

DEVELOPMENT AGREEMENT

This Agreement to Purchase and Develop Land is entered into as of _____, 20__ (the “Effective Date”), by and between the City of Buchanan, a Michigan public body corporate, acting by and through the _____, whose address is _____, Michigan _____, referred to herein as the “City,” and _____, a Michigan _____ liability company, whose address is _____, Michigan _____, referred to herein as “Developer.”

RECITALS:

A. Developer has offered to purchase and develop land located in the City of Buchanan, the legal descriptions of which is set forth on Exhibit A attached hereto and incorporated by reference, in accordance with the terms, covenants, and conditions of this Agreement.

B. Developer has represented to the City that it has the qualifications and financial ability to develop the land in accordance with this Agreement.

C. The City believes that the development of the Property pursuant to this Development Agreement and the fulfillment generally of this Development Agreement are in the best interests of the City and the health, safety and welfare of its residents.

In consideration of the foregoing recitals and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions shall, wherever they appear in this Agreement, be construed as follows:

1.01 “**Advance**” shall mean those funds deposited with the City by Developer upon the execution of this Agreement as set forth in Article 3.

1.02 “**Affiliate**” shall mean a parent, subsidiary or other company controlling, controlled by or in common control with Developer.

1.03 “**Agreement**” shall mean this Agreement and the following Exhibits and Schedules attached hereto and expressly made a part hereof:

- | | |
|-----------|--|
| Exhibit A | Legal Description of Property |
| Exhibit B | Site Plan Summary |
| Exhibit C | Quit Claim Deed |
| Exhibit D | Irrevocable Power of Attorney |
| Exhibit E | Certificate of Authority |
| Exhibit F | Developer’s Acknowledgment and Receipt of Development Plan |

1.04 **“Agreement Term”** shall mean the period of time from the Effective Date until the Certificate of Completion is issued by the City or this Agreement is terminated.

1.05 **“Associate”** shall mean any consultant, contractor, subcontractor, or any other party engaged by Developer and the agents and employees of said parties engaged by Developer to undertake any of the activities associated with the performance of this Agreement.

1.06 **“Certificate of Completion”** shall mean the written certification issued by the City as provided in Section 11.02 upon the completion by Developer of all Improvements on the Property in accordance with the terms and conditions of this Agreement.

1.07 **“City”** shall mean the City of Buchanan, a Michigan public body corporate.

1.08 **“Closing”** shall mean a date agreed upon by the parties hereto for the transfer of title to the Property, but in no event shall said date be more than ninety (90) days from the Effective Date.

1.09 **“Construction Plans”** shall mean all plans, drawings, specifications, related documents, and construction progress schedule, respecting the Improvements to be constructed on the Property by Developer.

1.10 **“Deed”** shall mean the Quit Claim Deed conveying the Property to Developer by the City in substantially the form as attached hereto as Exhibit C.

1.11 **“Developer”** shall mean the party specified as such in the preamble to this Agreement, its employees and agents and its successors, assigns, personal representatives, executors, and administrators.

1.12 **“Development Plan”** shall mean the Development Plan for Redevelopment Project No. ____, and subsequent modifications thereto as recorded in Liber ____, page ____, as approved and adopted by the City of Buchanan’s City Commission on _____, 20__, and as further modified in accordance with Article 22 of this Agreement, which is incorporated in this Agreement by reference and made a part hereof.

1.13 **“Encumbrance”** shall mean any covenant, license, right of way, easement, limitation, condition, reservation, restriction, right or option, mortgage, pledge, lien, construction lien, mechanic's lien, charge, conditional sale or other title retention agreement or arrangement, encumbrance, lease, sublease, security interest, or trust interest.

1.14 **“Event of Default”** and **“Default”** shall have the meanings as set forth in Article 15 of this Agreement.

1.15 **“Improvements”** shall mean the construction proposed in the preliminary development proposal submitted to the City by Developer containing site plans and elevation drawings relative to the uses Developer agrees to construct on the Property a summary of which is set forth in Exhibit B attached hereto and made a part hereof.

1.16 **“PC”** shall mean the City of Buchanan Plan Commission.

1.17 **“Project”** shall mean the development of the Property and the construction of the Improvements thereon in accordance with this Agreement.

1.18 **“Property”** shall mean that parcel of land more particularly described in Exhibit A attached hereto and made a part hereof.

1.19 **“Purchase Price”** shall mean that sum specified in Section 3.01 hereunder to be paid to the City by Developer in consideration for the City conveying the Property to Developer for development in accordance with the terms of this Agreement.

ARTICLE 2. ENGAGEMENT OF PARTIES

2.01 **Engagement.** The City hereby agrees to convey the Property in consideration of Developer's agreement contained herein to purchase and develop the Property in accordance with the terms, conditions and covenants of this Agreement. Developer agrees to purchase and develop the Property in accordance with the terms, conditions and covenants of this Agreement.

2.02 **City Approval of Agreement.** Prior to closing and the delivery of the Deed, Developer shall have no authority to commence construction activities on the Property without prior written approval by the City. In no event shall Developer commence construction activities prior to the recording of this Agreement with the Office of the Berrien County Register of Deeds. Developer will pay the cost of recording this Agreement.

ARTICLE 3. SALE / COMPENSATION

3.01 **Purchase Price.** Subject to the terms, covenants, and conditions of this Agreement, Developer agrees to purchase and develop, and the City agrees to convey, the Property for the price of _____ Dollars (\$_____.00), to be paid by wire transfer or certified or cashier's check simultaneously with the delivery of the Deed.

3.02 **Advance.** The Advance of _____ Dollars (\$_____.00) is to be deposited with the City by Developer prior to the execution of this Agreement, and is to be held by the City as security for the performance of the obligations of Developer contained herein. Upon the issuance of the Certificate of Completion, the Advance will be returned to Developer without interest. If Developer does not satisfy the requirements for issuance of the Certificate of Completion in accordance with the terms of this Agreement, the City is entitled to retain the Advance in whole or in part, in the City's sole discretion, without rebate to Developer, in partial settlement of any claims it may have against Developer for breach of this Agreement.

ARTICLE 4. TITLE INSURANCE/DEED

4.01 Title Insurance.

a. **Commitment.** Developer has obtained a commitment for an owner's title insurance policy for the Property setting forth the status of the title of the Property and all encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, and all other matters of record affecting the Property, subject to the terms, covenants, and conditions of this Agreement and standard exceptions (the “Title Commitment”). The Title Commitment will be in the amount of the Purchase Price and will be issued by a responsible title insurance company acceptable to the City and authorized to do business in the State of Michigan. Upon receipt of the Title Commitment, Developer will deliver to the City a copy of the Title Commitment together with copies of all instruments of record referred to therein. Developer shall have the right, within ten (10) days of the Effective Date, to identify in writing those exceptions and/or title encumbrances identified therein that are unacceptable to it, in which event the City shall have reasonable opportunity for a period not to exceed twenty (20) days (but not the obligation) to cure or remove such exceptions (if any) and to satisfy any other requirements set forth therein. The City's failure or inability to do so, or conscious decision not to do so, communicated in writing to Developer, shall give Developer the right to terminate this Agreement and be relieved of all further obligation to perform hereunder, in which event the City shall promptly return any and all funds deposited by Developer with the City as an Advance as defined in Article 3 herein above.

b. Policy. The City shall not order or pay the premium for an owner's policy of title insurance, nor will the City provide any estoppel or seller's certificate to the Developer or the title insurance company. Any title insurance policy insuring Developer's title to the Property, whether an owner's or mortgage policy, with or without standard exceptions, will be at Developer's expense.

4.02 Title/Deed.

a. Conveyance. At the Closing, if Developer has complied with all of those terms and conditions precedent to Closing as specified hereunder, the City will deliver the Deed to the Property to Developer.

b. Title conveyed. Such conveyance and title shall be a determinable fee pursuant to Articles 13 and 16, and shall, in addition to the conditions and covenants hereinafter provided for, be subject to existing easements and restrictions of record, all applicable zoning and building laws, and other encumbrances (if any) specifically referred to in Exhibit A. Developer acknowledges that the City has not made, and by execution of this Agreement or any Deed does not make, any representations or warranties whatsoever with respect to title to the Property.

ARTICLE 5. TAXES AND ASSESSMENTS

5.01 Property on Tax Rolls at Closing. In the event that the Property is on the tax rolls at the date of Closing, all taxes and assessments which have become a lien upon the Property at the date of Closing shall be paid by the City provided that current City and County taxes shall be prorated and adjusted to the date of Closing or transfer of possession, whichever is earlier, on a due date basis.

