

BILL NO. R-20-09-29

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA,
REGARDING THE APPROVAL OF A PARKING
STRUCTURE LEASE WITH REGARD TO AN
ECONOMIC DEVELOPMENT PROJECT FOR A NEW
MIXED-USE PROJECT TO BE UNDERTAKEN BY
ASHBERRY EIGHT, LLC AND RAZE 222 LLC (THE
ASHBERRY PROJECT)**

WHEREAS, the Fort Wayne Redevelopment Commission (the “Commission”), governing body of the City of Fort Wayne, Indiana, Department of Redevelopment (the “Department”) and the Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the “Act”); and

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the “City”), known as the Riverfront I Columbia Street Economic Development Area, to be a redevelopment area and an allocation area (the “Area”), adopted a Redevelopment Plan, and established an allocation fund for said Area; and

WHEREAS, the Commission has entered into an Economic Development Agreement (“EDA”) with Ashberry Eight, LLC, and RAZE 222 LLC (the “Developers”), wherein the Developers agreed to develop and construct a mixed-use building consisting of a commercial component and a parking structure, constituting an aggregate investment of approximately Forty-Three Million Four Hundred Forty-Four Thousand and No/100 Dollars (\$43,444,000.00), to be located within the Area on the western half of the block bounded by Main Street, Harrison Street, Berry Street, and Maiden Lane in downtown

1 Fort Wayne (the "Project"), and the Commission agreed to provide certain economic
2 development incentives; and

3 WHEREAS, the Project is the second and final phase of a redevelopment
4 project encompassing a portion of the block upon which the Project is located, the first
5 phase consisting of the rehabilitation of 202 Metro (as defined in the Lease), located at
6 the northwest corner of Harrison Street and Berry Street; and
7

8 WHEREAS, the Commission has determined that completion of the
9 Project is in the best interests of the citizens and taxpayers of the City and, to stimulate
10 and induce the completion of the development of the Project, the Commission agreed in
11 the EDA, subject to further proceedings as required by law, to provide certain economic
12 development incentives in exchange for the development of the Project; and
13

14 WHEREAS, the Commission agreed to provide support to the Project
15 pursuant to the EDA in substantially the form of the Parking Structure Lease attached
16 hereto as Exhibit A and incorporated herein by reference (the "Lease"), wherein the
17 Commission shall lease, operate and manage the parking structure for a period not to
18 exceed twenty-two (22) years in exchange for its payment of Annual Rent (as defined in
19 the Lease) as and when the same is due and payable pursuant to the Lease; and
20

21 WHEREAS, the Commission has held a public hearing on the Lease and
22 thereafter determined that the service to be provided throughout the term of the Lease
23 will serve the public purpose of the City and that the execution of the Lease is in the best
24 interest of its residents pursuant to Indiana Code 36-7-14-25.2(c).

25 WHEREAS, the Commission shall pledge the tax increment revenues
26 generated by the Project and by 202 Metro ("TIF Revenues") to the payment of the
27 amount due pursuant to the Lease; and
28

1 WHEREAS, the Common Council has determined that the completion of
2 the Project is in the best interests of the citizens and taxpayers of the City and desires to
3 provide for the stimulation and inducement of the Project and approve the Lease as
4 provided in this Resolution;
5

6 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
7 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

8 1. The Common Council finds, determines, ratifies and confirms that
9 the Project is in the best interests of the citizens and taxpayers of the City of Fort Wayne
10 and will support the redevelopment goals of the City of Fort Wayne in the Area.

11 2. The Common Council hereby finds and determines that the Lease
12 is in the best interests of the citizens and taxpayers of the City of Fort Wayne and the
13 Lease is approved in substantially the form attached to this Resolution as Exhibit A. As
14 set forth in the Lease, the maximum term of the Lease shall be twenty-two (22) years and
15 the maximum Annual Rent shall be Seven Hundred Ninety-Five Thousand And No/100
16 Dollars (\$795,000.00), pursuant to Indiana Code 36-7-14-25.2(c).

17 This Resolution shall be binding and in full force and effect from and after the time it has
18 been adopted by Common Council, approved by the Mayor and otherwise executed and
19 delivered in accordance with any and all laws appertaining thereto.
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Councilmember

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

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EXHIBIT A
PARKING STRUCTURE LEASE

(See attached)

RESOLUTION 2020-40
FORT WAYNE REDEVELOPMENT COMMISSION

AUTHORIZING THE EXECUTION OF A LEASE
OF CERTAIN LAND AND IMPROVEMENTS IN THE CITY OF FORT WAYNE, INDIANA,
WITH RESPECT TO A NEW ECONOMIC DEVELOPMENT PROJECT IN THE CITY
TO BE UNDERTAKEN BY ASHBERRY EIGHT, LLC AND RAZE 222 LLC
(ASHBERRY PROJECT)

WHEREAS, the Fort Wayne Redevelopment Commission (the "Commission"), governing body of the City of Fort Wayne, Indiana, Department of Redevelopment (the "Department") and the Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953 which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the "Act"); and

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the "City"), known as the "Riverfront I – Columbia Street EDA," to be a redevelopment area and an allocation area (the "Area"), adopted a redevelopment plan for the Area, and established an allocation fund for the Area (the "Allocation Fund"); and

WHEREAS, Ashberry Eight, LLC, an Indiana limited liability company, and Raze 222 LLC, an Indiana limited liability company (collectively, the "Developer"), have proposed the development of a mixed-use building including commercial uses and a parking garage, as more particularly described on Exhibit A attached hereto (the "Project"), on real estate located generally on the western half of the block bounded by Main Street, Harrison Street, Berry Street, and Maiden Lane in Fort Wayne, Indiana, legally described on Exhibit B attached hereto (the "Project Real Estate"); and

WHEREAS, the Project is the second and final phase of a redevelopment project encompassing a portion of the block upon which the Project Real Estate is located, the first phase consisting of the rehabilitation of 202 Metro, located at the northwest corner of Harrison Street and Berry Street; and

WHEREAS, the Commission has determined that completion of the Project is in the best interests of the citizens of the City and, to stimulate and induce the completion of the development of the Project, the Commission entered into that certain Economic Development Agreement pursuant to Resolution 2020-39 approved by the Commission on September 14, 2020 ("EDA"), with Developer and Summit Development Corp. ("Summit"); and

WHEREAS, Developer, Summit and Commission have agreed upon a Parking Structure Lease ("Lease") in substantially the form attached hereto as Exhibit C pursuant to the EDA; and

WHEREAS, a notice of public hearing on the Lease was published on September 4, 2020, pursuant to and in accordance with Indiana Code 5-3-1; and

WHEREAS, on this date such public hearing has been held and all interested parties have been provided the opportunity to be heard at the hearing; and

WHEREAS, the Commission, after conducting a public hearing in accordance with Indiana Code 36-7-14-25.2(c), has determined that (a) the terms of the Lease are based upon the value of the facilities leased

and (b) the service to be provided throughout the term of the Lease will serve the public purpose of the City and is in the best interest of its residents; and

WHEREAS, the Commission intends to pay rent to the Lessor (the "Rental Payments"), pursuant to the terms of the Lease, at a rate not to exceed Seven Hundred Ninety-Five Thousand and No/100 Dollars (\$795,000.00) per year for a period not to exceed twenty-two (22) years, as provided in the Lease; and

WHEREAS, the Commission anticipates that it will pay the Rental Payments from incremental tax revenue pledged by the Commission generated by the Project and generated by 202 Metro (as that term is defined in the Lease) (the "Pledged Revenue");

NOW, THEREFORE, BE IT RESOLVED by the Fort Wayne Redevelopment Commission that:

1. The Rental Payments to be paid by the Commission, pursuant to the terms of the Lease, at a rate not to exceed Seven Hundred Ninety-Five Thousand and No/100 Dollars (\$795,000.00) per year for a period not to exceed twenty-two (22) years, as provided in the Lease, are fair and reasonable, and the service to be provided throughout the term of the Lease will serve the public purpose of the City and is in the best interests of its residents.
2. The President and the Secretary of the Commission are hereby authorized and directed, on behalf of the Commission, to execute and attest, respectively, and to deliver the Lease in substantially the form presented at this meeting with such changes in form or substance as the President and Executive Director of the Commission shall approve, such approval to be conclusively evidenced by the execution thereof, following the approval of the Lease by the Common Council of the City (the "Common Council").
3. The Secretary of the Commission is hereby directed to transmit to the Common Council a copy of this Resolution, and the Commission hereby approves and ratifies action taken by the Secretary of the Commission to file with the Common Council a resolution approving the Lease.
4. The Commission hereby ratifies any and all actions taken by Commission officers and staff to cause publication of the notice of public hearing on the Lease.
5. Pursuant to Section 39(b)(3) of the Act and Indiana Code 5-1-14-4, the Commission hereby pledges the Pledged Revenue to the payment of the Lease pursuant to the terms of the Lease.
6. There is hereby created within the Allocation Fund an "Ashberry Eight Account". Subject to the terms of this Resolution, all Pledged Revenue deposited into the Allocation Fund pursuant to the Act shall be set aside into such account and used for the purpose described herein.
7. The obligation of the Commission to make rental payments under the Lease is limited to Pledged Revenues and shall not be considered a debt of the City or the Redevelopment District of the City for purposes of the Constitution or laws of the State of Indiana.
8. The President and the Secretary of the Commission are, and each of them is, hereby authorized and directed to take all such further actions and to execute all such agreements, instruments or documents as are desirable to carry out the transactions contemplated by this Resolution, in such

form as the President, the Vice President and the Secretary of the Commission executing the same shall deem proper, to be evidenced by the execution thereof.

9. This Resolution shall be in full force and effect after its adoption by the Commission.

FORT WAYNE REDEVELOPMENT COMMISSION

Christopher Guerin, President

Steve Corona, Secretary

ADOPTED: 14 September 2020

EXHIBIT A

Description of Project

Ashberry is a new 7-story mixed-use building containing commercial space and a parking structure located on the western half of the block bounded by Main Street, Harrison Street, Berry Street, and Maiden Lane in downtown Fort Wayne, Indiana, including:

- *Parking garage* with 383 public parking spaces on floors 1 through 5 and 27 private spaces on the lower level.
- *Multi-story commercial retail/office* adjacent to the north and south sides of the parking garage, including:
 - Three-story south “end cap” along Berry St containing approximately 20,000 sft of commercial space.
 - Seven-story north “end cap” along Main St containing approximately 49,500 sft of commercial space.

The parking garage is partially screened from view along Berry Street by the South End Cap, and completely screened from view along Main Street by the North End Cap. The parking garage will incorporate architectural screening along Maiden Lane.

Maiden Lane will be converted from a two-way street into a one-way northbound street.

The anticipated cost of the project is \$43,444,000

EXHIBIT B

Legal Description of Project Real Estate

Parcel I

Part of Lot 520 in Hannas Addition, said Lot 520 described as Parcel III in Document #2016047990 in the Office of the Recorder of Allen County, Indiana, this new description was prepared by Micheal C. Vodde, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #16-07-122-2, dated November 21, 2019, more particularly described as follows:

BEGINNING at a mag nail monumenting the Northwest corner Lot 520 of Hannas Addition; thence South 11 degrees 56 minutes 43 seconds East, on the Southwesterly line of said Lot, a distance of 150.00 feet to the Southwest corner of said Lot; thence North 78 degrees 08 minutes 17 seconds East, on the Southeasterly line of said Lot, a distance of 26.58 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 75.39 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 78 degrees 08 minutes 17 seconds East a distance of 3.00 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 74.61 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A" on the Northwesterly line of said Lot; thence South 78 degrees 08 minutes 17 seconds West on the Northwesterly line of said Lot, a distance of 29.58 feet to the Point of Beginning, *containing 0.097 acres of land, more or less*, subject to all legal rights-of-way, easements, restrictions and rights affecting the above-described parcel.

Parcel II

Lot Number 522 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel III

Lot Number 534 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel IV

Lot Number 535 and the West 10 feet of Lot Number 536 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel V

Part of a 14 foot alley for the purpose of begin vacated between Lots 520, 521, 522, 534, 535, and 536 in Hanna's Addition, according to the plat thereof, as recorded in Deed Book A, page 17 in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of Lot 522 in Hanna's Addition; thence North 11 degrees 56 minutes 43 seconds West (assumed bearing and basis of bearing for all bearings in this description), a distance of 14.00 feet to the Southwest corner of Lot 534; thence North 78 degrees 08 minutes 17 seconds East, on the Southeast line of Lots 534, 535, and 536, a distance of 129.58 feet; thence South 11 degrees 56 minutes 43 seconds East a distance of 14.00 feet to the Northwest line of Lot 520; thence South 78 degrees 08 minutes 17 seconds West, on the Northwest line of lots 520, 521, and 522, a distance of 129.58 feet to the Point of Beginning, *containing 0.042 acres of land, more or less*.

Parcel VI

The East Forty (40) feet of Lot Number 536 in Hanna's Addition to the City of Fort Wayne, Indiana, according to the recorded plat thereof.

Parcel VII

Lot Numbered five hundred twenty one (521) in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, recorded in Deed Record C, pages 525-526, in the office of the Recorder of Allen County, Indiana.

EXHIBIT C

Parking Structure Lease

(see attached)

PARKING STRUCTURE LEASE

By and Among

ASHBERRY EIGHT, LLC and RAZE 222 LLC,

as Developer and Landlord

and

SUMMIT DEVELOPMENT CORP.,

as Tenant

and

**THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT,
acting by and through the FORT WAYNE REDEVELOPMENT COMMISSION,**

as Subtenant

Dated

_____, 2020

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PARKING STRUCTURE LEASE

THIS PARKING STRUCTURE LEASE ("Lease") is made and entered into as of _____, 2020 (the "Effective Date"), by and among ASHBERRY EIGHT, LLC, an Indiana limited liability company ("Ashberry"), RAZE 222 LLC, an Indiana limited liability company ("Raze" or "Landlord"), SUMMIT DEVELOPMENT CORP., an Indiana nonprofit corporation ("Tenant"), and THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT, acting by and through the FORT WAYNE REDEVELOPMENT COMMISSION ("Subtenant").

WHEREAS, Landlord, Ashberry, Tenant and Subtenant are each a party to the Development Agreement (as defined herein);

WHEREAS, Landlord and Ashberry own certain parcels of real estate located in the City of Fort Wayne, Allen County, Indiana, as depicted and legally described on attached Exhibit A (collectively, the "Development Tract");

WHEREAS, in accordance with the terms of the Development Agreement, Developer (as defined herein) is obligated to construct the Project (as defined herein) upon the Development Tract, which includes constructing the Parking Structure (as defined herein) upon the Parking Structure Parcel (as defined herein);

WHEREAS, in accordance with the terms of the Development Agreement, Tenant shall lease a portion of the Parking Structure (such portion being referred to herein as the Premises) from Landlord, and Tenant shall sublease the Premises to Subtenant, all pursuant to the terms and conditions set forth in this Lease; and

WHEREAS, this Lease is drafted by the parties with the intent that it will conform to and comply with Indiana law and in all instances be construed and enforced in order to give the fullest effect of such intent; and this Lease is entered into by the parties pursuant to the authority set forth in Indiana Code § 36-7-14-25.2, and all parties hereto intend that this Lease be construed to comply with said statute.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord, Ashberry, Tenant and Subtenant agree as follows:

ARTICLE 1 RECITALS; DEFINITIONS

Section 1.01 Recitals. The representations, covenants and recitations set forth in the foregoing recitals are material to this Lease and are hereby incorporated into and made a part of this Lease as though they were fully set forth in this Section 1.01.

