

PARK DISTRICT DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made this ____ day of _____ 2015⁴, by and between the CITY OF EAST LANSING, a Michigan municipal corporation, with its offices at City Hall, 410 Abbot Road, East Lansing, Michigan 48823 (the “City”), the CITY OF EAST LANSING BROWNFIELD REDEVELOPMENT AUTHORITY, with offices located at 410 Abbot Road, East Lansing, Michigan 48823 (the “ELBRA”), the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF EAST LANSING with offices located at 410 Abbot Road, East Lansing, Michigan 48823 (the “DDA”), and PARK DISTRICT INVESTMENT GROUP, LLC, a Michigan limited liability company c/o Eckhardt & Associates, PC 1427 West Saginaw, East Lansing, Michigan 48823, or assigns (the “Developer”).

THE PARTIES RECITE THAT:

WHEREAS, the City is a municipal corporation organized and existing under and pursuant to the Michigan Home Rules Cities Act, 1909 PA 279, as amended (codified at MCL 117.1 et seq.), and exercising all of the powers provided for therein and pursuant to East Lansing City Charter, adopted July 11, 1944, and as subsequently amended; and

WHEREAS, the ELBRA is organized and existing under and pursuant to the Brownfield Redevelopment Financing Act, 1998 PA 381 as amended (codified at MCL 125.2651 et seq.), to encourage the redevelopment of contaminated, functionally obsolete, and blighted property within the City of East Lansing by providing financial and tax incentives, without which the redevelopment would not be economically feasible; and

WHEREAS, the DDA is organized and existing under and pursuant to the Downtown Development Authority Act, 1975 PA 197 as amended (codified at MCL 125.1651 et seq.), to foster economic development and correct and prevent the deterioration of downtown East Lansing by utilizing tax increment financing and related measures; and

WHEREAS, the Developer is a Michigan limited liability company organized and existing in good standing under and pursuant to the Michigan Limited Liability Company Act, Public Act 23 of 1993, as amended (codified at MCL 450.4101 et seq.), and exercising all of the powers provided for therein; and

WHEREAS, the Developer, through its wholly owned subsidiary [City Center Two Project, LLC](#), owns various parcels of real property located within the City of East Lansing which [isare](#) specifically listed and legally described on Exhibit A (hereinafter the “Property”) upon which the Developer desires to proceed with a mixed-use development project, hereinafter referred to as “the Project”, containing commercial (including but not limited to retail, office, fine and casual dining restaurants licensed to serve alcohol [subject to additional approvals](#), and hotel licensed to serve alcohol to guests and special event invitees, residential, parking, and other uses consistent with a first-class mixed-use development); and

WHEREAS, the City has determined that the Project will remove blighted, environmentally contaminated, and functionally obsolete properties and be transformational in scope by providing for the expansion of desirable uses within the Downtown including LEED certification for portions of the Project as reasonably practical; and

WHEREAS, the Project may be constructed, subdivided, owned, and operated under the condominium form of ownership as regulated by the Michigan Condominium Act, 1978 PA 59, MCL 559.101, *et seq.*

WHEREAS, the City and Developer have determined that it is in the best public interest to set forth their respective public and private commitments and understandings with regard to developing the mixed-use project; and

WHEREAS, the City Council deems this project to be a substantial public benefit to the City of East Lansing; and

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the City and the Developer agree as follows:

1) **THE DEVELOPMENT PROJECT**

a) **Project Definition.** The Project is more accurately described in Exhibit B – The Site Plan, and Exhibit C – The Building Summary.

b) The Developer agrees to construct a mixed-use development that will contain the following elements:

1) **Building A:** To be located at the northwest corner of Abbot Road and Grand River Avenue, with the façade's exterior constructed in accordance with the requirements of Sec. 50-793(a)(2), and will contain retail space on the first and second floors above grade, general office space on the ten floors above grade, residential units developed for sale or lease to multimixed-market rentals tenants (as defined in the East Lansing DDA Downtown Housing Policy) on floors two through ten above grade, a hotel on floors two through ~~ten~~ four above grade, and an underground parking facility to principally serve the occupants of Building A on the two floors below grade. The building structure shall not exceed 140 ft. in height or a maximum of ten floors above grade. Said restrictions on height shall not consider the lower level parking or communication transmission equipment servicing the building or third parties less than 10 feet in height above the roof, architectural embellishments less than ten feet in height above the roof or elevator/stair towers less than ten feet in height above the roof affixed to the top of the building.

- 2) **Building B:** To be located on the southwest corner of Evergreen Street and Valley Court Drive, the mixed-use building shall be four stories, with the facade's exterior constructed in accordance with the requirements of Sec. 50-793(a)(2). and will contain retail and, office space, and up to sixty percent (60%) residential apartments developed for sale or lease to multi-market tenants on the first floor and residential apartments developed for sale or lease to multi-market tenants or office space on floors two through four. First floor tenants are planned to be either office or retailers. No national chain quick service restaurants or retailers should be tenants.
- 3) **Infrastructure Improvements.** Improvements to support the project and surrounding area generally including infrastructure improvements approved by the City, DDA and/ or the ELBRA include, but are not limited to, site improvements, excavation, demolition, water, sanitary sewer, storm sewer, roads, sidewalks, site acquisition costs, soil geotechnical issues including building foundations, remediation, excavation, sheet piling, utilities, exterior lighting, private underground parking structure, and related professional fees and interest carrying costs (“Infrastructure Improvements”) as set forth in the East Lansing Brownfield Redevelopment Authority Brownfield Plan #19 (the “BRA Plan #19”), as shown as Exhibit D. The streetscape improvements shall be done in compliance with the East Lansing's DDA's Urban Design Guidelines. All improvements required by this section shall be constructed in accordance with the City's prevailing wage requirements.
- 4) **Economic incentives.** Economic incentives of including Michigan Business Tax Credits and Tax Increments sufficient in that amount necessary to provide only that level of incentives necessary to (i) reimburse Developer for the eligible cost of the Infrastructure Improvements (together with cost to privately finance) in accordance with a Brownfield Redevelopment Plan, and (ii) The City will also support the developer in retaining Michigan Business Tax Credits that were previously approved for a similar project at this location of \$10 million approved for Building A, of \$500 thousand approved for Building B and of \$2 million that was approved for a portion of the development that is no longer

