EAST LANSING CENTER CITY DISTRICT

MASTER DEVELOPMENT AGREEMENT

This East Lansing Center City District Master Development Agreement, including its exhibits (the "Agreement") is made this ____ day of _____ 2017 (the "Effective Date"), by and between the CITY OF EAST LANSING, a Michigan municipal corporation, with its offices at City Hall, 410 Abbot Road, East Lansing, Michigan 48823 (the "City"), the CITY OF EAST LANSING BROWNFIELD REDEVELOPMENT AUTHORITY, with offices located at 410 Abbot Road, East Lansing, Michigan 48823 (the "ELBRA"), the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF EAST LANSING with offices located at 410 Abbot Road, East Lansing, Michigan 48823 (the "DDA"), and HB BM East Lansing LLC, 3412 Commercial Avenue, Northbrook, IL 60062 (the "Developer" and, together with the City, ELBRA, and the DDA, the "Parties" and each a "Party").

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

WHEREAS, the ELBRA is organized and existing under and pursuant to the Brownfield Redevelopment Financing Act, 1996 PA 381 as amended (codified at MCL 125.2651 et seq.), to encourage the redevelopment of contaminated, functionally obsolete, or blighted property and provide for the reimbursement of eligible activities on eligible properties within the City by providing financial and tax incentives, without which the redevelopment would not be economically feasible; and

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

WHEREAS, the Developer is a limited liability company organized and existing in good standing under and pursuant to the laws of its state of organization, and exercising all of the powers provided for therein; and

WHEREAS, the Developer owns and or controls or will own and control various parcels of real property located within the City which are also specifically listed and legally described on **Exhibits B-1 and B-2** upon which the Developer desires to proceed with a portion of the Project (as defined in Section I) and on which a portion of the Project is to be constructed; and

WHEREAS, upon making the last payment to the East Lansing Building Authority at the beginning of its next fiscal year, the City will own and control various parcels of real property located within the City which are specifically listed and legally described on **Exhibit B-3,** upon which the Developer desires to proceed with a portion of the Project and on which a portion of the Project is to be constructed; and

WHEREAS, the Developer will acquire long-term leasehold rights as described in this Agreement that are necessary to complete the development of Project; and

WHEREAS, the City has determined that the Project will remove blighted, environmentally contaminated, or functionally obsolete properties and be transformational in scope by providing for the expansion of desirable uses within its downtown; and

WHEREAS, the City, DDA, ELBRA and the Developer have determined that it is in the best public interest to set forth their respective commitments and understandings with regard to developing the Project; and

WHEREAS, as part of its due diligence, the East Lansing City Council has requested a financial verification report regarding the Project from a third party consultant; and

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

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

I. THE DEVELOPMENT PROJECT

a) **Project Definition**. The mixed-use development project that is the subject of this Agreement (the "Project"), is described in the plans and specifications set forth in **Exhibits C-1, C-2, C-3 and C-4** (together, "**Exhibit C**"), which include the plans and specifications for each of the five buildings described below that are to be constructed as part of the Project.

b) The Developer agrees to construct the Project in accordance with **Exhibit C** without deviation or amendment, unless such deviation or amendment is authorized pursuant to City Code Section 50-37(k). The Project will consist of Infrastructure Improvements (as set forth in Exhibit C-4), together with the following five buildings: (i) Building A1 (Grand River Anchor Retail), (ii) Building A2 (Grand River Housing), (iii) Building B1 (Albert Retail), (iv) Building B2 (Parking Structure) and (v) Building B3 (Albert Active Adult Housing) generally described as follows:

1) **Building A1**: Building A1 shall be constructed in accordance with **Exhibit C-1** and shall be located along Grand River Avenue on the property described in **Exhibit B-1** (the "Grand River Anchor Retail Property"). Building A1 will be an approximately 22,225 gross square feet single-story building containing retail space and a residential lobby associated with Building A2 (as defined below)**.** Building A1 will be owned by the Developer and the retail space will be leased by the Developer to a retail tenant.

2) **Building A2**: Building A2 shall be constructed in accordance with **Exhibit C-1** on a portion of property described in **Exhibit B-2** and above Building A1 (the "Grand River Housing Property"). Building A2 will be an 11 story building with 273 apartments containing a total of approximately 246,106 gross square feet, and will be on top of Building A1, for a total height of 12 stories and not exceeding 140 feet in height. Building A2 will be owned by the Developer and leased to residential tenants. The Developer may change its final number of apartments in Building A2, provided that the final number of apartments does not vary from 273 apartments by more than 2%, and provided that the number of apartments in Building B3 is not less than 25% of the number of apartments in Building A2.

3) **Buildings B1, B2 and B3:** Buildings B1, B2 and B3 shall be constructed on property located along Albert Avenue between Abbot Road and MAC Avenue, currently utilized as Parking Lot #1 in the City Parking System, and more fully described in **Exhibit B-3** (the "Albert Avenue Property"). Upon final payment to the East Lansing Building Authority near the beginning of the City's next fiscal year, the Albert Avenue Property will be owned by the City. The City will enter into a 49

year Master Ground Lease for the Albert Avenue Property with the Developer, the form of which Master Ground Lease is attached as **Exhibit D-1**. As described in the Master Ground Lease, the Developer will have the option to renew the Master Ground Lease in the Developer's sole discretion for an additional term of 49 years. The Master Ground Lease will be effective no sooner than July 15, 2017. The Developer and the City will also enter into a Master Deed converting the improvements to be made to the Albert Avenue Property into a condominium project with the following three units, all as more fully described below: (i) Building B1 on the Albert Retail Property in accordance with **Exhibit C-2**, (ii) Building B2 - the Albert Parking Property in accordance with **Exhibit C-3**, and (iii) Building B3 - the Albert Active Adult Housing Property in accordance with **Exhibit C-2**. At the conclusion of the Master Ground Lease, either after its initial 49 year term or at the conclusion of 98 years if the option to renew is exercised by the Developer or Developer's assignee, or any successor thereto, the ownership of all condominium units including Buildings B1 and B3 shall revert to the City, in fee simple, without any further obligation on behalf of or by the City to Developer or any of Developer's assignees, or any successor thereto. The Master Deed, along with the related condominium documents attached as **Exhibit D-2**, will contain reciprocal easement agreements and other approvals or restrictions necessary for the protection and convenience of the owners of Buildings B1, B2, and B3. Additionally, the City and the Developer will enter into a Joint Agreement for Payment of Construction Costs that will govern the construction of Buildings B1, B2, and B3 and sources and timing of payments to the contractors in connection with such construction, the form of

which is attached as **Exhibit D-3**.

