

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into this ____ day of _____, 2024 (“Effective Date”), by and between the City of Auburn (“City”), a Washington municipal corporation, and Auburn 18 Business Park, LLC (“Owner”), a Delaware limited liability company. The City and Owner are referred to collectively as the Parties and individually as a Party.

RECITALS

A. RCW 36.70B.170 through 36.70B.210 authorize cities to enter into development agreements with property owners to govern future development of real property. Under RCW 36.70B.170, development agreements must “set forth the development standards and other provisions that shall apply and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.”

B. Owner is the owner of the property generally known as the Auburn 18 Business Park (“Property”), located at King County Parcel #2421049004 in the City, legally described on Exhibit A and depicted on Exhibit B. The Property is zoned C-3 Heavy Commercial under the Auburn City Code (“ACC” or “City Code”). Owner may redevelop all or part of the Property and seeks confirmation of the use and development standards that would apply to such future redevelopment.

C. The City owns the Auburn Avenue Theater (“Theater”) located at 10 Auburn Avenue in the City. The Theater has been closed since 2021 due to damage caused by fire at an adjacent apartment building. The City plans to develop a new theater building to replace the Theater (“New Auburn Theater”).

D. This Agreement will provide mutual benefit to the Parties and to the residents and businesses of the City. The Agreement will further the City’s goals and policies as described in the Comprehensive Plan and is consistent with applicable development regulations.

E. A development agreement must be approved by ordinance or resolution after a public hearing. A public hearing was held on _____, 2024, and the City Council approved this Agreement by Resolution _____ on _____, 2024. The approval of this Agreement constitutes a land use decision under RCW Ch. 36.70C.

F. Now therefore, in consideration of the mutual promises set forth in this Agreement and the benefit to both the Owner and City, the Parties agree as follows:

AGREEMENTS

1. Development. The Owner may redevelop the Property after the Effective Date of this Agreement with new buildings, outdoor storage, parking, and other site improvements (“Development”). No project has been proposed or applications submitted. The future Development will require building and other construction permits from the City, which shall be governed by the ACC and this Agreement.

2. Development Standards. Prior to the Development of the Property, the Owner may lease all or parts of the Property and the currently existing buildings and improvements and may make tenant improvements (“Pre-Development Use”). Pre-Development Use of the Property and Development of the Property occurring subsequent to the Effective Date shall be governed by Sections 2.a-o, Section 3 and Section 6 of this Agreement and, except as provided in those Sections, the provisions of the City Code identified in Section 2 of this Agreement in effect on the Effective Date (“Vested City Code”), except as otherwise provided in Section 2.p of this Agreement.

a. Use. “Building contractor, heavy”; “Manufacturing, assembling and packaging – Medium intensity,” as those terms are defined in ACC Sections 18.04.194 and 18.04.616; and “Warehouse and distribution” uses including the uses described in the 2022 North American Industry Classification Code System (“NAICS”) Codes 4841, 4842, 4882, 4885, 4889 and 4931, including all uses within these categories, shall be permitted uses on the Property, in addition to uses otherwise permitted in the C3 zone under the Vested City Code.

b. Public Improvements. For the purpose of determining required half-street improvements per ACC 12.64A and the Engineering Design Standards (“EDS”) Section 10.03.03, the existing Property frontages along C Street SW and 15th Street SW shall be considered fully improved and removal, replacement, upgrading of those existing frontages is not required for Development of the Property in accordance with this Agreement except as needed to accommodate new or modified accesses to/from the Property as reasonably determined by the City based on a traffic impact analysis (“TIA”).

c. Undergrounding of existing overhead wires per ACC 13.32A on, and along the Property frontages, shall not be required for Development of the Property in accordance with this agreement.

d. Right-of-way dedication per ACC 12.64A shall not be required for Development of the Property in accordance with this Agreement except that sufficient property to accommodate a 40-foot corner curb radius in accordance with the EDS at the southwest corner of the intersection of C Street SW and 15th Street SW shall be required. Owner may be required to construct improvements at this intersection to mitigate the impacts of increased traffic resulting from Development of the Property, as reasonably determined by the City based on a TIA. Additional right-of-way dedication may be required to provide for public improvements associated with any modified or new access to the Property from public rights-of-way, to the extent such public improvements are required to mitigate impacts of Development of the Property as reasonably determined by the City based on a TIA.