Section 1.02 Lease and Sublease. Landlord acknowledges and agrees that this Lease shall constitute a lease from Landlord to Tenant and a sublease from Tenant to Subtenant pursuant to which Subtenant agrees, with Landlord's consent which is provided herein, to assume entirely the rights and obligations of the Tenant pursuant to this Lease. Throughout the

balance of this Lease, the reference to “Tenant” shall reference the rights and obligations of Tenant and, with Landlord’s consent, the Tenant’s Estate as leased to Tenant and subleased to and assumed by Subtenant.

Section 1.03 Definitions. For all purposes of this Lease and all exhibits and schedules to this Lease, except as otherwise expressly provided, the following terms shall have the meanings assigned to them in this Section or in the Section referenced after such terms:

“**202 Metro**” shall mean the eight (8) story mixed-use building located at 202 West Berry Street, Fort Wayne, Indiana 46802, as depicted and legally described on attached **Exhibit B**.

“**Alterations**” shall mean any alterations and modifications, rehabilitation or remodeling and additional improvements to the Premises made after completion of the initial construction of the Premises.

“**Annual Rent**” and “**Annual Rental Obligation**” shall have the meanings ascribed to them in Section 4.01 of this Lease.

“**City**” shall mean the City of Fort Wayne, Indiana.

“**Commencement Date**” shall mean the date which is the first day of the month following the occurrence of the Parking Structure Substantial Completion Date, which is estimated to be January 1, 2022.

“**Construction Plans**” shall mean final construction plans and specifications for the Project as described in the Development Agreement.

“**Developer**” shall mean, collectively, Ashberry and Raze.

“**Development Agreement**” shall mean that certain Economic Development Agreement entered into by and among Landlord, Ashberry, Tenant and Subtenant, dated September __, 2020, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

“**EDA**” shall have the meaning ascribed to it in the Development Agreement.

“**Event of Default**” shall have the meaning set forth in Section 9.01 of this Lease.

“**Excess Tax Increment Revenues**” shall mean, for any given year throughout the Term of this Lease, the amount by which Tax Increment Revenues exceed Annual Rent.

“**Lease**” shall mean this Parking Structure Lease, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

“**Mixed-Use Improvements**” shall mean a commercial building consisting of a seven (7) story plus lower level north end cap and common areas containing

approximately 59,747 square feet and a three (3) story south end cap with common areas and lower level tenant area containing approximately 26,435 square feet, the north and south sides of which will “wrap” the Parking Structure, as depicted on attached Exhibit C, and as reflected in the Preliminary Plans.

“**Mixed-Use Parcel**” shall mean that certain parcel of real estate located in the City of Fort Wayne, Allen County, Indiana, as depicted on attached Exhibit D.

“**Mortgagee**” shall mean any bank, insurance company, pension fund or other individual, corporation, partnership or other entity which is making a bona fide loan, take back purchase money mortgage, or an assignment sub-leaseback transaction and which is the holder of a beneficial interest and a secured position under any Mortgage (as defined in Section 13.04), but shall not include a mortgage or other encumbrance given with the intention of implementing a foreclosure to avoid the assignment restrictions contained in this Lease.

“**Net Operating Revenues**” shall mean all revenues derived from the Premises, minus all of Tenant’s expenses incurred in connection with the fulfillment of its duties and responsibilities hereunder, including without limitation, those described in Sections 4.05, 5.02 and 6.01 hereof, and minus the annual set aside for reasonable and necessary capital expenses.

“**Parking Structure**” shall mean a fully equipped and operational structured parking facility containing approximately three hundred eighty-three (383) public and twenty-seven (27) private parking spaces, together with entrances and exits, ramps and drives, common areas, stairwells, elevators, elevator lobbies and related facilities, to be constructed on the Development Tract as part of the Project in substantially the form and location depicted on attached Exhibit C and as reflected in the Preliminary Plans.

“**Parking Structure Parcel**” shall mean that certain parcel of real estate located in the City of Fort Wayne, Allen County, Indiana, and as depicted on attached Exhibit D.

“**Parking Structure Substantial Completion Date**” shall mean the date the Parking Structure is substantially complete as provided in Section 3.03 hereof.

“**Permitted Delays**” shall have the meaning set forth in Section 13.01 of this Lease.

“**Preliminary Plans**” shall mean the preliminary plans and specifications for the Project, as described in the Development Agreement.

“**Premises**” shall mean the Parking Structure, less and excepting certain portions situated below ground as depicted in the Parking Structure Lease, but including certain common areas, stairwells, elevators and approximately three hundred eighty-three (383) public parking spaces, as more particularly depicted on attached Exhibit C. The Premises are a three-dimensional space, the exact description of which will be determined in connection with the completion of the Construction Plans. Upon completion thereof, the

parties may elect to attach the three-dimensional legal description of the Premises as part of Exhibit C.

“Project” shall mean, collectively, the Parking Structure and the Mixed-Use Improvements to be constructed and developed on the Development Tract which reflects an investment by Landlord in land, a building and equipment of approximately \$43,444,000.

“Real Estate Taxes” shall mean and include such installments of *ad valorem* real property taxes and assessments levied upon or with respect to the Development Tract, including land and improvements and all use, impact and related fees or costs associated therewith, which become due and payable during the Term of this Lease.

“Subtenant” shall mean the City of Fort Wayne, Indiana, Department of Redevelopment, acting by and through the Fort Wayne Redevelopment Commission.

“Tax Increment Revenues” shall mean the tax increment revenues generated by the Project and 202 Metro when and as received by Subtenant from the Treasurer of Allen County, Indiana.

“Tenant” means Summit Development Corp., an Indiana nonprofit corporation. Tenant shall also have the meaning ascribed to it in Section 1.02 hereof.

“Tenant’s Estate” shall mean Tenant’s interest in the Parking Structure, this Lease or any permitted sublease of this Lease.

“Term” shall have the meaning set forth in Section 2.02 of this Lease.

ARTICLE 2 GRANT AND TERM OF LEASE

Section 2.01 Premises. For and in consideration of the terms and conditions set forth in the Development Agreement and hereinafter stated, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises pursuant to the terms and conditions of this Lease. Landlord hereby grants to Tenant (i) a right to access the Premises by existing or future roads, sidewalks or accessways as the same shall exist from time to time, (ii) a right to access the Premises by the common areas and entranceways identified in attached Exhibit C; and (iii) all easement rights in favor of the Premises which are useful for the operation of the Parking Structure upon the Premises. Landlord hereby reserves the right to locate all necessary mechanical components for tenants of the Project on the Premises, provided that such components do not unreasonably interfere with the intended use of the Premises or obstruct access to parking spaces.

Section 2.02 Term. The term of this Lease (the “Term”) shall begin on the Commencement Date and expire on a date that is six (6) months following the earlier of: (i) the date upon which Tenant satisfies through the payment of Annual Rent the Maximum Lease Obligation (as defined below); or (ii) July 11, 2042.

Section 2.03 Covenants of Title and Quiet Enjoyment. Subject to all easements, restrictions, agreements and encumbrances of record which encumber the Development Tract, including the Declaration described in the Development Agreement (the "Permitted Exceptions"), Landlord represents and warrants to Tenant that Landlord, as of the Commencement Date, shall have good and marketable fee simple title to the Premises. Landlord covenants and agrees that so long as no Event of Default exists and is continuing, Tenant shall have peaceful and quiet enjoyment of the Premises, subject to the Permitted Exceptions, during the Term.

Section 2.04 Development Agreement. Landlord and Tenant acknowledge that this Lease is being entered into pursuant to the terms and conditions of the Development Agreement. A default under the Development Agreement shall also be a default under this Lease, subject to the notice and cure periods under the Development Agreement and subject to any limitation of remedies set forth in the Development Agreement. Capitalized terms not otherwise defined in this Lease shall be defined as provided in the Development Agreement.

Section 2.05 Surrender of Premises. Upon the termination of this Lease, Tenant shall surrender the Premises to Landlord, including the Parking Structure Parcel and the Parking Structure, and all improvements and fixtures related thereto, unless the same are to be removed as expressly provided in this Lease, in good operating condition in compliance with Tenant's maintenance obligations, reasonable wear and tear and damage by casualty excluded, and subject to Landlord's maintenance obligations. Tenant shall remove, prior to such termination, all of its trade fixtures, equipment and personal property which are owned by and installed by Tenant. In the event that Tenant holds over under this Lease without Landlord's prior written consent, Tenant shall be responsible for payment of an amount equal to one hundred twenty-five percent (125%) of the Annual Rent paid to Landlord the previous year under this Lease plus reasonable out-of-pocket costs and expenses incurred by Landlord as a result of such holdover, prorated to match the length the Tenant's holdover. A nonconsensual holdover shall also be an Event of Default hereunder and Landlord shall be entitled to all remedies provided in this Lease and otherwise available to Landlord under the law.

Section 2.06 Common Areas. Landlord and Tenant hereby grant to one another and their respective agents, contractors, employees, licensees and invitees, during the Term, the reciprocal license to access and right to use the common entranceways, driveways, walkways, entrances, stairways, elevators, landings and other common areas within the Parking Structure or the Mixed-Use Improvements, which are designed for public use and ingress and egress to and from the Parking Structure to the Mixed-Use Improvements and the public right of ways adjacent to the Mixed-Use Parcel and the Parking Structure Parcel, as depicted on attached Exhibit C.

Section 2.07 Utilities. Developer and Tenant hereby grant to one another during the Term the reciprocal license to access and right to use such utility lines and facilities available at the Mixed-Use Parcel and the Parking Structure Parcel, including the right to connect to such utilities (subject to the rights of any third-party utility provider) as currently shown on the Preliminary Plans.

ARTICLE 3 CONSTRUCTION

Section 3.01 Parking Structure Construction Obligations of Landlord. Developer shall construct the Parking Structure upon the Parking Structure Parcel pursuant to the Construction Plans. Developer shall construct the Parking Structure at Developer's cost and expense, except as expressly stated otherwise in this Lease or in the Development Agreement. Construction of the Parking Structure shall include, without limitation, the site work, excavation and foundation and structural support necessary to support the Parking Structure, all as provided in the Development Agreement and as to be reflected in the Construction Plans. Developer's construction shall be in compliance with the Construction Plans unless a material modification to the Construction Plans is approved in writing by Tenant. For purposes of this Section 3.01, a material modification to the Parking Structure is one that has a material impact on the structure, exterior appearance, exterior materials, interior configuration, common areas, accessways, driveways or parking spaces located within the Parking Structure, including but not limited to any change in the materials or methods used for construction.

Section 3.02 Mixed-Use Improvements Construction Obligations of Landlord. Landlord shall construct the Mixed-Use Improvements upon the Mixed-Use Parcel pursuant to the Construction Plans. For purposes of this Section 3.02, a material modification to the Mixed-Use Improvements is any modification to the Mixed-Use Improvements which reduces the Investment (as defined in the Development Agreement) or which impacts the gross leasable square footage, the exterior appearance, exterior materials or the materials or methods used for construction. Landlord shall construct the Mixed-Use Improvements at Landlord's sole cost and expense.

Section 3.03 Project and Parking Structure Construction Schedule. Developer shall commence construction of the Project in accordance with the construction schedule attached hereto as Exhibit E (the "Construction Schedule"). Subject to delays caused solely by Tenant and subject further to Permitted Delays, Parking Structure Substantial Completion must be achieved so as to allow Tenant to occupy and commence operations in the Premises as soon as possible after the Development Closing, but no later than forty-eight (48) months following the Development Closing (the "Parking Structure Substantial Completion Date"). For purposes of this Lease, "Parking Structure Substantial Completion" shall mean the date on which (i) the Parking Structure has been completed in material compliance with the Construction Plans so that the Premises is immediately available for Tenant's occupancy and intended use; (ii) Developer's Architect has issued a Certificate of Substantial Completion on AIA Form G704 2017 with respect to the Parking Structure; (iii) a punch list of minor adjustments and unfinished items has been prepared by Developer and approved by Tenant; and (iv) a certificate of occupancy or other required occupancy permits have been issued for the Parking Structure.

Section 3.04 Mixed-Use Improvements Construction Schedule. Landlord shall commence construction of the Mixed-Use Improvements and shall continue construction in accordance with the Construction Schedule. Subject to delays caused solely by Tenant and subject further to Permitted Delays, Mixed-Use Improvements Substantial Completion must be achieved as soon as possible after the Development Closing, but no later than forty-eight (48) months following the Development Closing (the "Mixed-Use Improvements Substantial

Completion Date”). For purposes of this Lease, “Mixed-Use Improvements Substantial Completion” shall mean (i) the Mixed-Use Improvements have been completed in material compliance with the Construction Plans so that the Mixed-Use Improvements are immediately available for occupancy for Landlord and any third-party end users; (ii) Landlord’s Architect has issued a Certificate of Substantial Completion on AIA Form G704 2017 with respect to the Mixed-Use Improvements; and (iii) a certificate of occupancy or other required occupancy permits have been issued for the Mixed-Use Improvements.

Section 3.05 Construction Cooperation. The parties agree to cooperate and communicate with each other at all times during construction of the Project. Each party acknowledges and agrees that as the Parking Structure and the Mixed-Use Improvements may be constructed simultaneously or may be constructed at different times, some amount of disruption to the activities of the Parking Structure and the Mixed-Use Improvements may occur during the course of construction. Each party agrees to work with the other to minimize disruptions to the extent possible and to accommodate such disruptions as are necessary during the course of construction. Developer may designate certain portions of the substantially completed Parking Structure for staging construction of the Mixed-Use Improvements for such terms as the parties may agree, provided Tenant’s use of the Premises is not unreasonably impacted thereby. Developer shall indemnify and hold Tenant harmless from and against the cost of repair to, or any liability or damage arising from, Developer’s use of the staging area within the Parking Structure during construction.

Section 3.06 Subtenant Approval. This Lease shall require Landlord to obtain from Subtenant approval with respect to the following matters:

- (a) The selection of the design professionals employed to design the Parking Structure and other components of the Premises including, without limitation, common areas, stairwells, and elevators, or any change made thereto;
- (b) The selection of the prime contractors employed to construct the Parking Structure and other components of the Premises including, without limitation, common areas, stairwells, and elevators, or any change thereto;
- (c) The selection of the materials and methods of construction for the Parking Structure and other components of the Premises including, without limitation, common areas, stairwells, and elevators;
- (d) The layout of the access points between the Parking Structure, Premises and public rights of way;
- (e) The design of vehicular circulation throughout the Parking Structure;
- (f) The number, layout and allocation of parking spaces throughout the Parking Structure;
- (g) The parking access and revenue control system throughout the Parking Structure; and

- (h) The location, selection and quantity of electric vehicle charging stations.

Subtenant agrees to consult with Landlord in good faith and agrees that its approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 4 RENT AND EXPENSES

Section 4.01 Annual Rent; Audit Rights; Net Operating Revenues.