5.02 Property Not on Tax Rolls at Closing. In the event that the Property is not on the tax rolls at the date of Closing, Developer agrees to pay to the City at Closing an amount equal to the ad valorem taxes which would have been levied had the Property been on the tax rolls, prorated from the date of Closing or transfer of possession, whichever is earlier, to the dates when the next tax bills are issued after the date the Property is placed back on the tax rolls. For purposes of this Section 5.02 only the Taxable Value of the Property shall be equal to one-half (1/2) the Purchase Price. The Property will be placed back on the tax rolls as of December 31 of the year in which the Closing or transfer of possession takes place. For example, if the date of Closing or transfer of possession is on or before December 31, 2021, the Property would be placed back on the tax rolls effective December 31, 2021, and the next tax bills issued would be July 1, 2022 for the summer taxes and December 1, 2022 for the winter taxes. The payment for taxes would be pro-rated to June 30, 2022 and November 30, 2022, respectively. If the date of Closing and transfer of possession take place on or after January 1, 2022, the Property will not be placed on the tax rolls until December 31, 2022, and tax bills will not be issued until July 1 and December 1, 2023. In that case, the payment for taxes would be prorated to June 30 and November 30, 2023.

ARTICLE 6. REPRESENTATION AND WARRANTIES

6.01 Inducement. In order to induce the City to enter into this Agreement, Developer represents and warrants to the City that:

a. Organization and Qualification. It is a duly organized _____ company, validly existing and in good standing under the laws of the State of Michigan, and has full power and authority to carry on its business as it is now being conducted.

b. Power to Make Agreement. It has the power to make, deliver and perform this Agreement and finance the Improvements 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.

c. Lack of Legal Impediments. 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, the violation of which would or could materially affect its ability to fulfill its obligations under this Agreement, or any provision of Developer's organizational documents (articles of organization and operating agreement) and will not violate any provision of, or constitute a default under, any agreement or contract to which it is a party, the violation of which would or could materially affect its ability to fulfill its obligations under this Agreement.

d. Legal Operation. It is, to the best of its knowledge, in compliance with all existing laws and regulations applicable to it, the violation 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.

e. Litigation. As of the date of this Agreement, 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 or any of its property, that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement.

f. Financial Statements. The financial statements, if any, previously submitted to the City in connection with this Agreement (i) are complete and correct in all material respects, (ii) accurately present its financial condition as of the dates, and the results of its operations for the periods, for which same have been furnished, and (iii) have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods covered thereby.

g. Other Information. To the best of its knowledge, all other written information, reports, papers, and data, if any, given to the City by Developer with respect to it 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 and all projections of future results are, in its opinion, reasonable.

h. Other Agreements. To the best of its knowledge, it is not a party to any agreement or instrument materially and adversely affecting its present or proposed business, properties or assets, operation or condition, financial or otherwise, not disclosed to the City in writing; and it is not in default in the performance, observance, or fulfillment of any of the material obligations, covenants, or conditions set forth in any agreement or instrument to which it is a party, the violation of which would or could materially affect its ability to fulfill its obligations under this Agreement.

i. Brokerage and Finder's Fees and Commissions. It will indemnify the City and hold it harmless with respect to any commissions, fees, judgments, or expenses of any nature and kind which it may become liable to pay by reason of any claims by or on behalf of brokers, finders or agents incident to this Agreement and the transaction contemplated hereby resulting from any acts by Developer or any litigation or similar proceeding arising therefrom unless the City has by separate agreement provided for such payment.

j. Security Ownership. The listing of the record owners owning ten percent (10%) or more of the membership, shares or ownership interests issued by Developer and Affiliates as of the date of this Agreement which indicates the names of such record owners, their percentage ownership thereof, the type of interest owned thereby, the number of units of such interest and the issuer thereof, is true and complete in all respects. It has no knowledge of any persons or entities other than the record owners of said interests having any beneficial or other interest therein.

6.02 Survival. All of the representations and warranties contained in this Article 6 or pursuant hereto shall survive the delivery of the Deed and shall remain in full force and effect until the Certificate of Completion

is issued. Developer shall indemnify and hold the City harmless from and against, and shall be obligated to pay and reimburse the City for, any and all loss and damage (including reasonable attorneys' fees, whether inside or outside counsel) which the City may sustain or incur as a result of any misrepresentation or breach of warranty on the part of Developer due to the City's reliance thereon.

ARTICLE 7. TESTS AND SURVEY; CONDITION OF PROPERTY

7.01 Due Diligence. Subject to the conditions set forth below, Developer shall have a period of sixty (60) days from and after the Effective Date (the "Due Diligence Period") to conduct physical inspections, surveys, soil boring and bearing tests, and such environmental due diligence on or for the Property as Developer deems appropriate to determine the suitability of the Property for the Development (the "Due Diligence Activities). Permitted Due Diligence Activities may include, but shall not necessarily be limit to investigations, environmental site assessments and/or a Baseline Environmental Assessment ("BEA") as defined in Part 201, of the Natural Resources and Environmental Protection Act ("NREPA"), being MCL 324.20101 *et. seq.*, and such other investigations and assessments as Developer may deem appropriate to determine the condition of the Property and the Property's compliance with other federal, state and local laws, rules, regulations, and orders relating in any way to the protection of the environment and natural resources. The City will, prior to the transfer of possession or title, authorize the Developer, subject to a fully executed Right-of-Entry, to make soil boring and bearing tests and undertake such surveying and environmental due diligence activities as Developer deems appropriate, provided such activities do not interfere with demolition or site improvement activities of the City or the rightful use of the Property by a tenant in possession or other third party, if any, and subject to Developer's compliance with the requirements of the Right-of Entry, this Article 7 and other provisions of this Agreement . All such testing shall be done at Developer's sole risk and expense. Developer shall submit to the City a copy of each survey or report generated as a result of such activities. Developer shall give prior notice to the City to inspect and investigate the condition of the Property, including its environmental condition, and shall conduct such inspection and investigation as Developer desires during normal business hours. Prior to entering onto the Property for such purposes, Developer shall (i) request authorization from the City's _____ and provide details of the intended activities and other documentation deemed necessary, according to City procedure, (ii) obtain a Right-of-Entry letter, (iii) execute said letter, and (iv) comply with all conditions and requirements stated therein. Developer shall use all reasonable efforts to minimize damage to the Property in connection with such entry and shall fully restore the Property to the condition existing prior to such entry. Developer shall indemnify, defend and hold the City harmless from and against any and all loss, cost, liability and expense, including reasonable attorneys' fees and litigation costs, suffered or incurred by the City as a result of the Developer's activities, in accordance with the Right-of-Entry.

Prior to the Closing, Developer shall obtain, at Developer's cost, a survey of the Property made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys and the requirements of Michigan Public Act 132 of 1970 (as amended) (the "Survey"). Developer shall provide to City a copy of the Survey immediately upon receipt by Developer. The Survey will be certified to City.

7.02 Results of Due Diligence Activities. If Developer concludes as a result of the Due Diligence Activities that the condition of the Property is, in Developer's sole discretion, unsatisfactory, Developer shall notify the City in writing within ten (10) days after expiration of the Due Diligence Period. Such notice shall terminate this Development Agreement, and Developer shall be entitled to a refund of the Advance prepaid in the amount specified in Article 3.

If Developer fails to conduct the Due Diligence Activities within the Due Diligence Period, or fails to object to the condition of the Property based upon the results of the Due Diligence Activities within ten (10) days after expiration of the Due Diligence Period, then Developer shall be deemed to have waived any right to object to the condition of the Property.

7.03 Condition of Property. Developer takes the Property as it finds it, "**AS IS AS-IS, WHERE-IS, WITH ALL FAULTS,**" and the City makes no implied or express representations or warranties as to its fitness

for absolutely any purpose whatsoever, including, but not limited to the proposed use(s) set forth in this Agreement, Exhibit B to this Agreement, any warranty that the Property is fit for the Developer's purpose or regarding the presence or absence of Hazardous Materials at, on, in, under, about or from the Property and compliance of the Property with Environmental Laws, or otherwise. Developer acknowledges that neither the City nor any agent or employee of the City has made any warranty, representation or agreement, either express or implied and Developer has not relied on any representation, warranty or agreement of any kind made by the City or any agent or employee of the City, concerning (a) the physical or environmental condition of the Property; or (b) the presence or absence of any condition, substance or material, including but not limited to, any waste material, equipment or device at, in, on, about, under, or from the Property. Developer agrees that the disclosures of the City concerning the Property and its condition are intended to satisfy any duties the City may have under the law, including but not limited to statutes, the Environmental Laws, and the common law. Developer shall rely solely on its own due diligence with respect to such inquiries, investigations and assessments. By executing this Agreement, Developer acknowledges that it is satisfied with the condition of the Property, subject only to inspection of the Property, review of title, and the results of the tests, investigations, and surveys permitted under Section 7.01, above. If, prior to Closing, Developer fails to undertake such investigations and/or obtain such test results and surveys, or fails to object to the condition of the Property based upon the results of such tests, investigations or surveys, or fails to deliver copies of any and all reports of such tests, investigations and/or surveys to the City, Developer shall be deemed to have waived any right to object to the condition of the Property and shall be deemed to have declared its full satisfaction therewith.