contained within this project in an effort to make the private portion of the project economically feasible by determining and filling the gap between the cost of construction and the fair market value of the Project upon completion. The \$2 million in economic incentives that was approved for a portion of the development that is no longer part of this project shall, at the City's request, be assigned by developer or developer's successor in interest to another developer that enters into a development agreement with the City to develop either the property known as Parking Lot 4, the property known as Parking Lot 15 or the DDA owned parcels on Evergreen Ave. This is a material provision of the contract and the City is entitled to specific performance of this provision. Under no circumstance shall the failure to retain any of the Michigan Business Tax Credits be a basis for a claim that there was a breach of contract or any liability on behalf of any of the parties to this agreement.

2) **INFRASTRUCTURE IMPROVEMENTS**

- a) **Combined Storm and Sanitary Sewers.** The Developer shall construct the necessary combined storm and sanitary sewer mains in accordance with City standards to serve the Project and adjoining area to the north. ~~This work will be completed as part of a larger downtown infrastructure project providing upgraded service capacity to the general area.~~ All existing public storm and sanitary sewer lines are to be maintained and protected unless otherwise approved by the City Engineer. Any failure of the existing public storm and sanitary sewer lines as a result of the construction, or a failure to protect them during construction, shall be repaired immediately by Developer. Failure of the Developer to repair the storm or sewer line to a functioning level with 12 hours shall result in the City being able, in its discretion, to make the necessary repairs and charge the performance bond for the costs of repair. The Developer generally shall upgrade the combined sewers from the existing intersection

of Valley Court and Evergreen Avenue south to relocated Albert Avenue. Then east in Albert Avenue until proceeding south to Grand River Avenue thru a new easement area thereby connecting to the existing overflow tunnel in Grand River Avenue. The Developer shall be responsible for construction of the necessary leads in accordance with City standards and shall obtain all necessary permits and pay all required connection charges and capital connection charges as set forth in Exhibit E. The final alignment and connections points to the existing system shall be ~~reasonably~~ determined by the City Engineer during the detailed plan review process. Upon final approval of the newly constructed public storm and sanitary sewer lines, the Developer shall make the necessary connection to the existing lines in accordance with City standards. At no time shall service be disconnected for more than 12 hours. Failure of the Developer to connect the storm or sewer lines to a functioning level within 12 hours shall result in the City being able, in its discretion, to make the necessary connection/repair and charge the performance bond for any and all costs incurred by City as a result of the failure to connect within 12 hours.

- b) **Water Mains.** The Developer shall construct the improvements necessary to the public water mains to serve the Project. The Developer shall generally install a new 12" waterline and necessary services in accordance with City standards in relocated Albert Avenue, from just west of Valley Court to Abbot Road. ~~This work will be completed as part of a larger downtown infrastructure project providing upgraded service capacity to the general area.~~ All existing public water lines are to be maintained and protected unless otherwise approved by the City Engineer. Any failure of the existing water lines as a result of the construction, or a failure to protect them

during construction, shall be repaired immediately by Developer. Failure of the Developer to repair the storm or sewer line to a functioning level with 12 hours shall result in the City being able, in its discretion, to make the necessary repairs and charge the performance bond for the costs. The Developer shall be responsible for construction of the necessary leads in accordance with City standards and shall obtain all necessary permits and pay all required fees, connection charges, and those additional capital charges as set forth in Exhibit E. The final alignment and connections points to the existing system shall be ~~reasonably~~ determined by the City Engineer during the detailed plan review process. Upon final approval of the newly constructed water lines, the Developer shall make the necessary connection to the existing water lines in accordance with City standards. At no time shall service be disrupted for more than 12 hours. Failure of the Developer to connect the water lines to a functioning level within 12 hours shall result in the City being able, in its discretion, to make the necessary connection/repair and charge the performance bond for any and all costs incurred by City as a result of the failure to connect within 12 hours.