As further described in the Master Ground Lease, the Developer shall pay the City $200,000 annually as rent under the Master Ground Lease, with an annual rental adjustment not to exceed the lesser of 1.5% or the change in CPI. The $200,000 annual rent shall commence following the issuance of the Certificate of Occupancy for Building B2, and for that first year thereafter shall be a pro-rata payment of the $200,000 annual rent based on the percentage of Building B1 that is leased. Starting one year after the issuance of the Certificate of Occupancy for Building B2, 100% of the annual rent will become payable annually, regardless of the percentage of Building B1 that is leased.

4) **Condominium Building B1 ("Building B1")**: Building B1 shall be constructed in accordance with **Exhibit C-2** and shall be located along Albert Avenue between Abbot Road and MAC Avenue on the property described in **Exhibit B-4** (the "Albert Retail Property"). Building B1 will be an approximately 23,917 gross square feet single-story building or buildings containing retail space and a residential lobby for Building B3 (defined below). Building B1 will be owned by the Developer, or its assignee, or any successor thereto, until the expiration of the Master Ground Lease and the retail space will be leased by the Developer to retail tenants.

5) **Condominium Building B2 ("Building B2")**: Building B2 shall be a 5 story parking structure constructed adjacent to and on top of Building B1 pursuant to **Exhibit C-3 (**which exhibit shall include full plans and construction drawings) and on the property described in **Exhibit B-5** (the "Albert Parking Property"). Building B2 will be an approximately 161,098 gross square feet parking structure and will include

620 parking spaces. Building B2 will be owned and operated by the City, and the Developer will enter into one or more Parking Lease Agreements with the City, copies of which are attached as **Exhibit E,** that will, among other things, provide for the lease and reservations of certain parking spaces, and the payment of certain parking space lease fees.

For a period of thirty (30) years 318 parking spaces will be reserved for use by the commercial and residential tenants of Buildings A1 and A2 (202 parking spaces), and for use by the residents of Building B3 (116 parking spaces). With respect to the 318 parking spaces, the Developer will pay or cause to be paid $80.00 per month per leased space related to Building A2 (174 parking spaces) and $65.00 per month per leased space related to Building B3 (116 parking spaces) and Building A1 (28 parking spaces), with an annual rental adjustment not to exceed the lesser of 1.5% or the change in CPI (collectively, the "Developer Parking Space Rentals"). Specific parking space lease and rent payment details for each building will be provided for in the applicable Parking Lease Agreement. Notwithstanding the foregoing, the City and the Developer agree to meet on each five year anniversary date of this Agreement (or such more frequent basis as may be agreeable to the City and the Developer) to determine if the number of parking spaces set forth above and the Developer Parking Space Rentals set forth above continue to be in the best interests of the City and the Developer. If the City and the Developer mutually agree that an equivalent amount of revenue may be provided to the City under different parking space or parking rental terms, then the City and the Developer may by mutual written agreement amend the Parking Lease Agreements to provide for different terms.

Following the thirty year term of each respective Parking Lease Agreement, the Developer shall have the option to renew the respective Parking Lease Agreement for six successive periods of five years each. The specific renewal terms shall be set forth in the Parking Lease Agreements, but shall include a requirement for the parking rates to be reestablished at the then current market rates and for the number of leased parking spaces to be readjusted to meet the reasonable parking needs of Buildings A1, A2, B1 and B3, but no greater than the then current number of leased spaces unless otherwise agreed by the City.

As set forth in **Exhibit E**, the Developer Parking Space Rentals will commence for spaces associated with each respective building upon the later of (i) the issuance of a Certificate of Occupancy for that respective building, or (ii) when a Certificate of Occupancy is issued for Building B2. Further, payment of the Developer Parking Space Rentals shall be prorated for each building for the first twelve months after the applicable Certificate of Occupancy is issued, such that the Developer shall be obligated to pay Developer Parking Space Rentals only for the portion of the applicable building that is leased (based on a square foot basis for retail and based on a per unit basis for residential). Twelve months after the issuance of the applicable Certificate of Occupancy for each building, the Developer will be required to pay 100% of the annual Developer Parking Space Rentals associated with each building, regardless of the percentage of the applicable building that is leased.

6) **Condominium Building B3 ("Building B3")**: Building B3 shall be constructed in accordance with **Exhibit C-2** and shall be located above Building B2 on the property described in **Exhibit B-6** (the "Albert Active Adult Housing

Property"). Building B3 will be a 5 story building constructed on top of Building B2, with 92 apartments containing a total of approximately 129,533 gross square feet. Until the expiration of the Master Ground Lease, Building B3 will be owned by the Developer, or its assignee, or any successor thereto, and the units in Building B3 shall be designed to be leased and shall be leased to residential tenants age 55 and older in accordance with the Federal Housing for Older Persons Act. The Developer may change its final number of apartments in Building B3, provided that the final number of apartments does not vary from 92 apartments by more than 2%, and provided that the number of apartments in Building B3 is not less than 25% of the number of apartments in Building A2.

7) **Infrastructure Improvements:** Infrastructural improvements to support the Project (the "Infrastructure Improvements") and surrounding area are described in the East Lansing Brownfield Redevelopment Authority's Tax Increment Financing Plan #24 (the "BRA Plan #24") attached as **Exhibit H**, and specifications for those Infrastructure Improvements are set forth in **Exhibit C-4**. The Infrastructure Improvements shall be constructed by the Developer on behalf of the City and to standards and criteria set forth in **Exhibit C-4**. The Infrastructure Improvements shall be completed within 24 months of issuance of the first building permit.

