

**BIRMINGHAM CITY COMMISSION
SPECIAL MEETING AGENDA
WORKSHOP**

**MONDAY, APRIL 15, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Patty Bordman, Mayor

II. ROLL CALL

J. Cherilynn Mynsberge, City Clerk

III. DISCUSSION

- A. N. Old Woodward Parking Structure and Bates Street Extension Project
 - 1. Proposed Development Agreement Review

No action will be taken by the City Commission at this workshop.

IV. PUBLIC COMMENT

V. ADJOURN

This meeting is open to the public and the public is welcome to attend.

PLEASE NOTE: Due to building security, public entrance during non-business hours is through the Police Department – Pierce St. entrance only.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:248-530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

DRAFT

4/11/19

DEVELOPMENT AGREEMENT

(N. Old Woodward Avenue and N. Bates Street Redevelopment Project)

by and between

WOODWARD BATES PARTNERS, LLC

a Michigan limited liability company

and

CITY OF BIRMINGHAM

a Michigan municipal corporation

April __, 2019

DEVELOPMENT AGREEMENT

(N. Old Woodward Avenue and N. Bates Street Redevelopment Project)

This Development Agreement (the “Agreement”) is made as of April __, 2019 (the “Effective Date”), by and between WOODWARD BATES PARTNERS, LLC, a Michigan limited liability company (the “Developer”), and the CITY OF BIRMINGHAM, a Michigan municipal corporation (the “City”).

RECITALS

- A. The City owns certain parcels of real property consisting of approximately 3.9 acres located at and near the intersection of Willits Street and Bates Street and on North Old Woodward Avenue to the north of Willits Street in the City, as more particularly described on Exhibit A-1 to this Agreement (collectively, the “Redevelopment Parcel”);
- B. Pursuant to a request for proposal process initiated by the City with respect to the redevelopment of the Redevelopment Parcel, the Developer submitted a proposal to redevelop the Redevelopment Parcel as a mixed-use project including commercial, retail, and residential units together with a new parking structure, public park, and other public amenities (collectively, the “Project”) and the Developer was selected by the City as the developer for the Project, subject to, among other things, the negotiation and mutual execution of this Agreement;
- C. Prior to committing to the development of the Redevelopment Parcel, the City and the Developer each intends to undertake certain pre-development actions and investigations with respect to the Redevelopment Parcel and the Project;
- D. Upon the completion of the pre-development actions and investigations by the City and the Developer, and after the satisfaction of certain additional conditions, the Developer will undertake certain payment and development obligations with respect to the Project, the City will undertake efforts to issue and sell bonds to fund the construction of certain public components of the Project, including the new parking structure, and the City will engage the Developer to develop and construct the same; and
- E. The Developer and the City wish to set forth their respective contingencies, undertaking and obligations with respect to the Redevelopment Parcel and the terms and conditions governing the development of the Project.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City hereby covenant and agree as follows:

TERMS AND CONDITIONS

ARTICLE 1

DEFINITIONS

The following words and phrases wherever they appear in this Agreement shall be defined as follows:

1.1 “Affiliate” shall mean any entity controlled, directly or indirectly, by one or more of Ron Boji of Boji Group, LLC, John Rakolta, Jr. of Walbridge Aldinger Company, Victor Saroki of Saroki Architecture or Paul Robertson of Robertson Brothers Homes. For the purposes of this definition, “control” shall mean the power to exercise, directly or indirectly, exclusive authority (whether through contract or otherwise) to direct the management and operations of an entity and whom collectively own at least fifty-one (51%) percent of the outstanding voting interests of such entity.

1.2 “Bond Funds” shall mean the proceeds from the Bonds available to the City.

1.3 “Bonds” shall mean any taxable or tax-exempt bond obligations incurred by the City or its coordinate agencies, in one or more issues, in such amounts and on such terms as the City may determine is necessary and acceptable in order to enable the City to fund its financial contributions for the Public Components of the Project in accordance with the terms and conditions of this Agreement.

1.4 “City” shall have the meaning set forth in the Recitals.

1.5 “City Approval Notice” shall mean the written commitment contained in the Contingency Agreement (defined below) confirming that the City has satisfied and/or waived the contingencies stated herein and such additional terms and conditions and commitments as the City and/or the Developer may each require to proceed beyond the Pre-Development Period with respect to the Project, which contingencies shall include the issuance and sale of the Bonds.

1.6 “City Commission” shall mean the elected City Commission of the City.

1.7 “Construction Contract” shall mean the guaranteed maximum price contract to be entered into between the City and Developer for the construction of the Public Components of the Project, as approved by the City in accordance with the terms and conditions of this Agreement.

1.8 “Construction Lender” shall mean, whether one or more, the construction lender or lenders selected by Developer to provide financing for the Private Components of the Project.

1.9 “Construction Loan” shall mean, whether one or more, the loan or loans from the Construction Lender.

1.10 “Construction Plans” shall mean complete plans and specifications for the Public Components, including, without limitation, the Demolition, as approved by the City in

accordance with the terms and conditions of this Agreement and included in the Construction Contract.

1.11 “Construction Schedule” shall mean a proposed comprehensive schedule for the development and construction of the Project and the various phases thereof, as proposed by the Developer and approved by the City in accordance with the terms and conditions of this Agreement.

1.12 “Contingency Agreement” shall mean a written agreement executed by the Developer and the City wherein each separately confirms to the other that such party has satisfied or waived the conditions stated herein and any additional covenants, commitments and contingencies which are agreed to as part of each parties’ respective obligations to proceed with the Project (which shall include the actual issuance and sale of the Bonds) attached to which shall be the final form of all Project Documents, finalized by such date each in such form as may have been approved by the City and the Developer pursuant to the terms hereof.

1.13 “Contractor” shall mean the construction manager for the Project hired by the Developer and approved by the City in accordance with the terms and conditions of this Agreement. The City has heretofore approved Walbridge Aldinger Company as the Contractor for the Project.

1.14 “Cost Reimbursement Agreement” shall mean that certain Engagement and Cost Reimbursement Agreement dated as of February 11, 2019, as same may be amended, made by and between the City and Developer.

1.15 “Demolition” shall mean the demolition of the existing parking structure and surface parking facilities located on the Redevelopment Parcel, all as more particularly described in the Construction Contract.

1.16 “Developer” shall have the meaning set forth in the Recitals.

1.17 “Developer Approval Notice” shall mean (i) as to the Public Components the written notice contained in the Contingency Agreement confirming that the Developer has satisfied and/or waived the contingencies stated herein and the additional terms, conditions and/or commitments as the Developer and the City may require and agree to proceed beyond the Pre-Development Period (which shall include the issuance and sale of the Bonds), and (ii) as to the Private Components the written notice from the Developer to the City stated within the Contingency Agreement or sent within the time period stated in the Contingency Agreement stating that all Developer Pre-Development contingencies related to the Private Components have been satisfied and Developer has elected to proceed with the development of the Private Components, subject to the express terms and conditions of this Agreement.

1.18 “Developer Funds” shall mean the proceeds of the Construction Loan and the Equity Contribution required for each phase of the Private Components.

1.19 “Developer Obligations” shall mean the planning, pre-development, development, construction, and other obligations of the Developer set forth in this Agreement, the Contingency Agreement and in the Construction Contract.

1.20 “Development Period” shall mean the period of time commencing on the date that Developer and the City execute and exchange the Contingency Agreement and continuing through the date that final certificates of occupancy have been issued by the City, acting in accordance with its standard municipal approval process, for each of the completed improvements at the Project, including, without limitation, the Private Components of the Project. Upon commencement of construction of a Private Component of the Project in accordance with terms of this Agreement, the Contingency Agreement and the relevant Ground Lease, the Term of this Agreement shall be deemed expired with respect to such Private Component and the terms and conditions set forth in this Agreement shall not apply to such Private Component from and after such date and the parties’ rights, responsibilities, obligations and remedies relative to the respective Private Components shall be set forth in and governed by the respective Ground Lease.

1.21 “Effective Date” shall mean the date the City and Developer have executed this Agreement after approval by the City Commission.

1.22 “Equity Contribution” shall mean the required investment by Developer of its own funds necessary to complete the Developer Obligations and shall, at a minimum, represent a sufficient amount of unrestricted equity so that, when added together with the proceeds available from the Construction Loan and the amount to be paid to Developer pursuant to the Construction Contract, will be sufficient to permit Developer to perform the Developer Obligations and to pay all direct and indirect costs associated with such construction and development.

1.23 “Ground Lease” shall mean each lease to be entered into between the City and the Developer or its designated Affiliate(s) (and approved by the City) with respect to each parcel of real property upon which the Private Components of the Project shall be constructed containing such rents and other terms as the City and the Developer, or its designated Affiliate(s), may agree. It shall be a condition to each party's election to proceed beyond the Pre-Development Period and the execution of the Contingency Agreement that the parties shall have agreed upon a form of Ground Lease for each of the Private Components, which such Ground Leases shall contain such additional and/or divergent terms as the parties may agree.

1.24 “Ground Lease Form” shall mean the form of Ground Lease as may be agreed to by the parties, which shall be the basis of each Ground Lease.

1.25 “Parking Mitigation Plan” shall mean a plan to be implemented by the City to mitigate the adverse effects of the temporary reduction in parking spaces in Downtown Birmingham due to the Demolition and construction of the Parking Structure, as approved by the City in accordance with this Agreement.