- c) **Roadway and On-Street Parking Improvements.** The Developer shall be responsible for reconstruction of the roadway, in accordance with City standards, relocating Albert Avenue from west of Valley Court to Abbot Road including on-street parking. Evergreen Avenue will be ~~deconstructed~~ reconstructed into a one-way laned and on-street parking from Valley Court to Albert Avenue including one parking space equipped with an electric car charging station connected to City power. Valley Court will be reconstructed from Evergreen Avenue to Albert Avenue. Relocated parking and roadway access to Albert Avenue will be ~~provided to~~ constructed by the developer

on the Peoples Church property. Abbot Road will be widened to the west from Albert to Grand River to provide additional driving lanes including curb and gutter. The Developer will be responsible for the costs related to the sidewalk streetscape improvements, including, but not limited to, all sidewalks, street trees, wayfinding signs and site furnishings; ~~including~~ This also includes any temporary sidewalks with appropriate pedestrian protections necessary during construction. Any portion of the public right-of-way, including roads, alleys, curbs and gutter that is damaged during construction of the Project by the Developer shall be reconstructed to the current City of East Lansing design standards. ~~—REFERENCE TO DIAGRAM A AFTER REVIEWED BY DPW FOR SUFFICIENCY—~~ Failure of the Developer to complete the construction and reconstruction of the roadways within 6 months of the granting of the construction easements for the infrastructure improvements shall result in the City being able, in its discretion, to make the necessary improvements and charge the performance bond for the costs.

- d) **Developer’s Agreement to Install Utility Improvements.** The Developer shall obtain approval for and construct, relocate, remove or abandon, as necessary, all on-site and off-site gas, electrical, and cable and telecommunications facilities which are either municipally owned or operated under permit or franchise issued by the City, and right-of-way improvements necessary for the project as described herein and as may be required for the Project. The Developer shall be responsible for obtaining and paying the cost of all construction permits for the public improvements. Developer shall take all reasonable steps to minimize the interruption of service to properties not involved in the development project. At no time shall any of the activities cause any service to

other properties not involved in the development project to be interrupted for more than 12 hours. In the event service is interrupted for more than 12 hours, it shall result in the City being able to, in its discretion, take the necessary steps to return service to the affected properties and charge the performance bond for the costs.

- e) **Permits and Performance Bond.** Prior to commencement of construction of the public portion of the Infrastructure Improvements or issuance of the Building Permit for either Building A or Building B, the Developer shall provide to the City a performance bond by an AM Best Rated company with a rating of at least A-VII or; an irrevocable letter of credit, ~~or other financial assurance~~ in a form acceptable to the City ~~Attorney~~ in an amount no less than 110% of the approved public infrastructure costs of the approved Brownfield plan, minus the reimbursements for the private portion of the Infrastructure Improvements (including all interest), ~~—~~guaranteeing completion of the public portion of the Infrastructure Improvements to be undertaken by Developer plus an additional \$500,000 to guarantee demolition of existing buildings and site restoration in the event any buildings, in violation of this agreement, are not completed due to work stoppage that is not the result of an enforced delay.
- Throughout construction the City shall have access at any reasonable time to inspect any of the public portion of the Infrastructure Improvements. Upon completion, the public portion of the Infrastructure Improvements and appropriate easements as approved by the City Engineering Department and City Attorney shall be dedicated to the City. ~~The City and Developer agree to work cooperatively to insure that the Infrastructure Improvements are completed in the most mutually efficient and cost-effective manner possible.~~

- f) **Material Testing.** The Developer shall be responsible for scheduling inspection and testing, including pipe, structure backfill, road base, concrete work and bituminous pavement in accordance with City standards. ~~The Any~~ testing shall be completed by ~~the Developer will be completed by~~ a qualified ~~inspector.~~ (Construction Materials Testing and Inspection consultant approved by City). All testing shall be in accordance with Michigan Department of Transportation (MDOT) and City standards.
- g) **Connection Charges and Additional Capital Charges.** The City shall charge and the Developer shall pay all water and sewer connection charges and additional capital charges for each water main and sanitary sewer connection made on the project in accordance with Exhibit E. The actual Additional Capital Charges are to be established pursuant to Sections 46-5 and 46-7 of the City Code and subject to actual construction costs but shall not exceed the amounts in Exhibit E.
- h) **Building Permits.** The City shall charge and receive from the Developer all of the standard zoning fees, demolition permit fees, and building permit fees and inspection fees for all construction activities conducted by the Developer in affect at the time this Agreement is executed ~~except that no building permit fees shall apply to the~~ Infrastructure Improvements.
- i) **Staging Areas.** The Developer has identified appropriate staging space that is needed for this project set forth in the “Construction Containment Plan” to be submitted to and approved by the City as required herein. Additional areas may be allowed based upon mutual written agreement of the Developer and City. Compliance with the Construction Containment Plan is mandatory and failure of the Developer to comply with the plan shall permit the City, in its discretion, to issue a stop work order until

compliance is obtained and/or perform the work itself and charge the performance bond for the costs. The specific areas and timeframes will be detailed in the Construction Containment Plan attached as Exhibit F.

~~j) **No Third Party Beneficiaries and Restrictions on Assessment.** No person shall be entitled to claim any beneficiary status as to any right or obligation under this Agreement, except for the parties herein and their successors and assigns. Nothing in this Agreement shall restrict or limit the rights of City to levy special assessments against property (other than property encompassed within the Project) for equitable contributions to the cost of the public portions of the Infrastructure Improvements.~~

~~k) **Map of Improvements.** The proposed public improvements described in this Agreement are generally set forth on the attached ~~Diagram A~~ Exhibit H.~~

