

19-268

EXHIBIT A

DRAFT

COOPERATIVE AGREEMENT

among

COUNTY OF SUMMIT, OHIO

and

159 DEVELOPMENT, LLC

Dated as of

[_____] , 2019

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT made and entered into as of June ___, 2019, by and among the COUNTY OF SUMMIT, OHIO, a county organized and existing under the laws of the State and its Charter (the “County”), and 159 DEVELOPMENT, LLC, an Ohio limited liability company (“Owner”) (County and Owner, collectively, the “Cooperative Parties”), under the circumstances summarized in the following recitals (capitalized terms not defined in the recitals being used therein as defined in Article I hereof).

RECITALS:

A. Owner is the owner of the real property located in the City and identified as parcel numbers 6755900 and 6755901, with addresses of 153-165 South Main Street but commonly known as 159 South Main Street, and the following legal description:

Situated in the City of Akron, County of Summit, State of Ohio, and being all of Lot Nos. 23, 24 and 25 in the Quinby Allotment, as numbered and recorded in Plat Book 1, Page 59 of Summit County Records.

(the “Law Building”).

B. Owner is pursuing an adaptive reuse and redevelopment of the Law Building to convert the current 11-story office building into 112 market-rate residential units on the upper seven floors, with approximately 27,000 square feet of retail space between the sub level and first floor, and approximately 47,000 square feet of office space on the second through fourth floors (the “Project”).

C. The Owner and the County are parties, as successors in interest as owners, respectively, of the Law Building and the Ohio Building (located at 175 South Main Street, Akron, Ohio), to that certain agreement dated January 14, 1959, a copy of which is attached as Exhibit A hereto (the “Skywalk Agreement”) relating to the construction and shared maintenance of a pedestrian bridgeway between the Law Building and the Ohio Building (the “Skywalk”).

D. As part of the Project, Owner intends to repair and renovate the Skywalk at an estimated budget of \$400,000.

E. The County is the owner of the Summit County Parking Deck (“County Parking Deck”) which connects to the Ohio Building and the Law Building via the Skywalk.

F. The Cooperative Parties anticipate that the Project will generate the need for additional parking for residential and commercial occupants and visitors of the Law Building as redeveloped through the Project.

G. In recognition that the undertaking of the Project will promote economic development in the County and in the City of Akron, and that the County has not been requested for a number of years to contribute to the maintenance and repair of the Skywalk pursuant to the Skywalk Agreement, the County desires, in lieu of contributing to the anticipated costs of repair

and renovation of the Skywalk as contemplated in the Skywalk Agreement, to provide a number of parking spaces in the County Parking Deck to the Law Building at a discounted monthly rate for a ten (10) year period, and to forego payment of such discounted monthly rate until the aggregate foregone payments total Two Hundred Thousand and no/100 Dollars (\$200,000.00), at which point, the Owner will pay the discounted rate to County as set forth herein.

H. The Cooperative Parties intend to undertake the transactions described in this Cooperative Agreement, subject to the terms and conditions of this Cooperative Agreement, and each of the Cooperative Parties has full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on its respective part to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, and subject to the terms and limitations of this Agreement, the Cooperative Parties agree as follows:

[balance of page intentionally left blank]

ARTICLE I

Definitions

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2. Definitions. As used herein:

“Agreement” or “Cooperative Agreement” means this Cooperative Agreement as amended and supplemented from time to time.

“Legislative Authority” means as to the County, the Council of the County.

“Notice Address” means:

as to the County:

County of Summit, Ohio
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: Executive

with a copy to:

County of Summit, Ohio
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: Director of Law and
Risk Management

as to Owner:

159 Development, LLC
159 South Main Street
Akron, Ohio 44308
Attn: Tomasz Rybak

with copies to:

Vorys, Sater, Seymour and Pease LLP
106 South Main Street, Suite 1100
Akron, Ohio 44308
Attn: J. Bret Treier

and:

Bittiger Elias & Triolo P.C.
12 Route 17 North, Suite 206
Paramus, NJ 07652

Attn: Priscilla J. Triolo

or such additional or different address, notice of which is given under Section 4.1 of this Agreement.

“Person” or words importing persons means firms, associations, partnerships (including without limitation general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or other governmental bodies, other legal entities and natural persons.

Section 1.3. Interpretation. Any reference herein to the County or to a Legislative Authority or to any member or officer of the County includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II

Representations and Covenants

Section 2.1. Representations of the County. The County represents that: (a) it is a county duly organized and validly existing under the laws of the State and its Charter; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the County, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound which would have an adverse effect on the County's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by the County, will constitute the legal, valid and binding obligations of the County, enforceable against it in accordance with the respective terms thereof.

Section 2.2. Representations of Owner. Owner represents that: (a) it is a limited liability company duly organized and validly existing under the laws of the State of Ohio; (b) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (c) the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to Owner, and does not, and will not, conflict with or result in a default under any agreement or instrument to which Owner is a party or by which it is bound which would have an adverse effect on Owner's ability to perform its obligations under this Agreement (other than such adverse effect which is not material); (d) its Managing Member has duly authorized the execution, delivery and performance of this Agreement; and (e) this Agreement, when executed and delivered by Owner, will constitute the legal, valid and binding obligations of Owner, enforceable against it in accordance with the respective terms thereof.

(End of Article II)

ARTICLE III

Cooperative Arrangements

Section 3.1. Cooperative Arrangements. For the reasons set forth in the Recitals to this Agreement, the Cooperative Parties have determined to cooperate with one another in accordance with the terms of this Agreement.