8) **Bonds or Other Obligations**: The construction costs of the Infrastructure Improvements and of the Building B2 Parking Structure shall be financed with the proceeds of one or more series of limited obligation revenue bonds issued by the ELBRA (the "Bonds") which will be paid by incremental tax revenue pledged and authorized by a bond authorizing resolution adopted by the ELBRA, subject to BRA

Plan #24 as approved by City Council resolution, and shall be further guaranteed by the Developer as set forth below. Such ELBRA Bonds shall be without any recourse against the City or the ELBRA. The Bonds shall be issued pursuant to a Bond Trust Indenture (the "Indenture") to be entered into between the ELBRA and the trustee for the Bonds (the "Trustee"). The bond proceeds will be used to pay for the costs of the eligible activities which are set forth in Column 2, Scenario A of Exhibit N, (the "City Approved Eligible Activities"). The net proceeds from the BRA Bonds shall not exceed $24,389,518. For purposes of this Agreement, net proceeds shall be equal to the par amount of the Bonds, plus any original issue premium, less any original issue discount, less costs of issuance (including underwriter's discount), less any bond proceeds allocated to capitalized interest (for a period of not more than 36 months), and less any bond proceeds deposited into a debt service reserve fund (in an amount not more than 1.25 times maximum annual debt service on the Bonds).

If the proceeds of the sale of the Bonds are insufficient to pay for Building B2 and the Infrastructure Improvements, Developer shall make up any shortfall and pay for, or cause to be paid, the completion of Building B2 and the Infrastructure Improvements. The Developer shall provide the City with sufficient proof of Developer's ability to do so in the form of a proof of funding letter reasonably acceptable to the City, in a form attached as **Exhibit L**. As security for the Bonds, the ELBRA will authorize (i) the capture and pledge, giving rise to a statutory lien as set forth at MCL 125.2667(1), of eligible incremental taxes for payment of the debt service on the Bonds as set forth in BRA Plan #24, and subject to the BRA Plan #24 as approved by City Council resolution, and (ii) secondarily, the reimbursement of the

Developer for the cost of the City Approved Eligible Activities to the extent such costs are not paid with proceeds of the Bonds, plus interest computed at 5% per year. The captured incremental taxes shall be pledged by and remitted directly from or on behalf of the ELBRA to the Trustee, and pursuant to Act 381. Notwithstanding any provision to the contrary in this Agreement or in Brownfield Plan #24, the maximum amount of tax increment revenue that may be captured is $55,952,038.

The ELBRA will authorize the capture and pledge of 100% of the BRA Plan #24 eligible incremental taxes for 30 years for payment of the debt service on the Bonds and, to the extent not needed to pay debt service on the Bonds, to reimburse the Developer for the cost of the City Approved Eligible Activities, subject to the maximum amount of tax increment revenue that may be captured of $55,952,038.

The sale of the Bonds will be pursuant to a negotiated sale, and the Bonds shall not be sold unless the proceeds of the Bonds, when combined with other contributions from the Developer, from private financing as evidenced by **Exhibit [L]**, from the Michigan Strategic Fund ("MSF"), etc., are sufficient to complete the Project.

The Project will be constructed within the DDA's current development area, and accordingly the DDA, through an inter-local agreement with the ELBRA, the form of which is set forth in **Exhibit J** (the "ELBRA-DDA Interlocal Agreement"), will agree with the ELBRA that any authorized library-related millage will be captured pursuant to Act 381 and BRA Plan #24.

It is also anticipated that as a second level of security for the Bonds the Indenture will provide for the Developer, if necessary, to make certain payments to the Trustee, to pay debt service on the Bonds, in the event that the ELBRA tax increment

revenues, together with any debt service reserve funds and other such security under the Indenture and approved by the ELBRA, are not sufficient to pay debt service on the Bonds.

Proceeds from the sale of the Bonds shall be used for the planning, design, financing and construction of the City Approved Eligible Activities, funding a debt service reserve fund, paying capitalized interest and paying costs related to the issuance of the Bonds. Captured tax increment revenues that are not needed to pay debt service on the Bonds shall be used to reimburse the Developer for the cost of City Approved Eligible Activities not paid with Bond proceeds.

It is anticipated that the Indenture for the Bonds will have the following waterfall for distribution of tax increment revenues:

i. Payment of debt service on the Bonds;

ii. Transfer for any deficits in the Debt Service Reserve Funds under the Indenture;

iii. Reimbursement to the Developer for any debt service payments previously made by the Developer on the Bonds; and

iv. Payment to the Developer for the City Approved Eligible Activities paid by the Developer (and not paid with Bond proceeds), plus interest on such amount computed at a rate of 5% per year.

Neither the City, ELBRA, or DDA will make a limited tax pledge to support the Bonds, nor will the City seek authorization from voters to pledge the City's unlimited tax full faith and credit for the payment of the principal of and interest on the Bonds. The Bonds shall be payable solely from the tax increment revenues described herein

and recourse for payment of the Bonds shall be limited to such pledged tax increment revenues, as will be provided for in the Indenture. The Bonds shall be issued in such a manner as to preclude any other recourse against the City, ELBRA, or DDA. The Developer agrees to defend, indemnify and hold harmless the City, ELBRA, and DDA for any claims for payment of the principal of and/or interest on the Bonds beyond the tax increment revenues described herein. The City, ELBRA, and DDA will notify the Developer immediately of any such lawsuit and, with the exception of making any contributions toward a settlement will reasonably cooperate with the Developer in the resolution of any such claims. Such claims will not be settled without the Developer's written consent.

9) **Economic Incentives**. Economic incentives consist of tax increment revenues paid to the Trustee and used by the Trustee to pay debt service on the Bonds and as otherwise provided for in **Exhibits C-3, C-4** and **I.**

The City will also support the Project, with letters of support from City staff or ELBRA or DDA or with the appearance of City staff before appropriate agencies of the State as the City deems appropriate, in support of both BRA Plan #24 approval and a Community Revitalization Program Grant or other assistance from the MSF, in an effort to reimburse the Developer for public infrastructure costs and other parts of the Project and make the private portion of the Project economically feasible by determining and filling the gap between the cost of construction and the fair market value of the Project upon completion.

c) **Construction Methods. Buildings A1, A2, B1, B2 and B3 and** the Infrastructure Improvements shall be constructed in accordance with the City's prevailing wage policy

or a project labor agreement, as determined by the Developer. The foregoing shall not be construed to require the City's prevailing wage policy to apply to any tenant or condominium owner improvements. Developer shall at all times make reasonable effort to utilize residents of Michigan and particularly from the City's region, as labor necessary to complete the Project. Developer shall utilize Michigan made products in the completion of the Project wherever it is reasonably possible to do so.

