

**PARK DISTRICT DEVELOPMENT AGREEMENT**

This Development Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_ 2015, 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 (the “Developer”), and for purposes of this Agreement, “Developer” shall include all permitted assignees such as but not limited to joint-ventures, limited partnerships, limited liability companies or corporations,

**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 are 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 exterior constructed in accordance with the requirements of Sec. 50-793(a)(2), and will contain retail and office space on the entire first floor above grade, hotel space on the entire second and third floors above grade, and residential units developed for sale or lease to mixed-market rentals (as defined in the East Lansing DDA Downtown Housing Policy) on floors four through eight above grade, and an underground parking facility to principally serve the occupants of Building A on the two floors below grade which shall fully comply with the approved Site Plan (Exhibit B) and Building Summary (Exhibit C), without material (for purposes of this Agreement “material” shall mean modification to building dimensions that does not exceed 5,000 square feet or 5% of gross floor area, whichever is smaller) deviation or amendment unless otherwise approved in writing by the City in accordance with applicable ordinance. . The building structure shall not exceed 140 ft. in height or a maximum of eight floors above grade (excluding parking). Said restrictions on height shall not consider the communication transmission equipment less than

15 feet in height above the roof, architectural embellishments less than 15 feet in height above the roof, stair and elevator towers or mechanical infrastructure servicing the building or third parties less than 15 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 exterior constructed in accordance with the requirements of Sec. 50-793(a)(2), and will contain retail and office space on the first floor and residential apartments developed for sale or lease to multi-market tenants or office space on floors two through four which shall fully comply with the approved Site Plan (Exhibit B) and Building Summary (Exhibit C), without material deviation or amendment unless otherwise approved in writing by the City in accordance with applicable ordinance. Developer shall make all available first floor commercial space at a rate twenty percent (20%) less than standard rates for any qualified locally owned and operated commercial use that is not a national franchise and provide the City with the rates and discounted rates.
- 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 (“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 Tax Increments to provide only that level of incentives necessary to reimburse Developer for the eligible cost of

the Infrastructure Improvements (together with cost to privately finance) in accordance with a Brownfield Redevelopment Plan approved by the ELBRA and the City. The City will also support the project, with letters of support from City staff or the Brownfield Authority or with the appearance of City staff before appropriate agencies of the state as the City deems appropriate, 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 reimburse Developer for public infrastructure improvements and 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.

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 ordinances and standards, applicable state and federal laws, rules and regulations, and applicable permits, certifications and approvals, to serve the Project and adjoining area to the north and in accordance with plans and specifications prepared by Developer at its expense and approved by the City Engineer. 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 within 12 hours shall result in the City being able, in its reasonable 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 and any other sewer necessary to serve the proposed development or maintain the existing sewer. 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 connection points to the existing system shall be 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 reasonable 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. 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 water lines to a functioning level within 12 hours shall result in the City being able, in its reasonable 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 connection 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 reasonable 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 reconstructed into a one-way lane roadway with 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 as specified in the

approved plans. Relocated parking and roadway access to Albert Avenue will be 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 streetscape improvements, including, but not limited to, all sidewalks, street trees, wayfinding signs and site furnishings. 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. Failure of the Developer to substantially complete (defined as complete to the point of functioning as its intended use) the construction and reconstruction of the roadways within 24 months of the granting of the construction easements for the infrastructure improvements shall result in the City being able, in its reasonable 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 reasonable discretion, take the necessary steps to return service to the affected properties and charge the performance bond for the costs.

- e) **Permits and Performance Bonds.** 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 in a form acceptable to the City in an amount no less than 110% of the public infrastructure improvement costs as specified within the approved Brownfield plan, minus the reimbursements for the private portion of the Infrastructure Improvements (including all interest), to guarantee full completion of the public portion of the Infrastructure Improvements to be undertaken by Developer under this Agreement plus an additional bond (the “Demolition and Site Restoration Guarantee”) to guarantee demolition of existing or future (as constructed by the Developer) buildings, removal of demolition debris, and site restoration (by backfilling any excavation with typical granular fill to grade) in the event any buildings, required to be constructed by the Developer under this agreement, are not completed due to work stoppage that is not the result of an enforced delay (the amount of the Demolition Guarantee shall be 110% of the demolition bid(s) for the full cost of demolition, as selected by Developer for the demolition portion of the project as specified within paragraph 4 below through a contractor or contractors that are reasonably acceptable to

the City. 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.

