

## **PARK DISTRICT DEVELOPMENT AGREEMENT**

This Development Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_ 2018, 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 100 GRAND RIVER LLC and 341 EVERGREEN LLC, Delaware limited liability companies, 540 West Madison, Suite 2500, Chicago, IL 60661 (collectively, 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 comprises two limited liability companies organized and existing in good standing under and pursuant to the Delaware Limited Liability Company Act, authorized to do business in Michigan under and pursuant to the Michigan Limited Liability Company Act, 1993 PA 23, as amended (codified at MCL 450.4101, et seq.), and exercising all of the powers provided for therein; and

**WHEREAS**, the Developer owns certain parcels of real property in downtown East Lansing, listed and legally described on Exhibit A (the “Developer Property”), on which the Developer wishes to develop a mixed-use project including a hotel licensed to serve alcohol to guests and special event invitees, retail uses, fine and casual dining restaurants (licensed to serve alcohol subject to additional approvals), multi-family residential, parking, and other uses (which, combined with the City improvements described below, comprise and are referred to in this Agreement collectively as the “Project”). The City has determined that the Project will remove blighted, environmentally contaminated, and functionally obsolete properties and be transformational in scope by providing the introduction and expansion of desirable uses in the downtown; and

**WHEREAS**, the DDA owns certain real property in downtown East Lansing, listed and legally described on Exhibit B (the “DDA Property”) commonly known as 303 Abbot Road, which it acquired for economic development purposes, and which it wishes to be incorporated into the redevelopment to enhance the downtown by incorporating a mix of commercial and residential uses with improved infrastructure, roads and ways for motor vehicles, bicycles, and pedestrians; and

**WHEREAS**, the City controls the right of way for streets and alleys and owns real property in the west end of downtown East Lansing, legally described on Exhibit C (the “City Property”), which it wishes to be redesigned and redeveloped to improve pedestrian, bicycle, and vehicle access, traffic circulation, and parking and improve and enhance the west end of downtown East Lansing; and

**WHEREAS**, the parcels owned by the Developer have been subject to certain adverse environmental issues and dilapidated and functionally obsolete buildings and other structures; and

**WHEREAS**, the parcel owned by the DDA and the rights of way owned and controlled by the City are subject to certain adverse environmental issues and deteriorating and undersized municipal infrastructure which impede existing uses and cannot support redevelopment or future development in the downtown; and

**WHEREAS**, the parties desire to remediate or otherwise lawfully address any adverse environmental conditions as to the Developer Property, the DDA Property, and the City Property, using economic incentives, with the assistance of other local and state agencies, to provide adequate parking, correct the inadequacies of municipal infrastructure, and to develop the properties into a high-quality mixed use project that will enhance the downtown by incorporating a mix of commercial and residential uses with adequate municipal services and parking. The Project will contain commercial, residential, and parking uses, along with space provided to the City and its citizens for public uses consistent with a first-class mixed use development in the downtown; 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 compliance with the standards for LEED certification for portions of the Project as reasonably practicable; and

**WHEREAS**, the City, the DDA, the ELBRA, and the Developer, to best serve the public interest, wish to set forth their respective public and private commitments and understandings with regard to the Project; and

**WHEREAS**, the City Council, the DDA, and the ELBRA deem this Project to be a substantial public benefit to the City of East Lansing.

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

**I. THE DEVELOPMENT PROJECT**

a) **Project Definition.** The Project is more accurately described in Exhibit D – The Site Plan, pages A-001 through A-017, L-001 through L-004, and C-001 through C-009 approved by the City Council on August 14, 2018 (the “Site Plan”) and Exhibit E – The Building Summary. The Developer will construct a mixed-use development in accordance with Exhibit D that will contain Building A, Building C, and Building D. The Developer will construct the infrastructure and public improvements in accordance with Exhibit D and the terms of this Agreement.

1) **Building A, 100 West Grand River Avenue:** To be located at the northwest corner of Abbot Road and Grand River Avenue. This building will be constructed by the Developer on a development parcel owned by the Developer and a portion of the DDA’s 303 Abbot Road property. The portion of the DDA 303 Abbot Road Property necessary for the construction of Building A shall be transferred to the Developer by the DDA in accordance with the terms of this Agreement and a Land Transfer Agreement attached hereto as Exhibit F.

Building A will be a 13-level, 230,000 gross square feet in area, mixed-use building having retail uses and residential lobbies on the first floor. The remaining floors will have parking and 218 mixed-market residential rental units as shown on the Site Plan. This building will be owned by the Developer and operated by entities retained by the Developer. All residential units developed for lease shall be mixed-market rentals (as defined in the East Lansing Zoning Code Sec. 50-7). Building A shall comply with the approved Site Plan (Exhibit D) and Building Summary (Exhibit E), without deviation or amendment unless otherwise approved pursuant to Section 50-36(k) of the East Lansing City Code. The building structure shall not exceed 140 feet in height as measured from grade at the entrance at the corner of the property closest to Abbot and Albert Avenues as shown on the Site Plan, excluding 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 and less than 15 feet in height above the roof affixed to the top of the building. The Developer shall be responsible for soft and hard costs, including permits and review fees associated with Building A, subject to reimbursement for eligible activities from Amended Brownfield Plan #11, as amended by the City Council, dated \_\_\_\_\_ 2018, together with an Act 381 Work Plan and tax increment financing reimbursement approved by the Michigan Department of Environmental Quality (“MDEQ”), Michigan Economic Development Corporation (“MEDC”), and Michigan Strategic Fund Board (“MSF”) (sometimes collectively, the “Brownfield Plan”), and any MBT credit approved by the MEDC and MSF.

2) **Building D, 120 West Grand River Avenue:** To be located at the northwest corner of Evergreen Avenue and Grand River Avenue. This building will be constructed by the

Developer on a development parcel owned by the Developer. Building D will be a 10-level, approximately 125,000 gross square feet in area, mixed-use building having retail uses and a hotel lobby on the first floor. The remaining floors will have hotel amenities including meeting rooms, a ballroom, rooftop restaurant/lounge, guest rooms, and office space as shown on the Site Plan. This building will be owned by the Developer and operated by entities retained by the Developer unless it is transferred in accordance with Section VII d, below. Building D shall comply with the approved Site Plan (Exhibit D) and Building Summary (Exhibit E), without deviation or amendment unless otherwise approved pursuant to Section 50-36(k) of the East Lansing City Code. The building structure shall not exceed 119.5 feet in height as measured from grade at the hotel entry shown on the Site Plan, excluding 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 and less than 15 feet in height above the roof affixed to the top of the building. The Developer shall be responsible for soft and hard costs, including permits and review fees associated with Building D, subject to reimbursement for eligible activities from Amended Brownfield Plan #11, as amended by the City Council, dated \_\_\_\_\_, 2018, together with an Act 381 Work Plan and tax increment financing reimbursement approved by the Michigan Department of Environmental Quality (“MDEQ”), Michigan Economic Development Corporation (“MEDC”), and Michigan Strategic Fund Board (“MSF”) (sometimes collectively, the “Brownfield Plan”), and any MBT credit approved by the MEDC and MSF.