7.04 Release of City from Liability; Indemnification. Developer hereby releases the City and its officials, employees, and agents from any and all liability for any defects in or conditions of the Property, including but not limited to any surface, subsurface, latent or patent conditions whether naturally occurring or by action of any party, or conditions currently existing thereon, including but not limited to conditions described in Section 19.05, but subject to Section 19.05. Subject to Section 19.05, Developer hereby expressly agrees to and shall indemnify and hold the City and its officials, employees, and agents harmless from any claims by it or any other party for any personal injury or other loss resulting from any such Property conditions that occur or accrue after the date of possession or Closing, whichever is earlier. Developer, for itself and its successors and assigns, expressly waives and releases all Environmental Claims (whether for personal injury, property damage or otherwise) against the City and its officials, employees, and agents in connection with or related to the Property or any aspect thereof. Developer releases and discharges the City and its officials, employees, and agents from all Environmental Claims that Developer may now or hereafter have against the City in connection with or arising out of the condition of the Property. To the fullest extent possible under law, the City and its officials, employees, and agents shall not be liable to the Developer and the Developer shall promptly pay to the City and shall indemnify, defend and hold the City and its officials, employees, and agents harmless from and against, all loss, cost, liability, obligation, penalty, claim, damage and expense (including, but not limited to, fees and expenses for attorneys, expert witnesses, and other consultants) that the City and its officials, employees, and agents may suffer or incur as a result of, arising out of, or in connection in any way with, any violation or alleged violation of any Environmental Law, or any Environmental Claim, whenever occurring whether before or after the Closing or the transfer of possession to Developer.

7.05 Section 16 of NREPA. Check the box below if the Property is a "facility" under Part 201 of NREPA and provide the required information.

Pursuant to the requirements of Section 16 of Part 201 of NREPA, MCL 324.20116, Developer agrees that the City has notified Developer that the property is a "facility" as that term is defined in Part 201 of NREPA. The general nature and extent of any land or resource restrictions or any release at or from the facility that is known to the City is more fully described in certain reports, copies of which have been provided to Developer. By its execution of this Agreement, Developer acknowledges receipt of the following reports:

[Identify such environmental reports, if any, including Phase I and Phase II Environmental Site Assessments, with specificity. If none, so state.]:

None

ARTICLE 8. CLOSING

8.01 Time and Place of Closing. The City will notify Developer of the prospective closing date not less than ten (10) calendar days prior to the Closing, unless otherwise agreed between the parties. The Closing shall take place within thirty (30) days after satisfaction of the conditions to closing as specified in Section 8.02 of this Agreement, but not later than ninety (90) days from the Effective Date. The Closing shall take place at the office of the City's _____, or such other location designated by the City.

8.02 Conditions to Closing.

a. **City's Obligations to Close.** The obligation of the City to effect a Closing hereunder shall be subject to receipt of a resolution by the Buchanan City Commission authorizing the transaction, fulfillment of all conditions contained therein and fulfillment by Developer of each of the following conditions precedent:

1. **Legal Opinion of Developer's Counsel.** There shall have been a legal opinion delivered to the City by counsel for the Developer dated the Closing date, and supported by a certificate from Developer, to the effect that:

(a) That Developer is a duly organized _____ company, validly existing and in good standing under the laws of each jurisdiction where the nature of the business conducted by it or the properties owned or leased by it requires such qualifications.

(b) Developer has the power to make, deliver and perform this Agreement, to give the required Advance, to borrow pursuant to this Agreement and to make, deliver and perform all required loan instruments necessary for the performance of this Agreement and has taken all necessary action to authorize each of the foregoing.

(c) This Agreement has been duly executed and delivered by a duly authorized member of Developer, and this Agreement constitutes a valid obligation of Developer, legally binding and enforceable upon it in accordance with its terms.

(d) So far as is known to such counsel, the execution, delivery, and performance of this Agreement will not violate any provision of any existing law or regulation, order or decree of any court or governmental entity, or any provision of Developer's organizational documents (articles of organization, and operating agreement) or violate any provision of or constitute a default under any agreement or contract to which Developer is a party.

(e) So far as is known to such counsel, no default has occurred and is continuing under this Agreement.

(f) So far as is known to such counsel, Developer is in compliance with all building and zoning ordinances and requirements, and all other applicable state and federal statutes and regulations and local laws applicable to the conduct of Developer's

business as presently being conducted, the violation 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.

(g) Developer has secured the Title Commitment and met all other requirements of Article 4 of this Agreement.

2. Resolution of Developer's Authority. Developer shall furnish to the City a certified copy of a resolution satisfactory to the City in form and substance, duly adopted by the _____ of Developer, authorizing the execution, delivery and performance of this Agreement and all other documents and actions contemplated hereunder. Developer shall also furnish to the City an incumbency certificate, executed by the proper _____ of Developer, identifying the _____ of Developer.

3. Documents and Legal Matters. All documents reasonably requested by the City shall have been submitted to the City and shall be satisfactory in form and content as determined by the City.

4. Delivery of Financing Documents. Developer shall have furnished the City evidence satisfactory to the City of Developer's financial ability to complete the Project, which evidence, if requested by the City, may consist of validly executed financing documents within the reasonable discretion of the City acceptable to the City from qualified financial institutions of recognized responsibility, evidencing sufficient capital on deposit to secure financing, which capital shall not be subject to withdrawal prior to Closing. The City may, in its reasonable discretion, waive such requirements if Developer submits other evidence satisfactory to the City of Developer's financial ability to complete the Project.

5. Evidence of Insurance. Developer shall obtain, prior to Closing and prior to entry onto the Property for the purposes set forth in Article 7, and maintain at its expense during the term of this Agreement and any extension thereof the insurance described in Section 9.02. Developer shall provide evidence of such insurance to the City in accordance with Section 9.02.

6. Payment of Purchase Price and Closing Costs. Developer shall have tendered payment of the Purchase Price, the Advance, and the closing costs payable by Developer.

7. No Default. There shall be no existing Default by Developer under this Agreement.

8. Delivery of Construction Plans. Developer shall have delivered to PC the documents required pursuant to Article 10 of this Agreement.

9. Site Plan Approval. Developer shall have obtained from the PC approval of its final site plan, elevations, landscape, fencing, lighting, and signage plans, substantially consistent with the site plans and elevations drawn _____ and dated _____, 20____ (collectively referred to as the "Site Plan"), subject to PC's consent to and approval of such additional terms and conditions as may be required by the PC. To be acceptable to PC, the Site Plan must specifically include _____.

10. Approval of Curb-Cut. [Intentionally Omitted]

11. Landscape Plan Approval. Developer shall have obtained from the PC approval of its landscape, fencing, and lighting plans. The plans to be so reviewed and subject to such approval shall include _____.

13. Zoning. The City of Buchanan Zoning Ordinance, designates the Property “__” (_____) and incorporates and reflects the development proposal and plans as described in the Site Plan.

14. City Commission Approval. The City Commission shall have adopted a resolution authorizing the sale of the Property, as legally described herein, and otherwise without preconditions.

b. Developer's Obligations to Close. The obligation of Developer to effect a Closing hereunder shall be subject to the fulfillment by the City of each of the following conditions precedent:

1. Title. Title to the Property shall be in the form required by this Agreement.

2. City Council Approval. The City Council shall have adopted a resolution authorizing the transaction contemplated by this Agreement.

3. Acceptable Condition of Property. The physical and environmental condition of the Property shall be acceptable to Developer, pursuant to Article 7.

8.03 Delivery of Deed and Possession. The City will deliver the Deed to the Property and the possession thereof to Developer at the Closing provided that Developer has complied with all conditions precedent as specified herein. Developer shall be responsible for recording the Deed and paying all recording costs (including the cost of the documentary stamp tax on the Deed, if any).