(a) Beginning on the Commencement Date and continuing throughout the Term of this Lease, Tenant shall pay annual rent to Landlord in semi-annual installments (on or about June 1 and December 1 of each year throughout the Term) solely from one hundred percent (100%) of the Tax Increment Revenues, all as pledged by the City of Fort Wayne Redevelopment Commission in payment of the annual rent. The amount of annual rent payable by Tenant hereunder shall be \$795,000 (the "Annual Rent" or the "Annual Rental Obligation"), except that the amount of each bi-annual payment due from Tenant hereunder shall be the lesser of: (i) \$397,500 and (ii) one-half of the Tax Increment Revenues collected by Subtenant for the then-applicable calendar year. Throughout the Term, Landlord shall bear the risk of there being insufficient Tax Increment Revenues to satisfy the payment of Annual Rent. To mitigate Landlord's risk, however, Tenant shall, in future years, following any shortfall with respect to the payment of Annual Rent that is not attributable to Landlord's failure to pay in full when due the Real Estate Taxes payable with respect to the Parking Structure, apply Excess Tax Increment Revenues (if any) to any previous shortfall, with the intent being that at the end of the Term, Landlord shall have received, to the fullest extent possible, the full amount of the Maximum Lease Obligation (as defined in this Section 4.01). Also with respect to any such shortfall, Tenant shall make a good faith effort to pay such shortfall during the Term from unobligated tax increment generated by other properties located in the EDA, if allowable by law. Any payment by Tenant of any Excess Tax Increment Revenues, made to account for any shortfall in the payment of Annual Rent not attributable to Landlord's failure to pay in full when due applicable Real Estate Taxes, shall hereinafter be referred to as a "Catch-up Payment". Notwithstanding anything contained herein to the contrary, under no circumstances shall Tenant be required to pay Annual Rent, aggregated throughout the Term of this Lease, in excess of \$15,070,000 (the "Maximum Lease Obligation").

(b) On or before April 15th of each calendar year during the Term of this Lease, Tenant shall provide Landlord with a detailed breakdown of Tax Increment Revenues and Net Operating Revenues for the previous calendar year. Notwithstanding anything contained herein to the contrary, Annual Rent shall abate in full, and Landlord shall forfeit its right to receive a Catch-up Payment, during any period of time in which Landlord has failed to pay in full when due the Real Estate Taxes payable with respect to the Premises and, during the first three (3) years of the Term, Landlord has failed to pay in full when due the Real Estate Taxes payable with respect to the Mixed-Use Improvements. Annual Rent shall also abate, in full, and Landlord shall forfeit its right to

receive a Catch-up Payment, during any period of time in which the Premises are not available for use by Tenant in accordance with this Lease. Annual Rent shall be prorated on a per diem basis for periods less than one (1) year.

(c) Landlord may audit Tenant's determination of Tax Increment Revenues and Net Operating Revenues identified in the above-referenced breakdown by providing a written notice of Landlord's intent to audit within sixty (60) days of Tenant's receipt of such breakdown. In the event Landlord fails to timely provide such written notice of Landlord's intent to audit, then Landlord shall be deemed to have waived the right to audit and the amount of Tax Increment Revenues and Net Operating Revenues shall be deemed to be that set forth in Tenant's written breakdown of the amount of Tax Increment Revenues and Net Operating Revenues. In the event of an audit by Landlord, Tenant shall make available its written evidence of the Tax Increment Revenues and Net Operating Revenues at Tenant's business office for Landlord's inspection and review. Any audit conducted by Landlord shall be at Landlord's sole cost and expense. In the event Landlord's audit establishes an understatement or an overstatement, then the amount of Tax Increment Revenues and Net Operating Revenues shall be revised to that amount shown in Landlord's audit, provided Tenant has approved Landlord's audit, which approval Tenant agrees shall not be unreasonably withheld, conditioned, or delayed.

(d) Tenant shall deposit the Annual Rent into a special fund designated for the payment of base rent due and payable under this Lease. Rent payments pursuant to this Lease are limited to the special fund so established pursuant to Indiana Code 36-7-14-25.2(f). The special fund shall consist of revenues pledged in accordance with Indiana Code 5-1-14-4 and subject to the provisions of Indiana Code 36-7-14-25.5. The parties hereto acknowledge and confirm that except as expressly stated otherwise in this Lease, the Annual Rent shall be paid exclusively from the sources identified herein and shall not constitute either: (i) a claim on any other funds of Tenant, Subtenant, or the City, or (ii) an indebtedness or obligation of the City. Landlord also acknowledges that the City is not the "Tenant" or the "Subtenant" under this Lease, and neither Annual Rent nor any additional rent shall be deemed an indebtedness of the City.

(e) The first bi-annual rent payment of this Lease payable by Tenant shall include, to the extent necessary for Tenant to meet its Annual Rent obligation, any Tax Increment Revenues which may have accrued between the Effective Date and the Commencement Date hereof.

(f) In addition to Annual Rent, Landlord shall be entitled to all Net Operating Revenues, which shall be payable by Tenant to Landlord on a monthly basis, in arrears, on or before the last day of each succeeding month throughout the Term of this Lease.

Section 4.02 Past Due Payments. If any payment required to be made by a party shall not be paid when due, such unpaid amounts shall bear interest from the due date to the date of payment at the rate of ten percent (10%) per annum.

Section 4.03 Place of Payments. All payments required to be paid by Tenant to Landlord shall be delivered to Landlord at its address set forth in Article 13 hereof.

Section 4.04 Real Estate Taxes and Assessments. During the Term, Developer shall timely pay, as and when due, all Real Estate Taxes, as herein defined, assessments and other governmental charges, general and special, including assessments for public improvements and benefits, if any, which now or hereafter constitute a lien upon the Development Tract, and any improvements located thereon. Tenant shall be responsible for all other permits, fees, sales taxes and all governmental charges related to the operation (but not for the construction) of the Premises. Landlord shall be responsible for all permits, fees, sales taxes and all governmental charges related to the construction and operation of the Mixed-Use Improvements upon the Mixed-Use Parcel. Ashberry shall be responsible for all permits, fees, sales taxes and all governmental charges related to the construction and operation of the portions of the Parking Structure not included in the Premises.

Section 4.05 Utilities. Developer shall be responsible for obtaining all original utility service connections necessary for the construction and operation of the Parking Structure on the Parking Structure Parcel. Thereafter, Tenant shall promptly pay when due all charges for any utility services furnished to the Premises during the Term. Gross parking revenue collected through the management and operation of the Premises may be used to fund or finance the payment of utility services. Landlord hereby acknowledges that the portion of the Parking Structure not constituting the Premises shall be separately metered. Developer shall be solely responsible for utility costs incurred during the construction of the Parking Structure. Landlord shall be solely responsible for all utility costs incurred by Landlord during construction of the Mixed-Use Improvements. Landlord shall promptly pay when due all charges for any utility services provided to the Mixed-Use Improvements during the Term of this Lease.

Section 4.06 General Provisions. Except as specifically set forth herein to the contrary, all monies payable pursuant to this Lease shall be paid without notice or demand and without relief from valuation and appraisal laws.

ARTICLE 5 USE OF PREMISES; ALTERATIONS AND IMPROVEMENTS

Section 5.01 Use of Premises. Tenant shall use the Premises solely for the purpose of operating the Premises, for such ancillary uses as are incidental thereto and for no other purpose without the express written consent of Landlord, which consent Landlord agrees shall not be unreasonably withheld, conditioned, or delayed. Tenant shall not commit any waste upon the Premises or use the Premises in any manner inconsistent with the operation of the Premises for its intended purpose. The Premises shall not be used for any unlawful purpose, or in any manner creating any nuisance thereon. The Premises shall be used in compliance with all Restrictions, as defined below. Tenant shall comply in all respects with all laws, ordinances, rules and regulations applicable to Tenant's operation of the Premises.

Section 5.02 Alterations and Improvements. Tenant may make Alterations to the Premises, and may construct and install additional improvements, so long as (i) the Alterations do not constitute a material deviation from the Construction Plans for the Parking Structure and

are conducted in accordance with the general requirements of this Lease and the Development Agreement, (ii) work on the Alterations, once begun, shall be continued to completion in a reasonable and diligent manner, subject to Permitted Delays, (iii) the Alterations do not reduce or negatively affect the fair market value of the Parking Structure, (iv) copies of preliminary plans shall be provided to Landlord before construction of the Alterations commences, and copies of as-built plans are provided promptly after the Alterations are completed, and (v) Tenant obtains advance written approval of Landlord, which may be withheld in Landlord's sole and absolute discretion. All Alterations proposed by Tenant shall, if permitted or approved, be at the sole cost and expense of Tenant. Gross parking revenue collected through the management and operation of the Premises may be used to fund or finance duly approved Alterations.

Section 5.03 Restrictions on Use. Developer and Tenant shall not use the Parking Structure Parcel or permit the Parking Structure Parcel to be used for any use which would violate applicable zoning and land use laws and regulations or which would violate any applicable private restrictions or covenants, including the Declaration described in the Development Agreement (the "Restrictions"). Each party agrees to discontinue any use which is not permitted by the Restrictions immediately upon notice from another party. Tenant agrees not to use the Parking Structure Parcel in any way that would cause an increase in the amount of insurance premiums paid by Tenant with respect to the Parking Structure.

ARTICLE 6 MAINTENANCE

Section 6.01 Parking Structure Maintenance. Beginning on the Commencement Date and continuing throughout the Term, Tenant, at Tenant's sole cost and expense, shall maintain, repair and replace the Premises as required to keep the same in good condition and repair and in compliance with all applicable laws, rules, ordinances, orders and regulations of federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction, reasonable wear and tear and damage by casualty excluded, except as otherwise specifically set forth in this Lease. Without limiting the above, Tenant shall be responsible for all snow and ice removal and for the repair of all accessways, sidewalks, parking areas and related improvements located within the Premises or on any adjacent public right-of-way (but excluding any obligation to maintain the actual roadway pavement or adjacent shoulder for such public right-of-way), to the extent the same is not maintained by a governmental agency or body. Tenant shall promptly and diligently repair the Premises, as required to maintain or comply with the requirements above, or to remedy all damage to all or any part of the Premises which occurs at any time during the Term. The completed work of maintenance, compliance, repair, restoration or replacement shall be at least equal in value, quality and use to the condition of the Premises before the event giving rise to the work, except as expressly provided to the contrary in this Lease. Tenant may fund or finance all reasonable maintenance and repair costs with gross parking revenue collected through the management and operation of the Premises, and Tenant may annually set aside a reasonable portion of gross parking revenue for necessary capital expenses. In the event annual gross parking revenue is insufficient to cover all of Tenant's expenses attributable to this Lease, Tenant may invoice Landlord the difference between its expenses and such revenues, and Landlord shall pay the said invoice within thirty (30) days of receiving such invoice.

Except as specifically set forth elsewhere in this Lease to the contrary, Landlord shall not

be required to furnish any services or facilities or to make any repairs, replacements, or maintenance of any kind in or on the Premises. Landlord's election to perform any obligation of Tenant due to Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant's default, and Tenant shall promptly reimburse, defend and indemnify Landlord against all liability, loss, cost and expense arising from it; provided, however, that prior to performing any such obligation, Landlord shall first give written notice to Tenant and allow the applicable cure period to run as provided in this Lease.

Notwithstanding anything contained in this Lease to the contrary, Landlord shall be responsible for the maintenance, repair and replacement of the foundation and structural supports of the Premises, the structural walls within the Premises and the structural walls of the roof deck on top of the Premises (but not the roof deck itself) and all other repair and replacement of Premises components caused by inherent construction defects in the Premises. Furthermore, Landlord shall and does hereby warrant the design, materials and workmanship used in the construction of the Premises against defects for the benefit of Tenant for a period of one (1) year following the Commencement Date. Landlord shall make available to Tenant any and all construction guaranties and warranties of materials and workmanship obtained by Landlord in the course of constructing the Premises in accordance with this Lease and shall, to the extent permitted by the terms and conditions of the guaranty or warranty, assign the benefits of the same to Tenant upon Tenant's written request. Tenant agrees to contact Landlord, inquire on availability of such construction guaranties and warranties prior to performing any material repairs or maintenance contemplated to be performed under this Section 6.01, and avail itself of such construction guaranties and warranties to the extent they are available in lieu of expending gross parking revenue. The provisions of this Section 6.01 shall survive the expiration or earlier termination of this Lease.

ARTICLE 7 INSURANCE

Section 7.01 Insurance. Beginning on the Commencement Date and continuing throughout the Term, each party to this Lease shall maintain policies of commercial general liability insurance listing the other party as an additional insured and, during all times that a party is performing construction activities upon the Parking Structure Parcel or the Mixed-Use Parcel, that party shall cause its general contractor to maintain the construction insurance coverages, all as listed on attached **Exhibit F**. Beginning on the Commencement Date and continuing throughout the Term, Tenant shall maintain the completed structure property casualty insurance coverages and the commercial general liability coverages set forth on attached **Exhibit F** and such additional coverage as Landlord may reasonably require from time to time so long as such coverage is customary for similar properties in the greater Fort Wayne, Indiana area at the time the same is requested. The insurance coverages required to be carried subject to this Section 7.01 shall be with companies, and in forms, amounts and limits and for such periods of time and subject to such deductibles, as is customary for projects of this kind, and shall insure the respective interests of the parties to this Lease. No insurance coverage shall be acceptable if the provider is rated less than "A- VIII" by A. M. Best & Co. or in the event such company is no longer providing such ratings, a similar rating as may be provided by a national rating company. Such insurance may be provided in umbrella policies covering more than one property.

Certificates and renewals thereof covering the risks to be insured against, bearing satisfactory evidence of payment of all premiums thereon, shall be delivered by each party to the other parties at least thirty (30) days prior to the date that such insurance is required pursuant to this Lease. At least thirty (30) calendar days prior to the expiration of any insurance coverage required to be provided hereunder, each party shall deliver to the each other party, evidence of the renewal or replacement of such insurance and appropriate evidence of payment of premiums therefor. All insurance coverages required to be carried hereunder shall:

- (a) include effective waivers by the insurer of all rights of subrogation against any named insured;
- (b) provide that no cancellation, non-renewal, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by the other parties of written notice thereof;
- (c) name the Landlord, Tenant and Subtenant, as the case may be as an additional insured;
- (d) be on a completed value, non-reporting form with no co-insurance requirement; and
- (e) if customary for similar projects in the greater Fort Wayne, Indiana area, include terrorist coverage.

Notwithstanding the terms and conditions of this Section 7.01 above, Tenant reserves the right to self-insure any of the coverages required to be carried by Tenant, provided Tenant gives Landlord written notice of and a certificate of said self-insurance program applicable to the Premises.

Section 7.02 Waiver of Subrogation. The parties release, and shall cause their contractors to release, each other, and their respective authorized representatives, from any claims for damage to any person, or to the Premises, the Parking Structure and other Improvements in which the Premises are located, and to the fixtures, personal property, and equipment in the Premises that are caused by or result from risks insured against or which would be insured against under any fire and extended coverage insurance policies carried, or customarily carried, by the parties, or by the parties' contractors, at the time of the damage. Each party shall cause each insurance policy obtained by that party, or by that party's contractor, to provide that the insurance company waives all right of recovery by way of subrogation against the other parties in connection with any damage covered by any policy.

Section 7.03 Indemnification. Tenant shall indemnify and hold Landlord harmless from any liability for injury (including loss of life) or damages to any person or property in, on or about the Premises from any cause arising from Tenant's possession, control, management, operation or use of the Premises during the Term of this Lease (other than liabilities or damages attributable to the negligence or willful misconduct of Landlord). The provisions of this Section 7.03 shall survive the expiration or earlier termination of this Lease.