3) **Building C: 341 Evergreen Avenue:** This building will be constructed by the Developer on the portion of Developer’s Property commonly known as 341-345 Evergreen

Avenue. Building C will be a 5-level, approximately 63,000 gross square feet in area, 72-unit residential building having parking on the first level and four levels of moderate income housing, for-sale owner-occupied residential condominiums, or other occupancy which brings the project into compliance with Sec. 50-94(b)(4)-e of the City Code, as shown on the Site Plan. Developer shall be responsible for soft and hard costs, including permits and review fees, associated with Building C.

4) **Infrastructure Improvements.** Infrastructure improvements shall be completed to replace aged sewer and water systems that in part serve the Oakwood Neighborhood, electric and gas service, and cable, telecommunications, Internet, and other services, demolition and construction of roadway, sidewalks, street lighting, landscaping, and a traffic signal, as approved by the City, DDA and ELBRA, (the “Infrastructure Improvements”). The Infrastructure Improvements will be constructed by the Developer for the City on portions of the Developer’s Property, portions of the City Property now known as Parking Lot 4, a portion of Evergreen Avenue right of way, a portion of Albert Avenue right of way, a portion of Abbot Road right of way, and a portion of the DDA Property as shown on the approved Site Plan. The portion of the DDA 303 Abbot Road Property necessary for the realignment of Albert Avenue as shown on Exhibit D shall be transferred or otherwise dedicated by the DDA to the City in accordance with the terms of this Agreement and a Land Transfer Agreement attached hereto as Exhibit F. The Developer, at its option, may lease from the DDA commercial space in the building at 314 Evergreen Avenue, if available at the time, for use as construction or leasing offices during construction of the Project at normal rental rates or as otherwise agreed upon by the Developer and the DDA. In the event the DDA obtains a request from another entity to rent the available commercial space, Developer shall first be offered the available commercial space at the rate

agreed upon by the other entity. Upon notification, Developer shall have 10 business days within which to notify the DDA of its decision to rent the premises. Otherwise the DDA may rent the space to the other entity. The Infrastructure Improvements shall be constructed and financed by the Developer in accordance with this Agreement, Exhibit D, and the City's ordinances and engineering standards. The financing shall be reimbursed as set forth in subsection 5 and Section II, below. Except as specified in the approved Site Plan, streetscape improvements shall be designed and constructed in compliance with the East Lansing Urban Design Guidelines.

5) **Financing and Incentives.** Tax Increment Financing to reimburse the Developer for eligible costs of the Infrastructure Improvements (together with cost to privately finance) in accordance with Amended Brownfield Plan #11 shall be paid and applied as provided in the Brownfield Reimbursement Agreement dated \_\_\_\_\_, 2018. The City will also support the project, with letters of support from City staff or the Brownfield Authority or with the appearance of City elected officials or staff before appropriate agencies of the state, for amending and retaining Michigan Business Tax Credits that were previously approved for a similar project at this location of \$10 million in an effort to make the private portion of the Project economically feasible by filling the gap between the cost of construction and the fair market value of the Project upon completion. Approval of Amended Brownfield Plan #11 and City support for amending and retaining the Michigan Business Tax Credits ("MBT Credits") shall be conditioned upon the Developer obtaining an agreement for assignment of any rights and a release of any claims (in a form satisfactory to the City Attorney) by the prior developer of the Property in connection with the Brownfield plan, Brownfield Reimbursement Agreement, MBT credits, and the Project against the Developer, the City, the DDA, and the ELBRA.



**b) Contracting.** The public streets and utility improvements and private improvements for Building A and Building C as part of the Project shall be constructed in accordance with the City's prevailing wage policy. The Developer will pay on-site labor at prevailing hourly wage labor rates excluding tenant improvements and furniture, fixtures, and equipment installation. For the private improvements for Building D the Developer will pay on-site labor at prevailing hourly wage labor rates, excluding tenant improvements and furniture, fixtures, and equipment installation, for a minimum of sixty-seven percent (67%) of the project labor. The Developer shall at all times make every reasonable effort to utilize residents of Michigan, and particularly from the Capital region, as labor necessary to complete the project, and at least ninety percent (90%) shall be Michigan residents. The Developer shall utilize Michigan-made products in the completion of the project wherever it is reasonably possible to do so. The project shall be constructed in accordance with the City's Green Building Incentive Policy as adopted by Council Resolution 2009-1, as currently applied, and shall meet LEED v4 standards "Certified" level.

## **II. INFRASTRUCTURE IMPROVEMENTS**

If the Developer proceeds with the development of Building A and Building D, the Developer agrees to construct or cause the construction of the Infrastructure Improvements.

**a) Expenses for the Infrastructure Improvements.** The expense of the Infrastructure Improvements, as well as the cost of surveying, engineering, soils testing, compaction density testing, paving, core testing, permit application fees, legal and engineering fees for the approval process and other costs as mutually agreed upon involved in designing the Infrastructure Improvements and receiving all governmental permits and approvals and other current costs incurred for the Infrastructure Improvements shall be paid and the Infrastructure

Improvements work shall be performed at the Developer's initial expense, and, together with the cost to privately finance, reimbursed in accordance with Amended Brownfield Plan #11, and paid and applied as provided in the Brownfield Reimbursement Agreement dated \_\_\_\_\_, 2018. The costs stated in Amended Brownfield Plan #11 and the Brownfield Reimbursement Agreement are estimated, and if the costs for the Infrastructure Improvements agreed upon by the Developer and the City exceed the estimated costs, the Developer shall notify the City, and the parties shall mutually develop a plan of action and schedule for changes to the Infrastructure Improvements to reduce the cost and/or for reimbursement of additional costs if they exceed the contingency amounts in Amended Brownfield Plan #11.