- 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 testing shall be completed by a qualified Construction Materials Testing and Inspection consultant approved by City. All testing shall be in accordance with Michigan Department of Transportation (MDOT) and City standards at Developer's sole cost and expense.
- 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, building permit fees and inspection fees for all construction activities conducted by the Developer in effect at the time this Agreement is executed.

- 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 reasonable 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 including any lender participating in the financing of the Project.
- k) **Map of Improvements.** The proposed public improvements described in this Agreement are generally set forth on the attached Exhibit H.
- l) **Inspections.** During construction and installation of the Infrastructure Improvements, the City shall have the right, but not the obligation, to conduct inspections, upon reasonable prior notice to Developer. However, such inspections, if undertaken, shall not relieve Developer 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, Developer acknowledges that the City cannot guarantee uninterrupted service to the project area except as generally required under statute, ordinance, regulation or the common law. **The Developer will be required to**

escrow sufficient funds to cover the cost of city inspections for all public infrastructure improvements.

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 Buildings 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 financing for Building A closes and the City Consents, 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 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

financing for Building A closes and the City consents, shall not be mortgaged, pledged or have any liens or encumbrances placed thereon. Either this development agreement or other evidence of this restriction against encumbrances shall be filed with the register of deeds at the City's discretion. 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 free of any liens or encumbrances. 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, 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 120 days 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 as required by paragraph 2, Infrastructure Improvements, subparagraph e, Permits and Performance Bonds, for completion of the infrastructure to the City's Department of Planning, Building and Development. (Within 120 days 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 2 weeks from submission of the last documents submitted pursuant to subparagraph 1) or 2) above, or notifies Developer of deficiency within that time. This time period may be extended for any required review by the Michigan Department of Environmental Quality. If Developer is notified of deficiencies in either, the above cycles of submission and review are repeated until approved. If Developer is unable to provide sufficient financial assurances that do not have identifiable deficiencies within 90 days of the initial submission, City may, at its option and in its sole discretion, terminate this agreement by delivery of notice of termination to Developer and the terms of this agreement shall have no further for or effect.

4) The City grants construction easements to 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 4 weeks of issuance of permit and easements.

6) Developer completes construction of infrastructure improvements with 24 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 60 days 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 60 days 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 (the "Demolition and Site Restoration Guarantee") as required by paragraph 2, Infrastructure Improvements, subparagraph e, Permits and Performance Bonds, 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. If Developer is unable to provide sufficient financial assurances that do not have identifiable deficiencies within 90 days of the initial submission, City may, at its option and within its sole discretion, terminate this agreement by delivery of notice of termination to Developer and the terms of this agreement shall have no further force or effect.

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 30 days of issuance of demolition permits.)

6) Developer completes above-ground demolition of buildings located on sites where Buildings A and B are to be located. (Within 90 days of commencement of demolition.) Failure to complete the above ground demolition of both of the buildings required by this paragraph within 120 days of issuance of the demolition permit shall entitle City to, at its option, (i) complete the demolition and site restoration and be reimbursed for all costs and expenses from the “Demolition and Site Restoration Guarantee” as required by paragraph 2, Infrastructure Improvements, subparagraph e, Permits and Performance Bonds, and/or (ii) collect, retain, and disburse all tax increment financing revenues necessary to reimburse all costs of demolition and site restoration. Any periods of enforced delays during this time period shall extend the 120 day deadline by an equal amount of days.

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 90 days 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.
  
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.
  
4. Upon approval of the plans and financing and completion of demolition of the buildings on the sites for Buildings 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 30 days of issuance of building permit for Building B.
  
6. Developer requests certificate of occupancy for Building B upon completion of Building B, commencement of work on Building A, completion of all infrastructure that is reasonably necessary to support Building B, and the City determines in its reasonable discretion that any uncompleted infrastructure is subject to adequate financial assurances guaranteeing completion as provided for herein
  
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 as outlined in Paragraph 3-b-i of this Agreement prior to issuance of building permit.

4) Developer abandons utilities in that portion of Evergreen Avenue to be vacated as part of the construction of Building A.