II. INFRASTRUCTURE IMPROVEMENTS

a) **Combined Storm and Sanitary Sewers.** The Developer shall construct the Infrastructure Improvements as set forth in **Exhibit C-4** and in accordance with City ordinances and standards, applicable state and federal laws, rules and regulations, and applicable permits, certifications and approvals, to serve the Project and in accordance with plans and specifications prepared by Developer and approved by the City Engineer. All existing public storm and sanitary sewer lines and other utilities are to be maintained and protected unless otherwise approved by the City Engineer. Any failure of the existing public storm and sanitary sewer lines or any other utility as a result of the construction, or a failure to protect them during construction, shall be repaired immediately by Developer. Unless prearranged and agreed to by the City, failure of the Developer to repair the storm or sewer line or any other utility to a functioning level within 12 hours shall result in the City being able, in its reasonable discretion, to make the necessary repairs and charge the Performance Bond (as defined below) for the costs of repair. The Developer shall be responsible for construction of the necessary leads in accordance with City standards and shall obtain all necessary permits, subject to any applicable waivers and credits, all as set forth in **Exhibit F**. The final alignment and

connection points to the existing system shall be determined by the City Engineer during the detailed plan review process. Upon final approval of the newly constructed public storm and sanitary sewer lines, the Developer shall make the necessary connection to the existing lines in accordance with City standards. Unless prearranged and agreed to by the City, at no time shall service be disconnected for more than 12 hours. Failure of the Developer to connect the storm or sewer lines to a functioning level with 12 hours, or within the time otherwise agreed to, shall result in the City being able, in its reasonable discretion, to make the necessary connection/repair and charge the Performance Bond for the reasonable costs incurred by City as a result of the failure to timely connect.

b) **Water Mains.** The Developer shall construct the improvements necessary to the public water mains to serve the Project as described in **Exhibit C-4**. All existing public water lines are to be maintained and protected unless otherwise approved by the City Engineer. Any failure of the existing water lines as a result of the construction, or a failure to protect them during construction, shall be repaired immediately by Developer. Unless prearranged and agreed to by the City, failure of the Developer to repair the water lines to a functioning level within 12 hours shall result in the City being able, in its reasonable discretion, to make the necessary repairs and charge the Performance Bond for the reasonable costs. The Developer shall be responsible for construction of the necessary leads in accordance with City standards and shall obtain all necessary permits, as set forth in **Exhibit F**. The final alignment and connection points to the existing system shall be reasonably determined by the City Engineer during the detailed plan review process. Upon final approval of the newly constructed water lines, the Developer shall make the necessary connection to the existing water lines in accordance with City standards.

Unless prearranged and agreed to by the City, at no time shall service be disrupted for more than 12 hours. Failure of the Developer to timely connect the water lines to a functioning level within 12 hours or as otherwise agreed shall result in the City being able, in its reasonable discretion, to make the necessary connection/repair and charge the Performance Bond for the reasonable costs incurred by City as a result of the failure to timely connect.

c) **Roadway, Alley and On-Street Parking Improvements.** The Developer shall be responsible for reconstruction of the roadways and alleys, in accordance with City standards and as set forth in the approved **Exhibits C-4**. The Developer shall be responsible for the costs related to the streetscape improvements, including, but not limited to, all sidewalks, alleys, street trees, wayfinding signs and site furnishings. This also includes any temporary sidewalks with appropriate pedestrian protections necessary during construction. Any portion of the public right-of-way, including roads, alleys, curbs and gutter that is damaged during construction of the Project by the Developer shall be reconstructed to the current City design standards. Failure of the Developer to substantially complete (defined as complete to the point of functioning as its intended use) the construction and reconstruction of the roadways within 36 months of the granting of the construction easements for the Infrastructure Improvements shall result in the City being able, in its reasonable discretion, to make the necessary improvements and charge the Performance Bond for the reasonable costs.

d) **Developer's Agreement to Install Utility Improvements.** The Developer shall obtain approval for and construct, relocate, remove or abandon, as necessary, all on-site and off-site gas, electrical, and cable and telecommunications facilities which are either

municipally owned or operated under permit or franchise issued by the City, and right-of-way improvements necessary for the Project as described herein, to the extent necessary for the Project. The Developer shall be responsible for obtaining and paying the cost of all construction permits for the public improvements, subject to any applicable waivers and credits, all as described in **Exhibit F**. Developer shall take all reasonable steps to minimize the interruption of service to properties not involved in the Project. Unless prearranged and agreed to by the City, at no time shall any of the activities cause any service to other properties not involved in the Project to be interrupted for more than 12 hours. In the event service is interrupted for more than 12 hours or more than as otherwise agreed to, the City may, in its reasonable discretion, take the necessary steps to return service to the affected properties and charge the Performance Bond for the reasonable costs.

e) **Permits and Performance Bonds.** Prior to commencement of construction of the public Infrastructure Improvements or issuance of a building permit for any of the buildings, the Developer shall provide to the City a performance bond by an AM Best Rated company with a rating of at least A-VII reasonably acceptable to the City or an irrevocable letter of credit in a form reasonably acceptable to the City (the "Performance Bond") in an amount not less than 125% of the costs of the public Infrastructure Improvements and construction of the Building B2 Parking Structure, to guarantee their full completion by the Developer under this Agreement and pursuant to **Exhibits C-3 and C-4,** or a return of Lot #1 to its current state if Buildings A1 and A2 are not constructed**,** plus an additional bond (the "Demolition and Site Restoration Guarantee") to guarantee demolition of existing or future (as constructed by the

Developer) buildings, removal of demolition debris, and site restoration (by backfilling any excavation with typical granular fill to grade) in the event any buildings, required to be constructed by the Developer under this Agreement, are not completed due to work stoppage that is not the result of an Enforced Delay (as defined below). The amount of the Demolition and Site Restoration Guarantee shall be 125% of the demolition bid(s) for the full cost of demolition, as selected by Developer for the demolition portion of the Project through a contractor or contractors that are reasonably acceptable to the City. The applicable Performance Bond amounts shall remain in full force and effect throughout the construction process to insure site restoration in the event of Developer's failure to complete the Project. Upon completion, the public Infrastructure Improvements and appropriate easements as approved by the City Engineering Department and City Attorney shall be dedicated to the City. City may use the Performance Bond to either complete the Infrastructure Improvements and Building B2, demolish the existing buildings on Project property, or restore the sites if buildings are left partially constructed. Developer shall have forty five (45) business days to cure any default after written notice of the same.