e. Access. Development of the Property in accordance with this agreement shall be exempt from that portion of EDS Section 10.08.01 that limits projects to a single driveway access to a City street. All other Engineering Design Standards related to driveways (except for Section 10.08.01’s single driveway access limitation) shall apply.

f. 15th Street SW Railroad Crossing. The Owner shall be responsible for any improvements to the existing railroad crossing on 15th Street SW that serves the Property

(“Crossing Improvements”) that may be required by the Washington Utilities and Transportation Commission (UTC) due to any new or increased rail service to/from the Property associated with Development of the Property under this Agreement. Improvements may include, but are not limited to, crossing gates, flashing lights, interconnect conduit and cabling, additional street lighting, signage, and pavement markings. Nothing in this Agreement relieves the City or others of responsibility (if any) for completion of Crossing Improvements that may be required for reasons not related to the Owner’s uses or Development of the Property under this Agreement.

g. This agreement does not waive EDS Section 10.01.01’s requirements, including requirements for a transportation impact analysis (TIA), impact identification, and mitigation of impacts, among others.

h. Outdoor storage. Outdoor storage shall be allowed on up to 50% of the Property.

i. Parking. Based on the reduced parking demand anticipated for Development, a minimum onsite parking ratio of 1 space: 2700 square foot (“SF”) of floor area shall be required for all uses on the Property.

j. Screening, Fencing and Landscaping. Screening shall not be required except that fencing and landscaping adjacent to 15th Street SW and landscaping adjacent to C Street SW shall be provided as required by the City Code in existence as of the Effective Date. Fencing with a maximum height of 8 feet, including barbed wire, shall be allowed on the Property. Opacity requirements of the City Code in existence as of the Effective date shall not apply to fences located on the western, eastern or southern sides of the Property, provided that landscaping along C Street SW shall be provided as required by the City Code in existence as of the Effective Date.

k. On-Site Lighting. Light poles with a maximum height of 40 feet shall be allowed on the Property.

l. Loading. Loading and unloading docks may be visible from the street without the provision of an additional 10-foot width of landscaping along the abutting street, provided that landscaping along C Street shall be provided as required by the City Code in existence as of the Effective Date.

m. On-Site Trees. Existing trees on private property may be removed to accommodate development of the Property.

n. Stormwater. Development of the Property shall comply with the applicable City of Auburn Surface Water Management Manual (“SWMM”) that is in effect at the time of submittal of any complete building or site development permit application except that Development of the Property in accordance with this agreement may utilize storm pump systems, subject to all design requirements for pump systems in Section III-D.6, City Supplement, to the SWMM. Subject to City confirmation of conformance with such design requirements, any deviation that may otherwise have been required for a pump system is deemed approved.

o. Impact Fees. Owner shall pay and City shall collect impact fees under Title 19 of the City Code as a condition of Development approvals, subject to the provisions of this Section 2(o). For Development permits issued within 12 months of the Effective Date, Owner shall pay transportation impact fees calculated under the provisions of Ch. 19.04 and associated impact fee rate schedules of the City Code in effect as of the Effective Date. For Development permits issued after 12 months following the Effective Date, transportation impact fees shall be imposed and paid by Owner per the then-current ACC Ch. 19.04 as it may be amended from time to time. If an existing building on the Property is demolished, the Owner shall be entitled to a credit against transportation impact fees (“TIF”) for subsequent Development on the Property, calculated and applied as follows. The Owner may utilize the TIF credit for Development on any portion of the Property regardless of any future division of the Property. TIF credits that are awarded must be used within 5 years of the date of issuance of a demolition permit for the building generating the credit. A TIF credit is “used” when a building permit has been issued. The amount of traffic impact fee (“TIF”) credit generated by the demolition of Buildings 7, 8, 11 and 12, as depicted on Exhibit B, shall be calculated as shown on Exhibit C. The amount of TIF credit generated by demolition of any other building on the Property shall be based on the TIF calculation methodology in the applicable TIF rate schedule, as defined in this Section 2(o), using the square footage and land use of the building existing at the time of issuance of a demolition permit.