1.26 “Parking Structure” shall mean a new public parking structure containing not less than 1150 spaces and ancillary improvements to be constructed on the Parking Structure Parcel pursuant to the Construction Contract and Construction Plans, each as approved by the City in writing in accordance with this Agreement.

1.27 “Parking Structure Parcel” shall mean certain real property owned by the City, tentatively described on Exhibit A-2 attached to this Agreement, on which the Developer is to

complete the Demolition of the existing parking facilities and construct the Parking Structure on the terms and conditions set forth in this Agreement, the Contingency Agreement and in the Construction Contract.

1.28 “Permits” shall have the meaning set forth in Subsection 4.3.2 of this Agreement.

1.29 “Pre-Development Period” shall mean as to the Public Components the period of time commencing on the Effective Date and ending on August 2, 2019, or such later date as may be agreed to by the City and Developer, by which date the Developer and the City shall have executed and exchanged the Contingency Agreement, failing which this Agreement shall terminate in accordance with the terms of Section 2.3(c).

1.30 “Private Components” shall mean Project 2, Project 4, and Project 5.

1.31 “Project” shall have the meaning set forth above in the recitals and include the development and construction of the Public Components and Private Components.

1.32 “Project 1A” shall mean the Parking Structure, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Construction Plans, which may include, at the option of the City, a linear space as depicted on the Proposed Site Plan as Project 3.

1.33 “Project 1B” shall mean the extension of N. Bates Street in a northerly and northeasterly direction thereby connecting Willits Street and N. Old Woodward Avenue, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Construction Plans.

1.34 “Project 1C” shall mean the construction of a public plaza and a pedestrian bridge over the Rouge River to connect such public plaza to Booth Park, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Construction Plans.

1.35 “Project 2” shall mean the construction of up to a five-story building, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Ground Lease for Project 2.

1.36 “Project 3” shall mean the construction of a one-story building, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Construction Plans.

1.37 “Project 4” shall mean the construction of up to a five-story building, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Construction Plans.

1.38 “Project 5” shall mean the construction of an up to a five-story building, preliminarily depicted on the Proposed Site Plan and to be more particularly described in the Construction Plans.

1.39 “Project Budget” shall mean, the Public Components Budget as approved by the City.

1.40 “Project Development Schedule” shall mean the final development schedule for the Project, including the Public Components and Private Components thereof, which shall include a proposed timeline for the completion of all pre-development, development, and construction activities relating to the Project, as approved in accordance with this Agreement, which when finalized and agreed to shall be incorporated in (and subject to amendment as may be provided by) each of the respective Ground Leases, the Construction Contract, or the Contingency Agreement.

1.41 “Project Documents” shall mean this Agreement, the Construction Contract, the Construction Plans, the Construction Schedule, the Parking Mitigation Plan, the Project Budget, the Project Development Schedule, the Project Phasing Plan, the Site Plan, the Ground Leases, the Contingency Agreement, the REA and any other agreement or document entered into between or among the Developer and City or for which the City’s consent or approval is required under the terms and conditions of this Agreement.

1.42 “Project Phasing Plan” shall mean the proposed final plan and schedule for phasing the construction of the Project, as approved in accordance with this Agreement which plan shall contain such mechanisms for amendment and modification as the parties may agree; provided, however, nothing contained in the Project Phasing Plan shall be interpreted as a requirement for the Developer to complete construction of the Private Components and/or Public Components by a specific date.

1.43 “Proposed Site Plan” shall mean the current proposed site plan for the Project, as attached hereto as Exhibit B, it being agreed that the Proposed Site Plan shall remain subject to the review and approval of the Planning Commission and other governmental bodies having jurisdiction over same.

1.44 “Public Components” shall mean Project 1A, Project 1B, Project 1C, and if constructed, Project 3.

1.45 “Public Components Budget” shall mean the final budget for the cost of completing the Public Components of the Project, as approved in accordance with this Agreement.

1.46 “Qualified Expenses” shall mean those costs and expenses approved by the City and expended by the Developer in connection with the construction of the Public Components that constitute “public facilities” or that may otherwise be funded by proceeds from the Bonds under applicable law.

1.47 “REA” means the reciprocal easement agreement providing, inter alia, structural support for project 2 between the City, in its capacity as the owner of Project 1A, and the Developer (or its designated Affiliate(s)) as the ground lessee of Project 2.

1.48 “Redevelopment Parcel” shall have the meaning set forth in the Recitals.

1.49 “Site Plan” shall mean the final site plan for the Project, as approved by the City pursuant to the Site Plan Approval.

1.50 “Site Plan Approval” shall mean the final site plan approval for the Project issued by the City in accordance with its standard municipal procedures.

1.51 “Special Assessment District” shall mean the special assessment district comprised of the Private Components of the Project and other adjacent properties approved by the City and established by the City for the purpose of levying a special assessment against such Private Components in order to defray the cost of Project 1B and Project 1C (but not, for the avoidance of doubt, Project 1A). The parties acknowledge that the City has adopted, and reserves the right to adopt in the future, other special assessments, which do and may encumber other properties located in the City, including the Private Components.

1.52 “Special Assessment Revenues” shall mean the special assessment revenues generated by the special assessment levied upon the Special Assessment District.

1.53 “Term” shall mean the term of this Agreement, which shall be the period commencing on the Effective Date and expiring from time to time upon the expiration of the Development Period and, as to each Private Component of the Project, expiring upon commencement of construction of such Private Component by Developer.

ARTICLE 2

PRE-DEVELOPMENT PERIOD

2.1 Covenants of the Developer. The Developer covenants and agrees to undertake the following actions with respect to the Project during the Pre-Development Period.

2.1.1 Entity Structure and Information. The Developer has delivered or will deliver to counsel for the City, the following entity information with respect to itself and the Affiliates of the Developer which are proposed or required to be the parties to the Construction Contract, the Contingency Agreement, the Ground Leases, and/or any completion guaranties (the “Key Documents”) all of which shall be recertified by the Developer as accurate and complete in connection with and as required by the Contingency Agreement:

(a) An organizational chart showing the identity of the parties then owning interests in the Developer and/or the Affiliates of the Developer and the relationships among Developer and each of their Affiliates proposed to be the parties to the Project Documents.

(b) An officer’s certificate for the Developer and each of its Affiliates proposed to be the parties to the Project Documents, containing and certifying as true, correct and complete, (A) resolutions authorizing the execution of this Agreement and/or participation in the Project, and (B) a statement of incumbency for the current officers of the entity.

(c) Certified articles of organization (or incorporation) from the jurisdiction of its organization (or incorporation) for the Developer and its Affiliates proposed to be the parties to the Project Documents.

(d) Good Standing Certificate from the State of Michigan Department of Licensing and Regulatory Affairs for the Developer and, if applicable, its Affiliates proposed to be the parties to the Project Documents.

(e) Such other entity information or documentation as may be reasonably required by the City.

Following the Effective Date of this Agreement, there shall be no change in control of the Developer or each of the Affiliates proposed to be the parties to the Project Documents during the performance of the Developer's and the Affiliates of the Developer obligations under the Project Documents; provided, however, nothing herein shall be deemed a limitation on (i) the rights of each of the Affiliates under a Ground Lease to transfer interests directly or indirectly following completion of construction of the Private Components to be completed under each such Ground Lease, or (ii) the rights of the Affiliates under the Ground Lease to obtain financing, as may be permitted by the terms of such Ground Lease.

2.1.2 Preliminary Development Schedule.

(a) No later than July 31, 2019, Developer will deliver to the City for its review, comment, and approval a preliminary Development Schedule for the Public Components thereof, which shall include a proposed timeline for the commencement and completion (and other relevant milestones) of all pre-development, development, and construction activities relating to the Public Components. The Contingency Agreement or the other Project Documents shall provide the proposed time lines for the commencement and completion by the Developer of the Private Components. Following the execution of the Contingency Agreement, compliance with the terms of the Contingency Agreement and confirmation from the City that the Bonds have been issued and sold, Developer shall proceed with the construction of the Public Components in accordance with the Construction Contract.

(b) The Development Schedule shall be subject to the approval of the City, which approval shall not be unreasonably withheld; provided, however, that the City's approval of the portions of the Development Schedule concerning the Public Components of the Project may be given or withheld in the City's sole and absolute discretion.

2.1.3 Redevelopment Parcel Due Diligence.

(a) No later than August 2, 2019, Developer will conduct and complete real property and development site due diligence with respect to the Redevelopment Parcel which it requires, including, without limitation evaluation of:

(i) the state and condition of its title and all encumbrances thereupon;

- (ii) its environmental condition;
- (iii) the condition of the soils.

(b) Subject to the City's undertaking in Section 2.1.3(c), Developer will promptly (and in all events prior to delinquency) pay all costs and expenses for all title work, surveys, environmental and geotechnical investigations and studies, lien and litigation searches, and all other due diligence necessary or desirable to Developer to satisfy this due diligence condition with respect to the Private Components. Developer will consult with the City with respect to any due diligence investigations and/or reports which it believes are required in connection with the construction of the Public Components. The City shall promptly consider any such investigative undertakings required for the Public Components and will ultimately control whether or not to incur the costs of such investigation as well as the vendors undertaking such investigations. All costs associated with the investigations required to be completed in connection with the Public Improvements and approved by the City shall be paid for by the City, unless otherwise agreed to by the Developer.