f) **Material Testing.** The Developer shall be responsible for scheduling inspection and testing, including pipe, structure backfill, road base, concrete work and bituminous pavement in accordance with City standards. The testing shall be completed by a qualified construction materials testing and inspection consultant approved by City. All testing shall be in accordance with Michigan Department of Transportation (MDOT) and City standards at Developer's sole cost and expense. Material testing for Building B2, including compacted fill materials, poured concrete foundations, cast in place concrete,

welds, connectors and other commonly tested components are to be scheduled and coordinated by the Developer as reasonably directed by the City's engineer or parking consultant. All testing for Building B2 shall be in accordance with City standards at the Developer's sole reasonable cost and expense.

g) **Connection Charges and Additional Capital Charges.** The City shall charge the Developer $660,000 for utility tap fees, water and sewer or other utility connection charges and additional capital charges for Buildings A1, A2, B1 and B3, all as more fully described in **Exhibit F**.

h) **Building Permits.** The City shall charge and receive from the Developer all of the standard zoning fees, demolition permit fees, building permit fees and inspection fees for all construction activities conducted by the Developer in effect at the time this Agreement is executed and as reflected described in **Exhibit F**. The terms and conditions of the City's standard building permits are incorporated herein and all duties, obligation and requirements contained therein shall be those of the Developer.

i) **Staging Areas.** The Developer has identified appropriate staging space that is needed for this Project set forth in the "Construction Containment Plan" attached hereto as **Exhibit G**, which includes parking arrangements for contractors and construction crews during completion of the Project. The Construction Containment Plan will provide that the construction workers for the Project will be instructed to park in the City's Division Street Parking Ramp, and during the construction of the Project, such construction workers, or their respective contractors or sub-contractors, shall pay not less than $350,000 in parking fees to the City as shown by contractor or subcontractor receipts. Additional space may be provided for upon mutual written agreement of the Developer

and City. Substantial compliance with the Construction Containment Plan is mandatory, and failure of the Developer to substantially comply with the plan shall permit the City, in its reasonable discretion, to issue a stop work order until compliance is obtained and/or, after a cure period as described in the Construction Containment Plan, perform the work itself and charge the Performance Bond for the reasonable costs. The Construction Containment Plan shall require that up to $40,000 shall be set aside to be used by the DDA with respect to construction communications and other related expenses with respect to the Project. 50% of such amount shall be contributed from Bond proceeds and 50% of such amount shall be paid by the City or the DDA. The DDA shall provide the City and the Developer with a budget demonstrating the proposed disbursements of such funds and with receipts showing the actual expenditures following the disbursement of such funds.

j) **No Third Party Beneficiaries and Restrictions on Assignment.** No person shall be entitled to claim any beneficiary status as to any right or obligation under this Agreement, except for the parties herein and their successors and assigns including any lender participating in the financing of the Project.

k) **Description of Public Improvements.** The proposed public improvements described in this Agreement are generally set forth on the attached **Exhibit C-4**.

l) **Inspections.** During construction and installation of the public Infrastructure Improvements, the City shall have the right, but not the obligation, to conduct inspections, upon reasonable prior notice to Developer. However, such inspections, if undertaken, shall not relieve Developer of its obligation to construct and install the Infrastructure Improvements in accordance with the terms and conditions of this

Agreement. After dedication of the utilities to the City in accordance with **Exhibit C-4**, Developer acknowledges that the City cannot guarantee uninterrupted service to the Project area except as generally required under statute, ordinance, regulation or common law. The Developer will be required to pay the cost to cover the cost of City inspections for all public Infrastructure Improvements, subject to any credits, as provided in **Exhibit F**.

III. CLOSING AND FINALIZATION OF CERTAIN EXHIBITS

This Agreement is effective as of the Effective Date. Certain exhibits to this Agreement are subject to modification and finalization after the Effective Date of this Agreement as described in **Exhibit M**. Modifications to the Exhibits may only be made upon agreement by each Party, in writing, by authorized officers of each Party, and only as described in **Exhibit M** and as required by law including City ordinance.

IV. TIMING

The City and the Developer agree that they will complete each of the following activities in a reasonable time, in accordance with applicable exhibits attached hereto and otherwise applicable, but with outside dates for completion as follows:

a) **Infrastructure Improvements**.

1) Within 180 days from execution of this Agreement by all Parties, or upon such reasonable date to which the Parties agree, the Developer submits infrastructure plans and application for any right-of-way permits to construct Infrastructure Improvements along with proposed utility easements, to the City's Department of Public Works.

2) Within 180 days from execution of this Agreement by all Parties, or upon such reasonable date to which the Parties agree, the Developer submits such financial

assurances and the Proof of Funding Letter for completion of the entire Project, reasonably satisfactory to the City, which may include adequate documentation from a qualified financial institution, bank, pension fund, private equity fund, and/or private investors that demonstrates the availability of sufficient financing to complete the Project, including the Performance Bond, as required herein, for completion of the public Infrastructure Improvements, to the City's Department of Planning, Building and Development.

3) The City reviews submissions of infrastructure plans, the applications for right-of-way permits, the proposed utility easements, and the financial assurances, including the Performance Bond, required by this Agreement and either issues permit and approval notification within 2 weeks from submission of the last documents submitted pursuant to subparagraphs 1) or 2) above, or notifies Developer of deficiency within that time. This time period may be extended for any required review by the Michigan Department of Environmental Quality. If Developer is notified of deficiencies, the above cycles of submission and review are repeated until approved.

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

5) Developer begins construction of Infrastructure Improvements within 30 days of issuance of permits and easements.

6) Developer completes construction of the public portion of the Infrastructure Improvements (not including Building B2) within 10 months of issuance of permit.

b) **Construction and Occupancy of Project Buildings**.

1) Developer pays required fees and submits application for building permits, proposed right-of-way permits, the proposed Performance Bond (applicable to public Infrastructure Improvements and Building B2) and plans for the Project, with the initial submissions taking place within 90 days from the Effective Date and all such submissions taking place within 180 days from the Effective Date.

2) City reviews submission of materials described in 1), above, and either issues the applicable permits and approvals, or advises Developer of any deficiencies, within 28 days from receipt of all necessary submissions. If deficiencies are noted, cycle of submission and review repeats until no further deficiencies are noted, and then applicable permits and approvals are issued.