p. Vesting.

i. *Vested City Code*. The Vested City Code shall consist of the following Sections and Chapters of ACC Titles 16, 17 and 18 in effect on the Effective Date of this Agreement:

Section 16.06.130 Substantive authority

Chapter 17.24 Binding Site Plans

Section 18.02.120 Permitted land uses established

Chapter 18.04 Definitions (as the defined terms are used in the Vested City Code)

Chapter 18.23 Commercial and Industrial Zones

Section 18.31.030 Height limitations - Exceptions

Section 18.31.040 Lots

Section 18.31.070 Setbacks

Section 18.31.180 Performance standards

Chapter 18.41A Temporary Uses

Chapter 18.47 Electric Vehicle Infrastructure

Chapter 18.50 Landscaping and Screening

Chapter 18.52 Off-Street Parking and Loading

Chapter 18.53 Master Plans

Chapter 18.55 Outdoor Lighting

Chapter 18.56 Signs

Chapter 18.57 Standards for Specific Land Uses

Except as expressly stated in this Agreement, any amendments to or additions to the Vested City Code made during the term of this Agreement shall not apply to or affect the conditions of Development approvals or the standards set out in Section 2.a-o and Section 3 of this Agreement. A complete copy of the Vested City Code is included as Exhibit C, which shall not be included in the recorded copy of this Agreement but shall be available on file at the Auburn Department of Community Development.

ii. *Exemptions.* Amendments, additions, increases or other changes to the following plans, policies, laws, ordinances, regulations, fees and monetary charges, adopted by the City following the Effective Date, are exempt from the vesting provided in Section 2.p(i) of this Agreement:

(a) Permit application, permit review, and inspection fees applicable to any application for Development;

(b) Water, sewer and stormwater connection charges, general facility charges, and monthly service charges, as the Council may from time to time adopt and/or amend; and

(c) The Washington State Building Code, including without limitation the International Building Code and such other International or other Uniform Codes adopted by the Washington State Building Code Council and/or the City from time to time, including electrical, building, plumbing, fire and other ancillary uniform or international construction codes adopted pursuant to Chs. 19.27 or 19.27A RCW;

(d) Impact fees imposed under Title 16 of the ACC, except as otherwise specifically provided in this Agreement;

(e) City of Auburn Engineering Design Standards, except as otherwise specifically provided in this Agreement;

(f) The City's authority to require additional SEPA review and/or mitigation under Ch. 43.21C and Ch. 197-11 WAC in connection with applications for Development Approvals; provided however that the Project shall be vested to the City's substantive SEPA policies and regulations in effect on the Effective Date;

(g) Any law, ordinance, rule, regulation or policy adopted by the City pursuant to RCW 36.70B.170(4), following written notice to Owner and an opportunity to be heard, that the City deems necessary to address a serious threat to public health and safety;

(h) Procedural ordinances or regulations of the City which are not substantive, relating to hearing bodies, notices, applications, findings, records, hearings, reports, recommendations and appeals and any other matter of procedure; provided, however, that the Project is vested to the requirements and processes for Binding Site Plans in Ch. 17.24 ACC and any BSP-related provisions of this Agreement in effect on the Effective Date;

(i) Any plans, policies, ordinances, regulations or Vested City Code that the City must change by direction of, or the City reasonably determines to be necessary to change to

comply with, the requirements of any state or federal law or the directive of any state or federal agency or court, in order to avoid being in violation of state or federal law or to preserve the City's eligibility to receive shared revenues, grants or other funding, but only to the extent necessary to comply with such state or federal law. To the extent that the City can comply with such state or federal law or directive by adopting changes to plans, policies, ordinances or regulations that apply prospectively, this exemption shall not apply to permit retroactive changes to the terms, conditions or Vested City Code provisions to which the Project is vested under this Agreement;

(j) Taxes of any nature of general applicability throughout the City; and

iii. *Subsequent Code Amendments.* If mutually agreed by Owner and City, the Owner may develop the Property in accordance with one or more amendments to the Vested City Code adopted after the Effective Date, without the obligation to comply with other subsequently adopted City Code provisions. The City's decision whether to agree to application of such amendments to the Vested City Code may be made administratively by the City's Community Development Director. Any such agreement must relate to the entirety of an amended City Code section or chapter, as applicable, and will apply to all future Development during the term of this Agreement.