ARTICLE 8 CONDEMNATION AND CASUALTY

Section 8.01 Condemnation. If all of the Premises are taken for any public purpose, this Lease shall terminate when possession of the Premises are taken by the applicable condemning authority. In the event of a partial taking of a material portion of the Premises or a partial taking that results in a lack of practical access to the Premises, Tenant shall have the right to terminate this Lease by notice to Landlord of such election not later than ninety (90) days from the date of such possession and, in the event of such election, this Lease shall terminate when possession of the Premises are taken by the applicable condemning authority. In the event of a partial taking that does not result in the termination of this Lease, this Lease shall terminate only as to that portion of the Premises taken as of the date possession is taken by the condemning authority and the rights and obligations of the parties hereunder shall otherwise continue to apply in full force and effect and Landlord shall be entitled to all condemnation awards applicable to the interest(s) in the Premises so condemned. Each party agrees to give the other party prompt notice of any threatened or pending condemnation of any part of the Premises, and Landlord shall have the sole right to participate in all proceedings and negotiations with respect thereto. For the purpose of this Article 8, a taking shall include a negotiated sale or lease and transfer of possession to a condemning authority under a bona fide threat of condemnation. In the event of a partial condemnation which results in a part of the Premises being condemned, Landlord shall be responsible, at its cost and expense, to (i) remove such portion of the Premises and restore the balance of the Premises to the same condition existing as of the date immediately prior to the condemnation to a functional unit to the extent practicable; and (ii) in the case of such restoration, Landlord shall be entitled to use the condemnation proceeds to restore the Premises. If the Premises or any portion thereof is taken temporarily, this Lease shall not terminate and Landlord shall be entitled to any and all compensation paid by the condemnation authority. Rent shall abate in proportion to the amount of the Premises which is not available to Tenant as a result of any condemnation.

Section 8.02 Casualty. If the Premises or any portion thereof is partially or totally destroyed by fire or other casualty, then Landlord shall as soon as practicable commence with the reconstruction and repair of the Premises and diligently pursue the same to completion, subject to delays caused by Tenant or Permitted Delays. Landlord shall be entitled to use the insurance proceeds to pay for the reconstruction and repair of the Premises. Rent shall abate in proportion to the amount of the Premises which is not available to Tenant as a result of any casualty. In the event available insurance proceeds are insufficient, in Landlord's determination, to pay for the reconstruction and repair of the Premises to approximately the condition preceding the casualty, or such casualty occurs in the last two (2) years of the Term, Landlord may elect to terminate this Lease as of the date of the casualty.

ARTICLE 9 DEFAULTS AND REMEDIES

Section 9.01 Default. The occurrence of any one or more of the following events shall be deemed to be an "Event of Default" under this Lease: (a) the failure of Tenant to pay any installment of Annual Rent on or before its due date and such failure has continued for five (5) business days following a written notice from Landlord to Tenant; (b) the failure of a party to

pay any sum required to be paid under this Lease (other than Annual Rent in the case of Tenant) within ten (10) days after written notice of such failure from a party entitled to demand such payment, (c) the failure of a party to comply with any other covenant or provision of this Lease within thirty (30) days after written notice of such failure from a party entitled to demand such performance, provided if such failure is not susceptible of being cured within such thirty (30) day period, a party shall have a reasonable period beyond such thirty (30) day period to effect such cure, so long as such party commences to cure such failure within such thirty (30) day period and diligently pursues the same to completion and any expenses incurred by the other party as a result of such failure are paid by the such party, and (d) an event of default by a party under the Development Agreement, subject to the applicable notice and cure periods contained therein.

Section 9.02 Remedies. When an Event of Default exists, subject to the rights and obligations of any Mortgagee set forth in Section 13.04 of this Lease, a non-defaulting party shall have the following remedies, which shall be their sole and exclusive remedies:

(a) Following any Event of Default, the non-defaulting party may perform the covenant of the defaulting party which is in default (entering on the property of the defaulting party, if necessary) and recover the cost of such performance, including an oversight and administrative fee of ten percent (10%) of the cost of the work, from the defaulting party. The non-defaulting party's performance of such covenant shall neither subject the non-defaulting party to liability for any loss, inconvenience or damage to the defaulting party nor be construed as a waiver of the defaulting party's default or of any other right or remedy provided for herein respecting such default;

(b) With respect to a default in any payment due from a party under this Lease, the party entitled to said payment may bring suit for the collection of any amounts for which the defaulting party is in default; and/or

(c) Following any Event of Default by a defaulting party, a non-defaulting party may exercise any other right or remedy at law or in equity, including the right to enjoin the failure to perform, or specifically enforce the performance of, any covenants with respect to which the defaulting party is in default under this Lease.

Interest on any amounts incurred by a non-defaulting party with respect to the cure of an Event of Default hereunder shall bear interest at the rate of ten percent (10%) per annum.

Section 9.03 Attorney Fees. In the event of any dispute between the parties regarding this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with such dispute. For purposes of this Lease, the term 'prevailing party' shall include, but not be limited to, a party obtaining substantially the relief sought, whether by award of a judgment by a court of competent jurisdiction, compromise, settlement, or otherwise.

ARTICLE 10 ASSIGNMENT AND SUBLETTING

Section 10.01 Assignment and Subletting. Except as permitted in Sections 1.02, 10.02 and 10.03 hereof, Tenant may not assign or otherwise transfer this Lease, or any interest therein, without the prior written consent of Landlord, which consent Landlord may withhold in Landlord's sole and exclusive discretion. Any transfer by operation of law or other transfer or assignment, or a series thereof, which are designed to assign the economic interest of the Tenant's rights under this Lease, shall be deemed to be an assignment and shall require Landlord's approval. Tenant may, without Landlord's consent, assign and sublease the Premises as provided in Sections 10.02 and 10.03 below.

Section 10.02 Permitted Subleases. Tenant shall be obligated and required to manage and operate the Premises and shall have the unfettered right to enter into third-party subleases and parking space licenses and agreements for all or a part of the Premises, and may enter into management contracts, operating agreements and equipment leasing agreements in order to operate the Premises as provided under this Lease, without Landlord's consent provided. Tenant shall provide Landlord with a written notice of all management contracts, operating agreements and equipment leasing agreements promptly upon execution.

Section 10.03 Permitted Assignments. Tenant shall be permitted to assign this Lease without the consent of Landlord (i) to another governmental agency or political subdivision for the purpose of financing or refinancing its interest in this Lease or its investment in improvements or alterations to the Premises, or (ii) to an entity acquiring all or any portion of Tenant's parking facilities located in the City; provided, however, that Tenant shall remain liable to Landlord for the payment of Annual Rent.

Section 10.04 Permitted Landlord Assignment. The rights and interests of Developer contained in this Lease may not be assigned by Developer prior to the Commencement Date, without the express prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, (a) Ashberry and Raze, each, may freely assign its rights and interest under this Lease to a business entity to be formed (or already formed), owned (in whole or in part) and controlled (in whole or in part) by Ashberry or Raze (whichever may be applicable), and (b) the collateral assignment of Developer's interests in this Lease to Developer's lender(s) as security for Developer's financing shall not require such notice or consent. Following the completion of the Project, the rights and interest of Landlord contained in this Lease may be freely assigned by Landlord, without the consent of Tenant, and upon thirty (30) days prior written notice to Tenant, to any party, in which case, (i) Landlord shall be released from any and all liabilities under this Lease first arising after the date of such assignment, so long as the assignee assumes in writing Landlord's obligations under this Lease first arising after the date of assignment, and (ii) upon receipt of written notice from Landlord, Tenant shall immediately and automatically attorn to the assignee, so long as the assignee assumes in writing Landlord's obligations under this Lease first arising after the date of assignment. Following the completion of the Project, the rights and interest of Ashberry contained in this Lease may be freely assigned by Ashberry, without the consent of Tenant, and upon thirty (30) days prior written notice to Tenant, to any party, in which case, Ashberry shall be released from any and all liabilities under this Lease first arising after the date of such assignment, so long as the

assignee assumes in writing Ashberry's obligations under this Lease first arising after the date of assignment.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

Section 11.01 Representations and Warranties of Landlord. Landlord represents and warrants to Tenant as of the Effective Date that:

- (a) Landlord has all requisite power and authority to execute and deliver this Lease and all other documents required to be executed and delivered by it pursuant hereto;
- (b) This Lease will not violate any statute, ordinance, governmental restriction, regulation or any private restriction or agreement applicable to Landlord;
- (c) Landlord has not entered into any contract, agreement or option, other than this Lease granting to any party the right to purchase, lease or sublease the Premises;
- (d) Landlord has received no written notice of any administrative agency action, litigation, condemnation or other proceeding of any kind pending or threatened that relates to the Premises; and
- (e) All of the representations and warranties of Landlord contained in the Development Agreement remains true as of the Effective Date.

Section 11.02 Representations and Warranties of Tenant. Tenant represents and warrants to Landlord as of the Effective Date that:

- (a) Tenant has all requisite power and authority to execute and deliver this Lease and all other documents required to be executed and delivered by Tenant pursuant hereto;
- (b) This Lease will not violate any statute, ordinance, governmental restriction, regulation or any private restriction or agreement applicable to Tenant; and
- (c) All of the representations and warranties of Tenant contained in the Development Agreement remain true as of the Effective Date.

ARTICLE 12 HAZARDOUS MATERIALS

Section 12.01 Environmental Obligations. No party to this Lease shall store, use, generate, manufacture, dispose, or release any Hazardous Materials (as defined in 29 Code of Federal Regulations 1910.120) on the Parking Structure Parcel, except that a party may store and use Hazardous Materials in nominal amounts as is reasonable, necessary and customary for the uses described herein for the Parking Structure, so long as such storage and use are in

compliance with all applicable laws, rulings, regulations, ordinances and other governmental directives.

Section 12.02 Tenant's Indemnification. Tenant shall be responsible for and shall indemnify and defend Landlord from and against any and all losses, claims, demands, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, reasonable attorneys' fees) which are brought or recoverable against, or suffered or incurred by Tenant or any party related thereto as a result of (i) any storage, use, generation, transport, manufacture, disposal or release of any Hazardous Materials by Landlord upon the Parking Structure Parcel (including Landlord's agents, employees or contractors), or (ii) which otherwise arise as a result of the operation of the Parking Structure by Landlord, except to the extent caused by the gross negligence or intentional misconduct of Tenant, its employees, agents or contractors. The obligations of Landlord under this Section 12.02 shall survive the expiration or any termination of this Lease.

Section 12.03 Landlord's Indemnification. Landlord shall be responsible for and shall indemnify, defend and hold Tenant harmless from and against any and all losses, claims, demands, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, reasonable attorneys' fees) which are brought or recoverable against, or suffered or incurred by Tenant as a result of any release of Hazardous Materials upon the Parking Structure Parcel to the extent caused by gross negligence or intentional misconduct of Landlord or its agents, employees or contractors. The obligations of Landlord under this Section 12.03 shall survive the expiration or any termination of this Lease.

ARTICLE 13 MISCELLANEOUS

Section 13.01 Permitted Delays. Whenever performance is required of any party hereto, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar cause beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances ("Permitted Delays", and in the singular form, each a "Permitted Delay"); except that any Permitted Delay shall not give Landlord or Tenant the right to withhold, postpone or delay any monetary obligations hereunder, including, in the case of Tenant, Annual Rent, unless such Permitted Delay by law prevents Landlord from its duty to pay Real Estate Taxes upon the Premises, or renders the Premises not available for use by Tenant in accordance with this Lease. If (i) there should arise any Permitted Delay for which Landlord or Tenant are entitled to delay its performance under this Lease, and (ii) Landlord or Tenant anticipates that the Permitted Delay will cause a delay in its performance under this Lease, then Landlord or Tenant, as the case may be, agree to provide written notice to the other party of the nature and the anticipated length of such delay.

Section 13.02 Memorandum of Parking Structure Lease. Promptly upon execution of the Lease, Landlord and Tenant shall execute and deliver a short-form or memorandum of lease in recordable form so as to give public notice of the existence of this Lease. Such memorandum of lease shall be in the form of the Memorandum of Parking Structure Lease attached hereto as Exhibit G.

Section 13.03 Real Estate Commissions. The parties each represent that they have not dealt with any broker in connection with this Lease and agree to indemnify each other from any loss, damage or claim arising from a breach of such representation.

Section 13.04 Subordination, Nondisturbance and Attornment. Tenant agrees that subject to the terms of this Section 13.04, this Lease is and all of Tenant's rights hereunder are and shall always be subject and subordinate to any mortgages, deeds of trust or security instruments ("Mortgage") that may now exist or may hereafter be placed upon the Parking Structure Parcel or the Parking Structure, or any part thereof, and to any and all advances made or to be made thereunder and to the interest thereon and all renewals, replacements, modifications, consolidations or extensions thereof as granted by Landlord. If the holder of any such Mortgage ("Mortgagee") or if the purchaser of any foreclosure sale or any sale under a power of sale contained in any Mortgage ("Purchaser"), at its sole option, so requests, Tenant will attorn to and recognize the Mortgagee or Purchaser as Landlord under this Lease, subject to the terms and conditions of this Lease. Such subordination and attornment is forever expressly conditioned upon the Mortgagee or Purchaser assuming in writing the obligations of Landlord under this Lease and agreeing that Tenant's rights under this Lease shall not be disturbed in any manner whatsoever, so long as Tenant remains in compliance with the terms and conditions of this Lease. The terms and provisions of this Section 13.04 shall be self-operative and no further instrument or document shall be necessary unless requested by Tenant, Mortgagee or Purchaser. Neither the Mortgagee nor the Purchaser shall be bound by any termination, amendment, modification or surrender of the Lease without such Mortgagee or Purchaser's written consent. Neither the Mortgagee nor the Purchaser shall be bound by any advance payment of rent more than the current rent due at any time during the Term of this Lease. Neither the Mortgagee nor the Purchaser shall be liable for any damages or subject to any offset or defense by Tenant as a result of the acts of a prior Landlord. Tenant shall, upon written request of said Mortgagee or Purchaser, execute all instruments and/or documents that may be reasonably requested to acknowledge the subordination, nondisturbance and attornment described in this Section 13.04. Notwithstanding anything to the contrary set forth above, any Mortgagee may, at any time, subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant. In the event a Mortgagee or Purchaser shall fail to uphold and comply with the provisions of this Section 13.04, then this Lease shall automatically be superior to the interests of such Mortgagee or Purchaser.

Section 13.05 Notices. All notices permitted or required to be given by any party hereunder shall be deemed to have been fully given when made in writing and delivered in person or by nationally recognized overnight courier or deposited in the United States mail, certified, postage prepaid, and addressed as follows:

If to Landlord: Ashberry Eight, LLC
Attention: Anthony J. Brita
888 S. Harrison Street, Suite 900
Fort Wayne, IN 46802
Telephone: 260-341-0365
Email: tony@ashcrest.com

With a copy to: Barrett McNagny LLP
Attention: Henry P. Najdeski
215 E. Berry Street
Fort Wayne, IN 46802
Telephone: 260-423-8835
Email: hpn@barrettlaw.com

If to Tenant or Subtenant: The City of Fort Wayne, Indiana
Department of Redevelopment
Attn: Executive Director
Citizen's Square
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
Telephone: 260-427-2323
Facsimile: 260-427-1375
Email: nancy.townsend@cityoffortwayne.org

With a copy to: The City of Fort Wayne, Indiana
Attention: Lawrence E. Shine
Citizen's Square
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Telephone: 260-427-1190
Facsimile: 260-427-5678
Email: lawrence.shine@cityoffortwayne.org

With a copy to: Rothberg Logan & Warsco LLP
Attention: Tom Trent
505 E. Washington Blvd.
Fort Wayne, IN 46802
Telephone: 260-469-0253
Email: ttrent@rlwlawfirm.com

All such notices shall be deemed to be received upon delivery in person or by overnight courier or on the third (3rd) day after mailing. Either party may change its address for notice by written notice given in accordance herewith.