3) Developer dedicates public rights-of-way, if any, as outlined in **Exhibit C-3** of this Agreement prior to issuance of building permits.

4) Developer commences construction on each respective Project building other than Building B3 within 30 days of issuance of each respective building permit.

5) Developer completes construction of Project buildings A1, A2, B1 and B2. Buildings A2 and B2 shall be completed to the extent they can receive a Certificate of Occupancy. Building A1 and B1 shall be completed to the extent they are ready for build out by tenants.

6) Developer is notified of any deficiencies in construction of a respective Project Building and/or in the Infrastructure Improvements within 2 weeks of Developer's request for a Certificate of Occupancy for Buildings A2 and B2 (as defined by the City's applicable ordinance or code).

7) If necessary, Developer corrects any deficiencies in construction and/or completion of a Project building and resubmits request for a Certificates of Occupancy. This cycle of subparagraphs repeat until no further deficiencies preventing occupancy or tenant build-out exist with respect to a Project building.

8) City issues Developer a Certificate of Occupancy for a Project building within 1 week of the request after all such deficiencies have been remedied.

9) Building A2 is available for use by tenants and Building B2 is available for use as a parking structure.

10) Developer completes construction of Building B3 within 12 months of Developer's receipt of a Certificate of Occupancy for Building A2.

11) Paragraphs 6 through 8 are repeated for Building B3 until it receives its Certificate of Occupancy.

c) **Delays, Extensions and City Approval**. In the event of an unavoidable delay in the performance by the Developer of their obligations under this Agreement, due to unforeseeable causes beyond their control and without Developer's fault or negligence, including, but not restricted to, acts of God or acts of war or terrorism; acts of the federal, state or county government that directly impact the Project; acts of the judiciary not resulting from Developer's breach of this Agreement or fault of Developer, including injunctions, temporary restraining orders and decrees; acts of other Parties to this Agreement; fires; floods; epidemics; unanticipated environmental contamination (any of the preceding, an "Enforced Delay" or "Enforced Delays"); the time for performance of such obligations shall be extended for the period of the Enforced Delays; provided, however, the Party seeking the benefit of the provisions of this section shall, within

twenty one (21) days after the beginning of such Enforced Delay, have first notified the other Party in writing of the causes thereof and requested an extension for the period of the Enforced Delay.

With respect to any matters that are within the discretion or approval of the City, DDA and ELBRA, those Parties shall: (i) use good faith in considering and negotiating matters proposed by or under discussion with the Developer, (ii) act reasonably in all dealings with the Developer, (iii) not unreasonably withhold, condition or delay any approvals within its discretion, and (iv) act reasonably to assist the Developer in completion of the Project. In addition to any extension provided for any Enforced Delay, in the event that the City, its agents and/or employees take or fail to take any action that unreasonably delays the Developer from meeting the schedule provided for herein or unreasonably withhold, condition or delay any approval under this Agreement, then the City shall be in breach of this Agreement and Developer may seek an order for specific performance of the terms of this Agreement in accordance with Section VIII (n).

V TAX INCREMENT FINANCING

a) **Tax Increment Revenues.** The ELBRA agrees to remit or cause to be remitted captured tax increment revenues to the Trustee, for the benefit of the Bonds issued to finance the City Approved Eligible Expenses, which are eligible expenses pursuant to the BRA Plan #24 (**Exhibit H),** and as approved by the East Lansing City Council at its meeting on [June __, 2017].

b) **Limitations on Tax Increment Revenue.** Nothing contained in this Agreement shall be construed to establish any liability on the part of the City, DDA, or ELBRA to pay tax increment revenues for any costs or expenses, except to the extent that such costs and

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

VI PERFORMANCE

Authorized officers of the Parties can agree in writing to waive any of the requirements herein, or the failure to meet the timing requirements described herein, to the extent legally permitted.

a) **Developer Performance.** In the event that the Developer fails to obtain the necessary building permits for the Project in accordance with the timelines set forth herein (except if same are unreasonably withheld, unreasonably conditioned or unreasonably delayed by the City, or any other governmental unit, in contravention of this Agreement), the City may, at its option and within its reasonable discretion terminate this Agreement and terminate the related Brownfield Reimbursement Agreement and BRA Plan #24, either immediately or prospectively; provided that, prior to any such termination, the Developer shall have ninety (90) business days to cure any default after written notice of the same; and provided further that, such terminations are subject to any outstanding statutory liens or other outstanding Bond obligations at that time.

b) **Failure to Complete.** In the event the Developer fails to complete the construction of the public Infrastructure Improvements as set forth in this Agreement, including its exhibits, within thirty-six (36) months following issuance of the building permits for the

Project buildings, except for any Enforced Delays, the City may, at its option and within its discretion, (i) draw upon the Performance Bond or other financial assurances provided in Section II of this Agreement to complete the public Infrastructure Improvements and Building B2, and/or (ii) except as necessary for the payment of any Bonds issued, collect, retain, and disburse all tax increment revenues necessary to complete the cost of the public Infrastructure Improvements, and seek any other legal or equitable remedy available to the City, but not including any damages of any kind including consequential damages. Further, termination of the Master Ground Lease shall not be a remedy pursuant to this Agreement. If default by the Developer occurs and is not timely cured to the satisfaction of the City then the City may, in its reasonable discretion, cooperate with Developer to complete the Project; provided, however, such cooperation shall not be interpreted to require the City to contribute any additional financial assistance to the Project. Developer shall have forty five (45) business days to cure any default after written notice of the same.