(c) The Developer confirms that on or prior to the date hereof, City has delivered to Developer the following due diligence materials with respect to the Project:

- (i) Title Commitment issued by Seaver Title Company, dated September 4, 2018, covering the Redevelopment Parcel.
- (ii) Survey prepared by Nowak and Fraus Engineers, dated 10/29/18, being Job #1565.
- (iii) Phase I Environmental Site Assessment, dated August 16, 2018, prepared by AKT Peerless.

Developer acknowledges that the above reports have been prepared by parties other than the City and the City makes no representations as it relates to the accuracy or completeness of same.

(d) From and after the date hereof, Developer may have access to the Redevelopment Parcel to perform its due diligence upon (i) providing reasonable advance notice to the City, (ii) obtaining the written consent of the City in advance of performing any invasive, intrusive, or destructive testing, which consent may be withheld in the City's sole and absolute discretion, and (iii) delivering evidence of the insurance required to be maintained hereunder to the City; provided, however, the City hereby consents to the completion of the environmental site assessments and soil testing identified on Exhibit C attached hereto. In connection with the foregoing, Developer and each of its representatives, agents, and consultants engaged in connection therewith and entering the Redevelopment Parcel to complete such studies or testing shall maintain comprehensive general liability insurance in an amount of not less than Three Million and 00/100 (\$3,000,000.00) Dollars per occurrence (or such other amount as may be approved by the City) with respect to personal injury (including death) and damage to property arising in connection with the presence of such applicable parties on the Redevelopment Parcel and the performance of such due diligence investigations, examinations, and studies thereon, and Developer shall deliver certificate(s) of insurance, in form and substance reasonably satisfactory to the City, to the City prior to entry upon the Redevelopment Parcel each evidencing the

existence of such coverages and naming the City and its elected and appointed officials, employees and volunteers and others working on their behalf, as an additional insured thereunder. Developer shall, at Developer's sole cost and expense, promptly repair and/or restore any damage to the Redevelopment Parcel resulting from such investigations, examinations, and studies performed by or on behalf of Developer. Developer hereby indemnifies, protects, defends and holds the City, its officials (whether elected or appointed), employees, agents, consultants, volunteers, and representatives (each a "City Indemnified Party") harmless from and against any and all losses, claims, causes of action, judgments, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) (collectively, "Losses") that City or any City Indemnified Party suffers or incurs (or alleges to have suffered or incurred) as a result of, or in connection with, Developer's investigations, examinations, and studies hereunder or the entry by Developer, its representatives, agents, or consultants upon the Redevelopment Parcel; provided, however, in no event shall the Developer be responsible for the mere discovery of existing conditions on the Redevelopment Parcel. Developer's undertakings pursuant to this Subsection 2.1.3(d) shall indefinitely survive a termination of this Agreement.

(e) Upon the request of the City, from time to time, Developer shall promptly deliver to the City copies of all written reports, documents, and materials produced in connection with the due diligence investigations, examinations, and studies performed hereunder relating to the state, quality and condition of the Redevelopment Parcel, it being acknowledged that all such reports, documents, and materials will be delivered without representation or warranty of any kind, express or implied, by Developer.

2.1.4 Preliminary Site Plan Approval. No later than June 15, 2019, Developer shall submit the preliminary Site Plan for the Project to the City for its review, comment, and approval, which preliminary Site Plan shall comply with the City's Downtown Birmingham 2016 Plan. The Developer acknowledges that the preliminary Site Plan will be subject to the review and approval of various departments and bodies of the City, including, without limitation, the City's Planning Department, Advisory Parking Committee, and City Commission, and that such review and approval shall be conducted in accordance with the City's standard municipal planning and development procedures. The preliminary Site Plan shall take into account the impact of the Project on existing easements, rights of way, and utility lines, facilities and equipment, and shall address the preservation or substitution (to the extent feasible) of all such existing easements and rights of way, it being understood that the City may in its discretion, but shall have no obligation to, pursue the vacation, modification, amendment, or termination of any existing easements or rights of way that encumber any portion of the Redevelopment Site with any third parties. The Site Plan shall be a Unified Site Plan for all components of the Project. The City shall endeavor to expedite the design, review and Site Plan Approval process for the Project.

2.1.5 Preliminary Project Phasing Plan. No later than May 15, 2019, Developer will deliver to the City for its review, comment, and approval a preliminary Project Phasing Plan that provides a plan and timeline for phasing the construction and development of the various elements of the Project.

2.1.6 Preliminary Project Budget. Prior to the Effective Date, Developer will deliver to the City for its review, comment, and approval a preliminary Project Budget, which may be given or withheld in the City's sole discretion.

2.1.7 Preliminary Project Construction Plans.

(a) Subject to the terms of, and by the date set forth in, the Cost Reimbursement Agreement, Developer will deliver preliminary Construction Plans for the Public Components of the Project to the City for its review, comment, and approval, which shall be sufficiently detailed to permit a determination of the guaranteed maximum price pricing for the Construction Contract and shall comply with the City's Downtown Birmingham 2016 Plan.

(b) The Construction Plans for the Public Components of the Project shall be subject to the approval of the City, which approval may be withheld in the City's sole and absolute discretion and shall not be deemed to waive the rights of the City or its component departments with respect to site plan review, zoning, Permits, building codes or other development and construction approvals necessary for the Project.

(c) The City shall endeavor to expedite the design, review and approval process with respect to such Construction Plans and undertake efforts to reduce permit costs associated with the such Construction Plans for the Public Improvements.

2.1.8 Preliminary Project Construction Schedule. No later than July 31, 2019, Developer will deliver a preliminary Construction Schedule for the Public Components to the City for its review, comment, and approval, which if approved by the City, shall be incorporated into the Construction Contract and shall be subject to the extension of dates as provided in the Construction Contract.

2.1.9 Construction Contract.

(a) No later than May 8, 2019, Developer will deliver a draft of the Construction Contract for the Public Components with segregated pricing for each of Project 1A, Project 1B, and Project 3 to the City for its review, comment, or approval and, if available, drafts the Subcontracts, as defined below. Without limitation of the City's approval rights in accordance herewith, the City and Developer agree that, except as otherwise provided in this Agreement, the Construction Contract shall include, without limitation, the following material terms: (i) Developer shall be responsible for the "turn-key" construction of those Public Components of the Project described in the Construction Contract, including, without limitation, all planning, pricing, permitting, and construction activities with respect thereto; (ii) Developer shall engage the Contractor as the construction manager for the Project; (iii) all contracts, subcontracts, work orders, purchase orders, and other agreements, including the contract between the Developer and the Contractor (collectively, "Subcontracts") with architects, engineers, space planners, subcontractors, vendors, or suppliers involving a consideration in excess of Fifty Thousand and 00/100 (\$50,000.00) Dollars shall be subject to the prior review and approval of the City, which approval shall not be unreasonably withheld; (iv) upon the completion of the Public Components of the Project, all warranties and guaranties and all surviving counterparty obligations under any Subcontracts shall be assigned to the City pursuant to assignments in form

and substance reasonably acceptable to City; and (v) with respect to the Public Components of the Project, the Developer shall be obligated to cause the Contractor to obtain such payment and/or performance bonds as may be required by the Construction Contract. Without limitation of the City's approval rights set forth in this Agreement, the guaranteed maximum pricing for the Construction Contract shall be determined on an "open-book" basis with multiple bids (if available) obtained with respect to each major trade.

(b) The Construction Contract and all Subcontracts shall be subject to approval of the City, which approval may be given or withheld in the City's sole and absolute discretion and such approval shall not be deemed to waive the rights of the City or its component departments with respect to site plan review, zoning, building permits, building codes or other development and construction approvals necessary for the Project. Following approval of the Construction Contract and all Subcontracts, the Developer shall not be permitted to modify the Construction Contract with the Contractor or any Subcontract without the prior written consent of the City, except as may be permitted by the Construction Contract.

2.1.10 Preliminary Parking Mitigation Plan. No later than July 3, 2019, Developer will deliver to the City for its review, comment, and approval a preliminary Parking Mitigation Plan for the Public Components.

2.1.11 Zoning Approval.

(a) The Developer will submit a request or application for, and thereafter obtain, the necessary variances for the development of the Project on the Redevelopment Parcel, if any.

(b) The application shall include all necessary zoning or rezoning requirements for approval.

(c) All costs and expenses of preparing and filing applications for approvals, including survey drawings, engineering plans and consultants costs for the Private Components shall be the sole responsibility of the Developer. All costs and expenses of preparing and filing applications for approvals of the Public Components, including survey drawings, engineering plans and consultants costs for the Public Components shall be the sole responsibility of the City.

(d) The City shall be under no obligation to change its normal municipal approval process for development projects. The execution of this Agreement in no way constitutes the approval by the City or its component departments of the Private Components or obligates the City to support or approve the Project except as expressly set forth.

2.1.12 Construction Financing. Prior to commencing each phase of the Private Components of the Project, Developer will make available to the City or its counsel term sheet(s) from the Construction Lender evidencing the terms of the financing for such phase of the Private Components of the Project, together with evidence of the availability of the Equity Contribution required for such phase and such other documents as may be required by the Project Documents.

2.1.13 Other Project Documents. The Developer shall negotiate in good faith with the City all the Project Documents not otherwise described in this Section 2.1 including the form of Ground Lease for each of the Private Components and the REA for Project 2.