8.04 Payment of Expenses. Developer shall pay all costs, fees, and out of pocket expenses of whatsoever kind or nature related to the procurement of services of Associates and contractors, etc. which have been incurred pursuant to the making of this Agreement and shall hold the City harmless with respect to the payment of same notwithstanding anything contained herein or elsewhere to the contrary.

8.05 City's Failure to Convey. In the event the City does not tender the conveyance of the Property in the manner provided in this Agreement, and any such failure shall not be cured within thirty (30) days after written demand by Developer, then, provided Developer is not in Default under this Agreement, at the option of Developer, this Agreement shall be canceled in accordance with Section 14.04, or, if all of the conditions set forth in Section 8.02a above have been satisfied, Developer shall be entitled to seek specific performance of this Agreement.

ARTICLE 9. AFFIRMATIVE COVENANTS

Developer covenants and agrees that until the Certificate of Completion is issued it will:

9.01 Maintenance of Business and Existence. Continue to engage in business of the same general type as now conducted by it so that its principal business shall continue to be as stated herein, will do all things necessary to preserve, renew, and keep in full force and effect its company existence and rights and franchises necessary to continue such business and will preserve and keep in force and effect all licenses and permits necessary for the proper conduct of its business.

9.02 Maintenance of Insurance. Maintain at its expense during the Agreement Term and any extension thereof, the following insurance:

a. Workers' compensation insurance for employees that meets Michigan's statutory requirements and Employers' Liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) each accident.

- b. Automobile liability insurance covering all owned, hired, and non-owned vehicles with personal protection insurance to comply with the provisions of the Michigan No-Fault Insurance Act, including residual liability insurance, with minimum bodily injury limits of One Hundred Thousand Dollars (\$100,000.00) each person and Three Hundred Thousand Dollars (\$300,000.00) each occurrence and minimum property damage limits of One Hundred Thousand Dollars (\$100,000.00) each occurrence.
- c. Comprehensive general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) combined single limit, each occurrence, for bodily injury, property damage, products, completed operations and blanket contractual liability for all written agreements.

Developer agrees that it will obtain the same written covenant with respect to worker's compensation insurance from all Associates. All of said insurance policies shall name Developer as the insured and, except for the worker's compensation insurance, shall name the City as an additional insured and shall, to the extent obtainable, be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days' prior notice to the City. Certificates of insurance evidencing such coverage shall be submitted to the City prior to the Closing. If the insurance is on a "claims made" basis, evidence of insurance shall be submitted for three (3) years after issuance of the Certificate of Completion.

9.03 Payment of Obligations. With regard to the Property, Developer shall pay and discharge all its indebtedness for borrowed money, and all liabilities for judgments, taxes, assessments and governmental charges, except where the same may be contested in good faith and maintain adequate reserves for all contingent liabilities. Provided, that if the City has reasonable grounds to believe that Developer will not timely discharge such obligations, the City may, upon written notice to Developer, at the City's option and without waiving any of its rights hereunder, pay either before or after delinquency, any or all of the said obligations and all sums so advanced or paid by the City shall become a lien upon the Property and every payment so made shall bear interest from the date of such failure to pay to the date of repayment to the City at the interest rate applicable to a federal income tax deficiency or penalty.

9.04 Books and Records. Maintain, at all times, true and complete books, records and accounts in which true and correct entries shall be made of its transactions concerning this Agreement in accordance with generally accepted accounting principles consistently applied.

9.05 Notification of Defaults. Promptly notify the City of any Default under or pursuant to this Agreement, whether or not any requirement of notice or lapse of time, or both, or any other condition has been satisfied or has occurred.

9.06 Access to Records and Premises. Afford access by the City to the Property at all for purposes of inspection, and permit the City to inspect and make and take away copies of any and all of its documents or records relative to this Agreement. Notwithstanding the foregoing, City agrees to maintain the confidentiality of all records and the information contained therein obtained from Developer, to the extent allowable under applicable law.

9.07 Notification Relating to Development Lender. Promptly notify the City of any refusal by any development lender to make a requested advance, any demands for escrow amounts under deficiency clauses, any declaration that default has occurred under any loan agreements, or declaration that development stage specifications for the Project are unacceptable.

9.08 Further Information. To the extent reasonable, promptly furnish the City from time to time such other information regarding its operations, business, affairs and financial condition concerning this Agreement that the City may reasonably request.

9.09 Further Assurance. Upon request, execute and deliver, or cause to be executed and delivered, such further instruments and do or cause to be done such further acts to the extent reasonably necessary or proper to carry out the provisions, intent and purpose of this Agreement.

ARTICLE 10. CONSTRUCTION PLANS

10.01 Submittal. As promptly as possible after the Effective Date, and in any event no later than sixty (60) calendar days from the Effective Date, and as a condition precedent to the issuance of any building permit, Developer shall submit to PC for approval Construction Plans in sufficient completeness and detail to show that the Improvements and the construction thereof will be in accordance with the provisions of this Agreement. In the event, Developer is unable to submit the Construction Plans within the timeframe required of this Section 10.01, but has demonstrated to the satisfaction of PC, in its sole discretion, that substantial progress has been made in that regard, PC may extend the date for submission of the Construction Plans for a reasonable period of time, not to exceed ninety (90) calendar days.

10.02 Approval of Construction Plans. PC shall promptly review the submitted Construction Plans. If the Construction Plans conform to the terms and provisions of this Agreement, as determined within the sole and reasonable discretion of PC, PC shall approve in writing such Construction Plans and no further filing by Developer or approval by PC thereof shall be required in satisfaction of this Agreement except with respect to any material change. In the event of a dispute with respect to what constitutes a material change, PC's reasonable determination shall control. If Developer desires to make any material change in the Construction Plans after their approval by PC, Developer shall submit the proposed change to PC for its approval. It shall be within PC's sole and reasonable determination to approve or reject such change.

If the PC rejects the Construction Plans in whole or in part as not being in conformity with this Agreement, Developer shall, within thirty (30) calendar days after receiving written notification of such rejection, (which notice will state the reasons PC believes the Construction Plans are not in conformity with the Agreement) either: (i) submit new or corrected Construction Plans which are in conformity therewith;; or (ii) elect to terminate the Agreement and receive return of all sums paid to the City pursuant to this Agreement. The Developer's election to terminate the Agreement under this Section 10.02 shall not constitute or be construed as an Event of Default by Developer. Upon termination under this Section 10.02, reconveyance of the Property shall be in accordance with Section 14.04 of this Agreement.

The provisions herein provided relative to approval, rejection and resubmission of corrected Construction Plans with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by PC; or Developer may elect to terminate this Agreement as provided in this Section 10.02.

10.03 Other Approvals. Approval by PC of the Construction Plans is in addition to any approvals by the City (or other agencies or departments) for building permits, use permits, certificates of occupancy, zoning approvals and variances, and other permits whether required by other City departments and/or agencies or otherwise. Developer shall be responsible for applying for all permits and zoning approvals and/or variances to allow for the uses it will make of the Property and the Improvements it will construct on the Property. Execution of this Agreement by the City shall not be deemed a grant of such permits, approvals, or variances, or a waiver of any of the procedural or substantive requirements of the departments and/or agencies responsible for issuing the permits, approvals and/or variances.

ARTICLE 11. PERFORMANCE OF CONSTRUCTION

11.01 Commencement and Completion. Developer shall promptly begin and diligently complete the development of the Property throughout the construction of the Improvements thereon, and shall begin such construction within ____ () months from the date of approval of the Construction Plans under Section 10.2. Construction shall be completed within ____ () months of the date of approval of the Construction Plans under Section 10.02.

11.02 Certificate of Completion.

- a. Subsequent to the proper completion of the Improvements in accordance with the provisions of this Agreement, the City shall furnish Developer with an instrument certifying such completion (herein called the "Certificate of Completion"). Upon written request by Developer, the Property may be divided into parts or parcels, provided that such subdivision, in the sole opinion of the City, is not inconsistent with the Development Plan or this Agreement. At its sole and reasonable discretion, the City may furnish Developer with individual Certificates of Completion upon proper completion of the Improvements relating to any such part or parcel.
- b. When Developer considers all Project work required hereunder to be complete, in conformance with this Agreement, and ready for final inspection, it shall so notify the PC. Within thirty (30) days of such written notification, the PC will thereafter make or cause to be made such inspection. If, upon such inspection, the PC finds the entire work not fully completed or portions not reasonably acceptable under the terms and conditions of this Agreement, the PC will so notify Developer in writing indicating in detail in what respects Developer has failed to complete the Improvements in accordance with this Agreement or is otherwise in Default, and what measures and acts Developer must take or perform in order to cure such nonconformity or Default. Developer shall thereafter promptly complete the Improvements in accordance with such directive so as to conform the construction of the Improvements as required by this Agreement.
- c. Upon the PC's determination that the Project is complete and in conformance with all provisions and requirements of this Agreement, the PC shall issue the Certificate of Completion.
- d. Except as otherwise provided in this Agreement, the Certificate of Completion shall be a conclusive acknowledgment by the PC of satisfaction by Developer of its obligations under this Agreement for the portion of the Property addressed by the Certificate of Completion. The Certificate of Completion shall not, however, constitute evidence of compliance with or satisfaction of (i) any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements, or any part thereof, or (ii) the requirements of any department, agency or entity with respect to any building, occupancy, or other permits.
- e. The Certificate of Completion shall be in such form as can be recorded against the Property. The cost of recording the Certificate of Completion shall be the responsibility of Developer.
- f. In the PC's discretion, Certificates of Completion may be given for each phase if the Project is developed in phases.