**b) Adverse Environmental Conditions.** The Developer and the City acknowledge that they do not have actual knowledge of the location and extent of adverse environmental conditions on the City property and the DDA Property beyond the presence of asphalt and related paving materials and the Phase II Environmental Site Assessment report for 303 Abbot Road, dated June 10, 2016, from Triterra, the Phase II Environmental Site Assessment Letter Report for the Proposed City Center II Development from PM Environmental, Inc., dated April 10, 2008, and the Phase II Environmental Site Letter Assessment Report for the Proposed City Center II Development, dated June 27, 2008, from PM Environmental, Inc. The estimated development cost for the Infrastructure Improvements in Amended Brownfield Plan #11 do not include the cost for remediation of any of the conditions disclosed in the three Phase II reports described above beyond the presence of asphalt and asphalt related paving materials and the soils associated with those conditions. The parties agree that the development cost for the Infrastructure Improvements shall include all expenses for management, removal, and remediation of any adverse environmental conditions on the City property and the DDA

property. In the event the Developer encounters soils or substances that are or may be considered hazardous or contaminated on City or DDA property during the course of performing the Infrastructure Improvements work beyond the presence of asphalt and related paving materials and the soils associated with those conditions, the Developer shall notify the City and the DDA, and the parties shall mutually develop a plan of action and schedule for remedying the same and reimbursement of additional costs if they exceed the contingency amounts in Amended Brownfield Plan #11.

c) **Continuity of Utilities/Soil Erosion Control Measures.** During demolition and construction, the Developer shall coordinate continuity of any and all utilities and services at the site, which utilities shall include but not be limited to electric service, street lighting, sewer, water, gas, and storm drainage, all in recognition of the need for such utilities and services to remain active and usable during this period. Notwithstanding the foregoing, the parties acknowledge that the relocation and rebuilding of Albert Avenue and Evergreen Avenue may necessitate temporary disturbances of the utilities, roads, and sidewalks during the course of construction. While this Agreement remains in effect, the Developer shall be responsible for compliance with all federal, state, or local laws, regulations, ordinances, permits, or other authorizations, approvals, or other requirements relating to stormwater discharges or the control of erosion or sediment discharges from the Developer's performance of the Infrastructure Improvements described herein, including, but not limited to, the Clean Water Act, 33 USC, § 1251, et seq., and the NPDES General Permit for Stormwater Discharges Associated with Construction Activities. The Developer's construction manager shall be responsible for obtaining all necessary soil erosion control permits and performing all necessary seeding,

spreading, and/or covering of the soil deposited by the Developer's construction manager to achieve stabilization while this Agreement remains in effect.

**d) Combined Storm and Sanitary Sewers.** As part of the Infrastructure Improvements, the Developer shall construct new combined storm and sanitary sewer mains in accordance with this Agreement, City ordinances and standards, applicable state and federal laws, rules and regulations, and applicable permits, certifications and approvals, in accordance with plans and specifications prepared by the Developer and approved by the City Engineer, including demolition of existing mains, as generally shown in the Site Plan, Sheets C-1 through C-9. Existing public storm and sanitary sewer lines and other utilities to be maintained and protected shall be specified by the City Engineer. Damage to those public storm and sanitary sewer lines or any other City utility as a result of the construction, or a failure to protect them during construction, shall be reported to the City Engineer and repaired immediately by the Developer. Failure of the Developer to repair the storm or sewer line or any other City utility to a functioning level within 12 hours or to make reasonable accommodation acceptable to the City shall result in the City being able, in its reasonable discretion, to make the necessary repairs and charge the Performance Bond (as defined below) for the costs of repair. The Infrastructure Improvements shall include connection to existing leads and the construction of any leads or portions of leads necessary to connect existing property services to the new system as the result of elevation changes, in accordance with City standards. The City will not charge the Developer for the abandonment of these existing leads. 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 inspection and 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 or to make reasonable accommodation acceptable to the City shall result in the City being able, in its reasonable discretion, to make the necessary connection/repair and charge the Performance Bond (as defined below) for any and all costs incurred by City as a result of the failure to connect within 12 hours.

e) **Water Mains.** As part of the Infrastructure Improvements, the Developer shall construct the improvements to the public water mains as part of the Project in accordance with this Agreement, City ordinances and standards, applicable state and federal laws, rules and regulations, and applicable permits, certifications and approvals, in accordance with plans and specifications prepared by the Developer and approved by the City Engineer, including demolition of existing mains, as generally shown in the Site Plan, Sheets C-1 through C-9. Existing public water lines to be maintained and protected shall be specified by the City Engineer. Damage to those lines as a result of the construction, or a failure to protect them during construction, shall be repaired immediately by the Developer. Failure of the Developer to repair the water lines to a functioning level within 12 hours or to make reasonable accommodation acceptable to the City shall result in the City being able, in its reasonable discretion, to make the necessary repairs and charge the Performance Bond (as defined below) for the costs. The Infrastructure Improvements shall include connection to existing leads and the construction of any leads or portions of leads necessary to connect existing property service to the new system as the result of elevation changes, in accordance with City standards. The City will not charge the Developer for the abandonment of these existing leads. 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 inspection and 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 or to make reasonable accommodation acceptable to the City shall result in the City being able, in its reasonable discretion, to make the necessary connection/repair and charge the Performance Bond (as defined below) for any and all costs incurred by City as a result of the failure to connect within 12 hours.

**f) Roadway Improvements.** The Infrastructure Improvements shall include reconstruction of the roadways, in accordance with City standards consistently applied to development in East Lansing. The reconstruction shall include realigning Albert Avenue as it crosses Abbot Road in accordance with the approved site plan, Exhibit D. The Infrastructure Improvements shall include 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 gutters, that is damaged during construction of the Project by the Developer shall be reconstructed to the current City of East Lansing design standards.

**g) Developer's Agreement to Install Utility Improvements.** As part of the Infrastructure Improvements, the Developer shall obtain approval for and construct, relocate, remove or abandon, as necessary, gas, electrical, and cable and telecommunications facilities which are either municipally owned or operated under permit or franchise issued by the City, within the right-of-way of the Infrastructure Improvements, as necessary for the Project as

described herein (the “Utility Improvements”) and as may be required for the Project. The Developer shall be responsible for obtaining, as part of the cost of the Infrastructure Improvements, all construction permits for the Utility Improvements. Developer shall take all reasonable steps to minimize the interruption of service to properties not involved in the Project. At no time shall any of the activities cause any service to other properties not involved in the Project to be interrupted. In the event service is interrupted without reasonable accommodation acceptable to the City, the developer shall take all reasonable steps to have service returned as soon as reasonably practicable. In the event the Developer fails to take such steps, it shall result in the City being able to, in its reasonable discretion, take the necessary steps to have service returned to the affected properties and charge the Performance Bond (as defined below) for the costs, if any.

**h) Performance Bonds.** Prior to commencement of construction of the public portion of the Infrastructure Improvements, the Developer shall provide to the City, at the Developer’s option, (i) a performance bond by an AM Best Rated company with a rating of at least A-VII acceptable to the City or (ii) an irrevocable letter of credit in a form acceptable to the City, or (iii) in a form and substance acceptable to the City, a completion guaranty, any of which shall be in an amount no less than 125% of the actual contracted amounts for the cost of the public Infrastructure Improvements, less amounts already completed, to guarantee full completion of the public portion of the Infrastructure Improvements to be undertaken by Developer under this Agreement (the “Performance Bond”). The contracts for the public Infrastructure Improvements shall be assignable to the City. To the extent the City and Developer cannot agree on an acceptable form for a selected option for the Performance Bond, the Developer shall choose another of the identified options. The cost of the Performance Bond

shall be part of the cost of the Infrastructure Improvements. 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 Infrastructure Improvements 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 these costs.

