

# CLARK HILL

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April 22, 2015

East Lansing Downtown Development Authority  
c/o Lori Mullins, Community & Economic Development Administrator  
410 Abbot Road  
East Lansing, MI 48823

Re: Park District project

Dear Ms. Mullins:

The City of East Lansing (the “City”) and the East Lansing Downtown Development Authority (the “DDA”) are considering a large redevelopment project in the Park District redevelopment area. The proposed project includes commercial, retail and residential components, a hotel and underground parking, along with significant utility and infrastructure improvements. We understand that a number of prior projects in the Park District redevelopment area have been unsuccessful for a variety of reasons. Accordingly, in an effort to promote the completion of this latest project, you have asked us to review the project developer and the corresponding project documents and provide analysis and suggested modifications.

## **Park District Investment Group, LLC**

Park District Investment Group, LLC (“Park District Investment”) is a Michigan limited liability company established in October of 2013. According to the Michigan Department of Licensing and Regulatory Affairs, as of the date of this letter Park District Investment is active and in good standing.

We have determined that Charles Crouch is a member and authorized agent for Park District Investment (Crouch Investment Group, LLC, is a majority owner of Park District Investment). Scott Chappelle, who is associated with Crouch Investment Group as an investment manager, is the founder of the Strathmore Development Company (“Strathmore”). As you likely know, Strathmore was linked to previous unsuccessful projects proposed for the Park District redevelopment area. According to court documents and media sources, Strathmore and/or its affiliates have been involved in a number of unsuccessful or delayed development projects across the state.<sup>1</sup> We understand that Strathmore and/or its affiliates may be involved in

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<sup>1</sup> According to the [Ann Arbor Observer](#), Strathmore and/or affiliates were involved in the Broadway Village project in Ann Arbor. The Broadway Village project was to be a mixed-use development that anticipated using public economic incentives to assist in funding public infrastructure. This project has not progressed since 2010.

project litigation in other states. Additionally, we are aware that the Internal Revenue Service has initiated the collection of sizeable tax liens against Strathmore and its affiliates.<sup>2</sup>

Although individuals connected to the Crouch Investment Group and Strathmore are affiliated with Park District Investment as mentioned above, we cannot reasonably suggest that such affiliation will adversely affect the project at issue. However, we recommend that the development agreement with Park District Investment require:

- A process for the disclosure of any and all entities/persons associated with the development (now or as become known as a permitted assignee).
- Specific Financial data showing that Park District Investment has the financial support to complete the project at each phase.

### Project Documents

#### A. Park District Development Agreement (02.18.15)<sup>3</sup>

We have reviewed the Park District Development Agreement and find it to be meticulously drafted. We believe the agreement as written provides ample protection to the City and the DDA for the duration of the project. In an effort to further reduce risk and avoid changes to the scope of the project during construction, we offer the following suggested modifications:

- Page 1, opening paragraph: the term “Developer” as used to describe Park District Investment could be expanded as follows: “for purposes of this Agreement, “Developer” shall include all permitted assignees and affiliates, such as but not limited to joint-ventures, limited partnerships, limited liability companies or corporations.”
- Page 3, paragraph 1(b)(1): this paragraph could be modified to require that the proposed project uses (*i.e.*, retail, office, hotel, etc) “shall fully comply with the approved Site Plan (Exhibit B) and Building Summary (Exhibit C), without deviation or amendment unless otherwise approved in writing by the City in accordance with applicable ordinance.”
- Page 4, paragraph 1(b)(2): this paragraph could also be modified to require that the proposed project uses (*i.e.*, retail, office, residential) “shall fully comply with the approved Site Plan (Exhibit B) and Building Summary (Exhibit C), without deviation or amendment unless otherwise approved in writing by the City in accordance with applicable ordinance.”

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Strathmore (and Mr. Chappelle and Mr. Crouch) are also involved in a mixed-use development project in Bear Creek Township, near Petoskey. We understand this project has been delayed over litigation involving the project area’s zoning designation.

<sup>2</sup> Although beyond the scope of our analysis, the City and/or the DDA’s financial consultant should be made aware of the IRS’s collection efforts.

<sup>3</sup> Our review includes the amendments to paragraph 2(e) (permits and performance bond) and paragraph 8 (o) (assignability) as proposed by Park District Investment’s attorney.

- Page 4, paragraph 4: this paragraph could be modified to recognize that the eligible cost of Infrastructure Improvements will only be reimbursed in accordance with "...a Brownfield Redevelopment Plan approved by the ELBRA and the City." Additionally, this paragraph could be modified to define (and limit) the "support" offered by the City in relation to the Michigan Business Tax Credits (*i.e.*, "support through a City Council resolution").
- Pages 5-6, paragraph 2(a) & (b): We understand that the City intends to assume the ongoing operation and maintenance of storm and sanitary sewers and water mains constructed by Park District Investment as part of the project (collectively, the "Utilities"). Therefore, we believe the following requirements could be added:
  - Plans and specifications for the Utilities shall be prepared at the cost of Park District Investment and submitted to the City engineer for review and approval. In strict accordance with such approved plans and specifications, Park District Investment shall construct and install the Utilities.
  - Park District Investment shall design, construct and install the Utilities in compliance with applicable City ordinances and construction standards, applicable state and federal laws, rules and regulations, and applicable permits, certifications and approvals.
  - During construction and installation of the Utilities, the City shall have the right, but not the obligation, to conduct inspections. However, such inspections, if undertaken, shall not relieve Park District Investment of its obligation to construct and install the Utilities in accordance with the terms and conditions of the agreement.
  - After dedication of the Utilities to the City in accordance with the agreement, Park District Investment acknowledges and agrees that the City cannot guarantee uninterrupted service to the project area.
- Page 9, paragraph 2(m): this paragraph could be modified to clarify that inspections shall be conducted "at Park District Investment's sole cost and expense."
- Pages 12-14, paragraph 4(a) & (b): these paragraphs could be modified to include remedies for a failure by Park District Investment to adhere to the required timeframes, including: (1) daily assessed fines/damages; (2) breach of agreement; (3) specific performance (in accordance with paragraph 8(n)); or (4) revisionary clauses.
- Pages 27-28, paragraph 8(o): this paragraph could be modified to provide that if the City does not consent to a requested assignment, Park District Investment remains obligated to complete its responsibilities under the agreement.

## B. Purchase and Sale Agreement

We have reviewed the Purchase and Sale Agreement and find it to be well drafted. We believe the agreement as written provides ample protection to the City and the DDA. In an effort to further reduce risk, we offer the following suggested modifications:

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- Page 7, paragraph 5.2: this paragraph could be modified to provide that the required warranty deed must include revisionary language to effectuate paragraph 3(a) of the development agreement (requiring developer to “deed the property back” in the event that Building A is not constructed).

C. Brownfield Plan Amendment and Brownfield Reimbursement Agreement

We have reviewed the Brownfield Plan Amendment and Brownfield Reimbursement Agreement and find both documents to be well drafted and compliant with applicable state law. We note, both documents limit reimbursement obligations to captured tax revenue and absolve the City and the ELBRA from liability in the event of a shortfall. We do not have any suggested modifications to either document.

We trust this letter sufficiently responds to your request. Should you have any questions, or if we can provide further assistance, please contact us.

Sincerely,

CLARK HILL PLC



Kenneth P. Lane

cc: Mr. Timothy Dempsey  
Mr. Tom Yeadon