2.1.14 Developer Approval Notice. When the Developer has determined that it is satisfied and/or is prepared to waive the conditions to its obligation to proceed beyond the Pre-Construction Period set forth in this Section 2.1 as to the Public Components and the Private Components, it shall advise the City of such intent, it being agreed that such intent to proceed shall be given no later than August 2, 2019, but shall not be binding until the parties have executed and exchanged the Contingency Agreement. Upon the Developer's issuance of notice of its intent to proceed beyond the Pre-Development Period and provided the City has similarly issued its notice of intent to proceed, the Developer and the City shall work with each other to finalize a mutually acceptable Contingency Agreement. The Contingency Agreement shall confirm each party's commitment to proceed with the Project subject only to such additional terms and conditions and commitment as the Parties may then agree including the issuance and sale by the City of the Bonds. The Contingency Agreement shall contain the following additional terms:

(a) A certification of Developer that it elects to proceed with the Public Components in accordance with the terms and conditions of this Agreement and the Contingency Agreement, subject only to the completion and/or waiver by City and the Developer and its Affiliates of any other commitments and/or contingencies expressly set forth in this Agreement and the Contingency Agreement.

(b) If reasonably required to issue and/or sell the Bonds, an acknowledgement reasonably acceptable to the City and the Developer signed by the Developer that (i) the issuance, marketability and tax status of the Bonds shall be limited by relevant provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and other applicable State and federal law, (ii) the Developer may be required to undertake certain continuing disclosure obligations in respect of the bonds to the extent necessary to comply with the rules promulgated by the U.S. Securities and Exchange Commission, (iii) acknowledging that normal and customary issuance costs associated with the issuance of the Bonds shall be paid to the extent lawfully permitted from proceeds of the Bonds, provided that if the Bonds are issued on a tax-exempt basis, issuance costs may be paid from proceeds of the bonds subject to limitations set forth in the Code.

2.2 Pre-Development Period Undertakings of the City. During the Pre-Development Period, the City will undertake the following tasks in connection with the Project upon satisfaction of:

2.2.1 Redevelopment Parcel Due Diligence. The Developer acknowledges that the City has provided to Developer copies of any due diligence information regarding the Redevelopment Parcel required to be delivered by the City to the Developer pursuant to Section 2.1.3(c) hereof.

2.2.2 Title Matters. The City will reasonably cooperate with Developer to address any objections made by Developer during the Pre-Development Period to the condition

of title to the Redevelopment Parcel, including, without limitation, any existing easements and rights of way; provided, however, that the City shall have no obligation hereunder to pursue the vacation, modification, amendment, or termination of any existing easements or rights of way with any third parties or to otherwise expend any monies or incur any liability in connection with such objections.

2.2.3 Economic Development Liquor License. The City will pursue the expansion of the City's Economic Development Liquor License program to cover the Private Components of the Project. The Developer will cooperate with the City in connection with the expansion, but acknowledges that such an expansion may only be effected by the affirmative vote of the City Commission and, accordingly, the City provides no assurances that such an expansion will occur.

2.2.4 Tax Division/Special Assessment District. Promptly following the City's approval of the legal description to be proposed by the Developer, for each of the Private Components of the Project (and otherwise fully cooperated with the City in connection therewith), the City will initiate and diligently pursue (both internally and with the County of Oakland and any other applicable governmental authorities) the division of the Redevelopment Parcel into separate tax parcels such that each of the Private Components of the Project shall constitute a separate tax parcel. The Developer acknowledges and agrees that such tax parcels for the Private Components of the Project will be subjected to and encumbered, inter alia, by the Special Assessment District and subject to the special assessments levied thereby, which special assessments shall be in addition to (and not in lieu of) ad valorem real estate taxes and assessments that are or may otherwise be levied or assessed upon the Private Components of the Project in accordance with applicable law. Promptly following the approval by the City of the legal description for the Private Components, and provided that the Developer and the City have both approved the Public Components Budget, the City will prepare and deliver to Developer its proposed terms for the Special Assessment District, which shall set forth, at a minimum, (i) the proposed aggregate monetary contribution of the Developer (and its applicable Affiliates) toward the cost to complete Project 1B and Project 1C and (ii) the proposed timeframe in which to fully recover such monetary contribution through Special Assessment District assessments. The City and Developer shall thereafter negotiate in good faith and with commercially reasonable diligence to agree upon final terms for the Special Assessment District and the City shall be required to confirm in writing the final terms of the Special Assessment District prior to the date that the Developer provides the Developer Approval Notice and following delivery thereof, the City may not change or modify the terms of such Special Assessment District, except pursuant to statute or as may be required by law.

2.2.5 Resolution Submitting Bond Proposal and Calling Election and Notice of Intent. The City Commission shall be asked to adopt a resolution with respect to the issuance of the Bonds and the scheduling of a special election for, among possible other matters, a public vote with respect thereto. Within ten (10) days following the City Commission's adoption of the foregoing resolution, Developer will pay to the City the sum of up to Twenty Thousand and 00/100 (\$20,000.00) Dollars in order to defray the cost of such special election.

2.2.6 Bonds. Within the time periods set forth in the Contingency Agreement and after the election on the question of the issuance of the Bonds shall have been held and result

in an approval for the City to issue the Bonds in the amount of the permitted Bond indebtedness, the City shall commence and diligently proceed to:

(a) Confirm that the Qualified Expenses support the amount of the Bonds;

(b) Confirm that the projected revenues designated by the City in its sole discretion to be used for the retirement of the Bonds will support the repayment in full of the City's obligations under the Bonds; and

(c) Provided the foregoing conditions have been satisfied, including the execution and exchange by the City and the Developer of the Contingency Agreement and the satisfaction by the City and/or waiver of all conditions to the issuance and sale of the Bonds in the Project Documents, authorize the sale of the Bonds, all in accordance with the provisions of all applicable laws.

2.2.7 Limitation on City Bond Obligations. The City's sole obligation with respect to the final issuance and sale of the Bonds shall be to take such steps as are necessary and within the City's control to offer the Bonds for competitive sale subject to the requirements of law. The City has made and makes no guaranties or representations concerning the interest rates at which the Bonds will sell or as to whether the Bonds will sell. Developer acknowledges and agrees that the municipal bond market is not predictable by the City, that changes may occur in that market which adversely affect the marketability of the bonds or the interest rates borne by the Bonds or both. In the event that the City is unable to sell sufficient Bonds to finance the cost of the Public Components of the Project, then the City shall have the right to (x) seek alternative financing arrangements with respect to the Public Components of the Project or the terms of such sale are unacceptable to the City, in which case the performance obligations of the parties under this Agreement shall be adjourned for a reasonable amount of time days during which the City may investigate and pursue such alternative financing arrangements, or (y) terminate this Agreement by written notice to Developer without liability or cost.

2.2.8 Bond Funds. The City will maintain the Bond Funds in a separate depository account controlled by the City in compliance with all applicable laws until the same are either payable to Developer for the costs of the Public Components of the Project in accordance with the Construction Contract, or, if not advanced, used to repay or defease the Bonds in accordance with applicable law.

2.2.9 Cooperation. The City will provide its cooperation to requests for estoppel certificates, evidence of Bond Funds or other information as reasonably requested by the Developer or its lenders in connection with the construction of the Public Components. The Developer will pay all costs of copying in connection with any such request.

2.2.10 Parking Structure Parking Licenses. The City will reasonably cooperate with the Developer in order to negotiate an agreement which would provide the Affiliate of the Developer which is ground leasing Project 2 with a commitment for the use of certain parking spaces in the Parking Structure to support the residential uses, if any, in Project 2 during the terms of the Project 2 Ground Lease (the "Parking Commitment"). Any Parking Commitment

shall be set forth in the Ground Lease for Project 2. The Developer acknowledges that the foregoing shall not entitle the Developer to an easement or other perpetual and/or exclusive right to use parking spaces in the Parking Structure and that the use of such parking spaces shall in all events be subject to the City's standard practices and procedures in effect from time to time.

2.2.11 Developer Entity Structure and Information. The City shall have satisfied itself with respect to the information provided by the Developer relative to each Affiliate of the Developer which shall be a party to a Project Document pursuant to Section 2.1.1.

2.2.12 Preliminary Development Schedules. The City shall have approved the Preliminary Development Schedules submitted by the Developer pursuant to Section 2.1.2.

2.2.13 Redevelopment Parcel Due Diligence. The City shall have satisfied itself with respect to the due diligence investigations relating to the development of the Public Components of the Property.

2.2.14 Site Plan Approval. The City shall have approved the form of Preliminary Site Approval.

2.2.15 Phasing Plan. The Developer and the City shall have agreed upon a mutually acceptable Phasing Plan.

2.2.16 Preliminary Project Budget. The City shall have satisfied itself with respect to the Preliminary Project Budget for the Public Components.

2.2.17 Project Construction Plans. The City shall have satisfied itself with respect to the Project Construction Plans.

2.2.18 Project Construction Schedule. The City shall have satisfied itself with respect to the Preliminary Project Construction Schedule.

2.2.19 Construction Contract. The City shall have satisfied itself with respect to the terms and conditions of the Construction Contract.

2.2.20 Ground Lease. The City shall have approved the form of each Ground Lease and all Project Documents.

2.2.21 REA. The City shall have approved the form of the REA as it relates to Project 1A and Project 2.

2.2.22 City Approval Notice. At such time as the City has satisfied itself with respect to the Pre-Development contingencies set forth above, it shall advise the Developer of such intent to proceed, it being agreed that such intent to proceed, if given shall be given no later than August 1, 2019, but shall not be binding until the parties have executed and exchanged the Contingency Agreement, the Developer has issued the Developer Approval Notices and all conditions, contingencies, and commitments of the City and the Developer and its Affiliates set forth in the Contingency Agreement are satisfied and/or waived. Upon the City's issuance of the City Approval Notice, and provided the Developer has similarly issued the Developer Approval

Notice, the City and the Developer shall work cooperatively to finalize an acceptable Contingency Agreement. In all events the Contingency Agreement must be signed by the Parties and all conditions stated therein satisfied prior to the date on which the City is scheduled to issue and/or offer for sale the Bonds.