Section 13.06 Construction and Interpretation. The captions of each article and section hereof are added as a matter of convenience only and shall be considered to be of no effect in the

construction or interpretation of any provision or provisions of this Lease. The terms of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns. This Lease shall be interpreted and its provisions shall be applied in accordance with the laws of the State of Indiana. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease shall not be affected thereby, and each term, covenant, or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. This Lease and the Development Agreement contain the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede all prior negotiations and agreements regarding the subject matter hereof. This Lease may be amended and modified only if (i) in writing, and (ii) signed by Landlord and Tenant. Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and the terms and provisions of this instrument shall be construed accordingly. All provisions hereof which by their nature would be expected to survive the termination or expiration of this Lease shall so survive.

Section 13.07 Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but not one in the same instrument.

Section 13.08 Rights of Inspection. Each party shall have the right at all reasonable times, upon reasonable prior notice and in conformity with reasonable security procedures, to go upon and inspect another party's construction and operations to determine that the same is in compliance with the terms and conditions of this Lease or to inspect and obtain information necessary for that party's construction or operations upon the Development Tract.

Section 13.09 Mechanic's Liens. The parties will not permit any mechanic's lien or liens to be filed against the Development Tract at any time for any work done for or materials furnished to a party; provided that a party may contest such lien or liens in good faith if a party (i) deposits as required by law a sufficient surety bond or other security to obtain a release of the lien or liens and (ii) obtains a court order releasing the lien or liens. If any such lien or liens are filed, then the party against whom the lien is filed shall cause the same to be removed within forty-five (45) days of the date of filing.

Section 13.10 Coordination with Development Agreement. This Lease and the Development Agreement shall be read and interpreted, to the extent possible, to give full meaning to each document and to avoid any conflict between the two. However, in the event that there is a direct conflict between the terms of the two documents, this Lease shall control.

Section 13.11 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created or any interest herein or in such leasehold estate, as well as the fee estate in the Premises or any interest in such fee estate.

Section 13.12 Estoppel Certificates. Any party shall, without charge, at any time and from time to time hereafter, within fifteen (15) days after the written request of the other, certify

by written instrument duly executed and acknowledged to any mortgagee, subtenant or assignee of Tenant or proposed mortgagee, subtenant or assignee of Tenant or to any purchaser from, or lender to, Landlord or any proposed purchaser from, or lender to, Landlord or any other person, firm or corporation specified in such request: (i) that this Lease is in full force and effect and unmodified or, if modified, stating the date of modification and the terms thereof, (ii) that the rent and other sums due and payable by the parties are paid currently without any offset or defense thereto, or stating any delinquency and offsets or defenses claimed by Tenant or Landlord, as the case may be, and known at the time of such statement, (iii) the amount of rent and any other sums due and payable, if any, paid in advance, and (iv) that there is no uncured Event of Default or default by Landlord or Tenant, as the case may be, and knowledge qualified with respect to defaults by the non-certifying party, or stating those claimed by either Landlord or Tenant, so long as the same are ascertainable, it being intended that any such instrument delivered pursuant to this Section 13.12 may be relied upon by any existing or prospective Mortgagee, assignee or subtenant of Tenant or purchaser or lender, or prospective purchaser from or lender to, Landlord.

Section 13.13 Waivers. No waiver of any condition or covenant in this lease by either party shall be deemed to imply or constitute a future waiver of the same or any other condition or covenant of this Lease. The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and in addition to every other right or remedy now or hereafter existing at law, in equity, or by statute, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises. No delay or omission to exercise any right or power by either party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein.

Section 13.14 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership, joint venture, or any relationship between the parties hereto other than that of Landlord and Tenant.

Section 13.15 Consent. Whenever it is necessary under the terms of this Lease for either party to obtain the consent or approval of the other party, except as expressly specified herein to the contrary, such consent or approval shall not be unreasonably withheld, conditioned or delayed. In the event that either party objects to the withholding of consent or approval by the other party, the objecting party shall be limited to the remedies of specific enforcement or an injunction to enforce the withholding party's obligation to consent, so long as the withholding party is not acting maliciously or in bad faith. The parties hereby waive any claims for monetary damages as a result of a party's wrongful withholding or delay in giving consent, so long as the party whose consent is required is not acting maliciously or in bad faith. Unless a different time period is specifically provided for in the Lease, any consent which is not provided within thirty (30) days of the date the request for the same is received, unless such delay is due in whole or in part to requesting party's acts or omissions, shall be deemed to have been given.

Section 13.16 Successors or Assigns. Except as otherwise specified in this Lease, all of the provisions contained in this Lease shall run with the land and bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors and assigns. Any references in this

Lease to Landlord and Tenant shall be deemed to include their respective heirs, successors and assigns.

Section 13.17 Disputes. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other or any work to be performed by either of them under the provisions hereof, the party against whom the obligation to pay or to perform is asserted shall have the right to make payment or perform such work and pay the cost thereof "under protest," and such payment or performance, so long as specifically identified, in writing, as "under protest," shall not be regarded as a voluntary payment or performance and the right of said party to institute suit to recover the amount paid "under protest" shall survive. If it shall be adjudged or mutually agreed by Landlord and Tenant that there was no legal obligation on the part of said party to pay such sum or any part thereof or that said party was not legally obligated to perform, said party shall be entitled to recover the amount paid "under protest" or so much thereof as it was not legally required to pay under the provisions of this Lease.

Section 13.18 Interest Rate. Except where a different rate of interest is expressly provided for elsewhere in this Lease, whenever any interest is payable by Tenant to Landlord or Landlord to Tenant under this Lease, such interest shall be paid at an annual rate equal to eight percent (8%).

Section 13.19 Severability. If any provision, covenant, agreement or portion of this Lease or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Lease and, to that end, any provisions, covenants, agreements or portions of this Lease are declared to be severable.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord, Tenant and Subtenant have executed this Lease as of the Effective Date.

ASHBERRY EIGHT, LLC,
an Indiana limited liability company

By: _____

Printed: _____

Its: _____

RAZE 222 LLC,
an Indiana limited liability company

By: ASHBERRY EIGHT, LLC, its sole Member

By: _____

Printed: _____

Its: _____

“LANDLORD”

SUMMIT DEVELOPMENT CORP., LLC
an Indiana nonprofit corporation

By: _____

Printed: _____

Its: _____

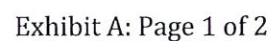
“TENANT”

**CITY OF FORT WAYNE DEPARTMENT OF
REDEVELOPMENT, acting by and through the
FORT WAYNE REDEVELOPMENT
COMMISSION**

By: _____

Christopher Guerin, President

“SUBTENANT”



Parcel I

Part of Lot 520 in Hannas Addition, said Lot 520 described as Parcel III in Document #2016047990 in the Office of the Recorder of Allen County, Indiana, this new description was prepared by Micheal C. Vodde, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #16-07-122-2, dated November 21, 2019, more particularly described as follows:

BEGINNING at a mag nail monumenting the Northwest corner Lot 520 of Hannas Addition; thence South 11 degrees 56 minutes 43 seconds East, on the Southwesterly line of said Lot, a distance of 150.00 feet to the Southwest corner of said Lot; thence North 78 degrees 08 minutes 17 seconds East, on the Southeasterly line of said Lot, a distance of 26.58 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 75.39 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 78 degrees 08 minutes 17 seconds East a distance of 3.00 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 74.61 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A" on the Northwesterly line of said Lot; thence South 78 degrees 08 minutes 17 seconds West on the Northwesterly line of said Lot, a distance of 29.58 feet to the Point of Beginning, *containing 0.097 acres of land, more or less*, subject to all legal rights-of-way, easements, restrictions and rights affecting the above-described parcel.

Parcel II

Lot Number 522 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel III

Lot Number 534 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel IV

Lot Number 535 and the West 10 feet of Lot Number 536 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

Parcel V

Part of a 14 foot alley for the purpose of begin vacated between Lots 520, 521, 522, 534, 535, and 536 in Hanna's Addition, according to the plat thereof, as recorded in Deed Book A, page 17 in the Office of the Recorder of Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of Lot 522 in Hanna's Addition; thence North 11 degrees 56 minutes 43 seconds West (assumed bearing and basis of bearing for all bearings in this description), a distance of 14.00 feet to the Southwest corner of Lot 534; thence North 78 degrees 08 minutes 17 seconds East, on the Southeast line of Lots 534, 535, and 536, a distance of 129.58 feet; thence South 11 degrees 56 minutes 43 seconds East a distance of 14.00 feet to the Northwest line of Lot 520; thence South 78 degrees 08 minutes 17 seconds West, on the Northwest lines of Lots 520, 521, and 522, a distance of 129.58 feet to the Point of Beginning, *containing 0.042 acres of land, more or less*.

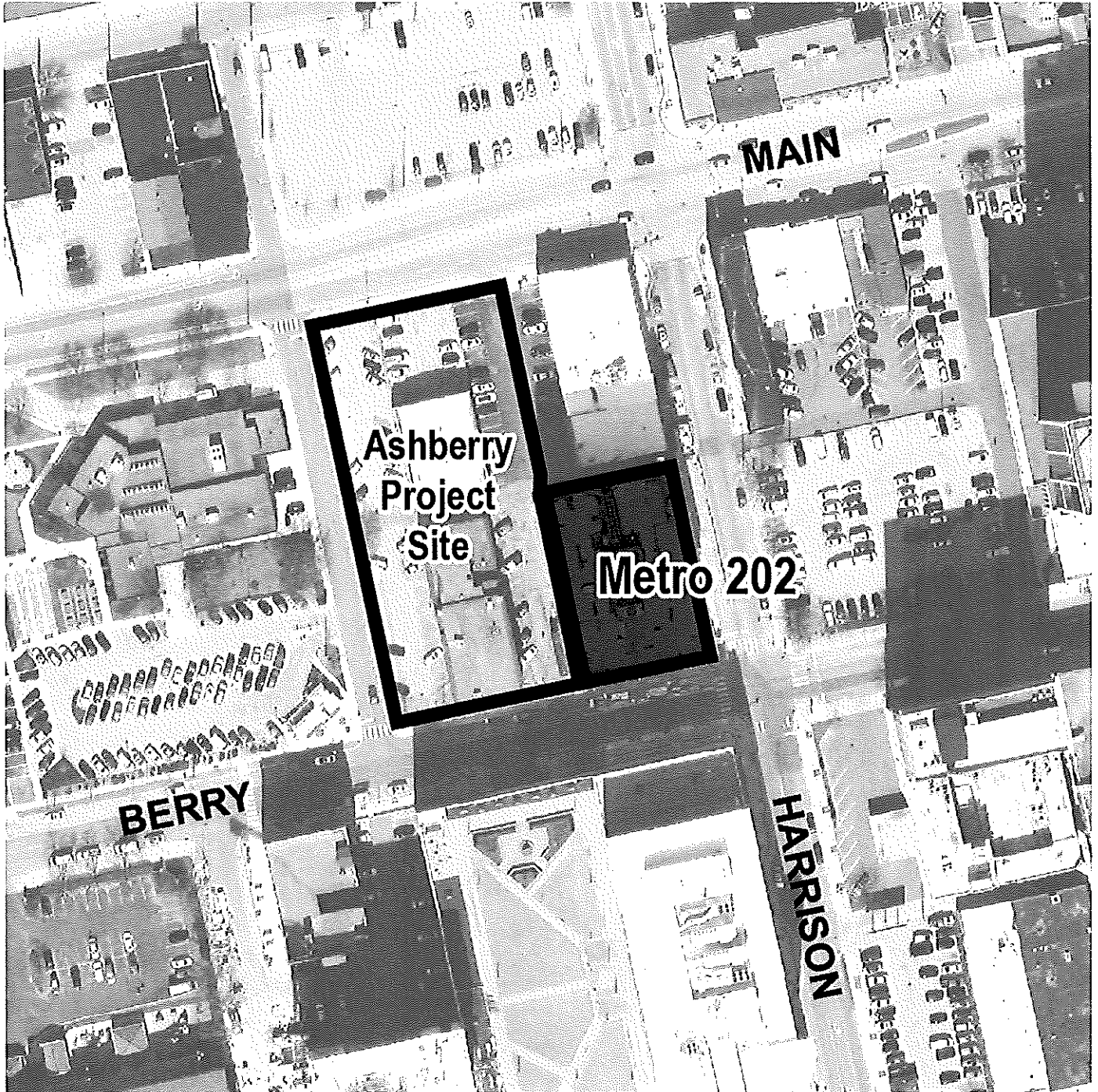
Parcel VI

The East Forty (40) feet of Lot Number 536 in Hanna's Addition to the City of Fort Wayne, Indiana, according to the recorded plat thereof.

Parcel VII

Lot Numbered five hundred twenty one (521) in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, recorded in Deed Record C, pages 525-526, in the office of the Recorder of Allen County, Indiana.

EXHIBIT B
Depiction and Legal Description of 202 Metro



PARCEL I:

Lot Number 518 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

PARCEL II:

Lot Number 519 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

PARCEL III:

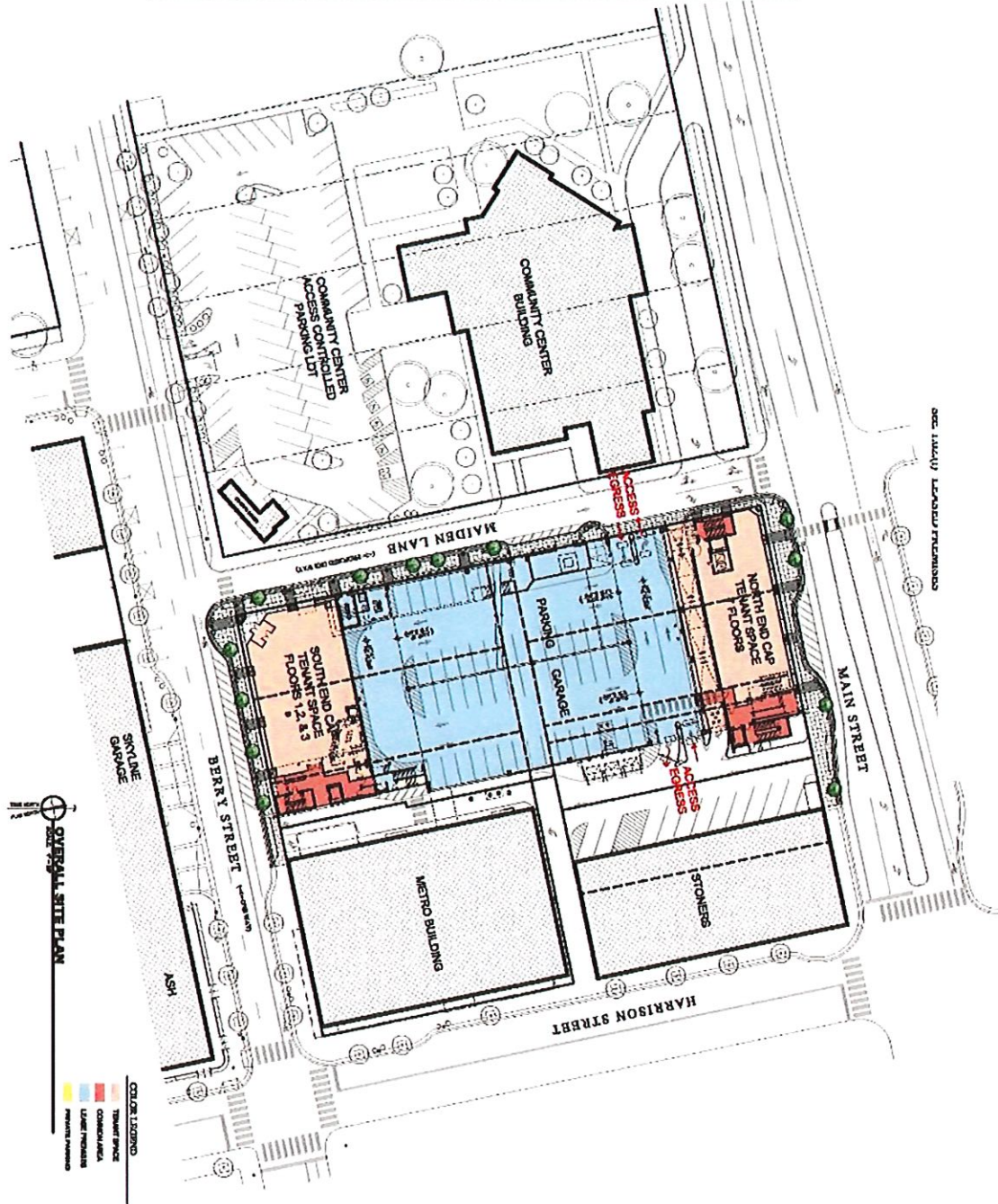
Lot Number 520 in Hanna's Addition to the City of Fort Wayne, according to the plat thereof, as recorded in Deed Record C, pages 525-526, in the Office of the Recorder of Allen County, Indiana.