ARTICLE 12. COST OF CONSTRUCTION

Developer shall be solely responsible for and shall pay in a timely manner all costs and expenses of whatsoever kind or nature constituting the cost of construction of the Improvements and development of the Project.

ARTICLE 13. RESTRICTIONS ON USE

13.01 Covenants Regarding Use of Property. Developer covenants for itself and its successors and assigns and every successor in interest to the property, or any part thereof, that Developer and its successors and assigns shall:

- a. Devote the Property only to and in accordance with the uses specified in this Agreement. This covenant shall be construed to run with the Property until the issuance of the Certificate of Completion.

b. Devote the Property to and only to and in accordance with, the uses specified in the Development Plan. This covenant shall be construed to run with the Property until the expiration of the period specified in the Development Plan.

c. Not discriminate upon the basis of race, height, weight, marital status, disability, religion, sex, sexual identity or orientation, creed or national origin in the sale, lease or rental or in the use or occupancy of the Property or any Improvements erected or to be erected thereon, or any part thereof. This covenant shall be construed to run with the Property in perpetuity, without limitation as to time.

13.02 Conditions Subsequent. Developer covenants and agrees, for itself and, as applicable, its successors and assigns, and every successor in interest to the Property or any part thereof, that Developer’s rights under this Agreement and its rights, title and interest in and to the Property, are expressly subject to the following terms and conditions, in addition to Developer’s other duties and obligations set forth elsewhere or incorporated into this Agreement:

a. _____.

b. _____.

c. Compliance with Zoning Ordinance. Developer shall at all times hereafter strictly comply with the City of Buchanan Zoning Ordinance, as amended to designate the Property “__” (____), including: _____ Developer’s failure to do so at all times prior to the issuance of the Certificate of Completion shall be a material breach of this Agreement and shall constitute a Default by Developer under Section 15.01(f) hereof.

ARTICLE 14. INABILITY TO OBTAIN FINANCING OR PERMITS

14.01 Prior to Conveyance. In the event that, prior to conveyance of the Property by the City, Developer shall be unable, after diligent effort, to obtain financing to construct the Improvements, as determined within the reasonable discretion of the City, on terms that would generally be considered satisfactory by builders or contractors for Improvements of the nature and type provided in the Construction Plans, then Developer shall have the right to cancel this Agreement in accordance with Section 14.04.

14.02 After Conveyance. If after conveyance of the Property by the City, Developer furnishes satisfactory evidence that it has been unable after diligent effort for a period of at least sixty (60) days to obtain financing or any additional financing necessary for making or completing the Improvements, as determined within the reasonable discretion of the City, on terms that would generally be considered satisfactory by builders or contractors for Improvements of the nature and type provided in the Construction Plans (the “Required Financing”), and Developer shall, if so requested by the City, continue to make diligent efforts to obtain such financing for a period of sixty (60) days after such request, but without success, then this Agreement may be canceled by Developer or the City in accordance with Section 14.04. Notwithstanding the foregoing, either the Developer or the City shall have the right to cancel this Agreement in accordance with Section 14.04 in the event Developer is unable to secure the Required Financing within one (1) year of the Closing.

14.03 Inability to Obtain Permits, Zoning Variances. If Developer notifies the City that it has been unable, after diligent effort, to obtain permits to allow for the uses it will make of the Property or the construction of Improvements or that under the zoning ordinances the Property cannot be used for the purposes and/or uses set forth in this Agreement and Developer, after diligent effort, has been unable to obtain the necessary zoning variances or approvals, then this Agreement shall be canceled in accordance with Section 14.04.

14.04 Cancellation. In the event of cancellation of all or any part of this Agreement as specified above, the City shall refund the Advance and Purchase Price paid, without interest, with a deduction for reasonable costs incurred or damages the City sustains to return the Property to the condition before Developer's entry upon the Property. If such cancellation occurs after conveyance, Developer agrees that upon notification of cancellation of this Agreement, or any part thereof, it will promptly execute and deliver a deed "C" (covenant deed) to the City as to the parcel(s) canceled, receipt of which shall be a condition to refunding the Advance and Purchase Price. Upon such cancellation neither the City nor Developer shall have any further rights against or liability to the other under this Agreement with respect to conveyancing or development of the Property.

ARTICLE 15. DEFAULTS AND EVENTS OF DEFAULT

15.01 Default by Developer. The occurrence of any one or more of the following events shall constitute a Default (also termed "Event of Default") of this Agreement by Developer:

- a. Developer violates its obligations with respect to the construction of the Improvements, as specified in this Agreement, including but not limited to any project deadlines.
- b. Developer fails to pay, when due, real estate taxes or assessments on the Property or any part thereof or places thereon any Encumbrance unauthorized by this Agreement, or suffers any levy or attachment to be made or any materialman's, mechanic's, or construction lien or any other unauthorized Encumbrance to attach.
- c. Developer violates any of the terms and conditions of the Fair Employment Practices Provision, Article 23 herein.
- d. There is any transfer of all or any part of the Property or of any right or interest in all or any part of the Property; or, in violation of Section 18.02 hereunder, there is any change in excess of ten percent (10%) or more in the or distribution of Developer's ownership interests or stock or with respect to the identity of the parties in control of Developer or the degree thereof.
- e. Developer admits in writing its inability to pay its debts generally as they become due, or Developer ceases to conduct business in the normal course by reason of any of the following: (i) The making by Developer of any general arrangement or general assignment for the benefit of creditors; (ii) Developer becoming a "debtor" as defined in 11 USC § 101 or any successor statute thereto (unless, in the case of a petition filed against Developer, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Developer's assets located at the Property or of Developer's interest in this Agreement, where possession is not restored to Developer within sixty (60) days; (iv) the attachment, execution or other judicial seizure of substantially all of Developer's assets located at the Property or of Developer's interest in this Agreement, where such seizure is not discharged within sixty (60) days; or (v) its voluntary or involuntary dissolution. In the event that any provision of this subsection is contrary to any applicable law, such provision shall be of no force or effect.
- f. Developer materially violates any of the terms and conditions of this Agreement.
- g. Developer does not acquire the Property pursuant to a Closing in accordance with this Agreement.

15.02 Failure to Cure Default. Any such Default on the part of Developer as set forth in Section 15.01 and the failure of Developer to cure such Default within ninety (90) calendar days after written demand by the City to correct said Default in the case of Subsections 15.01a, 15.01b, and 15.01c or within thirty (30) days after written demand by the City to cure said Default for Subsection 15.01f shall be deemed to constitute an Event of Default. If Developer is in good faith contesting any amount due under Subsection 15.01b, Developer may, in

lieu of paying said amount, deposit said amount in an escrow account which shall be disbursed upon the resolution of the dispute, or if the amount relates to a construction lien, Developer may bond over the lien in the manner prescribed by law. Defaults pursuant to Subsections 15.01d, 15.01e, and 15.01g are hereby deemed to be material, non-curable Events of Default without the necessity of any notice by the City to Developer thereof or opportunity to cure. The City may, in its sole discretion, waive in writing any Default or Event of Default by Developer.

15.03 Default by the City. The City shall not be in default unless the City fails to perform obligations required of the City within a reasonable time, but in no event later than ninety (90) days, after written notice by Developer to the City, specifying wherein the City has failed to perform such obligation, provided, however, that if the nature of the City's obligation is such that more than ninety (90) days are reasonably required for performance then the City shall not be in default if the City commences performance within such ninety (90) day period and thereafter diligently pursues such performance to completion.