Section 3.2. County Deck Parking Arrangements; Number of Parking Spaces and Rate. For a period of ten (10) years (the "Term"), commencing on the date a Certificate of Occupancy is issued to the Owner upon completion of the Project (the "Parking Support Commencement Date") and ending on the last day of the 10th year following thereafter, the County will provide up to 135 parking spaces in the County Parking Deck to Owner for use by residential tenants of the Law Building at the monthly rate of \$35.00 ("Discounted Rate"), provided, however, that if the County increases the regular monthly rate for parking in the County Parking Deck during the term, the Discounted Rate shall be increased by the same percentage increase for the regular monthly rate. On or before the Parking Support Commencement Date, Owner shall provide written Notice to the County of the number of parking spaces needed from that date until the last day of the then current calendar quarter (the "Discounted Parking Spaces"). Thereafter during the Term, Owner shall provide written Notice to the County no less than fifteen (15) days before the beginning of each calendar quarter of the number of parking spaces needed for such calendar quarter. The County will provide a corresponding number of access passes, allowing 24-hour access to and from the County Parking Deck, on the Parking Commencement Date and each calendar quarter during the Term thereafter. In the event that Owner does not provide Notice to the County by the date set forth in this paragraph of the number of parking spaces needed for a calendar quarter, then County will provide 115 parking passes to Owner for that upcoming calendar quarter and Owner shall pay County pursuant to this Agreement based on 115 passes, less any remaining applicable credits.

(b) Terms of Payment. Owner shall pay directly to the County by the fifth day of each month during the Term an amount equal to the then effective Discounted Rate times the then applicable number of Discounted Parking Spaces (the "Total Monthly Discounted Payment"), provided, however, that the County will forego the first Two Hundred Thousand and no/100 Dollars (\$200,000.00) of payments otherwise due from the Owner to the County as a credit against any amount that the County would otherwise be required to contribute to the repair and renovation of the Skywalk performed in connection with the Project (the "Skywalk Credit"). Once the aggregate monthly credited amounts equal the Skywalk Credit, Owner shall be obligated to commence payment of the Total Monthly Discounted Payment to the County.

(c) Future Costs of Skywalk. The County will remain responsible, during the Term and thereafter, for one-third of all costs of maintenance, taxes, assessments, cleaning, ventilating, heating, fire and extended coverage insurance, liability insurance,

and any other items of expense for the upkeep and preservation of the prescribed portion of the Skywalk under the Skywalk Agreement.

(d) County Parking Deck Maintenance. The Owner shall have no responsibilities with respect to costs of maintenance or repair of the County Parking Deck. The County shall keep and maintain the County Parking Deck, the paving and improvement thereon, in good, sightly and sanitary condition, repair, and appearance in accordance with reasonable standards of operations of comparable type, bearing all costs in connection therewith.

(e) Renewal of Term. Owner shall have the option, at its sole discretion, to renew the Term of this Agreement for an additional Term of 10 (ten) years, commencing upon the expiration of the initial Term, by providing County with written notice of Owner's exercise of its option to renew the Term no later than one hundred eighty (180) days prior to the expiration of the initial Term.

(f) Failure to Timely Pay; Late Fee. In the event that Owner fails to pay to County the Total Monthly Discounted Payment within five (5) days of the due date, it shall pay to County a late fee equal to 5% of the Total Monthly Discounted Payment due for that month. In the event Owner is delinquent on any Total Monthly Discounted Payment more than sixty (60) days, then County shall have the right to terminate this Cooperative Agreement and discontinue providing parking to Owner under this Cooperative Agreement.

Section 3.3. Responsibility for Transaction Costs; Legal Fees and Costs of Owner. All legal fees, costs and expenses Owner incurred in connection with the transactions described in this Cooperative Agreement shall be paid by Owner.

(b) Legal Fees and Costs of the County. All legal fees, costs and expenses of the County incurred in connection with the transactions described in this Cooperative Agreement shall be paid by the County.

(End of Article III)

ARTICLE IV

Miscellaneous

Section 4.1. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or delivered by overnight courier service, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Parties. The Cooperative Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail or courier service, any notice required to be mailed or delivered by courier service by the provisions of this Agreement shall be given in such other manner as in the judgment of the Cooperative Party shall most effectively approximate mailing thereof or delivery by courier service, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for delivery under this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 4.2. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer, official, employee or agent of the County or its Legislative Authorities, in other than its official capacity, and neither the members of any Legislative Authorities nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the the County contained in this Agreement.

Section 4.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns. This Agreement may be enforced only by the Cooperative Parties, their assignees and others who may, by law, stand in their respective places.

Section 4.4. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, no provision of this Agreement may be effectively amended, changed, modified, altered or terminated unless set forth in a writing signed by all of the Cooperative Parties.

Section 4.5. Execution Counterparts/PDF. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. Copies of signatures sent or provided electronically

in portable document format (PDF) shall be deemed to be originals for purposes of execution and proof of this Agreement.

Section 4.6. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 4.7. Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any Person other than the Cooperative Parties any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties, as provided herein.

Section 4.8. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in a State court sitting in Summit County.

(End of Article IV)

IN WITNESS WHEREOF, the Cooperative Parties have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

COUNTY OF SUMMIT, OHIO

By: _____
Ilene Shapiro, Executive

Approved as to form and correctness:

Deborah Matz,
Director of Department of Law
and Risk Management
County of Summit, Ohio

159 DEVELOPMENT, LLC

By: Poznan, LLC, Managing Member

By: _____
Tomasz Rybak, Managing Member

FISCAL OFFICER'S CERTIFICATE
COUNTY OF SUMMIT, OHIO

The undersigned, Fiscal Officer of the County of Summit, Ohio, hereby certifies that the moneys required to meet the obligations of the County during the year 2019 under the Agreement have been lawfully appropriated by the Legislative Authority of the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Fiscal Officer
County of Summit, Ohio

Dated: [May ____], 2019

EXHIBIT A

Skywalk Agreement