5) If the infrastructure work is on schedule, the City begins the process to vacate the Evergreen Avenue public right of way as described in accordance with the terms of Paragraph 3-b of this agreement within 3 weeks of City's consultant confirmation of adequate financing to complete the entire Project in accordance with Section 1-a of this Agreement and completes the vacation process as reasonably necessary for Developer to close its approved construction financing. The vacation of public right of way is to be concurrent with the Developer's dedication of public right of way. The purchase of a

portion of 303 Abbot as shown and described on Exhibit K is closed pursuant to the Purchase Agreement and in accordance to the terms thereof as described in Paragraph 3 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.
- 7) Developer commences construction on Building A within 30 days of issuance of the building permit (August 2015);
- 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.
- 11) City issues Developer a certificate of occupancy for Building A within 1 week of the request after all deficiencies have been remedied.
- 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; 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; fires; floods; epidemics; unanticipated environmental contamination; the time for performance of such obligations shall be extended for the period of the Enforced Delays; provided, however, 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 to assist the Developer in completion of the Project. In addition to any extension provided for any Enforced Delay, in the event that the City, its agents and/or employees take or fail to take any action that unreasonably delays the Developer from meeting the schedule provided for herein 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 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 until which time the entire Development Project is completed substantially 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 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 sufficient 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 September 30, 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 a(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 any default after notice of the same.

**b) Failure to Complete.** In the event the Developer fails to substantially complete the construction of the public portion of the Infrastructure Improvements as set forth in Paragraph 2 within twelve (12) months following issuance of the building permit for the same, except for any 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, 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. Developer shall have forty five (45) business days to cure any default after notice of the same.

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 three (3) months after commencement of infrastructure construction, (ii) cease construction for a continuous period of more than three (3) months, or (iii) fail to complete construction within 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. Developer shall have forty five (45) business days to cure any default after notice of the same.

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

**e) Utility Liens and Assessments.** In the event that, for any reason whatsoever, the Developer fails to substantially complete the Project and apply for permits and pay all water and sewer connection charges and additional capital charges required herein, 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 Developer agrees that it shall indemnify and hold harmless the 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 acts or omissions in conjunction with the performance of this Agreement so indemnifying, its agents, servants, employees or contractors; provided, however, that nothing herein shall be construed to require Developer to indemnify 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.

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.** 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, this agreement or a memorandum of this Agreement detailing any restrictions on property rights contained

herein may, at the City's discretion, 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 parties to this agreement shall be specific performance of the terms of this Agreement; provided that, the other parties agree that a temporary restraining order, preliminary or permanent injunction and/or declaratory relief and expedited hearing of any motion or action shall be remedies for Developer to the extent same are provided or allowed by applicable law or court rule. In the event that this Agreement is collaterally assigned to any lender having advanced funding for the Infrastructure Improvements, said lender and its successors and assigns shall have as its sole and exclusive remedy specific performance of the terms of this agreement except in cases of intentional misconduct or gross negligence on behalf of the Defendant in which case the lender and its successors and assigns shall have all remedies allowed by equity or law as to any action relating to receipt of the TIF revenues.

The prevailing party in any proceeding or court action to enforce the terms of this agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action.

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 which shall not be unreasonably conditioned, delayed, or denied. The parties contemplate the assignment of this Agreement (including any and all ancillary agreements) in order to facilitate the financing necessary to construct the Infrastructure Improvements and Project. The City agrees to take reasonable steps necessary to promptly approve the assignment provided that any assignee agrees to be bound by the terms and conditions herein and either the performance bonds issued pursuant to the terms of this agreement remain in full force and effect after and through the duration of the assignment or new performance bonds are issued on behalf of the assignee that meet the requirements of this agreement and are otherwise satisfactory to the City. Nothing in this Agreement beyond that stated herein shall be construed to hinder, delay, or prohibit the assignment of this Agreement or prohibit the City's use of reasonable criteria to insure that the City is not subjected to additional material risk related to the Development.

If an assignment of this Agreement, including any and all ancillary agreements (to a party other than a state or federally regulated lender or financial services firm with assets in excess of \$100,000,000) is requested by Developer prior to the completion of the Infrastructure Improvements and issuance of all Certificates of Occupancy for the Development, reasonable criteria shall be considered by the City in order to insure that the proposed assignee has equivalent or superior financial strength and capabilities as those of the Developer and the proposed assignment does not subject the City to additional material risk related to the Development. City agrees to perform such review within 30 business days of receiving that information reasonably necessary for such review

If an assignment of this Agreement (including any and all ancillary agreements) is requested by Developer after the completion of the Infrastructure Improvements and issuance of all Certificates of Occupancy for the Development, reasonable criteria shall be defined as that criteria necessary to insure that the proposed assignee agrees to be legally bound by the terms and conditions herein.

If the City properly declines to approve an assignment in accord with the provisions of this section, Developer shall remain obligated to complete its obligations under the Agreement.

**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**