3. Phasing. It is recognized that site wide improvements such as landscaping are not efficiently accomplished in conjunction with each building and/or each tenant improvement so it is therefore appropriate to identify mutually agreed upon site areas that trigger phased site improvements. Exhibit B depicts generalized areas of phased development that guide the timing of design and construction of site improvements. Phases are intended to correlate more to area of land rather than timeframe which means that build out of different phases may occur at the same time. The phases depicted in Exhibit B are general and not intended to be exact. At the Owner's option, phases shown in Exhibit B may be broken into separate sub-phases or combined provided the decision to split or combine is focused on adding clarity to when phased site improvements are triggered. Across the entirety of the site, and within all phases, the following principles shall apply:

a. Lighting fixtures shall be uniform throughout the site. This applies to parking lot lights, wayfinding lights, lighting for signage, security lighting, and fixtures used on buildings.

b. Wayfinding signage and campus monument signs shall use a consistent design approach where color, font, and lighting technique match.

c. Landscape species shall be consistent across all phases. This applies to perimeter landscaping, parking lot islands, and landscaping associated with individual buildings.

d. Screening techniques shall be uniform across the site. This includes landscaping, fencing, and walls used to screen storage areas and laydown yards.

e. Bushes and hedges installed in early phases shall be maintained to an agreed upon height until landscaping growth installed in later phases has the ability to match early growth.

f. Striping for parking, ADA paths, fire lanes, and similar features shall be installed in conjunction with each phases.

g. Utilities serving one phase may extend into another phase if necessary to meet technical standards for provision of utility service.

4. Theater. In consideration for the mutual promises of and certainty provided by this Agreement, Owner agrees to voluntarily contribute \$4 million dollars to the City for the design, permitting and construction of the New Auburn Theater, subject to the following terms and conditions:

a. The payment shall be made within six months of the Effective Date of this Agreement; provided, that if this Agreement is appealed, then the payment shall not be due until the validity of the Agreement is upheld by the highest appeal body with jurisdiction to hear the appeal.

b. The payment shall be held in a reserve account and may only be expended to fund the design, permitting or construction of the New Auburn Theater; provided that if the City decides not to proceed with development of the New Auburn Theater, the City may use the payment for another development project determined by the City to have equivalent public benefit. Subject to the foregoing, the City may expend the payment at any time during the Term of this Agreement or any extension thereof, and the Owner waives and releases, for itself and any and all successors, heirs or assigns, any claim for refund under RCW 82.02.020 or .080.

5. Term. This Agreement shall remain in effect for 50 years from the Effective Date (“Term”) provided that the site improvements identified in Paragraph 3 shall be completed within 15 years of the Effective Date.

6. Conforming structures, improvements and uses. Amendments to the City Code during the Term of this Agreement shall not be deemed to create nonconforming structures, improvements, or uses. Structures, improvements and uses that are consistent with this Agreement shall be considered conforming, and such uses may continue and such structures and improvements may be maintained, repaired, remodeled and replaced, consistent with the standards in Section 2, for the Term of this Agreement.

7. Amendments. The Owner may apply for amendments to this Agreement. “Minor Amendments” are those that do not increase the gross floor area of potential Development by more than 10% or do not significantly increase the environmental impacts of development on the Property, unless those impacts are mitigated to a level that is less than significant. Minor Amendments may include, but are not limited to, development standard deviations in addition to those provided in Section 2. Minor Amendments relating to zoning and land use shall be approved administratively by the City’s Community Development Director and Minor Amendments related to the EDS or other engineering standards by the City’s Public Works

Director. All other amendments are Major Amendments and shall be approved using the approval process required for this Agreement.