LESS AND EXCLUDING

Part of Lot 520 in Hannas Addition, said Lot 520 described as Parcel III in Document #2016047990 in the Office of the Recorder of Allen County, Indiana, this new description was prepared by Micheal C. Vodde, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #16-07-122-2, dated November 21, 2019, more particularly described as follows:

BEGINNING at a mag nail monumenting the Northwest corner Lot 520 of Hannas Addition; thence South 11 degrees 56 minutes 43 seconds East, on the Southwesterly line of said Lot, a distance of 150.00 feet to the Southwest corner of said Lot; thence North 78 degrees 08 minutes 17 seconds East, on the Southeasterly line of said Lot, a distance of 26.58 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 75.39 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 78 degrees 08 minutes 17 seconds East a distance of 3.00 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A"; thence North 11 degrees 56 minutes 43 seconds West a distance of 74.61 feet to a mag nail with an identification washer stamped "ANDERSON FIRM #29A" on the Northwesterly line of said Lot; thence South 78 degrees 08 minutes 17 seconds West on the Northwesterly line of said Lot, a distance of 29.58 feet to the Point of Beginning, *containing 0.097 acres of land, more or less*, subject to all legal rights-of-way, easements, restrictions and rights affecting the above-described parcel.

EXHIBIT C **Building Floor Plans and Depiction of Leased Premises**



Mixed Use Parking Garage and Tenant Space
ASHBERRY
 222 West Berry Street, Fort Wayne, IN 46802



Note: Leased Premises depiction is based upon architectural plans dated August 27, 2020.



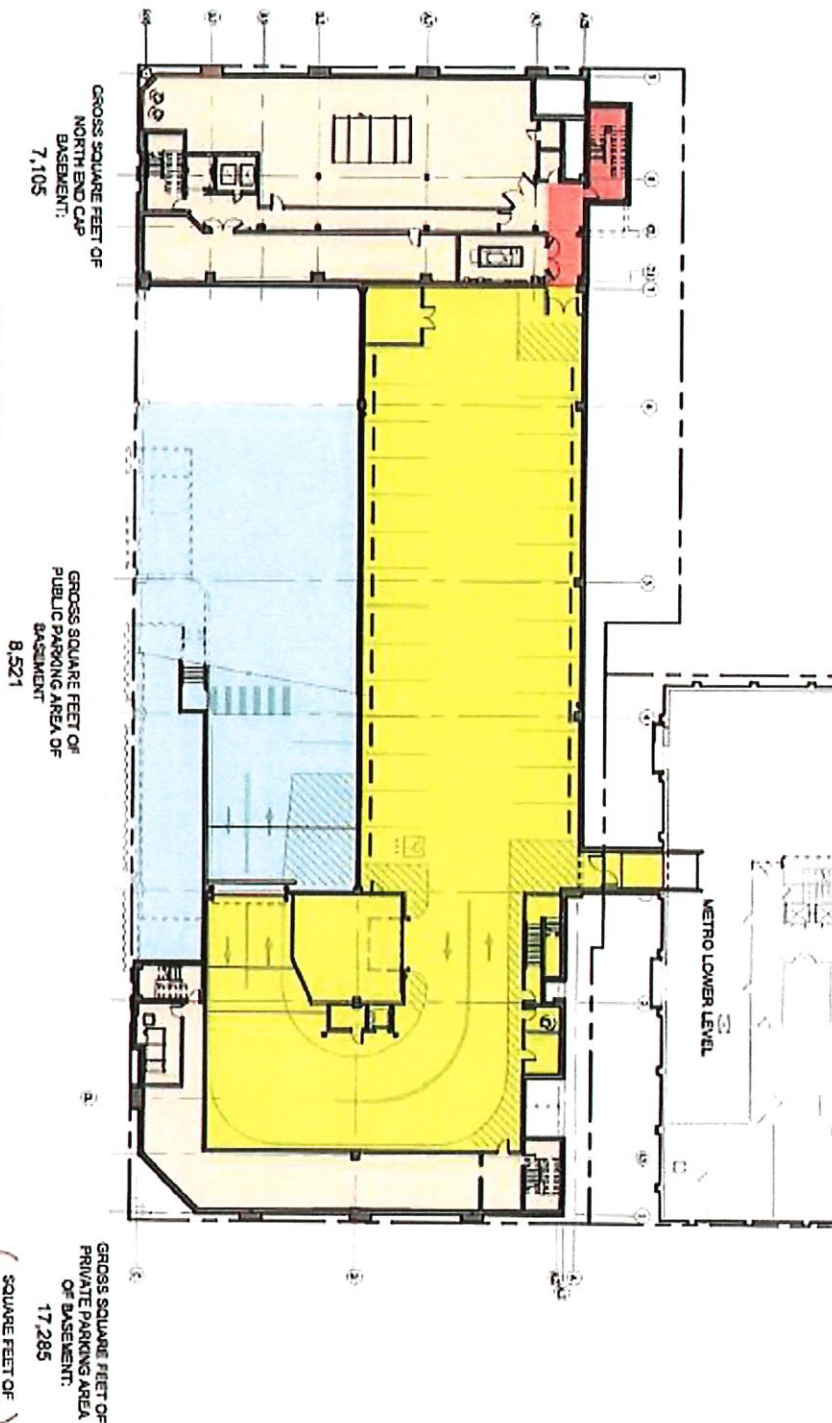
HOCH
Powerful Ideas.

- COLOR LEGEND**
- TENANT SPACE
 - COMMON AREA
 - LEASE PREMISES
 - PRIVATE PARKING



Basement Level Floor Plan
SCALE: 1" = 30'

08-27-2020





HOCH
Powerful Ideas.
GROWTH. INNOVATION.

08-27-2020

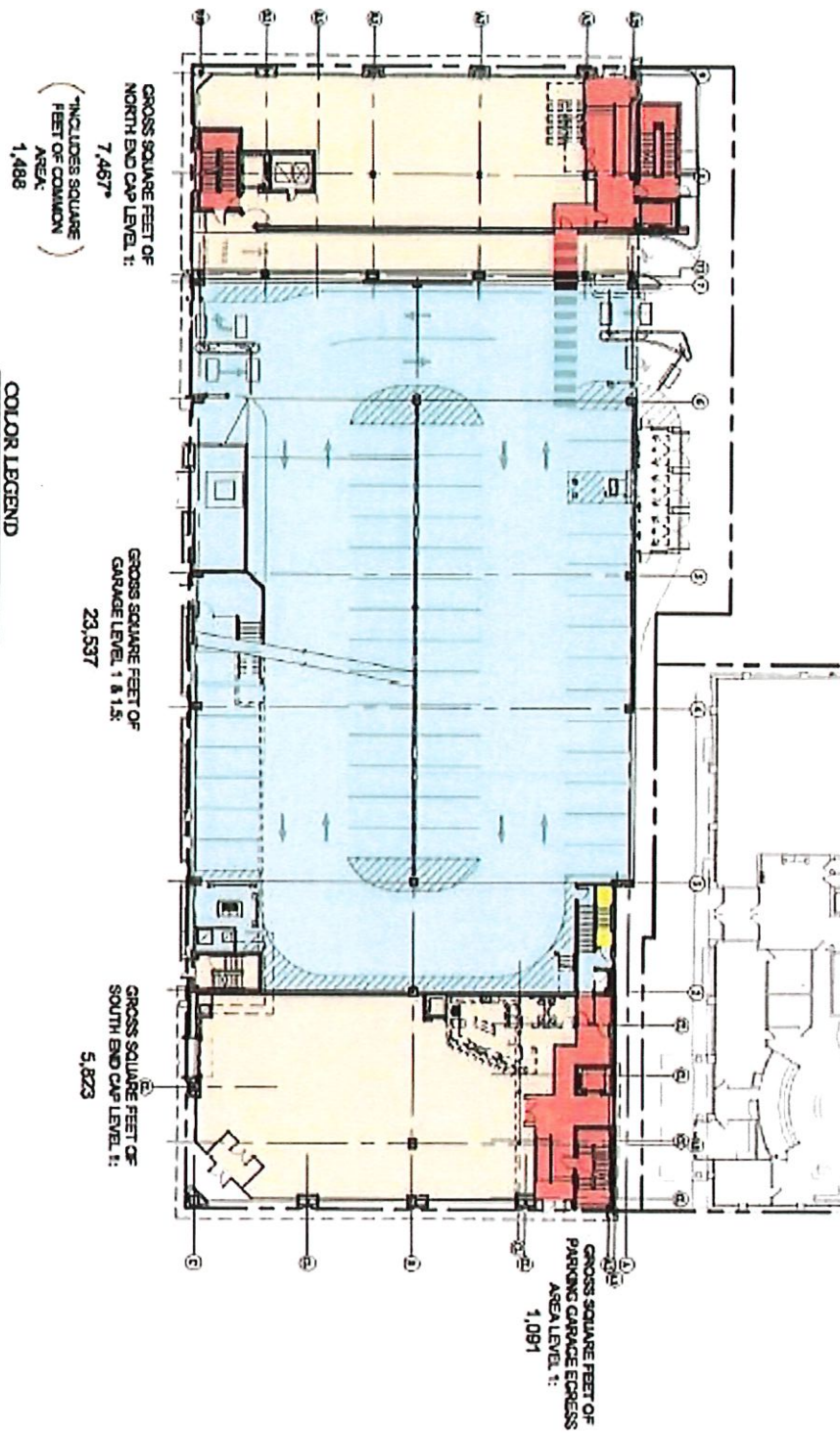
COLOR LEGEND

TEWANT SPACE
COMMON AREA
LEASE PREMISES
PRIVATE PARKING



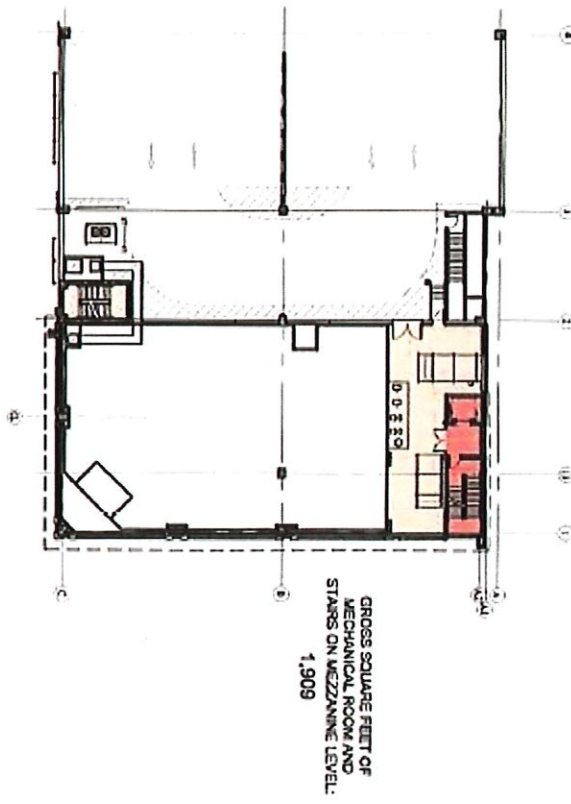
Level 1 Floor Plan
SCALE: 1" = 30'

08-27-2020





COLOR LEGEND	
	TENANT SPACE
	COMMON AREA
	LEASE PREMISES
	PRIVATE PARKING



 **Mezzanine Level Floor Plan**
SCALE: 1" = 30'
08-27-2020



COLOR LEGEND

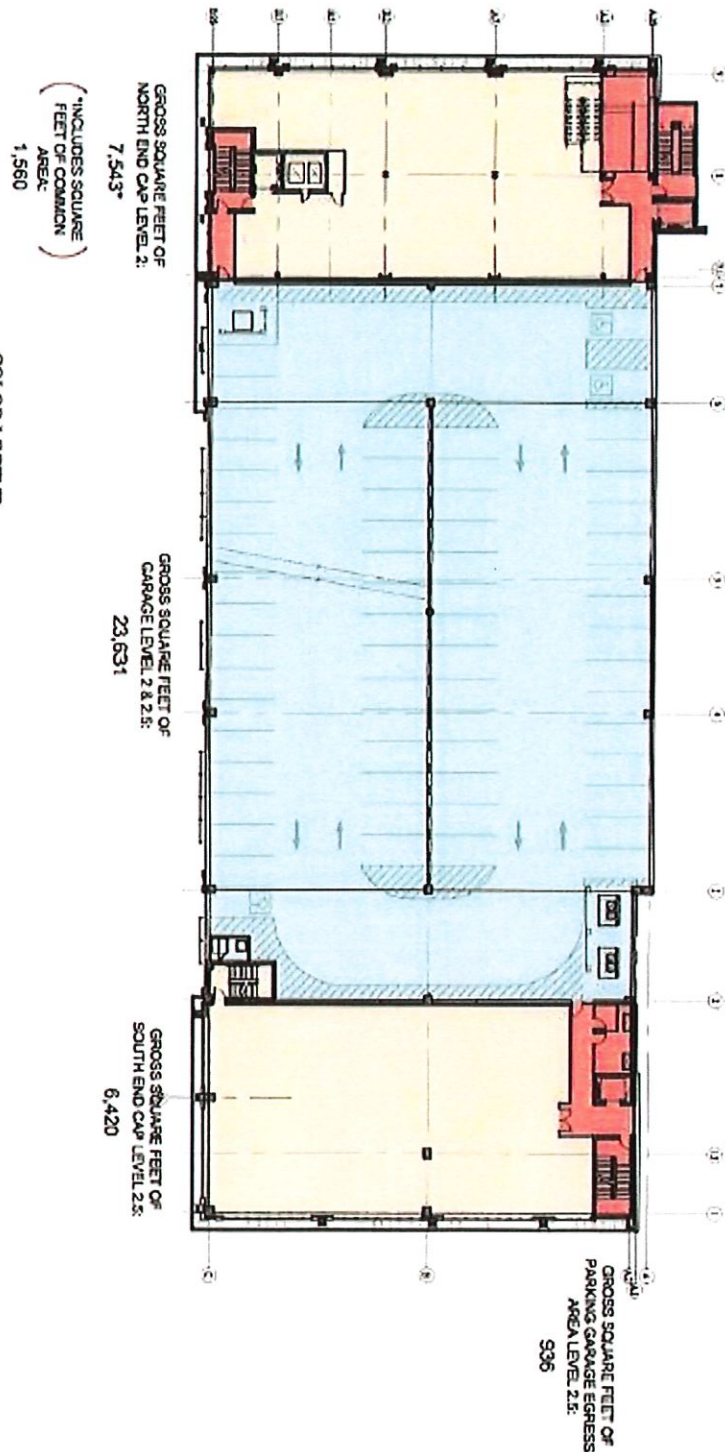
 TENANT SPACE
 COMMON AREA
 LEASE PREMISES
 PRIVATE PARKING



Level 2 Floor Plan

SCALE: 1" = 30'