**i) Material Testing and Professional Services.** 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 the City. All testing shall be in accordance with Michigan Department of Transportation (MDOT) and City standards consistently applied to development in East Lansing. The cost of materials and testing shall be as part of the cost of the Infrastructure Improvements. The Developer's contractor or construction manager shall provide communication services for the Project during construction and shall coordinate project communications with the City.

**j) Connection Charges and Additional Capital Charges.** The City shall charge and the Developer shall pay \$336,887.22 per building for capital connection charges for Buildings A, D, and C, for 6-inch meters for domestic water service and sewer service in accordance with Exhibit G, together with the physical tap and meters fees in accordance with then existing rates applicable in the City. Eight-inch fire service connections shall be separate and are not subject to capital connection charges.

**k) Permits.** The City shall charge and receive from the Developer all of the standard zoning fees, building permit fees, and inspection fees for all construction activities



conducted by the Developer in effect at the time this Agreement is executed except for Building C which shall be charged at the current rates at the time of submission of the application for permits. The terms and conditions of the City's standard building permits are incorporated herein and all duties, obligation and requirements contained therein shall be those of the Developer. The cost of any permits related to the Infrastructure Improvements, shall be a part of the cost of the Infrastructure Improvements.

**1) Staging Areas.** The Developer shall use the portion of the Developer Property that will be the site of Building C for an initial staging area, as set forth in the "Construction Containment Plan" attached hereto as Exhibit H. The Construction Containment Plan shall require that the Developer shall provide \$20,000.00 for site control to be used by the DDA with respect to construction communication and other related expenses with respect to the Project. The DDA shall provide the Developer with a budget demonstrating the proposed disbursements of such funds and with receipts showing the actual expenditures following the disbursement of such funds. The City and the DDA shall grant construction easements and right of way permits to the Developer as set forth in the Construction Containment Plan for the use of the southern portion of Lot 4 and those portions of Albert Ave. and Evergreen Ave. adjoining the project for the staging and construction of the Infrastructure Improvements, Building A, Building C, and Building D. The easements shall provide for the restoration of the areas used as construction easements. Additional areas may be allowed based upon mutual written agreement of the Developer and City. Compliance with the Construction Containment Plan is mandatory. Upon the failure of the Developer to comply with the plan, the City shall provide notice to the Developer with direction as to the acceptable response and time to cure appropriate to the noncompliance, but, in any event, no less than 24 hours. Upon the failure of the Developer to

comply, the City, in its reasonable discretion, may issue a stop work order until compliance is obtained and/or perform the work itself and charge the Performance Bond for the costs.

**m) No Third Party Beneficiaries and Restrictions on Assignment.** 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.

**n) Map of Improvements.** The proposed Infrastructure Improvements described in this Agreement are generally set forth on the attached Exhibit D.

**o) 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 Infrastructure Improvements in accordance with the terms and conditions of the Agreement. The Infrastructure Improvements shall be inspected by the City Engineer and Building Division in accordance with practice applied consistently to development in East Lansing. Upon completion of the Infrastructure Improvements, or, at the City's sole discretion, when a portion thereof is completed and ready and capable of operation, the City shall, within five (5) business days, issue a Letter of Approval, and thereafter, the Infrastructure Improvements or the appropriate portion shall be dedicated and conveyed to the City, evidenced by appropriate acceptance, that includes dedication to public use together with easements in recordable form to the City for access, maintenance, repair, and replacement, as approved by the City Engineering Department and City Attorney. By accepting such conveyance and dedication, the City will acknowledge that it has had full opportunity to inspect the construction of the Infrastructure Improvements, or the dedicated or transferred

portion thereof, and is wholly satisfied with them or the portion accepted. After dedication and transfer of the Infrastructure Improvements 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.

### **III. PROPERTY TO BE PURCHASED OR TRANSFERRED**

a) **Land Transfer Agreement.** The Developer, the DDA, and the City shall enter into a written agreement, the “Land Transfer Agreement” (Exhibit F), which describes the transfer of one-third, approximately 2,529 square feet, of the DDA 303 Abbot Road Property to Developer for the development of Building A and the remaining two-thirds of the DDA 303 Abbot Road Property to the City for the realignment of Albert Avenue and the expansion of the City parking lot on the northwest corner of Abbot Road and Albert Avenue. The Land Transfer Agreement sets forth the price, terms and other consideration for the purchase, exchange, method, and timing for transfers for the DDA Property. The portion of the DDA 303 Abbot Road Property transferred to the Developer shall be used in the development 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, the Land Transfer Agreement shall terminate with no further obligation of either party except those that are specified in the Land Transfer Agreement. The closing of the transfer shall occur contemporaneously with the closing of the Developer’s construction financing. Until the construction financing for the Project closes, or earlier, if the DDA consents, the DDA 303 Abbot Road Property shall not be mortgaged, pledged or have any liens or encumbrances placed thereon; evidence of this restriction shall be filed with the Register of Deeds if transfer to the Developer takes place prior to the closing on the Developer’s construction financing. In the event Building A, for any reason whatsoever, is not

completely constructed pursuant to the terms of this Agreement, the Developer, or its successor, shall deed the DDA 303 Abbot Road Property back to the City of East Lansing Downtown Development Authority, in fee, free of any liens or encumbrances, except those in existence at the time of its transfer to the Developer, or, if construction of the building has started but has not been completed sufficiently to provide payments to the DDA under the Interlocal Agreement, pay the DDA in accordance with the provisions of the Land Transfer Agreement.

**b) 100 West Grand River Bike Lane and Setback.** The Developer shall construct the Abbot Road curb set back five (5) feet to the West of the existing curb to accommodate a bike lane on southbound Abbot Road and set Building A back a corresponding five (5) feet as shown on the approved site plan attached as Exhibit D.

**c) Property Reversion.** In the event Building A, for any reason whatsoever, is not completely constructed pursuant to the terms of this Agreement, the Developer, or its successor, shall deed the DDA South 303 Abbot Road Property back to the City of East Lansing Downtown Development Authority, in fee, free of any liens or encumbrances, except those in existence at the time of its transfer to the Developer, or, if construction of the building has started but has not been completed sufficiently to provide payments to the DDA under the Interlocal Agreement, pay the DDA in accordance with the provisions of the Land Transfer Agreement. The parties agree that the parties shall be entitled to specific performance of these contractual obligations and that this is a material provision of the Agreement.