8. Default and Remedies.

a. Default. Any failure by a Party to perform any material action required under this Agreement shall constitute a default, unless such failure is compelled by order of a court, subject to the notice and opportunity to cure provided in Section 7.b.

b. Notice and Opportunity to Cure. Except as expressly provided otherwise in this Agreement, no party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

c. Rights of Non-Defaulting Party. Except as set forth herein, a party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation damages, specific performance, or writs to compel performance or require action consistent with this Agreement.

d. Attorneys' Fees. In any action to enforce or determine a party's rights under, this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

9. Notices. All notices required to be given under this Agreement shall be given in writing and shall be deemed delivered on the date of hand delivery of the notice or the date that is three days after mailing of the notice by certified or registered mail, return receipt, postage prepaid, to the parties at the addresses set forth below:

If to Owner: _____

If to City: _____

The Parties, by notice given, may designate any further or different address to which subsequent notices are to be sent.

10. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

11. Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement and no party other than the Owner and the City shall be entitled to enforce this Agreement.

12. Mutual Drafting. Both the City and Owner have participated fully in the drafting of this Agreement, and the rule of construction of ambiguities against the drafter shall not apply to either Party.

13. Covenant Running with the Land. The provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties, their successors and assigns.

14. Recording. This Agreement shall be recorded with the Office of the King County Recorder.

15. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. There are no other agreements, oral or written, except as expressly set forth in this Agreement. This Agreement supersedes all previous agreements, oral or written, except as expressly set forth in this Agreement. This Agreement may be modified only by a written instrument duly executed by the Parties following the amendment process described in Paragraph 6 of this Agreement.

17. Authority. The obligations to dedicate property, implement mitigation measures, make impact fee or other payments, or to fund or to provide services, infrastructure, or other facilities agreed to by Owner in this Agreement are made pursuant to, authorized by and/or are consistent with applicable law, including without limitation RCW 43.21C.060, WAC 197-11-350, RCW 36.70B.170(4), RCW 82.02.020 and the Washington State and United States Constitutions. Each Party represents and warrants that it has the power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, with each Party sending a .pdf of its signature to the other Party by electronic mail transmission. This Agreement, when fully executed and signature pages exchanged as provided herein shall be effective as the original document.

19. Exhibits. This Agreement includes the following Exhibits, which are incorporated by reference:

- a. Exhibit A: Legal description of Property.
- b. Exhibit B: Depiction of Property and Phasing Plan.
- c. Exhibit C: TIF credit calculations.

20. Indemnification. Owner releases and agrees to defend, indemnify and hold harmless the City and all of its elected and appointed officials and its employees from all liability, claims, causes of action, fees (including reasonable attorneys' and expert fees), penalties, appeals and

costs, including but not limited to the costs of defense of any claim or appeal brought by a third party, arising in connection with the approval of or otherwise relating to this Agreement or any Development under this Agreement, except to the extent resulting from the sole negligence of the City or its officers, agents or employees in performance of this Agreement, and except in connection with any action by either Party to enforce this Agreement or in connection with any other matter in which the Owner and City are adverse.

21. Interpretation. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170 – .210, except that this Agreement shall be construed to exclude from the scope of this Agreement and to reserve to the City that police power authority granted to the City by the Washington State constitution or by general law and which is prohibited by law from being subject to a mutual agreement with consideration.

Executed as of the date written above:

AUBURN 18 BUSINESS PARK, LLC,
a Delaware limited liability company

By: IRG Value Fund Manager, LLC,
 a Delaware limited liability company,
 its Manager