ARTICLE 16. REMEDIES

16.01 Prior to Conveyance. Upon an Event of Default prior to conveyance of the Property, this Agreement and any rights of Developer arising hereunder or otherwise with respect to the City or the Property, may, at the option of the City, be terminated by the City, except as to parcels previously conveyed where a Certificate of Completion has been issued by the City. In the event of such termination, the Advance may be retained by the City as its property without any deduction, offset, or recoupment whatsoever.

16.02 Subsequent to Conveyance. It is expressly understood and agreed between the parties hereto that during the Agreement Term the conveyance of the Property to Developer shall be construed and interpreted as the conveyance of a fee simple determinable interest until issuance of the Certificate of Completion, and that such conveyance shall endure only so long as subsequent to the conveyance and prior to the issuance of the Certificate of Completion there has been no Event of Default. Upon an occurrence of Event of Default, and the City's recording of a notice thereof, title to the Property shall automatically revert in and revert to the City. Upon such reversion/reversion of title, the City shall have the right to re-enter and take immediate possession of the Property. Upon an Event of Default, this Agreement and any rights of Developer arising hereunder or otherwise with respect to the City or the Property, may, at the option of the City, be terminated by the City, except as to parcels previously conveyed where a Certificate of Completion has been issued by the City. Developer agrees to promptly execute and deliver a covenant deed for such Property to the City. In the event of such termination, the Advance may be retained by the City as its property without any deduction, offset, or recoupment whatsoever.

16.03 Appointment of Attorney-in-Fact. Pursuant thereto, Developer hereby irrevocably constitutes and appoints the City, upon an Event of Default, to act as its true and lawful agent and attorney-in-fact, and grants the City full power and authority, upon an Event of Default, to execute in its name and on its behalf one or more deeds reconveying the Property to the City, together with all of Developer's rights, title, and interest therein. Developer shall be bound thereby as if an authorized officer of Developer had personally executed same. Developer shall execute simultaneously with this Agreement an "Irrevocable Power of Attorney" (in substantially the form of Exhibit D attached hereto and made a part hereof) granting such authority to the City.

16.04 Vacation of Property. Developer further acknowledges that any delay or failure to vacate the Property no later than thirty (30) days after title to the Property has vested/reverted back in the City and the City has given notice thereof to Developer will cause irreparable injury to the City not adequately compensable in damages and for which the City has no adequate remedy at law. Developer accordingly agrees that the City may in such event seek and obtain injunctive relief in a court of competent jurisdiction to compel Developer to vacate and abandon such Property, as well as liquidated damages in the amount of 150% of the fair market rental rate per day for each day of such failure or delay.

16.05 Remedies Cumulative. The rights and remedies of the City, whether provided by law or by this Agreement, shall be cumulative, and the exercise by the City of any one or more of such remedies shall not

preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach. No waiver made by the City or Developer shall apply to obligations beyond those expressly waived in writing.

16.06 Waiver of Defense. Developer, for itself and its successors and assigns, and all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, all claims or defenses otherwise available on the ground of its or their being or having become a person in the position of a surety, whether real, personal, or otherwise, or whether by agreement or operation of law. Such waiver shall include, but shall not be limited to all claims and defenses based upon extensions of time, indulgence, or modification of terms of this Agreement.

16.07 Reimbursement of Costs. Developer shall reimburse the City for its expenses, including reasonable attorney fees (whether inside or outside counsel), incurred by the City in connection with the enforcement of or the preservation of any rights under this Agreement including, but not limited to, any costs, damages, and expenses related to the recapture, management and resale of the Property.

16.08 Resale of Reacquired Property; Disposition of Proceeds. Upon the reversion/reverting in the City of title to the Property or any part thereof as provided in Article 16, the City shall, pursuant to its responsibilities under the State law, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as in Article 18 set forth and provided) as soon and in such manner as the City shall find feasible and consistent with the objectives of such law, the Development Plan and this Agreement to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for such Property or part thereof in the Development Plan and this Agreement. Upon such resale of the Property, the proceeds thereof shall be applied as follows:

- a. First, to reimburse the City for all costs and expenses incurred by the City (including, but not limited to, attorneys' fees and salaries of personnel) in connection with the reversion, reversion, recapture, management, and resale of the Property or part thereof (but less any income derived by the City from the Property or part thereof in connection with such management); all insurance premiums, taxes, assessments, and water and sewer charges with respect to the Property or part thereof; any payments made or necessary to be made to discharge any Encumbrances existing on the Property or part thereof at the time of reversion of title thereto in the City or to discharge or prevent from attaching or being made any subsequent Encumbrances due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing the City by Developer and its successor or transferee.
- b. Second, to reimburse Developer, its successor or transferee, up to the amount equal to (i) the sum of the Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by it in making any of the Improvements on the Property or part thereof, less (ii) any gains or income withdrawn or made by it from this Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the City as its property.

16.09 Estate Conveyed. Notwithstanding anything contained in this Agreement to the contrary, the estate conveyed hereby shall be deemed to be a determinable fee during the Agreement Term, and upon the issuance of the Certificate of Completion the possibility of reverter/reversion retained by the City shall automatically expire as to that part of the Property described therein.

ARTICLE 17. COVENANTS TO RUN WITH LAND

Except as provided for in Article 13 hereunder, each and all of the covenants, restrictions, reservations, conditions, and provisions contained in this Agreement are made for the direct, mutual, and reciprocal benefit of the Property and the community and shall be construed and interpreted by the parties hereto as covenants running with the land. Pursuant hereto Developer, by accepting the Deed to the Property, accepts same subject to such covenants, restrictions, reservations, conditions, and provisions and agrees for itself, its successors and assigns to be bound by each of such covenants, restrictions, reservations, conditions and provisions. During the Agreement Term, the City shall have the right to enforce such covenants, restrictions, reservations, conditions and provisions against Developer, its successors and assigns to or of the Property or any part thereof or any interest therein.

ARTICLE 18. RESTRICTION UPON SPECULATION AND ASSIGNMENT

18.01 No Speculation. Developer represents that its purchase of the Property and its other undertakings pursuant to this Agreement are for the purpose of development of the Property in accordance herewith and not for speculation.

18.02 Stock Transfers or Other Transfers of Ownership Interests. Prior to completion of the Improvements as certified by the City there shall be no transfer by any party owning ten percent (10%) or more of the shares or other ownership interests in Developer without the prior written approval of the City. There shall not be, without prior written approval of the City, any other similarly significant change in the ownership of such stock or other interests or in the relative distribution thereof or with respect to the identity of the parties in control of Developer by other means, whether by increased capitalization, merger with or acquisition by another legal entity, or by amendment of organizational documents or issuance of additional or new shares, ownership or membership interests, shares or classifications thereof, or otherwise. Notwithstanding anything contained in this Section 18.02 or elsewhere in this Agreement, the owners of interests in Developer shall be permitted to transfer such ownership interests to (i) other existing owners of such interests or (ii) member(s) of their immediate family, or (iii) trusts in connection with estate planning, or (iv) entities owned by any of the foregoing, provided that such a permitted transfer does not constitute or cause a significant change in the identity of parties in control of Developer.

18.03 Prior Approval of Assignment. Developer will not, prior to the issuance of the Certification of Completion, make any sale, assignment, conveyance or lease of any trust or power, or transfer in any other form with respect to this Agreement or the Property, without the prior written approval of the City. Any proposed transferee shall have the qualifications and financial responsibility, as determined at the sole discretion of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer, and if the proposed transfer relates to a part of the Property, such obligations to the extent that they relate to such part. Any proposed transferee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part). The consent of the City to an assignment or transfer in any one case shall not relieve Developer or the transferee of the obligation to obtain the consent of the City for any additional assignments or transfers.

18.04 Consideration For Assignment. Prior to the City's approval of any assignment pursuant to Section 18.03, Developer shall certify to the City that the consideration paid for the transfer of any of Developer's interest in this Agreement or the Property does not exceed an amount representing the actual cost (including carrying charges) incurred by Developer for the purchase of the Property and the construction of any Improvements on the Property (or allocable to the part or interest transferred); it being the intent of this Section to preclude assignment of this Agreement or transfer of the Property for profit prior to the issuance of the Certificate of Completion. In the event Developer transfers any such interest at a profit, said profit shall belong to and forthwith be paid to the City.

18.05 Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, as certified by the City, neither Developer nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other Encumbrance upon the Property, whether by express agreement or operation of law, or suffer any Encumbrance to be made on or attach to the Property, except for the purposes of obtaining funds only to the extent necessary to purchase the Property and make the Improvements. Developer (or successor in interest) shall notify the City in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property or any part thereof and shall promptly notify the City of any Encumbrance that has been created on or attached to the Property, whether by voluntary act of Developer or otherwise.