3) **PROPERTY TO BE PURCHASED**

a) **Purchase Agreement.** The Developer and the DDA shall enter into a written agreement, the “Purchase Agreement” (Exhibit G), which describes the purchase of 2,880 square feet of real property by Developer from the DDA (“DDA Property”). The Purchase Agreement sets forth the price, terms, and other considerations of purchase, method, and timing for acquisition. The DDA Property shall be used in the construction of Building A; provided that, should Developer be unable to obtain all of its required approvals, permits, and incentives for the construction of Building A and B, the Purchase Agreement shall terminate with no further obligation of either party except those that are specified in the purchase agreement. Until the construction of Building A begins, the property shall not be mortgaged, pledged or have any liens or encumbrances placed thereon and evidence of this restriction shall be filed with the register of deeds. In the event Building A, for any reason whatsoever, is not constructed pursuant to the terms of this agreement, Developer, or its successor, shall deed the property back to the City of East Lansing Downtown Development Authority, in fee, free of any liens or encumbrances. Developer shall be repaid the purchase price for the property less any

nonrefundable deposit for the property by the City of East Lansing Downtown Development Authority. The parties agree that the City shall be entitled to specific performance of this contractual obligation and that this is a material provision of the agreement.

b) **Evergreen Avenue and Abbot Road Right of Way.** The footprint for Building A shall include the Evergreen Avenue right of way between West Grand River and the existing Albert Avenue. In accordance with the timeline in paragraph 4, the City agrees to take those steps reasonably necessary to vacate this extent of Evergreen Avenue pursuant to the Home Rule Cities Act so that Developer, ~~or its affiliate,~~ shall have fee simple ownership of the former right of way. The vacated property, as described in Exhibit I, shall remain a separate and distinct parcel and until such time as the construction of Building A starts, shall not be mortgaged, pledged or have any liens or encumbrances placed thereon. Evidence of this restriction against any encumbrances shall be filed with the register of deeds. The City further agrees to provide those construction easements reasonably necessary to allow Developer's work to proceed in the right of way prior to transfer of title.

(i) ~~;~~ Prior to the use of the expanded right of way on the West side of Abbot Road, Developer shall transfer its interest in the easterly fifteen feet of the parcel at 100 West Grand River to the City to be used as additional right of way for Abbot Road according to the approved site plan as described in Exhibit J.

(ii). In the event Building A, for any reason whatsoever, is not constructed pursuant to the terms of this agreement, Developer shall deed the vacated property to the City of East Lansing Downtown Development Authority, in fee. The parties agree that the City shall be entitled to specific performance of this contractual obligation and that this is a material provision of the agreement.

4) TIMING

The City and the Developer agree that they will complete each of the following activities in a reasonable time, in accordance with the following schedules, as quickly as possible but with outside dates for completion as follows:

a) INFRASTRUCTURE.

1) The Developer submits infrastructure plans and application for Right-of-Way Permit to construct infrastructure to the City's Department of Public Works along with proposed utility easements. (Within 2 weeks from approval of the Site plan and special use permits for Buildings A and B and execution of this agreement by all parties.)

2) The Developer submits financial assurances and bond for completion of the infrastructure to the City's Department of Planning, Building and Development. (Within 2 weeks from approval of the Site plan and special use permits for Buildings A and B and execution of this agreement by all parties.)

3) The City reviews submissions of infrastructure plans, the application for Right-of-Way Permit, the proposed utility easements, and the financial assurances and bond for completion of the infrastructure and either issues permit and approval notification within _____ weeks from submission of the last documents submitted pursuant to subparagraph 1) or 2) above, or notifies Developer of deficiency within that time. If Developer is notified of deficiencies in either, the above cycles of submission and review are repeated until approved.

4) The City grants construction easements and developer on the City's standard forms and developer grants utility easements, as approved, within 2 weeks of notification of approval of the plans.

5) Developer begins construction of infrastructure within 2 weeks of issuance of permit and easements.

6) Developer completes construction of infrastructure improvements with 6 months of issuance of permit.

b) DEMOLITION OF BUILDINGS.

1) Developer submits fees and application for demolition of buildings located on sites where Buildings A and B are to be located. (Within 2 weeks from approval of the Site plan and special use permits for Buildings A and B and execution of this agreement by all parties.)

2) The Developer submits financial assurances and bond for completion of the demolition of the buildings to the City's Department of Planning, Building and Development. (Within 2 weeks from approval of the Site plan and special use permits for Buildings A and B and execution of this agreement by all parties.)

3) City reviews financial assurances and bond for completion of the demolition of the buildings within 2 weeks of submission and advises developer of any deficiencies within that time. If developer is notified of deficiencies the cycle is repeated until City is satisfied with the performance bond and financial assurances.

4) Developer is issued demolition permits. (Within 1 week of approval of financial assurances and bond.)

5) Developer begins demolition of buildings located on sites where Buildings A and B are to be located. (Within 3 weeks of issuance of demolition permits.)

6) Developer completes demolition of buildings located on sites where Buildings A and B are to be located. (Within 6 weeks of issuance of demolition permits.)

c) CONSTRUCTION AND OCCUPANCY OF BUILDING B.

1) Developer pays required fees and submits application for building permits and plans for Building B and provides proof reasonably satisfactory to the City's consultant of adequate financing to complete the entire Project within ___ weeks from approval of the Site Plan and Special Use Permits for Buildings A and B and execution of this agreement by all parties. Adequate documentation includes documentation from a qualified financial institution, bank, pension fund, private equity fund, and/or private investors that demonstrates the availability of required financing to complete the Project and appropriate escrow agreements to ensure completion of the Project should the developer default.