**d) Parking Spaces for Valet Parking.** The City and the Developer will enter into a Parking Lease Agreement that will provide for the lease of 25 spaces in the Evergreen Avenue Parking Lot (a/k/a Parking Lot 8) for use for valet parking for Building D at the initial rate of \$90.00 per month per leased space, with an annual rental adjustment for the monthly rate in

accordance with prevailing rates throughout the City (collectively, the “Developer Parking Space Rentals”). If the Evergreen Parking Lot is demolished or replaced, the Developer shall have the option to lease the same number of spaces in any newly-built City-owned or operated parking lot or garage or the nearest City-owned or operated lot or garage with space available. The City agrees to cooperate with the Developer to provide parking in close proximity during construction and after construction is complete to the extent such parking is available in City-owned or operated lots or garages. The Developer may revise the design of Building D to include underground parking, subject to site plan review.

#### **IV. CONDITIONS**

The obligations of the Developer under this Agreement are conditioned upon the following:

**a)** Approval by the City of Amended Brownfield Plan #11 on terms acceptable to the Developer in its sole discretion;

**b)** Approval by the Michigan Department of Environmental Quality (“MDEQ”), Michigan Economic Development Corporation (“MEDC”), and Michigan Strategic Fund Board (“MSF”), as required, of an Act 381 Work Plan and tax increment financing reimbursement on terms acceptable to the Developer in its sole discretion;

**c)** Approval by the MEDC and MSF, as required, of an amendment to approval of the pending \$10,000,000.00 in Michigan Business Tax Credits by the Michigan Strategic Fund Board to the Developer (the “MBT Credit Approval”).

**d)** Transfer to the Developer of the DDA South 303 Abbot Road Parcel (as defined in the Land Transfer Agreement) with fee title in Developer free and clear of all liens and

encumbrances, and subject only to those exceptions acceptable to the Developer in its reasonable discretion.

If the Developer determines, in its reasonable discretion, that the conditions set out in Paragraphs a through d, above, are not acceptable, the Developer shall provide written notice within 180 days of the approval or disapproval by the MEDC and the MSF under Paragraph d. If the Developer fails to provide such written notice, the Developer shall be deemed to have waived those conditions.

As to the DDA 303 Abbot Road Property, the Developer shall provide notice of any objections to the title in accordance with the Land Transfer Agreement, and any objections shall be resolved in accordance with the terms of the Land Transfer Agreement.

## **V. 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 shall submit the Infrastructure Improvements plans and application for right-of-way permits to construct the Infrastructure Improvements to the City's Department of Public Works along with proposed utility easements by May 1, 2019.

2) The Developer shall submit proof reasonably satisfactory to the City of financing that is adequate to complete the Infrastructure Improvements and the proposed form of bond as required by Section II, Infrastructure Improvements, Paragraph h), Permits and Performance Bonds (the "Performance Bond"), for completion of the Infrastructure Improvements to the

City's Department of Planning, Building and Development after submittal of the Infrastructure Improvements plans, if permits have been issued by the Department of Public Works.

3) Within four (4) weeks from receipt, the City shall review submissions of the Infrastructure Improvements plans, the application for right-of-way permits, proposed construction easements, and the Performance Bond and either issue permit and approval notification or notify the Developer of any deficiencies. This time period shall be extended for any required review by any State Department or Agency. If deficiencies are noted, the Developer shall cure the deficiencies, and within two (2) weeks of the submission of any documentation to cure the deficiencies, the City shall advise the Developer of any deficiencies. Submission and review shall be repeated until no further deficiencies are noted.

4) The City shall grant construction easements to the Developer on the City's standard forms, within 2 weeks of notification of approval of the plans.

5) Prior to the start of construction, the Developer shall submit the Performance Bond as required by Section II. The Developer shall begin construction of the Infrastructure Improvements within 4 weeks of issuance of permits and easements.

6) The Developer shall complete construction of the Infrastructure Improvements within 24 months of issuance of permits, and dedicate the Infrastructure Improvements and convey the utilities with required easements within 2 months thereafter.

**b) Construction and Occupancy of Building A**

1) The Developer shall pay the required fees and submit the applications for building permits and plans for Building A by May 1, 2019. Within four (4) weeks from receipt, the City shall review submissions of the Building A plans, the application for right-of-way permits, and proposed construction easements, and either issue permit and approval notification or notify the

Developer of any deficiencies. This time period may be extended for any required review by the Michigan Department of Environmental Quality. If deficiencies are noted, the Developer shall cure the deficiencies, and within two (2) weeks of the submission of any documentation to cure the deficiencies, the City shall advise the Developer of any deficiencies. Submission and review shall be repeated until no further deficiencies are noted.

2) The Developer shall provide proof reasonably satisfactory to the City by May 1, 2019, of financing that is adequate to complete the Infrastructure Improvements and Building A. 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. Within four (4) weeks from receipt of documentation of financing, the City shall advise Developer of any deficiencies. If deficiencies are noted, the Developer shall correct and resubmit, and the City shall advise the Developer of any deficiencies within two (2) weeks of the submission of any documentation to correct and resubmit. Submission and review shall be repeated until no further deficiencies are noted.

3) The Developer shall provide easements in a form acceptable to the City, subject to air rights, for that portion of Abbot Road as outlined in Section III, Paragraph b of this Agreement.

4) The transfer of the DDA South 303 Abbot Road Parcel shall be closed pursuant to the Land Transfer Agreement, Exhibit F, and in accordance with the terms thereof as described in Section III of this Agreement. The DDA and the City shall grant construction easements to the Developer on the City's standard forms for the staging and construction of the Infrastructure Improvements, Building A, Building D, and Building C, within 2 weeks of notification of approval of the plans.



5) The Developer shall be issued a building permit for Building A within 1 week after the DDA 303 Abbot Road Property transfer is closed, the building permits and plans for Building A are approved, and the City finds the proof of financing adequate to complete the Infrastructure Improvements and Building A is reasonably satisfactory.

6) Developer shall commence construction on Building A within 30 days of issuance of the building permit.

7) Upon Developer's completion of construction of Building A and/or a portion that may be occupied and completion of all Infrastructure Improvements that are reasonably necessary to support Building A or the portion to be occupied, the Developer may request a certificate of occupancy for Building A or a temporary certificate of occupancy for the portion to be occupied.

8) Developer shall be notified of any deficiencies in construction of Building A and the completion of the required Infrastructure Improvements within 2 weeks of the Developer's request for a certificate of occupancy or a temporary certificate of occupancy, in accordance with the approved permit documents.

9) Developer shall correct any deficiencies in construction and/or completion of Building A and any deficiencies in the required Infrastructure Improvements and resubmit requests for a certificate of occupancy for Building A or temporary certificate of occupancy for a portion of Building A. This cycle of Subparagraphs 7 and 8 shall repeat until no further deficiencies exist.