08-27-2020





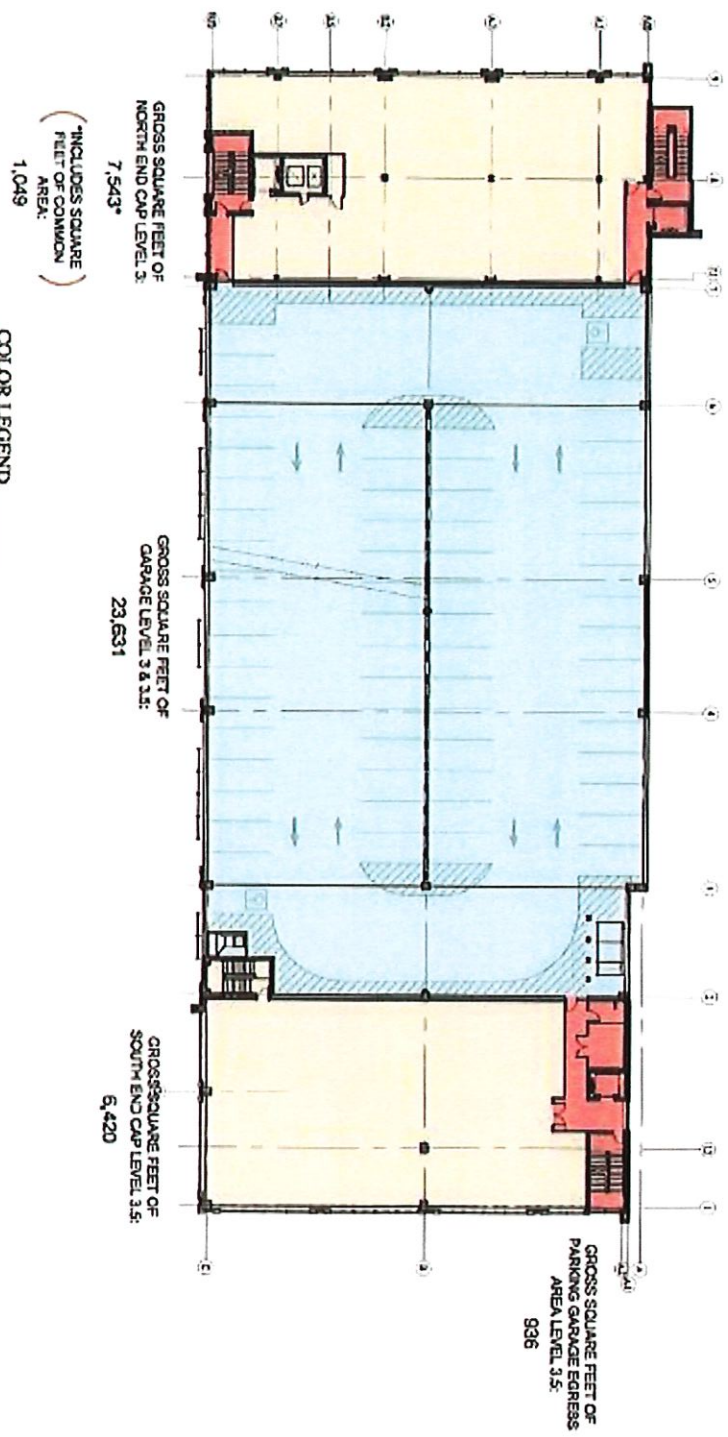
- COLOR LEGEND**
- TENANT SPACE
 - COMMON AREA
 - LEASE PREMISES
 - PRIVATE PARKING



Level 3 Floor Plan

SCALE: 1" = 30'

08-27-2020





HOCH
Powerful Ideas.
Sustained by Integrity.

- COLOR LEGEND**
- TENANT SPACE
 - COMMON AREA
 - LEASE PREMISES
 - PRIVATE PARKING



Level 4 Floor Plan
SCALE: 1" = 30'

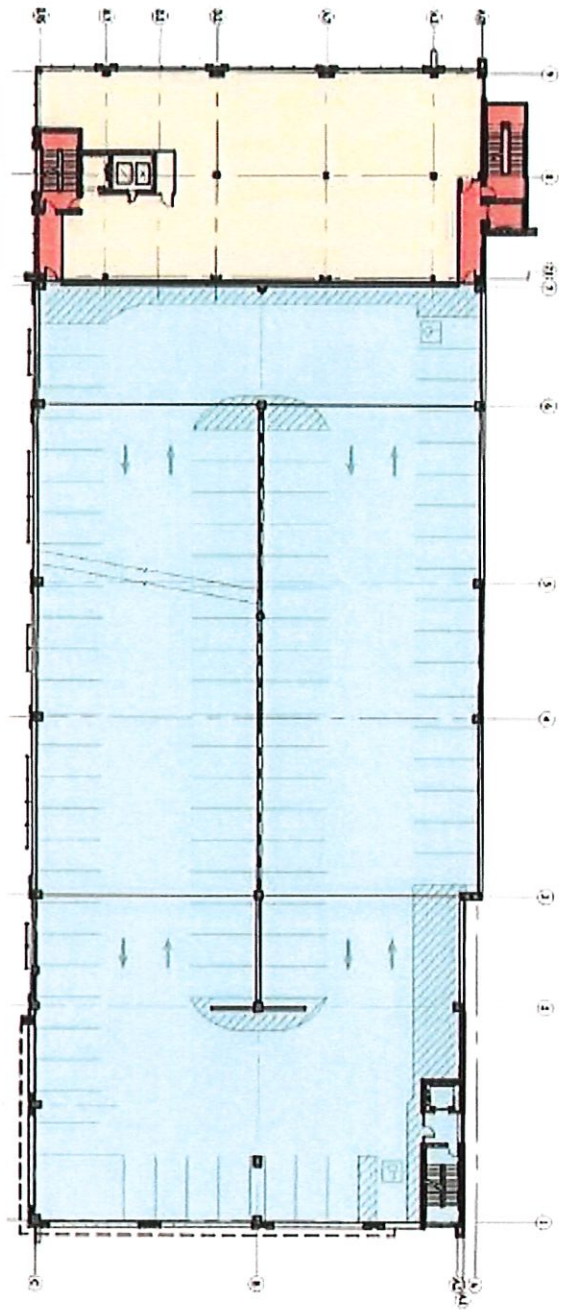
08-27-2020

(*INCLUDES SQUARE
FEET OF COMMON
AREA)
1,049

7,543*

GROSS SQUARE FEET OF
NORTH END CAP LEVEL 4

GROSS SQUARE FEET OF
GARAGE LEVEL 4 & 4.5
31,029



COLOR LEGEND

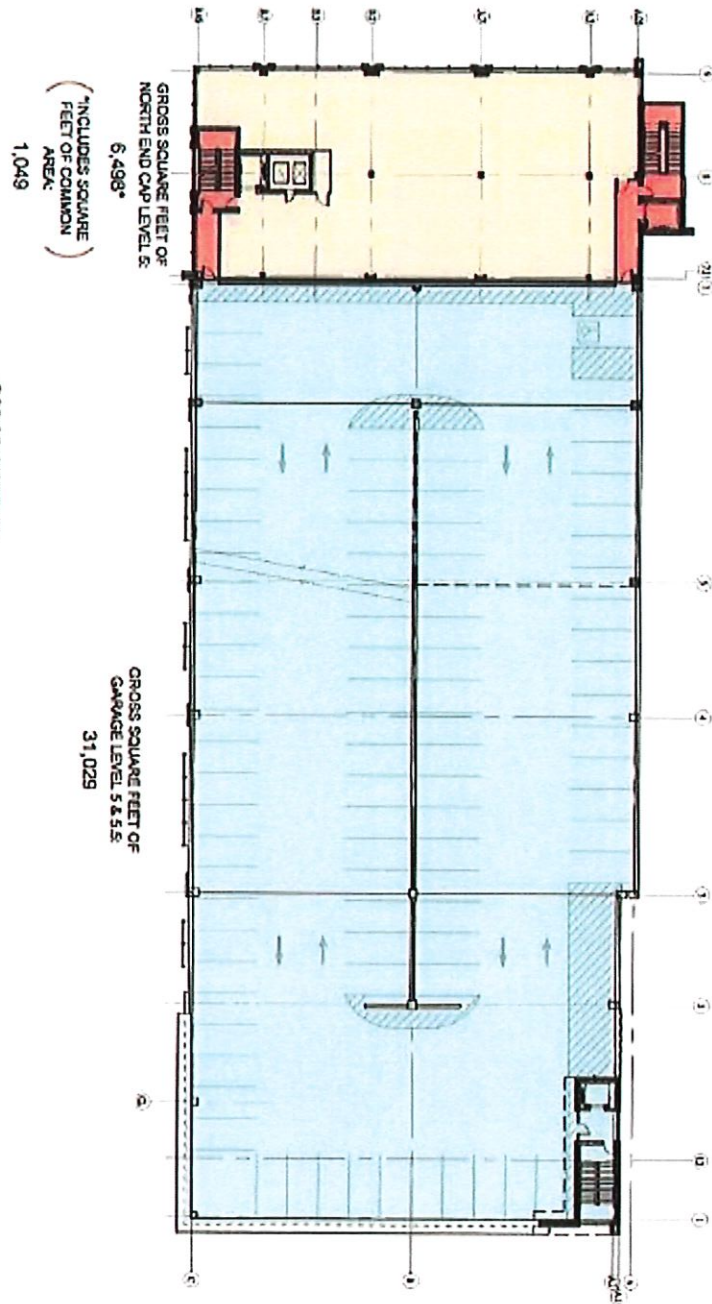
- TENANT SPACE
- COMMON AREA
- LEASE PREMISES
- PRIVATE PARKING



Level 5 Floor Plan

SCALE: 1" = 30'

08-27-2020





COLOR LEGEND

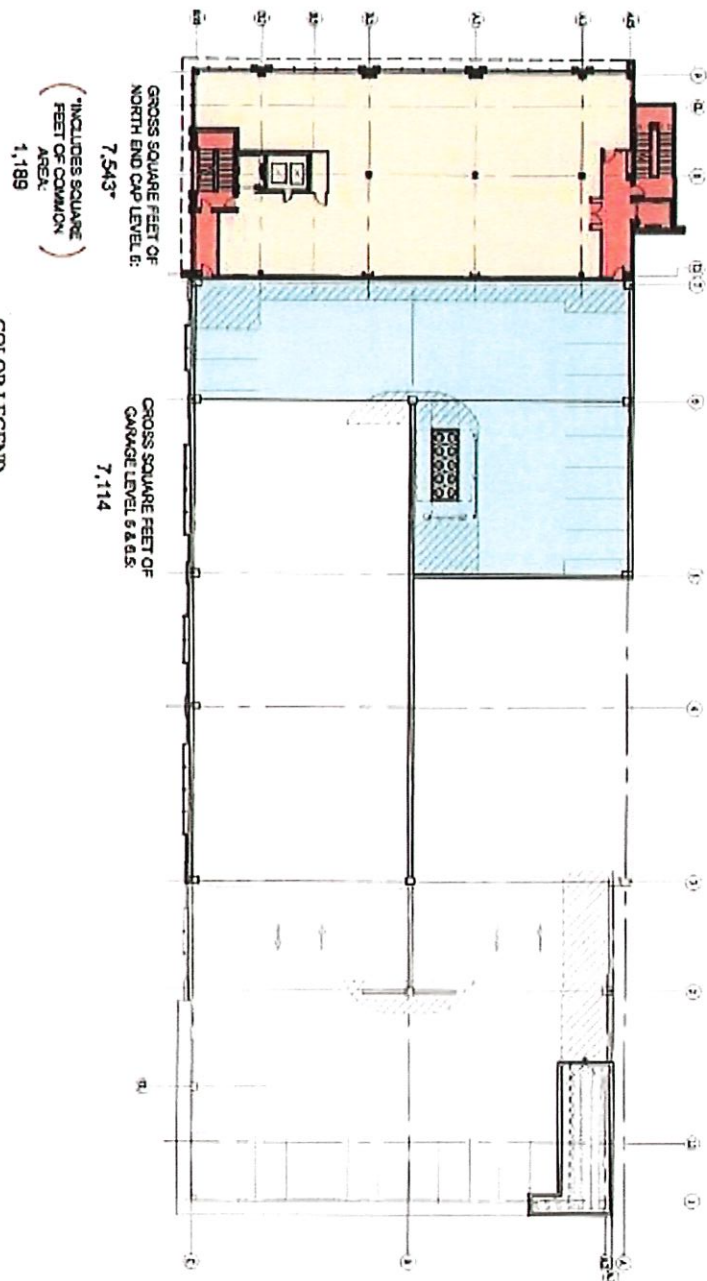
- TENANT SPACE
- COMMON AREA
- LEASE PROPOSALS
- PRIVATE PARKING



Level 6 Floor Plan

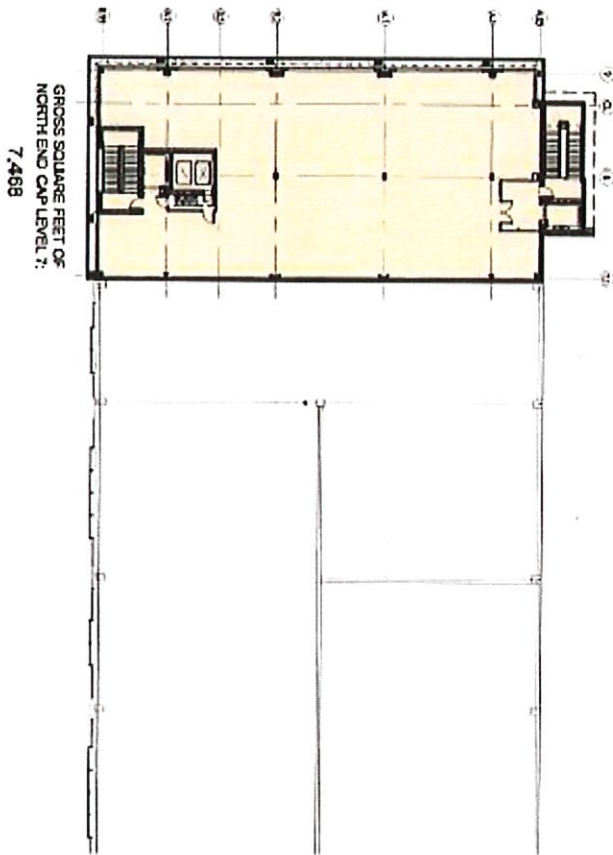
SCALE: 1" = 30'