c) **Lender Assignments.** The Developer shall have the option to mortgage its interests in the Project, including the Master Ground Lease, as may be required by a lender. Prior to commencement of construction, the Developer shall provide adequate documentation (in the form of a signed lender communication outlining such facts in the form attached as **Exhibit K**) to the City that all agreements relating to the construction of the Project including construction contracts, architectural and engineering contracts, management contracts, Brownfield Reimbursement Agreement, MSF approvals (if consented to by the MSF), building permits, and any and all rights and obligations under this Agreement, are or shall be assigned to Developer's construction lender in the event of an uncured default

by Developer. Upon the Developer providing **Exhibit K** to the City, the City shall immediately in return execute a consent to such assignments in such construction lender's customary and commercially reasonable form, which will include the City's agreement to provide to Developer's construction lender a copy of all notices of default hereunder and such additional further assurances, grace periods, etc., as reasonably requested, or as may be reasonably required for such construction lender to cure a default, and include customary limitations, reasonably acceptable to the City, on recourse against such construction lender. Developer shall be required to clear, fill, grade, landscape, or otherwise stabilize and make safe the Project site should the Developer, absent governmental or other Enforced Delays: (i) fail to complete demolition within three (3) months after commencement of Infrastructure Improvement construction, (ii) without prior arrangements, cease construction for a continuous period of more than three (3) months, or (iii) without prior arrangements, fail to complete construction within thirty-six (36) months of issuance of the permits or such additional time as authorized by a City official.

d) Modification or Termination. The City, through its City Council, and the Developer may mutually agree to modify or terminate this Agreement; provided that any such modification or termination may be subject to the prior written approval of any of Developer's lenders then having an interest in the Project.

e) Utility Liens and Assessments. In the event that, for any reason whatsoever, the Developer fails to substantially complete the Project and apply for permits and pay applicable charges, if any, the Developer consents that the equitable portion of any connection charges and additional capital charges set forth but waived in **Exhibit F** may

be assessed against all property benefiting from such improvements, including the property contained in this Project, by the City Council as a special assessment for public improvements initiated by the Developer pursuant to Chapter 13 of the East Lansing City Charter.

VII INSURANCE AND INDEMNIFICATION

a) Developer's Insurance. Prior to commencing construction of the Project, Developer shall, and Developer shall cause its agents, contractors and subcontractors, (the "Developer Parties"), to procure and maintain in full force and effect, at no expense to the City, (i) builders risk insurance, (ii) commercial general liability insurance, (iii) commercial automobile liability insurance, (including coverage for owned automobiles and for non-owned and hired automobiles), and (iv) umbrella or excess liability insurance for the (x) commercial general liability insurance, (y) commercial automobile liability insurance, and (z) professional liability as specified herein.

With the exception of worker's compensation and professional liability insurance, each policy must (i) identify the DDA, ELBRA and the City (collectively, "Additional Insureds") as additional insureds and (ii) include an endorsement providing that coverage in favor of the Additional Insureds will not be impaired in any way by any act, omission, or default of Developer, its contractors, employees, agents, representatives or any other person. All insurance policies required hereunder shall be written as primary policies, not as contributing with or in excess of any coverage maintained by the DDA, ELBRA, or City.

Developer shall provide the DDA, ELBRA & City with certificates of insurance and a copy of the additional insured endorsement at any time upon request.

Commercial general liability insurance, commercial automobile liability insurance, umbrella or excess coverage and worker's compensation insurance shall be written with limits of

liability not less than limits outlined below. Builders risk policies for each portion of the Project will be for the completed value of the structures, including Buildings A1, A2, B1, B2, and B3 as well as the other Infrastructure Improvements, either in whole or as component parts of the Project based upon the construction cost.

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

Developer shall, and shall cause all Developer Parties to, maintain in effect all insurance coverages required hereunder, at the Developer's sole expense or such Developer Party's sole expense. All insurance is to be issued by companies having a "General Policyholders Rating" of at least "A" and a financial rating of not less than Class XII. All insurance policies shall provide that the coverage afforded shall not be canceled or non-renewed. Any modifications to coverage shall require at least ten (10) days' prior written notice has been given to each of the Additional Insureds. Developer shall, at least thirty (30) days prior to the expiration of such policies, furnish City with proof of renewals thereof. In the event the Developer or Developer Parties fail to obtain or maintain any insurance

coverage required under this Agreement, City may purchase such coverage and charge the reasonable cost thereof to Developer.

b) **General Indemnification.** To the extent, and only to the extent, not covered by the proceeds from the insurance policies required to be carried hereunder or under any other agreements between the Parties hereto, and, with respect to the public Infrastructure Improvements, work in the public right-of-way and Building B2 only until the Developer conveys such improvements and the condominium unit to the City, the Developer agrees that it shall indemnify and hold harmless the City, DDA, and ELBRA against and from any loss, damage, claim of damage, liability or expense to or for any person or property, whether based on contract, tort, negligence or otherwise, arising directly or indirectly out of or in connection with its acts or omissions in conjunction with the performance of this Agreement so indemnifying, its agents, servants, employees or contractors; provided, however, that nothing herein shall be construed to require Developer to indemnify the City, DDA, or ELBRA against such Party's or its agents', servants', employees' or contractors' own acts, omissions or neglect.

VIII MISCELLANEOUS PROVISIONS

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

b) Anti-Merger. The parties agree and acknowledge that delivery and recording of the deeds contemplated in this Agreement shall not merge the provisions or obligations of this Agreement. All other obligations contained herein shall remain in full force and effect.

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

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

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

f) Third Parties. Except as otherwise provided herein, or as expressly provided in an exhibit to this Agreement, the Parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Parties hereto, and in no event shall any other

person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there are no third party beneficiaries under this Agreement.

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

h) **Michigan Law to Control and Severability.** This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with Michigan law. If any part, term, or provision of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining portions and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid unless it is a material term or provision of the agreement that would significantly alter the nature of the agreement. All terms, conditions, responsibilities, duties, promises and obligations of the parties are binding upon the parties, their successors and assigns.

i) **Due Authorization.** The City, DDA, and ELBRA and the Developer each warrant and represent to the others that this Agreement and the terms and conditions thereof have been duly authorized and approved by, in the case of the City, its City Council and all other governmental agencies whose approval may be required as a precaution to the

effectiveness hereof, in the case of the DDA, and ELBRA by its members and all other applicable governmental agencies, and as to the Developer, by the members thereof, and that the persons who have executed this Agreement below have been duly authorized to do so. The Parties hereto agree to provide such opinions of counsel as to the due authorization and binding effect of this Agreement and the collateral documents contemplated hereby as the other Party shall reasonably request.