10) The City shall issue to the Developer a certificate of occupancy for Building A or temporary certificate of occupancy for a portion of Building A within 1 week of the request after all deficiencies have been remedied. If a temporary certificate of occupancy is issued for a

portion of Building A, the cycle of requests for a certificate of occupancy for the completed structure and notices of deficiencies contained in Paragraphs 7 through 10 above shall continue until a certificate of occupancy is issued. The issuance of any temporary certificate of occupancy shall be in the sole discretion of the City's code official. A final certificate of occupancy for Building A shall not be issued until the Infrastructure Improvements are substantially complete.

**c) Construction and Occupancy of Building D**

1) The Developer shall pay the required fees and submit the applications for building permits and plans for Building D by May 1, 2019. Within four (4) weeks from receipt, the City shall review submissions of the Building D plans, the application for right-of-way permits, proposed construction easements, and either issue permit and approval notification or notify the Developer of any deficiencies. This time period shall be extended for any required review by any State Department or Agency. If deficiencies are noted, the Developer shall cure the deficiencies, and within two (2) weeks of the submission of any documentation to cure the deficiencies, the City shall advise the Developer of any deficiencies. Submission and review shall be repeated until no further deficiencies are noted.

2) The Developer shall provide proof reasonably satisfactory to the City by May 1, 2019, of financing that is adequate to complete Building D. 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. Within four (4) weeks from receipt of documentation of financing, the City shall advise Developer of any deficiencies. If deficiencies are noted, the Developer shall correct and resubmit, and the City shall advise the Developer of any deficiencies within two (2) weeks of the submission of any documentation to correct and resubmit.

3) The City shall grant construction easements to the Developer on the City's standard forms for the staging and construction of Building D.

4) The Developer shall be issued a building permit for Building D within 1 week after the building permits and plans for Building D are approved and the City finds the proof of financing adequate to complete Building D is reasonably satisfactory.

5) Developer shall commence construction on Building D within 30 days of issuance of the building permit.

6) Upon Developer's completion of construction of Building D and/or a portion that may be occupied, and completion of all Infrastructure Improvements that are reasonably necessary to support Building D or the portion to be occupied, the Developer may request a certificate of occupancy for Building D or a temporary certificate of occupancy for the portion to be occupied.

7) Developer shall be notified of any deficiencies in construction of Building D within 2 weeks of the Developer's request for a certificate of occupancy or a temporary certificate of occupancy, in accordance with the approved permit documents.

8) Developer shall correct any deficiencies in construction and/or completion of Building D and any deficiencies in the required Infrastructure Improvements and resubmit requests for a certificate of occupancy for Building D or temporary certificate of occupancy for a portion of Building D. This cycle of Subparagraphs 6 and 7 shall repeat until no further deficiencies exist.

9) The City shall issue to the Developer a certificate of occupancy for Building D or temporary certificate of occupancy for a portion of Building D within 1 week of the request after all deficiencies have been remedied. If a temporary certificate of occupancy is issued for a

portion of Building D, the cycle of requests for a certificate of occupancy for the completed structure and notices of deficiencies contained in Paragraphs 5 through 8 shall continue until a certificate of occupancy is issued. The issuance of any temporary certificate of occupancy shall be in the sole discretion of the City's code official.

**d) Construction and Occupancy of Building C**

1) The Developer shall pay the required fees and submit the applications for building permits and plans for Building C within 18 months of the issuance of a certificate of occupancy for Building A. Within four (4) weeks from receipt, the City shall review submissions of the Building C plans, the application for right-of-way permits, proposed construction easements, and either issue permit and approval notification or notify the Developer of any deficiencies. This time period shall be extended for any required review by any Department or Agency of the State. If deficiencies are noted, the Developer shall cure the deficiencies, and within two (2) weeks of the submission of any documentation to cure the deficiencies, the City shall advise the Developer of any deficiencies. Submission and review shall be repeated until no further deficiencies are noted.

2) Developer shall commence construction on Building C within 30 days of issuance of the building permit.

3) Upon Developer's completion of construction of Building C and/or a portion that may be occupied and completion of all Infrastructure Improvements as shown on Exhibit D that are reasonably necessary to support Building C or the portion to be occupied, the Developer may request a certificate of occupancy for Building C or a temporary certificate of occupancy for the portion to be occupied.

4) Developer shall be notified of any deficiencies in construction of Building C and the completion of the required Infrastructure Improvements as shown on Exhibit D within 2 weeks of the Developer's request for a certificate of occupancy in accordance with the approved permit documents.

5) Developer shall correct any deficiencies in construction and/or completion of Building C and any deficiencies in the required Infrastructure Improvements and resubmit requests for a certificate of occupancy for Building C or temporary certificate of occupancy for a portion of Building C. This cycle of Subparagraphs 4 and 5 repeat until no further deficiencies exist.

6) The City shall issue to the Developer a certificate of occupancy for Building C or temporary certificate of occupancy for a portion of Building C within 1 week of the request after all deficiencies have been remedied. If a temporary certificate of occupancy is issued for a portion of Building C, the cycle of requests for a certificate of occupancy for the completed structure and notices of deficiencies contained in Paragraphs 3 through 5 above shall continue until a certificate of occupancy is issued. The issuance of any temporary certificate of occupancy shall be in the sole discretion of the City's code official. A final certificate of occupancy for Building C shall not be issued until the Infrastructure Improvements as shown on Exhibit D are complete.

**e) Delays, Extensions and City Approval**

In the event of an unavoidable delay ("Enforced Delay") in the performance by the Developer of its obligations under this agreement, due to unforeseeable causes beyond its 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, county or city government that directly impact the Project;

acts of the judiciary not resulting from the Developer's breach of this Agreement or fault of the Developer, including injunctions, temporary restraining orders and decrees; acts of the other party in breach of this agreement; fires; floods; epidemics; unanticipated environmental contamination; strikes, lock-outs, labor trouble; inability to procure materials; failure of power; riots, insurrection, war, acts or negligence of the other party or their agents or other reason of like nature not the fault of the party delayed, 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) act reasonably in all dealings with the Developer, (ii) not unreasonably withhold, condition, or delay any approvals within its discretion, and (iii) 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 Section VII, Paragraph f.

## **VI. TAX INCREMENT FINANCING**

**a) Tax Increment Revenues.** ELBRA agrees to reimburse Developer for eligible expenses pursuant to Amended Brownfield Plan #11, as amended by the East Lansing City Council at its meeting on                      in accordance with the Brownfield Reimbursement

Agreement dated                     . Upon completion of the Infrastructure Improvements and Building A and Building D in accordance with the approved site plan, the ELBRA agrees to reimburse the Developer according to the TIF allocation schedule on Table 2 of Amended Brownfield Plan #11 and incorporated in the Brownfield Reimbursement Agreement.

**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 for Building A and Building D, 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.