2) City reviews plans and advises Developer of any deficiencies within 3 weeks from receipt of same. If deficiencies are noted, cycle of submission and review repeats until no further deficiencies are noted.

~~a) The Developer obtains necessary permits and approvals. (April 2015);~~

~~b) The Developer provides proof reasonably satisfactory to the City of adequate financing to complete the Project. Adequate includes documentation from a qualified financial institution, bank, pension fund, private equity fund, and/or private investors that demonstrates the availability of required financing to complete the Project and appropriate escrow agreements to ensure completion of the Project should the developer default. (August 2015);~~

Developer provides financial guarantee for Public Infrastructure as outlined in Paragraph 2(e).

3. City's consultant reviews financing and advises Developer of any deficiencies within 4 weeks from receipt of same. If deficiencies are noted, cycle of submission and review repeats until no further deficiencies are noted.

~~Appropriate land sale and property vacations are executed.~~

4. Upon approval of the plans and financing and completion of demolition of the buildings on the sites for Building A and B, the City shall issue a building permit for Building B within 1 week thereof.

5. Developer begins construction of Building B within 2 weeks of issuance of building permit for Building B.

6. Developer requests certificate of occupancy for Building B upon completion of Building B and upon completion of infrastructure, including the drive approach and parking improvement for People's Church (except for final course of asphalt on the roads and minor items necessarily delayed due to construction of Building A)).

8. Developer is notified of any deficiencies in construction of Building B or completion of infrastructure within 1 week of Developers request for a certificate of occupancy.

9. Developer corrects any deficiencies in construction and/or completion of the infrastructure and resubmits request for a certificate of occupancy for Building B.

This cycle of subparagraphs 8 and 9 repeat until no further deficiencies exist.

10. City issues Developer a certificate of occupancy for Building B within 1 week of the request after all deficiencies have been remedied.

d) CONSTRUCTION AND OCCUPANCY OF BUILDING A.

- 1) Developer pays required fees and submits application for building permits and plans for Building A within 180 days from approval of the Site Plan and Special Use Permit for Buildings A and B and execution of this agreement by all parties.
- 2) City reviews plans and advises Developer of any deficiencies within 3 weeks from receipt of same. If deficiencies are noted, cycle of submission and review repeats until no further deficiencies are noted.
- 3) Developer dedicates as public right-of-way that portion of Abbot Road ~~the lot Building A is to be constructed upon~~ as outlined in Paragraph 3-b-i of this Agreement prior to issuance of building permit.
- 4) Developer abandons utilities in that portions of Evergreen Avenue to be vacated as part of the construction of Building A.
- 5) If ~~completion of the infrastructure is complete or on schedule~~, the City begins the process to vacate the Evergreen Avenue public right of way as described ~~in and in~~ accordance with the terms of Paragraph 3-b of this agreement within 3 weeks of Developer's dedication of public right-of-way. The ~~DDA property purchase of the~~ portion of 303 Abbot as shown and described on Exhibit K is closed pursuant to the Purchase Agreement in and accordance to the terms of the terms thereof as described Paragraph 3-a of this agreement.
- 6) The Developer shall be issued a building permit for building A within 1 week after the property is vacated and the DDA property purchase is closed. ~~obtains all of the necessary building permits. (August 2015);~~

e)

- d) 7) Developer commences construction on Building A within 2 weeks of issuance of the building permit and completion of Building B. (August 2015);
- e) ~~Developer commences Infrastructure Improvements. (August 2015);~~
- f) ~~Developer completes Infrastructure Improvements. (June 2017);~~
- 8) Developer completes construction of Building A, lays final course of asphalt for infrastructure improvements, finishes any remaining infrastructure improvements necessarily delayed by the construction of Building A and requests a certificate of Occupancy for Building A. (December 2017);
- 9) Developer is notified of any deficiencies in construction of Building A or with the completion of infrastructure within 2 weeks of Developers request for a certificate of occupancy.
- 10) Developer corrects any deficiencies in construction and/or completion of the infrastructure and resubmits request for a certificate of occupancy for Building A. This cycle of subparagraphs 9 and 10 repeat until no further deficiencies exist.
- g) 11) City issues Developer a certificate of occupancy for Building B within 1 week of the request after all deficiencies have been remedied.
- h) 12) Developer Project available for move-in by tenants (December 2017);

In the event of an unavoidable delay “Enforced Delay” in the performance by the Developer of their obligations under this agreement, due to unforeseeable causes beyond their control and without fault or negligence, including, but not restricted to, acts of God or acts of war or terrorism of the public enemy; acts of the federal, state or county government that directly impact the project; acts of the judiciary not resulting from Developer’s breach of this agreement or fault of Developer, including injunctions, temporary restraining orders and decrees; acts of

the other party in breach of this agreement; ~~strikes or labor unrest~~; fires; floods; ~~unstable soils~~; epidemics; unanticipated environmental contamination; ~~or severe weather~~; ~~international, national or regional financial crisis~~; the time for performance of such obligations shall be extended for the period of the Enforced Delays; provided, however, ~~that, except for matters as to which the other party already has knowledge~~, the party seeking the benefit of the provisions of this section shall, within twenty one (21) days after the beginning of such Enforced Delay, have first notified the other party in writing of the causes thereof and requested an extension for the period of the Enforced Delay.