2.3 Pre-Development Period General Conditions. The following general conditions will apply during the Pre-Development Period:

2.3.1 Costs. Except as otherwise provided in the Cost Reimbursement Agreement, each party will bear its own costs, except to the extent a party incurs liability under a specific indemnification obligation set forth in this Agreement.

2.3.2 Cooperation. The City and Developer shall promptly and in good faith cooperate with each other in connection with the review, comment, revision, and approval of the matters requiring the approval of the City pursuant to this Article 2 and otherwise in connection with the foregoing pre-development activities; provided, however, that the foregoing shall not obligate the City to modify or otherwise deviate from its standard municipal planning and development review and approval process. Each party agrees that in the event it encounters issues which, if not resolved, would result in a party's election to terminate this Agreement, then, in that event, prior to any election to terminate this Agreement, it shall provide at least ten (10) business days advance written notice to the other party advising the other party of the issue which imperils that party's ability to proceed under this Agreement. The party receiving such notice shall have the right, but not the obligation, to attempt to resolve such issues to the issuing party's satisfaction and if such issue is not resolved to the issuing party's satisfaction within the time period stated, then in that event, either party shall have the right to terminate this Agreement without liability and this Agreement shall terminate as of the date stated in any notice provided, such termination to be in accordance with the provisions of Section 2.3.3 below.

2.3.3 Termination Rights.

(a) In the event that (i) any approval of the City required pursuant to this Article 2, including, without limitation, the Site Plan Approval and approval of the Project Budget, Construction Plans, Construction Contract or the Project Documents, is not given or if the City and Developer are unable to reach agreement on the terms of the Parking Commitment or any other Project Documents, in each case despite the efforts described in Subsection 2.3.2 above, or (ii) the City is unable to issue and/or sell sufficient Bonds in accordance with Subsections 2.2.5, 2.2.6, and 2.2.7 above, then the City shall not be deemed to be in default under this Agreement and either party may terminate this Agreement upon not less than fifteen (15) days advance written notice to the other.

(b) In the event the parties shall fail to execute and exchange the Contingency Agreement by August 2, 2019 (or such later date as may be agreed to by the City and Developer), and/or the Parties have not satisfied and/or waived all conditions stated therein which are a contingency to the City's obligation to issue and sell the Bond prior to the date that is ten (10) days before the Bonds are scheduled to be issued and/or sold, then neither the Developer nor the City shall be deemed to be in default under this Agreement but either party

may terminate this Agreement upon not less than five (5) days advance written notice to the other.

(c) Upon any termination under this Subsection 2.3.3, the parties shall have no further obligations under this Agreement and no liabilities, except to the extent any liability has accrued under the specific indemnification obligations set forth in this Agreement.

(d) This Agreement, the Contingency Agreement and the Project Documents shall terminate automatically and without further action by either party if the ballot initiative seeking approval for the issuance and sale of the Bonds fails, or upon the failure of the City to effect the sale of the Bonds on terms and conditions acceptable to the City. In either event, the City shall advise the Developer in writing of such failure and this Agreement shall terminate effective as of the date of such notice, in which event neither party shall be deemed in default of this Agreement.

(e) At such time as Developer commences construction of a Private Component, this Agreement shall be deemed terminated with respect to such Private Component and the Developer shall have no further obligations under this Agreement with respect to such Private Component for events which occur after the date construction commences thereof, but Developer shall remain liable for all claims accruing prior to such date.

(f) In the event that Developer has not commenced construction of a Private Component within the time period set forth in the Ground Lease, then, regardless of whether the City elects to terminate same pursuant to the terms of such Ground Lease, this Agreement shall terminate with respect to such Private Component and the City's obligation to provide a Ground Lease and parking agreement with respect to such Private Component shall terminate.

(g) Nothing contained in this Agreement is intended to modify the City's or the Developer's obligations and rights under the Cost Reimbursement Agreement.

ARTICLE 3

DEVELOPMENT PERIOD TERMS AND CONDITIONS

The obligations of the respective parties to commence with the development and construction of the Project following the waiver of the parties' Pre-Development Contingency and the execution of the Contingency Agreement are subject to the satisfaction of the following conditions precedent in accordance with this Agreement, any one of which may be waived in writing by the party benefiting therefrom.

3.1 Conditions Precedent to Developer Obligations.

3.1.1 No Default. There shall be no uncured default of any of the covenants and agreements of the City required to have been observed and performed by the City under the terms of this Agreement the Contingency Agreement or any of the other Project Documents to which the City is a party.

3.1.2 Bonds. The City shall have issued and sold on terms acceptable to the City sufficient Bonds to finance the construction of Project 1A and 1B of the Project.

3.1.3 Contingency Agreement. The City and Developer shall have timely executed and exchanged the Contingency Agreement and the Project Documents and the Parties shall have complied with their obligations under and satisfied any contingencies stated in the Contingency Agreement (the “Waiver Date”).

3.1.4 Special Assessment District. The Developer and the City shall have agreed upon the terms and conditions of the Special Assessment District.

3.1.5 Ground Lease. The City shall have entered into a Ground Lease, the REA and, if applicable, a Parking Agreement benefitting Project 2, with Developer or its Affiliates with respect to each of the Private Components.

3.1.6 Construction Easements. The City shall have entered into such construction easements as may be required in order for the Developer to complete construction of the Project.

3.1.7 Access Easements. The Developer shall have obtained such access easements as may be required in order for the Developer to utilize each of the Private Components which may include, without limitation, access agreement easements to be issued by the City.

3.1.8 Installation of Utilities. The Developer shall have confirmed arrangements to make available to the perimeter of each of the Private Components, water service, sanitary sewer service, storm water service, electrical, gas and all utilities necessary in order to develop each of the Private Components on terms acceptable to the Developer.

3.1.9 Utility Relocations. The parties shall have agreed on the allocation of responsibility for the relocation of all utility lines currently located in a Private Component in a manner which will permit the development and construction of improvements on such Private Component.

3.1.10 Economic Development District. An amendment to the City of Birmingham Zoning Ordinance shall have been adopted creating a new zoning district (or amending an existing zoning district) to include the Private Components and which allows for the sale and consumption beer, wine and liquor at the Private Components.

3.1.11 City. The City shall have satisfied and/or waived in writing any conditions precedent to its obligation to proceed as stated in Section 3.2.

3.2 Conditions Precedent to City Obligations.

3.2.1 Contingency Agreement. Developer and the City shall have timely executed the Contingency Agreement, the REA and the Project Documents and the Parties shall have complied with their obligations under and satisfied any contingencies stated in the Contingency Agreement (the “Waiver Date”).

3.2.2 Developer Deliveries. City must be satisfied with the Developer deliveries during the Pre-Development Period required by the Agreement, all of which shall be attached or referenced in the Contingency Agreement.

3.2.3 No Litigation. Except with respect to that certain case filed against the City in the United States District Court for the Eastern District of Michigan on January 28, 2019, as Case No. 2:19-CV-10277-PDP-EAS, no action, suit, proceeding or investigation shall be pending before any court, public board, or anybody to which the Developer, its Affiliates involved in the Project, or the City is a party related to or arising out of this Agreement or that would, if adversely determined, have a material adverse impact on the Project.

3.2.4 No Default. There shall be no uncured default of any of the covenants and agreements of the Developer required to have been observed and performed by the Developer under the terms of this Agreement, the Contingency Agreement or any of the other Project Documents.

3.2.5 Municipal Approvals. Developer shall have obtained all municipal approvals for the Project, including any required zoning approvals. Nothing in this Subsection 3.2.5 or elsewhere in this Agreement shall be interpreted to waive any current requirements, policies, or procedures of the City's Planning Department for the normal approval process for development projects in the City.

3.2.6 Special Assessment District. The City and Developer shall have agreed to the terms and conditions of the Special Assessment District and Developer shall have agreed and consented in writing to the submission of the Private Components of the Project to the Special Assessment District (and the lien thereof) upon such terms and conditions.

3.2.7 Bonds. The City shall have issued and sold sufficient Bonds on terms acceptable to the City to finance the construction of the Public Components of the Project.

3.2.8 Developer. The Developer shall have issued in writing its Developer Approval Notice and otherwise satisfied and/or waived all conditions precedent in Section 3.1.

ARTICLE 4

PROJECT DEVELOPMENT

4.1 Development Period. Following the commencement of the Project under Article 3, the City and the Developer agree to undertake certain joint and individual development and related obligations during the Development Period, all as set forth in more detail below.

4.2 Development Covenants of City.

4.2.1 Construction Contract. Within thirty (30) days of the Waiver Date, the City and the Developer will enter into the Construction Contract in the form approved by the City in accordance with Article 2 above.

4.2.2 Ground Leases. Within thirty (30) days of the Waiver Date, the City and the Developer and/or its Affiliates, will enter into the Ground Leases for the real property underlying Project 2, Project 4, and Project 5, each in the form of the Ground Lease agreed to by the parties and appended to the Contingency Agreement.