## **VII. PERFORMANCE**

### **a) Developer Performance.**

i. In the event that the Developer fails to obtain the necessary building permits for Building A and Building D in accordance with the timelines set forth herein (except if same are unreasonably withheld, unreasonably conditioned or unreasonably delayed by the City, or any other governmental unit, in contravention of this Agreement, or Enforced Delays), the City may, at its option and within its sole discretion, terminate this Agreement and 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 written notice of the same.

ii. In the event Developer fails to complete Building C by January 1, 2025 (except if any actions including permits, approvals, reviews, or inspections are unreasonably withheld, unreasonably conditioned, or unreasonably delayed by the City, or any other governmental unit, in contravention of this Agreement, or Enforced Delays), subject to any delays permitted under the terms of this Agreement, and the City has provided notice in accordance with Paragraph VI a) above, and Developer has failed to cure such default to the satisfaction of the City, Developer shall transfer fee title to the Building C Property (“Parcel C”), free and clear of any liens, to the City for use as a public open space, restricted to use of the property as public open space. Public open space means land dedicated or reserved for parks, recreational areas, and scenic areas. Parcel C may be built upon as part of a larger development or may be used to reconfigure adjacent roads, provided such development has, or the road reconfiguration provides, a contiguous public open and landscaped space of the same size as Parcel C, suitable for outdoor recreation and events, in addition to the open space that is already part of Valley Court Park. Transfer of Parcel C to the City shall be deemed to satisfy any requirement of any City ordinance related to the types of housing that comprise the Project and shall be enforceable by the City in equity, not as a penalty but to satisfy the Developer’s obligation to comply with the City ordinance, it being understood that the City’s actual damages may be extremely difficult to calculate. If the delay is caused by causes beyond the reasonable control of the Developer, and the Developer has started actions to cure such delay, the time to cure shall be extended to the time reasonably needed to complete it.

**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 Section II of this agreement within twenty-four (24) months following issuance of the building permits for



Building A, except for any Enforced Delays, the City may, at its option and within its discretion, (i) draw upon the Performance Bond provided in Section II 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. If the delay is caused by causes beyond the reasonable control of the Developer, and the Developer has started actions to cure such delay, the time to cure shall be extended to the time reasonably needed to complete the Infrastructure Improvements.

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 (all to the extent assignable) are assigned to Developer's construction lender in the event of default by Developer. The Developer shall be required to clear, fill, grade, landscape, or otherwise stabilize and make safe the Project site should the Developer, absent Enforced Delays: (i) cease construction for a continuous period of more than three (3) months, or (ii) fail to complete construction of the Infrastructure Improvements within twenty-four (24) months of issuance of the permits or such additional time as authorized by the

building official, or the City may use the Performance Bond to either complete the infrastructure or restore the sites if construction is partially completed. Developer shall have forty five (45) business days to cure any default after notice of the same.

**d) Building D Transfer and Assignment.** The property to be developed as Building D, commonly known as 120 to 140 West Grand River Avenue and legally described on Exhibit A, may be sold and transferred to an entity affiliated with AJ Capital Partners, and in connection therewith, the Developer may assign and the assignee shall assume the obligations of Developer under this Agreement with respect to the development of Building D. Such assignment and assumption shall not include the obligations of the Developer with respect to the Infrastructure Improvements, the rights of the Developer to reimbursement for eligible expenses pursuant to Amended Brownfield Plan #11 and the Brownfield Reimbursement Agreement, or the rights to any MBT Credit or other development credits or incentives whether by grants, tax credits, or otherwise.

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

**f) 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 charges required herein, the Developer consents that the equitable portion of any charges set forth in Exhibit G may be assessed against all property benefiting from such improvements, including the property contained in this Project, 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.

**g) City Performance.** In the event that the City or the DDA fails to comply with or perform any of the warranties, representations, covenants, or agreements of the City or DDA, respectively, contained herein, such a failure shall constitute a default by the City or the DDA under this Agreement, and upon the failure of the City or the DDA to cure any default within forty five (45) days after written notice of the same, the Developer, at its option and within its sole discretion may (i) terminate this Agreement, either immediately or prospectively; or (ii) proceed and bring an action for specific performance of the City's or DDA's obligations, including temporary and permanent injunctive relief.

#### **VIII. INSURANCE AND INDEMNIFICATION.**

**a) Developer's Insurance.** Prior to commencing construction on all or any portion of the development site, Developer shall and Developer shall cause its agents, contractors and subcontractors, (the "Developer Parties") to procure and maintain in full force and effect, at Developer's sole expense, Builders Risk, Commercial General Liability Insurance, Commercial Automobile Liability Insurance, (including coverage for owned automobiles and for non-owned and hired automobiles), Umbrella or Excess Liability Insurance for the Commercial General Liability Insurance and Commercial Automobile Liability Insurance, Professional Liability as specified herein and any other insurance as may be required from time to time. With the exception of Worker's Compensation and Professional Liability Insurance, each policy must (i) identify the DDA, ELBRA, and the City and their respective successors and assigns (collectively, "Developer's Designees") as additional insureds and (ii) include an endorsement providing that coverage in favor of Developer's Designees will not be impaired in any way by any act, omission, or default of Developer, its contractors, employees, agents, representatives or any other person. All insurance policies required hereunder shall be written as primary policies,

not contributing with or in excess of any coverage maintained by the DDA, ELBRA, or City. Developer shall provide the DDA, ELBRA, and City with a Certificate of Insurance and a copy of the additional insured endorsement at any time upon request. Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Umbrella or Excess Coverage and Worker's Compensation Insurance shall be written with limits of liability not less than those shown below. Builders Risk policies for each portion of the Project will be for the completed value of the structures, including Building A, Building C, Building D, and the Infrastructure Improvements, either in whole or as component parts of the Project based upon the construction cost.

Builders Risk	As stated above
Commercial General Liability	
i. Each Occurrence	\$1,000,000
ii. General Aggregate	\$2,000,000
iii. Products/Completed Operations (Aggregate)	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Commercial Automobile	\$1,000,000 combined single limit
Umbrella	\$10,000,000 each occurrence
Worker's Compensation	Statutory limits
Employer's Liability	\$1,000,000
Limited Pollution	\$1,000,000
Professional Liability	\$1,000,000

Developer shall, and shall cause all Developer Parties to, maintain in effect all insurance coverages required hereunder, at the Developer's sole expense or such Developer Party's sole expense. All insurance is to be issued by companies having a "General Policyholders Rating" of at least "A" and a financial rating of not less than Class XII. All insurance policies shall provide

that the coverage afforded shall not be canceled or non-renewed or restrictive modifications added, until at least ten (10) days' prior written notice has been given to each of the Developer's Designees. Developer shall, at least thirty (30) days prior to the expiration of such policies, furnish City with renewals thereof. In the event the Developer or Developer Parties fail to obtain or maintain any insurance coverage required under the Agreement, City may purchase such coverage and charge the cost thereof to Developer at 125% of the actual costs in order to compensate the City for the administrative time involved.