18.06 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including any other party who thereafter obtains title to the Property or such part from or through such holder or any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder; provided, that nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Development Plan and this Agreement.

18.07 Copy of Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to Developer with respect to any Default by Developer in its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the City.

18.08 Mortgagee's Option to Cure Default. After any Default referred to in Article 15 hereof, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such Default (or such Default to the extent that it relates to the part of the Property covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, that if the Default is with respect to construction of the Improvements, nothing contained in this Section or any other Section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Improvements (beyond emergency measures necessary to conserve or protect Improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this Agreement, the Improvements on the Property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Improvements relating to the Property or applicable part thereof shall be entitled, upon written request made to the City, to a Certificate of Completion with respect thereto.

18.09 City's Option to Pay Mortgage Debt or Purchase Property. In any case where, subsequent to the Default by Developer (or successor in interest) under this Agreement, the holder of any mortgage on the Property or part thereof: (i) has, but does not exercise, the option to construct or complete the Improvements relating to the Property or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the Default; or (ii) undertakes construction or completion of the Improvements but does not complete such construction within the period as agreed upon between the City and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in this Agreement), and such Default shall not have been cured within sixty (60) days after written demand by the City so to do, then the City shall (and every mortgage instrument made prior to completion of the Improvements with respect to the Property by Developer or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing

an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Property; (iv) the costs of any Improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

18.10 City's Option to Cure Mortgage Default. In the event of a default or breach during the Agreement Term by Developer, or any successor in interest, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an Encumbrance upon the Property or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from Developer or successor in interest of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Property (or the part thereof to which the mortgage or Encumbrance relates) for such reimbursement; provided, that any such lien shall be subject always to the lien of (including any lien contemplated because of advances yet to be made) any then existing mortgages on the Property authorized by this Agreement.

18.11 Mortgage and Holder. For the purposes of this Agreement, the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust, including, but not limited to, the Federal Housing Commission, the Administrator of Veterans Affairs, and any successor in office of either such official.

ARTICLE 19. INDEMNITY

19.01 Developer Indemnifications. Developer agrees to and shall indemnify and save harmless the City, its agents and employees against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including without limitation, fees and expenses of attorneys, whether inside or outside counsel, expert witnesses and other consultants) that may be imposed upon, incurred by or asserted against the City by reason of any of the following occurring during the term of this Agreement:

- a. any negligent or tortious act or omission or violation of Federal or Michigan environmental laws or regulations, including Environmental Laws described in this Agreement, by Developer or its Associates resulting in personal injury, bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use therefrom; or
- b. any failure by Developer or its Associates to perform their obligations either implied or expressed under this Agreement.

Developer also agrees to hold the City harmless from any and all injury to the person or damage to the property of, or any loss or expense incurred by, an employee of the City which arises out of or pursuant to Developer's activities under this Agreement or any contract entered into by Developer in connection therewith unless such loss or injury is caused by the City's gross negligence or willful misconduct.

19.02 Defense of Claims. In the event any action or proceeding shall be brought against the City by reason of any claim covered hereunder, Developer, upon notice from the City, will at its sole cost and expense, resist and defend the same, using legal counsel reasonably acceptable to the City.

19.03 Safeguarding Property. Developer agrees that it is its responsibility and/or that of its Associates and not the responsibility of the City to safeguard the property and materials that Developer or its Associates use or have in their possession while performing under this Agreement. Further, Developer agrees to hold the City harmless for any loss of such property and materials used by any such persons pursuant to the performance of this Agreement or which is in their possession.

19.04 Non-Liability of the City. From and after the date of Closing, the City shall not be responsible or liable to Developer, and Developer hereby releases the City from liability, for any loss or damage that may be occasioned by or through the acts or omissions of persons other than the City, occupying any part of the Property. From or after the date of Closing or the date Developer takes possession of the Property, whichever is earlier, Developer shall be solely responsible for all injuries to persons and property resulting from any accident, explosion, leak or other cause arising in or about the use of the Property and its appurtenances, as hereinbefore stated. The City shall not be responsible for any loss or damage resulting to Developer or its property or to any other person or persons on their property which may be caused by the bursting, stopping, or leaking of water, gas, sewer or steam pipes or from overflow or backing up of any sewer or water main, unless caused by the City's gross negligence or willful misconduct.

19.05 Hazardous Materials.

a. Representations and Warranties. Notwithstanding anything to the contrary which may be contained in this Agreement, Developer represents, warrants and covenants to the City as follows:

1. Developer shall not directly or indirectly use or allow the use of the Property for the purpose of storing Hazardous Materials, nor shall Developer directly or indirectly use the Property in a manner which will cause or increase the likelihood of causing the release of Hazardous Materials onto or from the Property, other than those Hazardous Materials which are necessary and commercially reasonable for the conduct of Developer's business operated on the Property and which Hazardous Materials have been at all times prior to the date hereof, and at all times hereafter shall be, handled and disposed of in compliance with all Environmental Laws (as defined in Subsection 19.05b1 below) and industry standards and in a commercially reasonable manner.

2. Developer is not aware of any claims or litigation, and has not received any communication from any person (including any governmental authority), concerning the presence or possible presence of Hazardous Materials at the Property or concerning any violation or alleged violation of the Environmental Laws respecting the Property, other than as disclosed to Developer by the City or as disclosed in or as a result of the tests, surveys and investigations performed by Developer under Section 7.01 above. Developer shall promptly notify the City of any such claims and shall furnish City with a copy of any such communications received by Developer. To the best of Developer's knowledge, there are no underground storage tanks located on the Property, other than as disclosed in or as a result of the tests, surveys and investigations performed under Section 7.01.

3. Developer shall notify the City promptly and in reasonable detail in the event that Developer becomes aware of or suspects the presence of Hazardous Materials or a violation of the Environmental Laws at the Property.

4. From and after the date of Closing, Developer shall ensure that the Property complies and continues to comply in all respects with the Environmental Laws.

5. If the Property is used or maintained so as to subject Developer, the City or the user(s) of the Property to a claim of violation of the Environmental Laws, Developer shall immediately cease or cause a cessation of those aspects of the use or operations causing the violation and shall

remedy and cure in compliance with the Environmental Laws any conditions arising therefrom at its own cost and expense.

b. Definitions.

1. “Asbestos” shall have the meanings provided under the Environmental Laws and shall include, but not be limited to, asbestos fibers and friable asbestos as such terms are defined under the Environmental Laws.

2. “Environmental Claims” shall mean all claims, demands, suits, proceedings, actions, whether pending or threatened, contingent or non-contingent, known or unknown, including but not limited to investigations and notices by any governmental authority, brought under common law and/or under any of the Environmental Laws which can or do apply to the Property.

3. “Environmental Laws” shall mean all applicable federal, state, and local laws, rules, regulations, orders, judicial determinations, and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi-governmental entity, whether in the past, the present or the future, with respect to:

(i) the installation, existence, or removal of, or exposure to, Asbestos on the Property.

(ii) the existence on, discharge from, or removal from the Property of Hazardous Materials.

(iii) the effects on the environment of the Property or of any activity now, previously, or hereafter conducted on the Property.

Environmental Laws shall include, but are not limited to, the following: (i) the Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended (“NREPA”); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, *et seq.*; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Resource Conservation and Recovery Act, 42 USC Sections 6901, *et seq.*; the National Environmental Policy Act, 42 USC Section 4321; the Toxic Substances Control Act, 15 USC Section 2601; the Hazardous Materials Transportation Act, 49 USC Section 1801; the Clean Air Act, 42 USC Sections 7401, *et seq.*; and the regulations promulgated in connection therewith; (ii) Environmental Protection Agency regulations pertaining to Asbestos (including 40 CFR Part 61, Subpart M); Occupational Safety and Health Administration Regulations pertaining to Asbestos (including 29 CFR Sections 1910.1001 and 1926.58) as each may now or hereafter be amended; and (iii) any state and local laws and regulations pertaining to any Hazardous Materials.