With respect to any matters that are within the discretion or approval of the City, the City shall: (i) use good faith in considering and negotiating matters proposed by or under discussion with the Developer, (ii) act reasonably in all dealings with the Developer, (iii) not unreasonably withhold, condition or delay any approvals within its discretion, and (iv) act reasonably use best efforts to assist the Developer in completion of the Project ~~(provided, however, that this section shall not require the City to accept liability for matters that are not its responsibility under this Agreement, unless the City's improper acts or omissions gave rise to the liability)~~. In addition to any extension provided for any Enforced Delay, in the event that the City, its agents and/or ~~other controversy~~: ~~(v)~~ employees take or fail to take any action that unreasonably delays the Developer from meeting the schedule provided for herein; ~~(vi)~~ or unreasonably withhold, condition or delay any approval under this Agreement, then the City shall be in breach of this Agreement and Developer may seek all damages at law or equity an order for specific performance of the terms of this agreement in accordance with paragraph 8-n.

5) TAX INCREMENT FINANCING

a) Tax Increment Revenues. The Developer and the City agree to share in the tax increment revenue generated under East Lansing Brownfield Redevelopment Authority Brownfield Plan #19 (the “BRA Plan #19”), as shown as Exhibit D. The Developer will undertake eligible expenses as outlined in BRA Plan #19 including, but not limited to, environmental response activities, demolition, asbestos remediation, site preparation, infrastructure improvements including water, sewer, roads, a private underground parking structure, excavation of soils, sheet piling, specialized foundations and footings, administrative and professional fees, and carrying costs including interest and loan fees and other related expenses. Upon completion of the entire Development Project, the ELBRA agrees to reimburse the Developer and the City according to the TIF allocation schedule on Table 2 of BRA Plan #19 and incorporated as an addendum to the Brownfield Reimbursement Agreement dated _____. No tax increment revenues shall be reimbursed to Developer if the entire Development Project is not completed in accordance with the terms of this agreement and both Buildings A and B are occupied in accordance with subparagraph 1-b of this agreement and constructed in accordance with the City’s Green Building Incentive Policy as adopted ~~Policy~~ by Council resolution dated November 16, 2010.

b) Limitations on Tax Increment Revenue. Nothing contained in this Agreement shall be construed to establish any liability on the part of the City, DDA or ELBRA to reimburse the Developer for any costs or expenses, except to the extent that such costs and expenses are eligible expenses under one or more tax increment financing plans approved by the City, DDA or ELBRA, and sufficient taxes are actually captured by

the DDA or ELBRA to pay for such costs and expenses. The City, DDA and ELBRA are responsible for reimbursement of eligible activities under any tax increment financing plans only to the extent that tax increment revenue is actually generated.

6) PERFORMANCE

a) Developer Performance. In the event that the Developer fails to obtain the necessary building permits for Building B by the August 31, 2015 (except if same are unreasonably withheld, unreasonably conditioned or unreasonably delayed by the City, or any other governmental unit, in contravention of this agreement) as set forth herein, the City may, at its option and within its sole discretion ~~terminate this Agreement, by sending a written notice to Developer specifying the failure, subject to the provisions below. In the event that this Agreement is terminated on this basis by the City then, by written notice given by the City to the Developer following such failure by the Developer which is not attributed to delays caused by Governing Agencies (which shall be defined as including, whether a party to this Agreement or not, any and all governmental agencies, quasi-governmental agencies and/or any private agencies with jurisdiction over any of the matters relevant to this Agreement, including any subdivisions, employees, agents or affiliates of those agencies; for purposes of this Agreement) or Enforced Delays (collectively, "Governmental/Enforced Delays"), thea~~ City may, at its option and within its discretion, (i) terminate this Agreement, and (ii) terminate the related Brownfield Reimbursement Agreement and Brownfield Redevelopment Plan, either immediately or prospectively; provided that, prior to any such termination, the Developer shall have ninety (90) business days to cure the default, ~~or if the default cannot be reasonably cured within such ninety business day~~

~~period, the Developer shall commence cure and undertake good faith efforts to complete same as soon as practicable.~~

b) Failure to Complete. In the event the Developer fails to complete the construction of the public portion of the Infrastructure Improvements as set forth in Paragraph 2 within ~~nine~~ twenty four (924) months following issuance of the building permits for the same, except for any ~~Governmental~~/Enforced Delays, the City may, at its option and within its discretion, (i) draw upon the financial assurances provided in Section 2) of this Agreement to complete the public portion of the Infrastructure Improvements, and/or (ii) collect, retain, and disburse all tax increment financing revenues necessary to complete the cost of the public portion of the Infrastructure Improvements, and seek any other legal or equitable remedy available to the City including termination. Provided, however, if default by the Developer occurs the City may, in its discretion, will use its best efforts to cooperate with Developer to complete the Project; provided, however, such cooperation shall not be interpreted to require the City to contribute any additional financial assistance to the Project.

c) Lender Assignments. Prior to commencement of construction, the Developer shall provide adequate documentation to the City that all agreements relating to the construction of the Project including construction contracts, architectural and engineering contracts, management contracts, hotel license agreements (to the extent permitted by Licensor), Brownfield Reimbursement Agreements, Michigan Business Tax Credits, building permits, and any and all rights under this Agreement, are assigned to Developer's construction lender in the event of default by Developer. Developer shall be required to clear, fill, grade, landscape, or otherwise stabilize and

make safe the Project site should the Developer, absent Governmental/Enforced Delays: (i) fail to complete demolition of the existing structures within ~~threenine~~ (39) months after commencement of infrastructure construction, (ii) cease construction for a continuous period of more than ~~threenine~~ (39) months, or (iii) fail to complete construction within ~~thirty-eight (38)~~twenty-four (24) months of issuance of the permits or such additional time as authorized by the building official City may use the performance bonds or letter of credit to either complete the infrastructure, demolish the existing buildings on lots A or B, or restore the sites if buildings are left partially constructed-

de) Modification or Termination. The City and Developer may mutually agree to modify or terminate this agreement.