08-27-2020





COLOR LEGEND	
	TENANT SPACE
	COMMON AREA
	LEASE PREMISES
	PRIVATE PARKING



 **Level 7 Floor Plan**
SCALE: 1" = 30'
08-27-2020



HOCH
Powerful Ideas.
DESIGNED • BUILT

PARKING COUNTS			
LEVEL	PUBLIC SPACES	PRIVATE SPACES	TOTALS
7	0	0	0
6	10	0	10
5	39	0	39
4	38	0	38
3	64	0	64
2	64	0	64
1	57	0	57
LOWER	11	27	38
	283	27	410

PARKING COUNTS

SCALE: N/A

08-27-2020



COLOR LEGEND

- TENANT SPACE
- LEASE PREMISES
- PRIVATE PARKING

Building Section Diagram

SCALE: 1" = 30'

08-27-2020

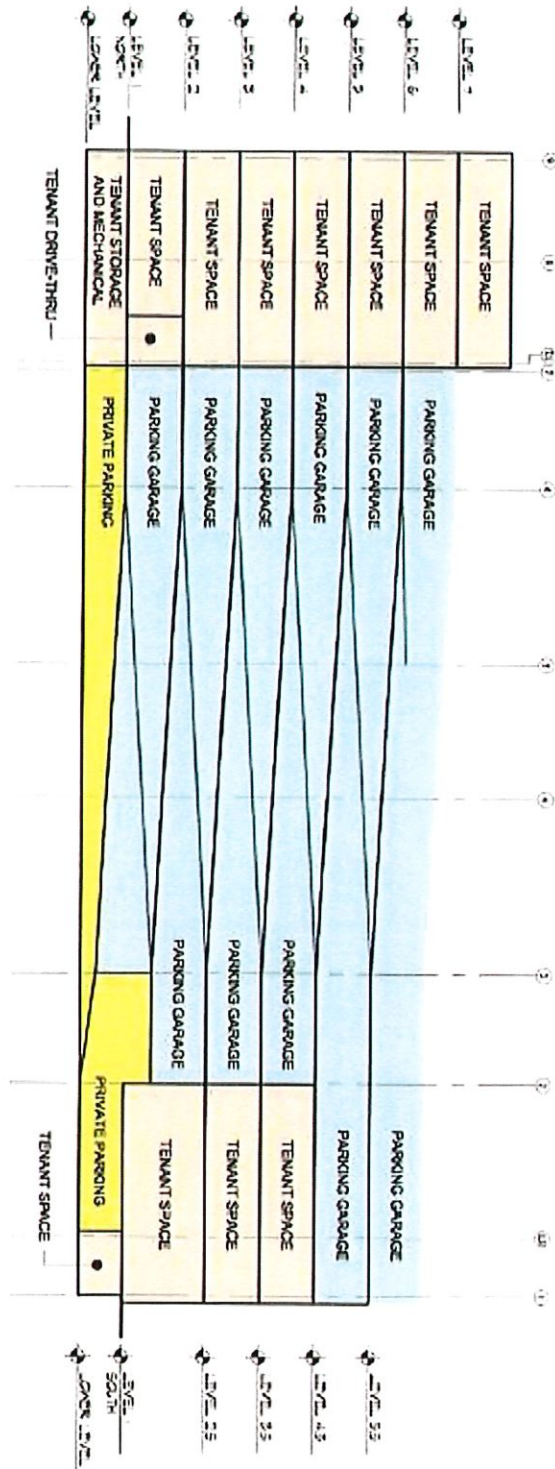
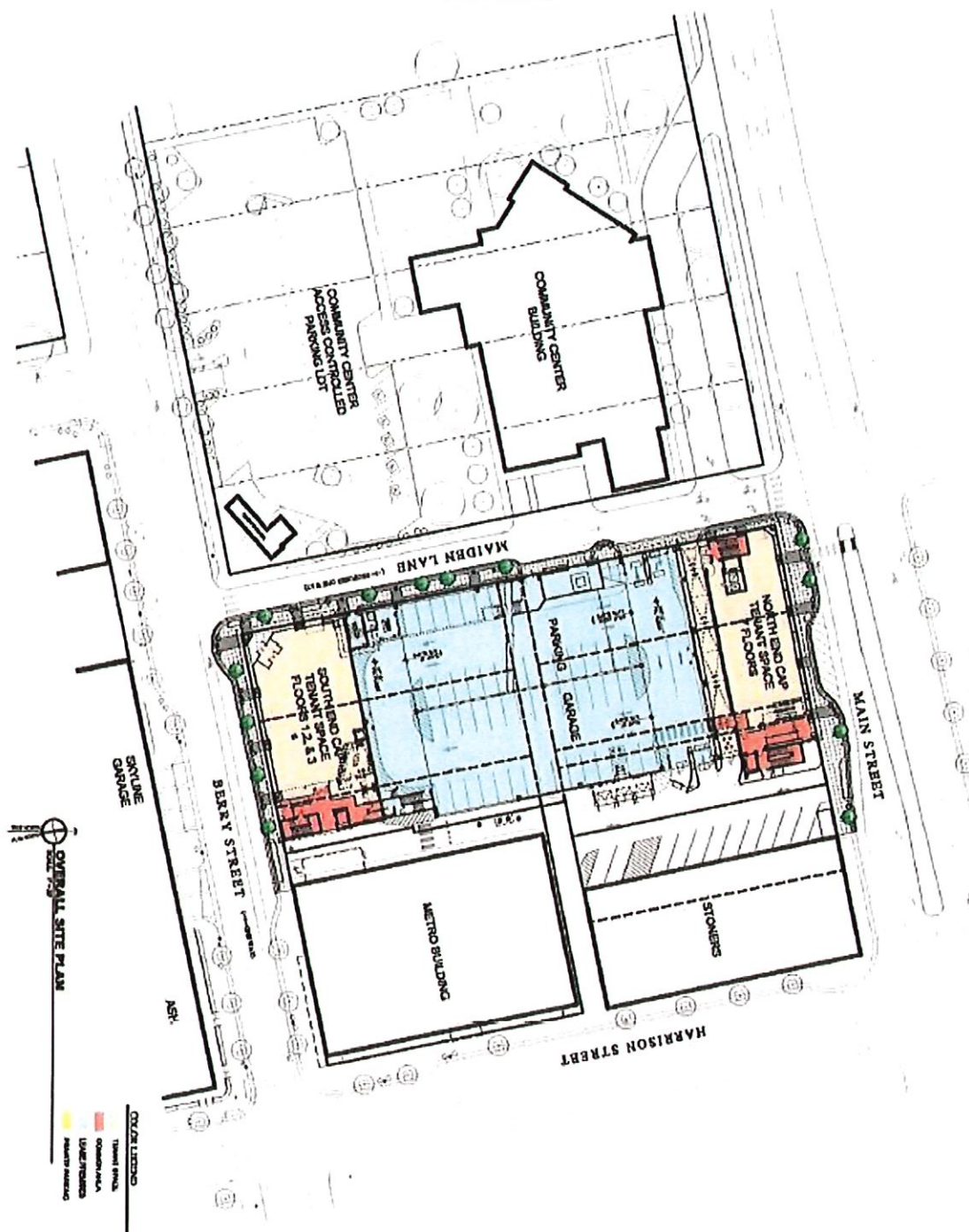


EXHIBIT D
Site Plan



PROPERTY BOUNDARY	THREAT AREA
COMMUNITY AREA	LANDSCAPED
OVERALL SITE PLAN	
C101	

Mixed Use Parking Garage and Tenant Space
ASHBERRY
 222 West Berry Street, Fort Wayne, IN 46802



EXHIBIT E **Construction Schedule**

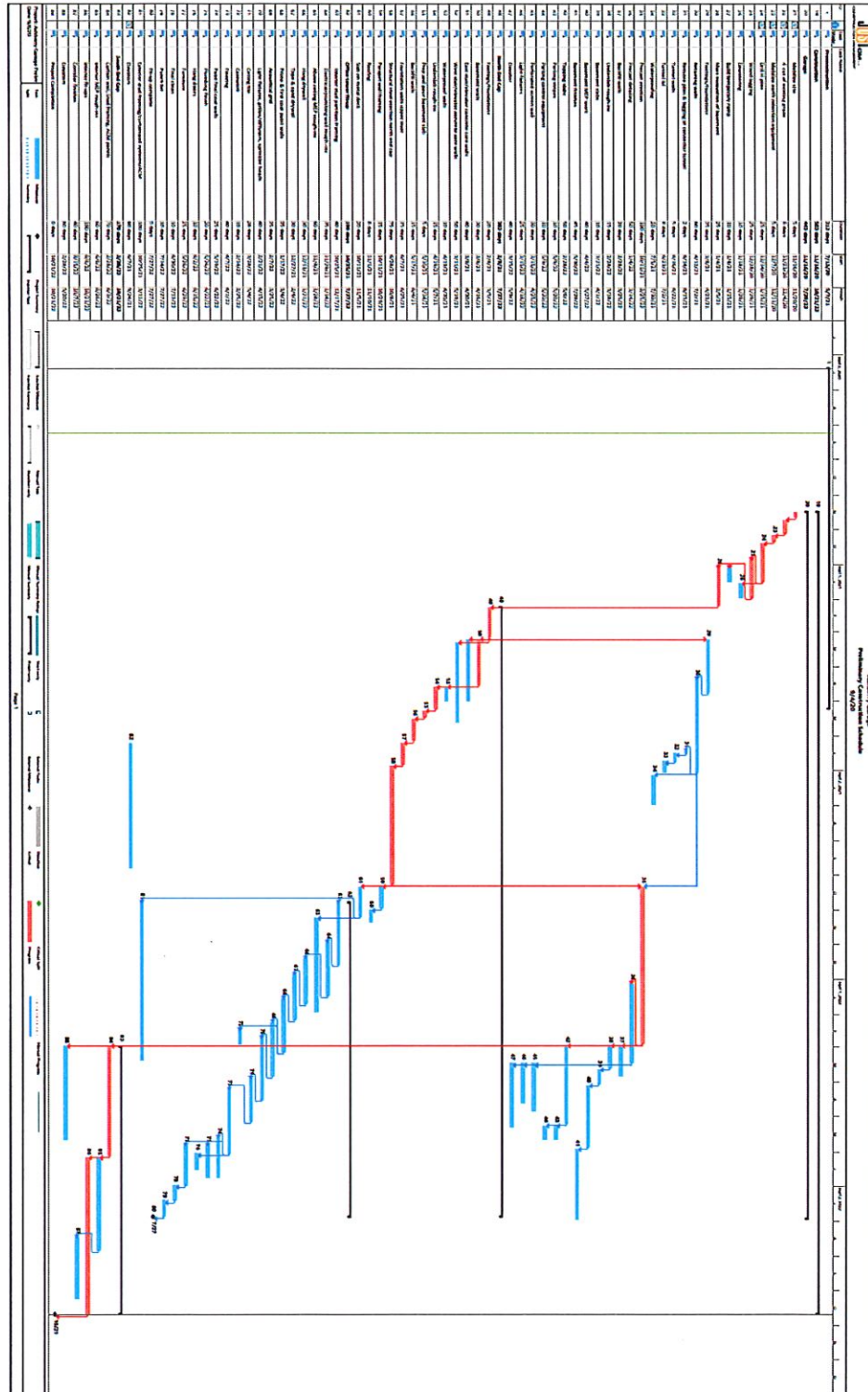


EXHIBIT F
Insurance

Landlord's Insurance Requirements During Construction:

Landlord's Commercial General Liability Insurance Requirements:

Landlord's Property and Casualty Insurance Requirements

Tenant's Insurance Requirements During Construction:

Tenant's Commercial General Liability Insurance Requirements:

Tenant's Property and Casualty Insurance Requirements:

EXHIBIT G
Memorandum of Parking Structure Lease

MEMORANDUM OF PARKING STRUCTURE LEASE

THIS MEMORANDUM OF PARKING STRUCTURE LEASE is entered into by and between the parties hereto to evidence the existence of a Parking Structure Lease dated _____, 20XX (the "Lease"), made by **SUMMIT DEVELOPMENT CORP.**, an Indiana nonprofit corporation ("Tenant"), **THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT**, acting by and through the **FORT WAYNE REDEVELOPMENT COMMISSION** ("Subtenant"), **ASHBERRY EIGHT, LLC**, an Indiana limited liability company ("Ashberry"), and **RAZE 222 LLC**, an Indiana limited liability company ("Landlord").

1. The real property that is the subject of the Lease is located in Allen County, Indiana, and is more particularly described by the legal description set forth on Exhibit "A", attached hereto and made a part hereof.

2. The Term commenced _____, and shall expire, unless sooner terminated according to its terms, at 11:59 p.m. EST, on the date which XX years thereafter.

3. The Lease is binding upon and inures to the benefit of Landlord, Ashberry, Tenant, Subtenant and their respective heirs, legal representatives, administrators, successors and assigns.

4. All other terms, covenants and agreements as set forth in the Lease, an executed counterpart of which is in the possession of each party thereto, are incorporated herein by reference hereto and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Parking Structure Lease, this ____ day of _____, ____

EXHIBIT A
TO MEMORANDUM OF PARKING STRUCTURE LEASE
LEGAL DESCRIPTION

DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of a parking structure lease with regard to an economic development project for a new mixed-use project to be undertaken by Ashberry Eight, LLC and RAZE 222 LLC (the Ashberry project - "Project")

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. This resolution approves a 22-year parking structure lease for 383 parking spaces that will be constructed as part of a new downtown mixed-use building. Lease payments will be made entirely from tax increment generated by the Project and by 202 Metro, which is an adjacent building recently rehabilitated by the same developer.

Although no money is being requested from the Common Council through this resolution, pursuant to Indiana Code 36-7-14-25.2(c), any lease approved by a resolution of the Redevelopment Commission must also be approved by the fiscal body of the unit.

The Redevelopment Commission will manage and operate the parking structure during the term of the lease.

EFFECT OF PASSAGE. The parking structure lease is the primary economic incentive for this public-private partnership. As such, passage of this resolution is essential for the project to move forward.

Passage of the resolution and construction of the Project would provide many benefits to the community, including: (i) public parking in an area with an urgent need for additional parking spaces, (ii) approximately 70,000 square feet of new commercial office space, and (iii) annual property tax and local income tax revenue generated by a type of development that typically has low per capita public service costs.

EFFECT OF NON-PASSAGE. This \$43.44 million investment will not move forward without passage, and the significant economic and community benefits, including much needed public parking, will be lost.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). Annual Rent for the lease is \$795,000 and is paid entirely from tax increment generated by the project and by 202 Metro. No other funding sources are being requested for the payment of Annual Rent. The only upfront costs for the City are streetscapes surrounding the building.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
260-427-2150 fwcommunitydevelopment.org

September 17, 2020

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Redevelopment Commission

From: Nancy Townsend, Executive Director, 427-2323

Re: **Resolution authorizing a parking structure lease for an economic development project called Ashberry**

On September 14, 2020, the Redevelopment Commission approved an economic development agreement and a parking lease in furtherance of an economic development project called Ashberry to be undertaken in downtown Fort Wayne. The project, located on the west half of the block bounded by Main, Harrison, Berry, and Maiden Lane, will consist of approximately 70,000 square feet of leasable commercial space and 405 parking spaces (383 of which will be leased by the Commission) at an investment of approximately \$43,444,000.

Although no money is being requested from the Common Council through this resolution, pursuant to Indiana Code 36-7-14-25.2(c), any lease approved by a resolution of the Redevelopment Commission must also be approved by the fiscal body of the unit.

Therefore, this memo requests Common Council approval of a resolution necessary to support the project. Enclosed herewith, please find a digest sheet, a resolution authorizing a parking structure lease and the parking structure lease approved by the Redevelopment Commission.

Vibrant. Prosperous. Growing.