4.2.3 Parking. Simultaneously with the execution of a Ground Lease with the Developer, the City shall issue to the Developer any parking agreement required by the Project Documents.

4.2.4 Construction Easements. Within thirty (30) days of the Waiver Date, the City shall enter into such construction easements as may be required by the Contingency Agreement.

4.2.5 Access Easements. Within thirty (30) days of the Waiver Date, the City shall have entered into such access easements as may be required by the Contingency Agreement in order for the Developer to utilize each of the Private Components.

4.2.6 Installation of Utilities. Within the time period set forth in the Contingency Agreement, the City shall install such utilities as may be described in the Project Documents and as required by the Contingency Agreement and the Construction Contract.

4.2.7 Utility Relocations. Within the time period set forth in the Contingency Agreement, the City shall relocate those utility lines located in a Private Component agreed to be relocated by the City in the Project Documents attached to or referenced in the Contingency Agreement and the Construction Contract.

4.2.8 Parking Mitigation Plan. The City shall be implement the Parking Mitigation Plan in accordance with the agreed upon Parking Mitigation Plans.

4.3 Development Covenants of Developer.

4.3.1 Ground Leases. Within thirty (30) days of the Waiver Date the Developer or its Affiliate(s) approved by the City, will enter into one or more Ground Leases with the City for the real property underlying Project 2, Project 4, and if not previously entered into, Project 5, each substantially in the form of the Ground Lease Form.

4.3.2 Permits and Approvals. To the extent not obtained, Developer will obtain all necessary permits, licenses, and/or approvals from all federal, state and local governmental authorities pursuant to the Contingency Agreement which are necessary in order for the Developer to undertake the Developer Obligations with respect to the Project, whether required by other City departments and/or agencies or otherwise, all in accordance with the Project Documents (collectively, the “Permits”). Developer covenants and agrees to the following additional conditions with respect to obtaining the Permits:

(a) All costs and expenses for preparing, filing, updating and amending applications for the Permits as to the Private Components shall be the sole responsibility of the Developer, including without limitation all fees and costs uniformly imposed by the City or any other governmental unit with respect to development projects and all

fees and costs of any attorneys and consultants engaged by the Developer. Developer shall also pay all standard tap fees and/or connection fees then in effect with respect to the municipal water and sewer system and all other utility systems or facilities serving the Private Components of the Project.

(b) The execution of this Agreement or the Project Documents by the City shall not be deemed a grant of the Permits or as an approval, variance or waiver of any of the procedural or substantive requirements of the government departments and/or agencies responsible for issuing the Permits including any such departments and/or agencies of the City and the City shall be under no obligation to change its normal approval process for building and related Permits.

(c) Developer will comply with, or caused to be complied with, and keep in effect at all times prior to the final completion of the construction of the Project, all Permits.

4.3.3 Inspections. Upon prior written notice by the City, Developer will allow the City and its employees, agents, contractors, and representatives at reasonable times during construction hours to inspect the Private Components during the course of construction and the right to examine or audit the books and records of the Developer, at no cost to Developer. The City shall have unlimited rights to enter into and inspect the Public Components at all times. City is under no duty to supervise or inspect the construction but may do so solely for the purpose of protecting its security and preserving its rights under this Agreement. No default of Developer will be waived by any inspection by City, nor shall any such inspection impose upon City any obligation that the work has been or will be in compliance with the Construction Plans and this Agreement or that the construction is free from defective materials or workmanship.

4.3.4 Maintain Existence in Good Standing. Developer shall maintain its existence in good standing in the State of Michigan and its qualification and good standing in every other jurisdiction wherein the failure to do so would affect the validity or enforceability of this Agreement, or would have a material adverse impact on the financial condition, business or operations of Developer.

4.3.5 Project Construction.

(a) Commencement of Construction. The Developer and City will enter into the Construction Contract in the form approved by the City in accordance with Article 2 above within the time periods reflected in the Contingency Agreement. Not later than thirty (30) days after its receipt of Permits sufficient to allow the lawful commencement of construction at the Project (or the applicable phase thereof), the Developer will commence and diligently pursue construction of the Public Components of the Project (or applicable phase thereof) in accordance with the Construction Contract (as to the Public Components of the Project), approved Site Plan, Construction Plans and Construction Schedule and subject to force majeure, shall not abandon construction for a period of more than thirty (30) consecutive days until the Project is complete. The Developer will construct and develop the Public Components of the Project substantially in accordance with the Construction Contract (as to the Public Components of the Project), Site Plan, Construction Plans, and Construction Schedule. The

Developer shall not modify or change the approved Site Plan, the Subcontracts, Construction Plans or Construction Schedule as to the Public Components in any material manner, without the express written consent of the City, in its sole and absolute discretion.

(b) Construction Site Obligations. All staging and storage of construction materials and equipment shall be limited to those portions of the Redevelopment Parcel approved by the City and described within the Construction Contract and other parcels owned or leased by Developer or as otherwise agreed to in writing by the City. Developer shall use commercially reasonable diligent efforts to promptly commence, pursue, and complete the construction of the Project and conduct its activities with minimal disruption to residents, owners, tenants, occupants, and invitees of properties neighboring the Project and the general public and to traffic patterns in and around the area. Before commencing construction, Developer shall take reasonable interim measures to ensure temporary screening of construction activities from such neighboring properties, and to prevent movement of wind-blown debris, dust and soil onto neighboring properties. Developer shall endeavor to provide its own site security protection during construction on a twenty-four (24) hour basis.

(c) Labor. All of the obligations required to be performed under this Agreement by Developer will be performed by Developer or under its supervision, and all agents, contractors, subcontractors, consultants and personnel engaged in the work shall be fully qualified and, where so required, shall be authorized or permitted under State and local law to perform such services.

(d) Further Assurances. Developer covenants and agrees to provide notice to the City of the occurrence or non-occurrence of any event that could have a material adverse effect on Developer's ability to complete the Project in a timely fashion or to fulfill its obligations under this Agreement.

(e) Construction and Materials Standards. All improvements to be constructed by the Developer in connection with the Project will be performed with excellent workmanship and new best-quality materials in accordance with the Construction Plans.

(f) Safety Standards. During the period of any construction by the Developer on any portion of the Redevelopment Parcel, the Developer shall erect or cause to be erected a fence or other suitable construction barrier(s) in accordance with customary construction safety practices and all applicable regulatory requirements and shall take all other safety measures as are necessary to protect the general public and private property from such construction.

4.3.6 Trailer; Signage. The Developer may erect on the Redevelopment Parcel a construction and/or marketing trailer and signage advertising the Project; provided, however, that the Developer shall obtain the approval of the City as to the size, location and text of any such trailer and/or signage.

4.3.7 Payment for Labor and Materials. Developer will promptly cause to be paid and discharged or bonded over all claims and liens for labor, materials and services furnished in connection with the construction of the Project. Prior to Developer's

commencement of construction of the Project, the Developer will submit to the City evidence that it has complied with the requirements of the Michigan Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, by recording with the Oakland County Register of Deeds and posting upon the site a Notice of Commencement.

4.3.8 Payment of Taxes and Assessments. Developer shall pay and discharge prior to the date when a penalty would apply, as often as the same may become due and payable, all taxes of whatever nature that may be levied or assessed against it or the Project in connection with its performance of the Developer Obligations; provided, however, nothing herein shall obligate Developer to pay any taxes or assessments associated with the Public Components, it being acknowledged and agreed that the taxes and assessments associated with the Private Components shall be required to be paid by the tenant under each Ground Lease pursuant to the terms of such Ground Lease.

4.3.9 Performance Bonds. Not later than ten (10) business days prior to the commencement of any construction for any applicable phase of the Public Components, the Developer shall obtain from the Contractor such performance bonds from a surety or bonding company securing the Contractor's obligation to complete the Public Components (or such applicable phase of the Public Components) or such other security therefor as may be permitted by the Construction Contract and otherwise in the form required by the applicable Project Documents and deliver reasonably satisfactory evidence thereof to the City.

4.3.10 Private Components Transfer Restrictions.

(a) Prior to completion of construction of a Private Component and other than in connection with the Construction Loan, there shall be no sale, conveyance, disposition, alienation, hypothecation, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbering of the Private Components of the Project or any portion thereof without the written approval of the City which approval shall not be unreasonably withheld; provided, however, and notwithstanding the foregoing, transfers of ownership interests constituting forty-nine (49%) percent or less of all such equity in Developer shall be permitted as long as there is no change of control in Developer from the control rights in existence with respect to Developer as of the Effective Date of this Agreement. Notwithstanding anything contained herein to the contrary, however, in all events, the Developer and its Affiliates shall be permitted to enter into Construction Loans associated with the development of the Private Components as provided in the Ground Leases and shall be permitted to enter into subleases with respect to each of the Private Components of the Project without the City's consent or approval.

(b) The Developer and its permitted successors shall in no event lease or otherwise transfer all or any portion of the Private Components of the Project to any person or entity that is exempt from ad valorem real property taxes under Michigan law.

4.3.11 Commencement of Proceedings. Developer shall notify City in writing within ten (10) days after Developer receives any written notice of the commencement of (a) any proceeding or investigation by a federal or state environmental agency against it regarding its compliance with any environmental law, rule or regulation, or (b) any other judicial or

administrative proceeding or litigation by or against it which could materially and adversely affect Developer or the Project.