ed) Utility Liens and Assessments. In the event that, for any reason whatsoever, the Developer fails to complete the Project and apply for permits and pay all water and sewer connection charges and additional capital charges required herein, ~~except as a result of any Governmental/Enforced Delay,~~ the Developer consents that the equitable portion of any connection charges and additional capital connection charges set forth in Exhibit E may be assessed against all property benefiting from such improvements including the Property by the City Council as a special assessment for public improvements initiated by the Developer pursuant to Chapter 13 of the East Lansing City Charter.

7) **INSURANCE AND INDEMNIFICATION.**

a) Developer's Insurance. The Developer shall obtain, and keep in full force and effect until the completion of the development, a single policy of builders risk

insurance in the amount of \$10 million, effective as of the date of commencement of construction, naming as insured the Developer, DDA, ELBRA and the City, as their interests may appear from time to time. The City, DDA and ELBRA shall each be provided with a certificate of such insurance prior to the Developer commencing any activities on the development site, which certificate shall provide that the certificate holder shall receive ten (10) days prior written notice of cancellation, non-renewal, or a material change of such insurance coverage. A breach of this requirement shall entitle the City to continue, and pay for, such insurance and recover from the Developer any such costs and/or issue a stop work order on the construction.

b) **General Indemnification.** To the extent, and only to the extent, not covered by the proceeds from the insurance policies required to be carried hereunder or under any other agreements between the parties hereto, the ~~City, DDA, ELBRA and the Developer~~ each agrees that ~~it they~~ shall indemnify and hold harmless the ~~other City, DDA and ELBRA~~ against and from any loss, damage, claim of damage, liability or expense to or for any person or property, whether based on contract, tort, negligence or otherwise, arising directly or indirectly out of or in connection with ~~its their respective~~ acts or omissions in conjunction with the performance of this Agreement ~~by the party~~ so indemnifying, its agents, servants, employees or contractors; provided, however, that nothing herein shall be construed to require ~~Developer either party~~ to indemnify ~~the other~~ the City, DDA or ELBRA against such party's own acts, omissions or neglect.

8) MISCELLANEOUS PROVISIONS

a) **Entire Agreement.** This Agreement, the exhibits attached hereto, if any, and the instruments which are to be executed in accordance with the requirements hereof set forth all of the covenants, agreements, stipulations, promises, conditions and understandings between the City, ELBRA, the DDA , and the Developer concerning the Development as of the date hereof, and there are no covenants, agreements, stipulations, promises, conditions or understandings, either oral or written, between them other than as attached to or set forth herein.

b) **Anti-Merger.** The parties agree and acknowledge that delivery and recording of the deeds contemplated in this Agreement shall not merge the provisions or obligations of this Agreement. All other obligations contained herein shall remain in full force and effect. ~~contemplated to occur, or be ongoing, after the closing of this Agreement.~~

c) **Relationship of the Parties.** The relationship of the City, DDA, ELBRA and the Developer shall be defined solely by the expressed terms of this Agreement, including the implementing documents described or contemplated herein, and neither the cooperation of the parties hereunder nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the City and the Developer, nor shall any party or their agent be deemed to be the agent or employee of any other party to this Agreement.

d) **Modification.** This Agreement can be modified or amended only by a written instrument expressly referring hereto and executed by the City, DDA, ELBRA, and the Developer.

e) **Cooperation.** The Parties shall take such further actions and deliver and execute such additional documents as are reasonably necessary to effectuate the terms and intent of this Agreement, including any necessary easements to accomplish the intent of the Project. The Parties shall work cooperatively to obtain any and all permits, approvals, waivers, certificates of occupancy, rental licenses, liquor licenses, and any other approval required to effectuate the Parties intent contemplated under the terms of this Agreement.

f) **Third Parties.** The Parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Parties hereto, and in no event shall any other person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there are no third party beneficiaries under this Agreement.

g) **Disclaimer and Indemnification.** The Parties hereto understand and agree that this document does not constitute a complete and final document as there are additional documents to be negotiated and attached hereto as described above, that any use of this document until it is further amended and completed will be solely and entirely at the users individual risk, and that the City of East Lansing and it's elected and appointed officers and employees will be held harmless from all liability from the use of this document until completed and final.

h) **Michigan Law to Control and Severability.** This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with Michigan law. If any part, term, or provision of this Development Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining

portions and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Development Agreement did not contain the particular part, term, or provision held to be invalid unless it is a material term or provision of the agreement that would significantly alter the nature of the agreement.