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 and the DDA from 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 a party to indemnify the other against such party's own acts, omissions, or neglect.

## **IX. MISCELLANEOUS PROVISIONS**

a) **Entire Agreement.** This Agreement, the exhibits attached hereto, and the instruments which are to be executed in accordance with the requirements hereof, together with the Brownfield Plan, the Brownfield Reimbursement Agreement, conditional zoning of the Developer Property, the special use permit and site plan approvals for the Project, 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 their successors and assigns

including any lender participating in the financing of the Project, 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) 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 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 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.

**h) Due Authorization.** The City, the DDA, the ELBRA, 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.

i) **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.

j) **Civil Rights.** The Developer, its contractors and subcontractors agree that it will comply with the City's Civil Rights Ordinance, Article II, Chapter 22 of the Code of the City of East Lansing, which in part requires that an employer not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment including benefit plan or system, or a matter directly or indirectly related to employment because of religion, race, color, national origin, age, sex, height, weight, marital status, sexual orientation, gender identity or expression, student status, because of the use by an individual of adaptive devices or aids, or because of an arrest record when a conviction did not result, except as allowed under Section 22-33(b)(6) of Chapter 22. An employer may apply to the City Human Relations Commission for an exemption on the basis that religion, national origin, age, sex, height, weight, marital status, sexual orientation, gender identity or expression, or student status is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. Further, for contracts in which the total contract price will be \$20,000.00 or more, the City's Civil Rights ordinance also prohibits discrimination on the basis of marital status, sexual orientation, or gender identity or expression by the Contractor failing to provide employment benefits for employees with domestic partners that it otherwise provides for the spouse of a married employee. These requirements of Article II, Chapter 22,



shall be considered material terms of this Agreement, and breach of any of these requirements will be regarded as a material breach of this Agreement.

**k) Income Tax.** Prior to commencing construction on all or any portion of the development site, the Developer shall cause its contractors to identify for the City the subcontractors for all on-site work.

**l) Recording of Agreement.** The Developer agrees that a memorandum or memorandums of this Agreement detailing any restrictions on property rights contained herein, in a form as attached hereto as Exhibit J, may, at the City's discretion, be recorded with the Ingham County Register of Deeds.

**m) Limitation of Remedies for Developer, Waiver.** Developer agrees that its sole and exclusive remedy against any of the parties for any claim arising out of this development, including but not limited to claims arising out of this Agreement shall be to seek and obtain specific performance of the terms of this Agreement including temporary and permanent injunctive relief; provided that, the other parties agree that a temporary restraining order, preliminary or permanent injunction and/or expedited hearing of any motion or action shall be remedies for the Developer to the extent same are provided or allowed by applicable law or court rule. All other claims arising out of this development project and this Agreement, whether for breach of contract, tort, or otherwise are waived by Developer. In the event that this Agreement is collaterally assigned to any other party or to a lender having advanced funding for the Infrastructure Improvements, said party and lender and its successors and assigns shall have as its sole and exclusive remedy specific performance of the terms of this Agreement including temporary and permanent injunctive relief, and shall be deemed to have waived any other claims as specified in this provision. 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. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan or federal law, and the amounts owed in accordance with the terms of this Agreement, and the agreements and financing incorporated by reference in the terms of this Agreement in an action for specific performance, including temporary and permanent injunctive relief.

n) **Notice.** Any notice required or intended to be given under the terms of this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given, delivered or served upon the earliest of (i) upon deposit in the U.S. Mail, for delivery by certified or registered mail, with proper postage prepaid and return receipt requested, or (ii) upon deposit with an overnight delivery carrier for next day delivery, or (iii) the date of personal delivery:

If to Developer:                   100 GRAND RIVER LLC  
  341 EVERGREEN LLC  
  540 West Madison, Suite 2500  
  Chicago, IL 60661  
  Att'n: David Nelson  
  dnelson@DRWHoldings.com

With a copy to:                   David E. Pierson  
  1305 S. Washington Ave., Suite 102  
  Lansing, MI 48910  
  dpierson@malansing.com

If to the City:                    City of East Lansing  
  City Hall, 410 Abbot Road  
  East Lansing, Michigan 48823  
  Att'n: City Manager

With a copy to: Thomas M. Yeadon  
601 Abbot Rd.  
P.O. Box 2502  
East Lansing, MI 48826-2502  
tomyeadon@mcgintylaw.com  
or the then current City Attorney

If to the DDA: East Lansing DDA  
City Hall, 410 Abbot Road  
East Lansing, Michigan 48823  
Att'n: DDA Chair

With a copy to: Thomas M. Yeadon  
601 Abbot Rd.  
P.O. Box 2502  
East Lansing, MI 48826-2502  
tomyeadon@mcgintylaw.com  
or the then current City Attorney

**o) Drafting and Construction.** All parties to this Agreement have participated fully and equally in the negotiation and preparation hereof; therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against any party hereto.

**p) Assignability.** Except for the assignments required or permitted by Section VII, this Agreement is not assignable without the express written agreement of the parties which shall not be unreasonably conditioned, delayed, or denied. 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 \$1,000,000,000) is requested by Developer prior to the completion of the Infrastructure Improvements and issuance of all Certificates of Occupancy for the Project, reasonable criteria shall be considered by the City in order to insure that the proposed assignee has adequate financial strength and capabilities, reputation, experience and expertise 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 \_\_\_\_\_  
Mark S. Meadows, Mayor

\_\_\_\_\_

By \_\_\_\_\_  
Jennifer Shuster, City Clerk

EAST LANSING BROWNFIELD AUTHORITY

\_\_\_\_\_

By \_\_\_\_\_  
Peter G. Dewan, Chairperson

DOWNTOWN DEVELOPMENT AUTHORITY

\_\_\_\_\_

By \_\_\_\_\_  
Peter G. Dewan, Chairperson

100 GRAND RIVER LLC

By: Convexity Management, LLC  
Its: Manager

\_\_\_\_\_

By \_\_\_\_\_  
David B. Nelson  
Its Vice President

341 EVERGREEN LLC

By: Convexity Management, LLC  
Its: Manager

\_\_\_\_\_

By \_\_\_\_\_  
David B. Nelson  
Its Vice President

APPROVED AS TO FORM:

By \_\_\_\_\_  
Thomas M. Yeadon, City Attorney

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## **EXHIBITS**

Exhibit A	Developer Property
Exhibit B	DDA Property
Exhibit C	City Property
Exhibit D	Site Plan
Exhibit E	Building Summary
Exhibit F	Land Transfer Agreement
Exhibit G	Sewer and Water Fees
Exhibit H	Construction Containment Plan
Exhibit I	Memorandum of Agreement