4.3.12 Indemnification. Developer shall indemnify, defend, and hold the City and each City Indemnified Party harmless for, from, and against any and all Losses incurred by the City or any City Indemnified Party from Developer's failure to perform its obligations in accordance with this Agreement or otherwise resulting from the Developer's performance (or non-performance) of the Developer Obligations or any other obligations of Developer under the Project Documents, except to the extent resulting from the City's failure to perform its obligations in accordance with this Agreement or from the City's negligence or willful misconduct.

4.3.13 Insurance. Not later than ten (10) business days prior to Developer's commencement of initial construction of the Project, the Developer will submit to the City (a) evidence of comprehensive public liability insurance, naming the Developer as an additional insured and the City as an additional insured, against claims on account of personal injury, death and property damage incurred upon or about the Project, and shall be accompanied by a commitment from the insurer that such policies shall not be cancelled or reduced without at least thirty (30) days' prior written notice to the City. Such insurance must be written with limits of not less than (i) Five Million and 00/100 (\$5,000,000.00) Dollars in respect of personal injury to or death of any number of persons arising out of any one occurrence, and (ii) Three Million and 00/100 (\$3,000,000.00) Dollars per occurrence in respect to any instance of property damage, and (b) evidence of builders' risk insurance in an amount equal to one hundred (100%) percent of the full replacement value of the Project or the portion of the Project then under construction. Certificates of insurance evidencing such coverage shall be submitted to the City prior to the commencement of any construction under this Agreement, and at least fifteen (15) days prior to the expiration dates of expiring policies. In addition, Developer shall cause any contractor it engages for the Project to carry, in addition to the foregoing, workers' compensation coverage in at least the amounts required under Michigan law and Developer shall maintain (and cause its contractors to maintain) such other amounts and types of coverage, and from such carriers, as are required by the Construction Lender.

4.3.14 Progress Reports. Commencing with the first (1st) month following execution of this Agreement, Developer shall provide written reports to the City of its progress in the development of the Public Components of the Project as are required by the Construction Contract until completion of construction or as otherwise agreed upon between Developer and the City.

4.3.15 Fair Employment. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, and including, but not limited to, the Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 252) and in accordance with the Michigan Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicapped Civil Rights Act (P.A. 1976 No. 220), Developer agrees that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, condition, or privileges of employment because of his or her

religion, race, color, or national origin, age, sex, height, weight, marital status, sexual orientation, or disability.

4.3.16 Compliance with Laws. Developer shall comply with all governmental laws, rules, regulations and orders applicable to it or to the Project.

4.3.17 No Liens or Encumbrances. Except for any liens in connection with the Construction Loan, the Developer shall keep the Project free from all liens and fulfill the applicable requirements of construction lien law, including the filing of a Notice of Commencement. The construction performed by the Developer shall be entirely on the Redevelopment Parcel and will not impermissibly encroach upon or overhang any easement, right-of-way, or land of others.

4.3.18 Required Notices. As soon as it has knowledge thereof, Developer will promptly notify City of any of the following:

(a) Any occurrence which constitutes a default under the Agreement which materially and adversely affects the Project, the Developer's financial condition or the Developer's ability to comply with its obligations under this Agreement.

(b) After Developer receives any notice of the commencement of (i) any proceeding or investigation by a federal or state environmental agency against it regarding its compliance with any environmental law, rule or regulation, or (ii) any other judicial or administrative proceeding or litigation by or against it.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Developer. The Developer hereby represents and warrants to the City, as of the date of this Agreement and as of the commencement of the Development Period, as follows:

5.1.1 Organization and Qualification. It is a duly organized limited liability company, validly existing and in good standing under the laws of the State of Michigan.

5.1.2 Authority. It has the power to execute, deliver and perform under this Agreement in accordance with the terms and conditions of this Agreement and has taken all necessary action to authorize the foregoing and to authorize the execution, delivery and performance of this Agreement.

5.1.3 Lack of Legal Impediments. The execution, delivery and performance of this Agreement will not violate any provisions of, or constitute a default under, any agreement or contract to which it is a party and, to the best knowledge of Developer, will not violate any provision of any existing law, regulation, order or decree of any court or governmental entity.

5.1.4 Compliance with Laws. To its best knowledge, it is in compliance with all existing laws and regulations applicable to it, the violations of which would or could materially

adversely affect its operations or would or could materially adversely affect its ability to fulfill its obligations under this Agreement.

5.1.5 Litigation. To its best knowledge and, except with respect to that certain case filed against the City in the United States District Court for the Eastern District of Michigan on January 28, 2019, as Case No. 2:19-CV-10277-PDP-EAS, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, is any such litigation or proceeding presently threatened, against the Developer that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement.

5.1.6 Other Information. To its best knowledge, all other written information, reports, papers and data prepared by the Developer and given to the City by the Developer are accurate and correct in all material respects and substantially complete insofar as completeness may be necessary to give the City a true and accurate knowledge of the subject matter.

5.1.7 OFAC. Developer represents and warrants to the City that neither it nor any of its Affiliates or any representatives of the Developer and its Affiliates (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (“OFAC”) pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the “Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “Orders”); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or detained on charges involving money laundering or predicate crimes to money laundering.

5.2 Representations and Warranties of the City. The City represents and warrants to the Developer as follows, as of the date of this Agreement:

5.2.1 Organization. It is a Michigan public body corporate, validly existing under the laws of the State of Michigan.

5.2.2 Authority. Subject to Section 8.1 of this Agreement, it has the power to make, deliver and perform as required under this Agreement in accordance with the terms and conditions hereof, and, has taken all necessary action to authorize the foregoing.

5.2.3 Lack of Legal Impediments. To the best of the City’s knowledge, the execution, delivery and performance of this Agreement will not violate any provision of any existing law, regulation, order or decree of any court or governmental entity, and will not violate any provisions of, or constitute a default under, any agreement or contract to which it is a party.

5.2.4 Compliance with Laws. To the best of the City’s knowledge, it is in compliance with all existing laws and regulations applicable to it, the violations of which would or could materially adversely affect its operations or would or could materially adversely affect its ability to fulfill its obligations under this Agreement.

5.2.5 Litigation. To the best of the City's knowledge, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against it that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement, except for that certain case filed against the City in the United States District Court for the Eastern District of Michigan on January 28, 2019 as Case No. 2:19-cv-10277-PDB-EAS.

5.3 Continuing Effect. All of the representations and warranties contained in this Article 5 shall continue in effect until the expiration of the Development Period. Each party shall notify the other promptly of any event or change in circumstances that causes any of the representations and warranties in this Article 5 to be materially untrue or materially misleading.

ARTICLE 6

CONFLICT OF INTEREST

6.1 Representation of Developer. Developer represents and warrants that to its best knowledge after due inquiry no member of the City Commission and no other officer, employee or agent of the City who exercises any function or responsibility in connection with the carrying out of this Agreement has any personal interest, direct or indirect, in the Developer or the Project.

6.2 Covenant of Developer. Developer covenants and agrees that no employee, agent, consultant, officer, or elected official or appointed official of the City who exercises or has exercised any functions or responsibilities with respect to this Agreement or the Project, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business, during or after their tenure. The foregoing restrictions shall apply to all activities that are part of the Project, but Developer shall not be deemed to have breached this Section 6.2 if Developer had no actual knowledge of such person's position, relationship, interest and/or benefit after due inquiry.

ARTICLE 7

DEFAULTS AND REMEDIES

7.1 Default by Developer. The occurrence of any of the following events shall be a default by Developer under this Agreement:

7.1.1 Payment Default. Developer fails to pay when due, and thereafter fails to pay within ten (10) days after written notice of such failure to pay from the City to the Developer, any payment obligations to the City under this Agreement.

7.1.2 Performance Default. Developer fails to cure its failure to perform any other covenant, agreement, obligation, term or condition set forth in this Agreement within thirty (30) days after written notice thereof from City to Developer; provided, however, that if such

default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within thirty (30) days, then, so long as the Developer commences to cure such default promptly after receipt of notice thereof from City, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, not to exceed ninety (90) days in the aggregate.

7.1.3 Breach of Representations and Warranties. Any material representation or warranty made in this Agreement or in connection with any application or commitment relating to the Project or any Project Document by Developer or its Affiliates is materially false or misleading in any material respect at the time made.

7.1.4 Project Document Default. Developer is in default past applicable notice and cure periods under any of the Project Documents.

7.1.5 Bankruptcy.

(a) Developer, or any of its Affiliates named in a Ground Lease on which construction has not commenced, becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt, or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Developer or its Affiliates named in any Project Document or the Ground Lease on which construction has not commenced, or for a substantial part of the assets of Developer or its Affiliates named in the Project Documents or the Ground Lease on which construction has not commenced, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(b) A petition is filed or any case, proceeding or other action is commenced against any Developer, or any of its Affiliates named in a Ground Lease on which construction has not commenced, seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction whether now or hereafter in effect or a court of competent jurisdiction enters an order for relief against Developer, or any of its Affiliates named in a Ground Lease on which construction has not commenced, as debtor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within one hundred eighty (180) days after being commenced.

7.1.6 Dissolution of Developer. Any dissolution, termination, or partial or complete liquidation of Developer, or any of its Affiliates named in a Ground Lease on which construction has not commenced.