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

k) Civil Rights. The Developer and its contractors and subcontractors on this Project shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms and conditions or privileges of employment, including any benefit plan or system or matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status, sexual orientation, gender identity or expression, student status, or the use by an individual of adapted devices or aids, because of an arrest record when a conviction did not result, or in any other manner prohibited by the provisions of the East Lansing Civil Rights Code, being Article II, Chapter 2 of the East Lansing City Code, which provisions are incorporated herein by reference. A breach of this covenant shall be regarded as a material breach of this Agreement.

l) **Recording of Agreement.** The City and the Developer agree that this Agreement or a memorandum of this Agreement detailing any restrictions on property rights contained herein may, at the City's or the Developer's discretion, be recorded with the Ingham County Register of Deeds.

m) **Parking Availability.** The Developer and City agree that the parking provided for by Building B2 will account for the needs of all Parties to this Agreement, as well as any retail and housing tenants, and projected growth, to satisfy the contemplated uses of the Project.

n) **Limitation of Remedies for Developer.** The Developer's sole and exclusive remedy against any of the Parties to this Agreement shall be to seek and obtain specific performance of the terms of this Agreement; provided that, the other parties agree that a temporary restraining order, preliminary or permanent injunction and expedited hearing of any motion or action shall be remedies for Developer to the extent same are provided or allowed by applicable law or court rule. In the event that this Agreement is collaterally assigned to any other party or to a lender having advanced funding for the Infrastructure Improvements or other Project related costs, said party and lender and its successors and assigns shall have as its sole and exclusive remedy specific performance of the terms of this Agreement.

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

o) **Assignability.** Except for the assignment required by Section VI(c) of this Agreement, to which all Parties hereto consent, this Agreement is not assignable without the express

written agreement of the Parties which shall not be unreasonably conditioned, delayed, or denied. The Parties agree to take reasonable steps necessary to promptly approve the assignment provided that any assignee agrees to be bound by the terms and conditions herein (subject to limitations applicable to the construction lender described in Section VI(c), as assignee) and either the Performance Bond issued pursuant to the terms of this Agreement remain in full force and effect after and through the duration of the assignment or new Performance Bond are issued on behalf of the assignee that meet the requirements of this Agreement and are otherwise satisfactory to the other Parties. Nothing in this Agreement beyond that stated herein shall be construed to hinder, delay, or prohibit the assignment of this Agreement or prohibit the City's use of reasonable criteria to insure that the City is not subjected to additional material risk related to the Project.

If an assignment of this Agreement, including any and all ancillary agreements (to a party other than a state or federally regulated lender or financial services firm with assets in excess of $100,000,000, such assignment being automatically permitted hereunder) is requested by Developer prior to the completion of the Infrastructure Improvements and issuance of all Certificates of Occupancy for the Project, reasonable criteria shall be considered by the City in order to insure that the proposed assignee has adequate financial strength and capabilities, reputation, experience and expertise and the proposed assignment does not subject the City to additional material risk related to the Project. City agrees to perform such review within 10 business days of receiving that information reasonably necessary for such review.

IX MISCELLANEOUS

a) Termination. The requirements of this Agreement shall terminate upon completion of the Project and the issuance of any necessary Certificates of Occupancy. Any exhibits or other related documents entered into in connection with this Project shall remain in force according to their respective applicable terms.

b) Severability. If any one or more sections, clauses or provisions of this Agreement shall be determined by a court of competent jurisdiction or otherwise to be invalid or ineffective for any reason, such determination shall in no way affect the validity and effectiveness of the remaining sections, clauses and provisions of this Agreement.

c) Executed in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts together shall and will constitute one and the same Agreement.

X TRANSFORMATIONAL BROWNFIELD PLAN

The Parties agree in principle that this Project meets the requirements, including the minimum investment requirements, necessary for the BRA Plan #24 to qualify as a Transformational Brownfield Plan under 2017 Public Acts 46, 47, 48, 49 and 50, which amended Act 381, in that the Project will have a transformational impact on and be a catalyst for local economic development and community revitalization and will impact a growth in population, commercial activity and employment. The Parties agree that such a Transformational Brownfield Plan constitutes a public purpose. Upon the request of the Developer, and subject to approval by the City, the Parties may consider revising the list of Eligible Activities and using the available proceeds from the Transformational

Brownfield Plan for the mutual benefit of the Developer and the City. In such case the Developer and the City would mutually seek such further approvals as necessary from ELBRA, the MSF and the Michigan Department of Treasury. Additionally, the City will support the Project as its first Transformational Brownfield Plan submission for 2017.

SIGNATURE PAGES FOLLOW

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

WITNESSES:

By_____

CITY OF EAST LANSING

By_____

_____, Mayor

Approved as to form:

By_____

_____, its City Attorney

By _____

_____, its City Clerk

Approved as to form:

By_____

_____, its Bond Counsel

Certified as to sufficiency of funds:

By_____

_____, its Finance Director

EAST LANSING BROWNFIELD REDEVELOPMENT AUTHORITY

By_____

By_____

_____, Chairperson

DOWNTOWN DEVELOPMENT AUTHORITY

By_____

By_____

_____, Chairperson

DEVELOPER

By_____ By_____

_____, its Authorized Signatory

East Lansing City Center District

Master Development Agreement
Schedule of Exhibits

Exhibit	Description
A	Reserved
	Legal Descriptions
B-1	Legal Description-Grand River Anchor Retail Property-Building A1
B-2	Legal Description-Grand River Housing Property-Building A2
B-3	Legal Description-Albert Avenue Property
B-4	Legal Description-Albert Retail Property-Building B1
B-5	Legal Description-Albert Parking Property-Building B2
B-6	Legal Description-Albert Active Adult Housing Property-Building B3
	Building and Site Specifications
C-1	General Design Plans-Buildings A1 and A2
C-2	General Design Plans-Buildings B1 and B3
C-3	Building and Site Specifications-Building B2
C-4	Infrastructure Improvement and Public Improvement Site Specifications
	Lease Agreements and Condominium Documents
D-1	Master Ground Lease
D-2	Master Deed and Related Condominium Governing Documents
D-3	Joint Agreement for Payment of Construction Costs
E	Parking Lease Agreement(s)
F	Schedule of Applicable Project Related Fees, Charges and Credits
G	Construction Containment Plan
H	ELBRA TIF (BRA) Plan #24
I	Brownfield Reimbursement Agreement
J	ELBRA-DDA Interlocal Agreement
K	Construction Lender Letter Confirming Assignment
L	Proof of Funding (Private Lender, MSF Awards, etc.)
M	Finalization of Exhibits
N	City Approved Eligible Activities

4836-9909-4594.23