All terms, conditions, responsibilities, duties, promises and obligations of the parties are binding upon the parties, their successors and assigns.

i) Due Authorization. The City and the Developer each warrant and represent to the others that this Agreement and the terms and condition thereof have been duly authorized and approved by, in the case of the City, its City Council and all other governmental agencies whose approval may be required as a precaution to the effectiveness hereof, in the case of the DDA and ELBRA by its members and all other applicable governmental agencies, and as to the Developer, by the members thereof, and that the persons who have executed this Agreement below have been duly authorized to do so. The parties hereto agree to provide such opinions of counsel as to the due authorization and binding effect of this Agreement and the collateral documents contemplated hereby as the other party shall reasonably request.

j) No Personal Liability. The obligations hereunder of the City, DDA, ELBRA, and the Developer shall constitute solely the obligations of the respective entities to be satisfied solely from their respective assets, and no officer, agent, employee or partner of any of said entities shall have any personal obligation responsibility or liability for the performance of the terms of this Agreement.

k) Civil Rights. The Developer and its contractors and subcontractors on this Project shall not discriminate against any employee or applicant for employment with

respect to hire, tenure, terms and conditions or privileges of employment, including any benefit plan or system or matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status, disability, sexual orientation, student status, or the use by an individual of adapted devices or aids, or in any other manner prohibited by the provisions of the East Lansing Civil Rights Code, being Article II, Chapter 2 of the East Lansing City Code, which provisions are incorporated herein by reference. A breach of this covenant shall be regarded as a material breach of this Agreement.

l) Recording of Agreement. The Developer agrees that a memorandum of this Agreement may be recorded with the Ingham County Register of Deeds.

m) Parking Availability. The Developer and City agree that they will negotiate in good faith a parking agreement [for spaces located in the core downtown](#), if necessary in Developer's [and City's](#) reasonable discretion, not to exceed that number of permits reasonably necessary to satisfy the contemplated uses of the Project after construction of the private underground parking within Building A and the on-site parking constructed as part of the Infrastructure Improvements.

n) Limitation of Remedies for Developer. [The developer agrees that its sole and exclusive remedy against any other parties to this agreement shall be specific performance of the terms of this agreement. The other parties shall have all remedies allowed by law.](#)

o) Assignability. [Except for the assignment required by paragraph 6-d of this agreement, this agreement is not assignable without the express written agreement of the parties.](#)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

WITNESSES:

CITY OF EAST LANSING

By _____

By _____
_____, Mayor

By _____

By _____
_____, City Clerk

EAST LANSING BROWNFIELD AUTHORITY

By _____

By _____
_____, Chairperson

DOWNTOWN DEVELOPMENT AUTHORITY

By _____

By _____
_____, Chairperson

PARK DISTRICT INVESTMENT GROUP LLC

By _____

By _____
_____, its Authorized Signatory

Approved as to Form:

_____(P_____)_____
East Lansing City Attorney

LIST OF EXHIBITS

EXHIBIT A	Property
EXHIBIT B	The Site Plan
EXHIBIT C	The Building Summary
EXHIBIT D	East Lansing Brownfield Redevelopment Authority Brownfield Plan #19
EXHIBIT E	Required fees, Connection Charges, Additional Capital Charges
EXHIBIT F	Construction Containment Plan
EXHIBIT G	303 North Abbot Purchase Agreement
EXHIBIT H	Diagram of Public Infrastructure Improvements
EXHIBIT I	Legal Description – Vacated Evergreen Avenue
EXHIBIT J	Legal Description – Abbot Road Right-of-Way Dedication
EXHIBIT K	Legal Description – Portion of 303 North Abbot

**EXHIBIT A
PROPERTY**

EXHIBIT B
THE SITE PLAN

EXHIBIT C
THE BUILDING SUMMARY

EXHIBIT D
EAST LANSING BROWNFIELD REDEVELOPMENT
AUTHORITY BROWNFIELD PLAN #19

EXHIBIT E
REQUIRED FEES, CONNECTION CHARGES,
ADDITIONAL CAPITAL CHARGES

EXHIBIT F
CONSTRUCTION CONTAINMENT PLAN

EXHIBIT G
303 NORTH ABBOT PURCHASE AGREEMENT

EXHIBIT H
DIAGRAM OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

EXHIBIT I
LEGAL DESCRIPTION – VACATED EVERGREEN AVENUE

EXHIBIT J
LEGAL DESCRIPTION – ABBOT ROAD RIGHT-OF-WAY DEDICATION

Planning Approvals

- (1) City Council approves Site Plan and Special Use Permit

Financing/Ownership Due Diligence

- (1) Real estate/financial consultant reviews project financial structure and brownfield plan
- (2) Outside legal counsel reviews ownership structure, development agreement, and related documentation

Development Agreement/Incentives

- (1) BRA and Council approve brownfield plan and reimbursement agreement
- (2) BRA, DDA, and Council approve development agreement

Infrastructure

- (1) ROW application & fees submitted
- (2) Performance bond secured
- (3) Permits issued
- (4) City grants construction easements and developer grants utility easements
- (5) Construction commences
- (6) Construction completed to City's standards

Demolition

- (1) Application & fees submitted
- (2) Performance bond secured
- (3) Permits issued
- (4) Demolition commences
- (5) Demolition is completed

Building B Construction

- (1) Building plans & fees submitted
- (2) Proof of financing (Buildings A & B) submitted to consultant for review and City approval
- (3) Permit issued
- (4) Construction commences
- (5) Construction is completed and Certificate of Occupancy issued

Building A Construction

- (1) Building plans & fees submitted
- (2) Developer dedicates Abbot ROW
- (3) City commences vacation of Evergreen and DDA closes on portion of 303 Abbot
- (4) Permit issued
- (5) Construction commences
- (6) Construction is completed and Certificate of Occupancy issued