7.2 Remedies of City. In the event of a default by the Developer under this Agreement (i) the City may terminate this Agreement by written notice to the Developer and/or pursue all rights and remedies available to it under the Ground Leases, Project Documents, hereunder, at law or in equity, and (ii) the City may terminate the Construction Contract and all other Project Documents to which the City is a party; provided, however, nothing herein shall be deemed a limitation on the Developer's or City's rights and remedies which may be set forth in the Construction Contract and/or the other Project Documents. Without limitation of the foregoing, upon the occurrence of an event of default by the Developer hereunder and after the termination of this Agreement, and the written request of the City the Developer shall within five (5) business days assign to the City, without cost or expense to the City, all non-confidential and non-proprietary plans, specifications, reports, studies, surveys, warranties, guaranties, and other documents, materials, and intangible property with respect to the Project in the possession or control of Developer.

7.3 Default by the City. The occurrence of any of the following events shall be a default by the City under this Agreement:

7.3.1 Payment Default. City fails to pay when due, and thereafter fails to pay within thirty (30) days after written notice of such failure to pay from the Developer to the City, any payment obligations to the Developer under this Agreement it being agreed that the remedies available to the Developer for a default by the City under the Construction Contract or other Project Document shall be governed solely by the Construction Contract or such other Project Document.

7.3.2 Performance Default. City fails to cure its failure to perform any other covenant, agreement, obligation, term or condition set forth in this Agreement within thirty (30) days after written notice thereof from Developer to City; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within thirty (30) days, then, so long as the City commences to cure such default promptly after receipt of notice thereof from Developer, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, not to exceed ninety (90) days in the aggregate.

7.3.3 Breach of Representations and Warranties. Any material representation or warranty made in this Agreement by City is materially false or misleading in any material respect at the time made, and the same has (or would be reasonably expected to have) a materially adverse effect on the Project.

7.4 Remedies of Developer. In the event of a default by the City under this Agreement, the rights and remedies of the Developer shall be limited to (i) termination of this Agreement upon written notice to the City, or (ii) pursuit of actual damages, subject to Section 7.6 of this Agreement.

7.5 Limitation of City Liability. The liability of the City for any default, breach or failure to pay or perform under this Agreement shall be limited solely to the actual and direct

damages incurred by Developer as a result thereof; provided, however, in no event shall the City be liable for any consequential, incidental, speculative, punitive, indirect, or special damages.

7.6 Estoppels. Within thirty (30) days of a request therefor by a Party, the other Party shall execute, acknowledge and deliver to the requesting Party an instrument stating, if the same is true, that this Agreement is in full force and effect, whether it has been amended and that to the knowledge of such Party, there are no outstanding uncured events of defaults hereunder. Additionally upon the request by any affiliate of the Developer which is a party to a ground lease the City shall agree to provide to a leasehold lender providing financing for the construction of a Private Component a written agreement in form reasonably acceptable to the City confirming the City's agreement to provide written notice to such leasehold lender of any defaults hereunder and such other terms as may be reasonably requested by such leasehold lender and agreed to by the City in connection with the financing of any of the Private Components. Nothing herein shall obligate the City to provide any such notice or acknowledgements with respect to the Developer's construction of the Public Improvements.

ARTICLE 8

MISCELLANEOUS

8.1 Agreement Condition Precedent. Unless and until the City Commission approves this Agreement as executed and delivered by the Developer, the City shall not be bound to this Agreement or otherwise obligated to undertake any of its obligations under this Agreement.

8.2 Effect of Agreement. The City shall be obligated to perform only those undertakings expressly set forth in this Agreement. Execution of this Agreement in no way constitutes City approval of the Project or obligates the City to support or approve the Project except as expressly set forth in this Agreement.

8.3 Term. The term of this Agreement shall commence on the date first written above and shall expire, if at all, upon the expiration of the Development Period in accordance with the terms of this Agreement. Notwithstanding the foregoing, this Agreement shall terminate as to each Private Components upon commencement of construction with respect to each such Private Component as hereinbefore provided.

8.4 Costs. Except as specifically set forth in this Agreement or in the Cost Reimbursement Agreement, each of the parties will bear its own costs, expenses, and fees with respect to this Agreement, the obligations of the parties hereunder, and the actions taken as required by this Agreement with respect to such obligations. The City shall have no liability for any costs, expenses, fees or claims of damages of any kind or nature except as expressly set forth in this Agreement or the Cost Reimbursement Agreement.

8.5 Assignment of this Agreement. Except as otherwise provided below, no party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of all other parties hereto, which consent shall not be unreasonably withheld. Regardless of any such consent by the City, the obligations of the Developer under this Agreement shall survive any

assignment, unless the assignee (or a guarantor of assignee), in each case as consented to by the City, has a net worth at least equal to the net worth of the assigning Developer at the time of the assignment and assumes all of the obligations of the Developer under this Agreement in writing.

8.6 Estoppels. The parties hereto shall provide estoppel certificates within twenty (20) days after written request therefor certifying that this Agreement is in full force and effect without default and containing such other reasonable and customary information as may be requested by the requesting party.

8.7 Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (iii) upon pdf transmittal (it being agreed that electronic signature ((e.g. PDF email)) shall have the same force and effect as an original signature for all notice purposes), or (iv) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as set forth below. The parties may change their addresses by giving notice thereof to the other in conformity with this provision:

If to Developer: Woodward Bates Partners, LLC
Attn: Mr. Ronnie J. Boji
255 South Old Woodward Avenue, Suite 310
Birmingham, Michigan 48009
Email: rboji@bojigroup.com

With a copy to: Lowell D. Salesin, Esq.
Honigman LLP
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304
Phone: (248) 566-8540
E-Mail: lsalesin@honigman.com

If to City: City of Birmingham
Attn: Joseph Valentine, City Manager
151 Martin Street
Birmingham, MI 48009
Phone No: (248) 530-1809
Email: jvalentine@bhamgov.org

With a copy to: Joseph M. Fazio, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
101 N. Main St., 7th Floor
Ann Arbor, MI 48104
Phone No.: (734) 668-7633
Email: fazio@millercanfield.com

With a copy to:

Beier Howlett, P.C.
3001 W. Big Beaver Rd., Suite 200
Troy, MI 48084
Attn: Timothy J. Currier, Esq.
Phone No.: (248) 282-1066
Email: tcurrier@bhlaw.us.com

8.8 Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto.

8.9 Entire Agreement. Except as otherwise expressly set forth in this Agreement, this Agreement, including all exhibits attached hereto and made a part hereof, contains all agreements between the parties with respect to the subject matter hereof. There are no representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties with respect to the subject matter of this Agreement, except to the extent reference is made thereto in this Agreement.

8.10 Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective permitted successors and assigns.

8.11 Severability. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Agreement.

8.12 Time of the Essence. Time shall be of the essence of this Agreement.

8.13 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute the same instrument.

8.14 Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

8.15 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

8.16 Mutual Cooperation. Each party to this Agreement shall (i) take all actions required of it by the terms of this Agreement as expeditiously as is reasonably possible; (ii) cooperate, to the fullest extent reasonably possible but at no cost or expense to such party, with the other party to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Project, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, Permits, licenses, approvals and any other consents or permissions necessary for the construction or operation thereof; (iii) execute and deliver all commercially reasonable documents reasonably necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or

agreements as may be required by the Developer's lenders with respect to the Project to secure the Developer's financing from such lenders; and (iv) use its reasonable efforts to assist, but at no cost or expense to such party, the other party to this Agreement in the discharge of their respective obligations hereunder. Nothing contained in this Section 8.15 or elsewhere in this Agreement shall be deemed a waiver by the City of any of its municipal approval rights, policies, or procedures or otherwise obligate the City to modify or deviate from its then standard policies, procedures, or practices regarding its review and approval of developments similar to the Project.

8.17 Force Majeure. No party hereto shall be liable for the failure to perform its non-monetary obligations hereunder if such failure is due to unforeseeable events beyond the party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, flood, epidemics, quarantine restriction, strikes and embargoes. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; provided, however, that the party seeking relief from its obligations under this Section 9.16 shall notify the other parties in writing, setting forth the event giving rise to such failure to perform, within ten (10) business days following the occurrence of such event.

8.18 Exculpation. No City official (whether elected or appointed), officer, employee, board member, council member (including, without limitation, any member of the City Commission), attorney, agent, representative, advisor, or consultant shall have any personal liability under this Agreement or otherwise in any manner arising out of or in connection with the Project.

8.19 City Action. Where any consent, approval, or other action of the City is required or requested under this Agreement, such consent, approval, or other action may be provided by the City Manager for the City unless such consent, approval, or other action of the City requires the approval of the City Commission pursuant to the express provisions of this Agreement or applicable law.

[signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

CITY:

CITY OF BIRMINGHAM,
a Michigan municipal corporation

By: _____

Name: _____

Title: _____

DEVELOPER:

WOODWARD BATES PARTNERS, LLC,
a Michigan limited liability company

By: _____

Name: _____

Title: _____

List of Exhibits

- Exhibit A-1 Legal Description – Redevelopment Parcel
- Exhibit A-2 Legal Description – Parking Structure Parcel
- Exhibit B Proposed Site Plan
- Exhibit C List of Approved Environmental Testing

EXHIBIT A-1

LEGAL DESCRIPTION OF THE REDEVELOPMENT PARCEL

Land in the City of Birmingham, Oakland County, Michigan described as follows:

[INSERT]

Tax Parcel I.D. No.: _____

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PARKING STRUCTURE PARCEL

Land in the City of Birmingham, Oakland County, Michigan described as follows:

[INSERT]

Tax Parcel I.D. No.: _____

EXHIBIT B

PROPOSED SITE PLAN

[to be inserted]

EXHIBIT C

LIST OF ENVIRONMENTAL TESTS
[to be provided by Developer]