By: _____
 Richard Klein
 Chief Financial Officer

CITY OF AUBURN,
a Washington municipal corporation

By: _____
Its: _____

EXHIBIT A

Legal Description of Property

EXHIBIT B

Depiction of Property and Phasing Plan

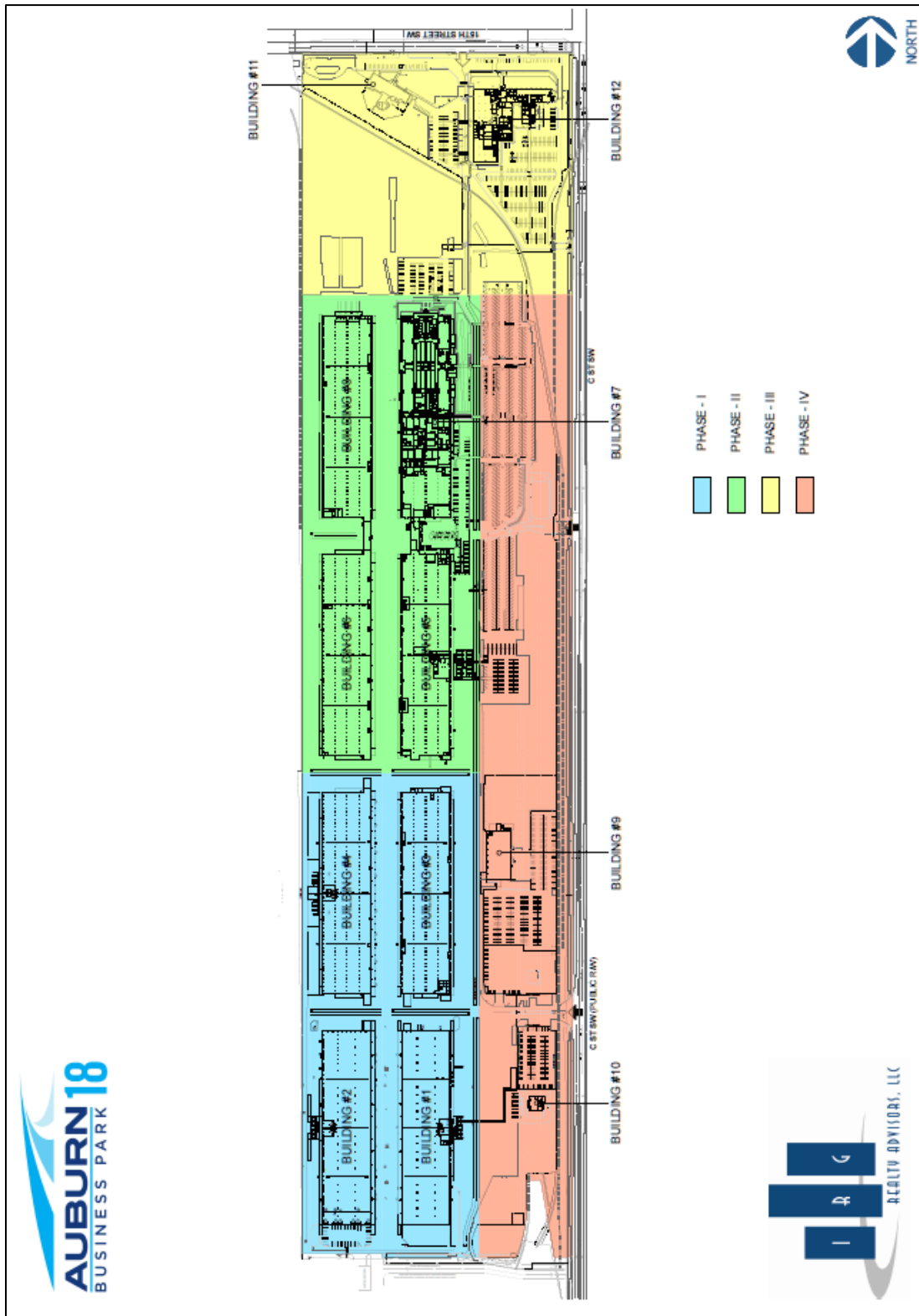


EXHIBIT C

Traffic Impact Fee Credit Calculations Buildings 7, 8, 11, 12

Building	Existing Land Use	Building Area (SF)	Impact Fee Rate (2024)	Impact Fee
7	Office	181,903	\$13.21	\$2,402,939
7	Warehouse	28,307	\$3.56	\$100,773
				\$2,503,712
8	Warehouse	182,571	\$3.56	\$649,953
11	Daycare	8,065	\$44.45	\$358,489
12	Office	105,771	\$13.21	\$1,397,235
TOTAL CREDIT =				\$4,909,388