4. “Hazardous Materials” shall mean any of the following as defined by the Environmental Laws, including but not limited to Asbestos; hazardous wastes; solid wastes; toxic or hazardous substances, wastes, or contaminants (including, but not limited to, polychlorinated biphenyls (PCB’s), paint containing lead, and urea formaldehyde foam insulation), and discharges of sewage or effluent.

c. Developer’s Obligations. At its sole cost and expense, Developer shall: (a) at all times strictly comply with all Environmental Laws; (b) pay immediately when due the cost of compliance with the Environmental Laws resulting directly or indirectly out of Developer’s ownership, use, possession, or development of the Property; and (c) keep the Property free of any lien imposed pursuant to the Environmental Laws resulting directly or indirectly out of Developer’s ownership, use, possession, or development of the Property.

d. City's Options. If Developer fails to comply with the requirements of this Section after notice to Developer and the earlier of the expiration of any applicable cure period hereunder, the expiration of the cure period permitted under the Environmental Laws, if any, or such earlier time if the City determines that life, person or property is in jeopardy, the City may, but shall not be obligated to, exercise its right to: (i) declare that such failure constitutes an Event of Default under Article 15 herein; and/or (ii) take any and all actions, at Developer's expense, that the City deems necessary or desirable to cure said failure of compliance.

e. Release and Indemnity. The City shall give Developer at its sole cost the opportunity to inspect the Property and conduct such environmental assessments and testing as Developer has deemed appropriate. The City shall not be liable to Developer for, and Developer, for itself and its successors and assigns, hereby releases the City from, any and all liability for any violation or alleged violation of the Environmental Laws respecting the Property, whether such alleged violation occurred before or after Closing and the transfer of possession to Developer. The City shall not be liable for, and Developer shall immediately pay to the City when incurred and shall indemnify, defend and hold the City harmless from and against, all loss, cost, liability, damage and expense (including, but not limited to, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that the City may suffer or incur as a result of or in connection in any way with any violation of the Environmental Laws occurring after the Closing or the date of transfer of possession, whichever is earlier, any environmental assessment or study from time to time undertaken or requested by Developer or City, or breach of any covenant or undertaking by Developer in this Section.

f. Survival. The provisions of this Section shall survive the termination of this Agreement, any related Closing or transfer of possession of the Property.

g. Breach. Breach of any of the representations, warranties and/or covenants contained in this Article shall be a default under this Agreement; provided, however, that no breach shall be deemed to have occurred so long as, upon becoming aware of a possible breach, Developer proceeds to reasonably investigate and remedy in compliance with the Environmental Laws the matter giving rise to the possible breach.

ARTICLE 20. ADMINISTRATION

20.01 Developer Personnel. Developer represents and warrants that all Developer personnel and agents and the personnel and agents of its Associates are fully qualified and authorized to perform the functions and duties assigned them under Federal, State and Local laws and licensing requirements and governing professional association rules, if any, where such persons are employed.

20.02 Inspection by City. Prior to the issuance of the Certificate of Completion, the City may in its sole discretion assign City employees or any agent or retained contractor to enter upon the Property to inspect the work performed by Developer or on Developer's behalf upon reasonable notice to Developer. Developer and any Associates shall cooperate fully with and grant full access to any City employee, agent or contractor designated to conduct any on-site inspection or who is assigned to review relevant documents concerning the Project or construction of the Improvements.

20.03 Independent Contractor Relationship. The relationship of Developer to the City is and shall continue to be that of an independent contractor relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agent or employee with respect to the City as a result of the performance of this Agreement, unless expressly stated in this Agreement. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture

between the parties hereto; it being understood and agreed that none of the provisions contained herein, nor any acts of the parties herein, shall be deemed to create any such relationship between the parties.

20.04 Waiver. Developer shall not hold the City liable for any personal injury incurred by an employee, agent or consultant of itself, its Affiliates or its Associates that is subject to the provisions of the Michigan Governmental Liability for Negligence Act, Public Act 170 of 1964, MCL 691.1401, *et seq.*

ARTICLE 21. COMPLIANCE WITH LAWS AND REGULATIONS

21.01 Compliance. Developer shall comply with, and shall require in all its contracts with Associates that Associates comply with, all applicable laws, ordinances or other regulations imposed by any properly constituted governmental authority, including without limitation by virtue of this enumeration: (a) Americans with Disabilities Act (“ADA”) and Michigan Department of Transportation (“MDOT”) accessibility and construction requirements for sidewalks and curb cuts and ramps, and (b) Executive Order No. 2007-1 and Executive Order No. 2003-4.

21.02 Intellectual Property. Developer represents and warrants that any products sold or processes used in the performance of this Agreement do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. In the event of any claim by any third party against the City regarding alleged infringement or violation, the City shall promptly notify Developer and Developer shall defend such claims in the City's name, but at Developer's expense, using legal counsel reasonably acceptable to the City, and shall indemnify and hold harmless the City against any loss, costs, expense or liability arising out of such claim, whether or not such claim is successful.

21.03 Right to Examine Books. Nothing contained herein shall be construed or permitted to operate as any restriction upon the power granted to the City Commission to audit all accounts chargeable against the City. Pursuant hereto the City shall have the right to examine and audit all books, records, documents, and other such supporting data of Developer with respect to the Project as the City may deem necessary within thirty (30) days of written demand by the City served in accordance with Article 24, hereof.

ARTICLE 22. AMENDMENTS

22.01 Form. Any change, addition, deletion, extension or modification of this Agreement (including assignments) that is mutually agreed upon by and between the City and Developer shall be incorporated in a written amendment (herein called “Amendment”) to this Agreement. Such Amendment shall not invalidate this Agreement nor relieve or release Developer of any of its obligations under this Agreement unless stated therein. Notwithstanding the above, PC approval is required for material changes in the Construction Plans pursuant to Article 10 of this Agreement.

22.02 Binding effect. No Amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed, dated and acknowledged by duly authorized representatives of both parties. To be effective against the City, the Amendment must be authorized as set forth in Section 25.14 of this Agreement.

ARTICLE 23. FAIR EMPLOYMENT PRACTICES

23.01 Compliance. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity including, but not limited to, Title VII of the Civil Rights Act of 1965 (PL 88-352, 78 Stat. 252, 42 USC § 2000e *et seq.*), and United States Department of Justice Regulations (28 CFR Part 42) issued pursuant to that Title, 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 (1976 P.A. No. 453) and the Michigan Handicappers Civil Rights Act (1976 P.A. 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, conditions, or privileges of employment or hire because of his or her religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. Developer hereby recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its Associates connected directly or indirectly with the performance of this Agreement.

23.02 Non-Discrimination. Developer covenants that it shall not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Agreement, with respect to his or her hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of religion, race, color, creed, national origin, age, marital status, handicap, public benefit status, sex, or sexual identity or orientation. This provision shall not apply if it is determined by the City that such requirements are *bona fide* occupational qualifications reasonably necessary to performance of the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon Developer.

23.03 Associate Notification. Developer further agrees that it shall notify any Associate of its obligations relative to non-discrimination under this Agreement when soliciting same and shall include the provisions of this Article 23 in any subcontract as well as provide the City a copy of any such subcontract upon request. Developer further agrees to take such action with respect to any such subcontract as the City may direct as a means of enforcing the provisions of this Article 23 and Article 21.

23.04 Breach. Breach of the terms and conditions of this Article shall be regarded as a material breach of this Agreement.

23.05 Remedies Upon Breach. If Developer fails to comply with the preceding Section and/or with any of the rules, regulations or orders as issued by the City, the City, at its option, may:

- a. Cancel, terminate or suspend this Agreement in whole or in part.
- b. Recover from Developer an amount of \$100.00 per day, as liquidated damages and not as a penalty, for each day that Developer fails to comply with the preceding section as determined by the City's _____ in accordance with its rules and regulations; said sum being fixed as negotiated and agreed upon by and between the City and Developer because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages that the City would sustain in the event of such a breach of contract, and agreed to be the amount of damages that the City would sustain.
- c. Any other City remedies upon default set out in this Agreement
- d. Utilize such other remedies as may be provided by law.

ARTICLE 24. NOTICES

24.01 Addresses. Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (herein collectively called "**Notices**") required or permitted under this Agreement shall be given in writing and personally delivered with receipt obtained, or mailed by registered or certified first-class mail, return receipt requested, addressed as follows:

If to the City: _____

with a copy to: Corporation Counsel

If to Developer: _____

with a copy to: _____

24.02 Date of Notice. All notices shall be deemed given when hand-delivered or, if mailed, on the day of mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in Section 24.01. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

ARTICLE 25. MISCELLANEOUS

25.01 Standard of Performance. Developer shall not perform any act directly or indirectly that would act to subvert or otherwise circumvent any of the terms and conditions contained herein. If there is any dispute between the parties with regard to the requirements of the Development Plan or the terms and conditions of this Agreement, the reasonable interpretation and determination of the City shall govern.

25.02 Conferences. Developer hereby agrees to meet at reasonable times with duly authorized City representatives, upon the City's request to discuss any aspect of this Agreement during the term of this Agreement.

25.03 Severability. If any one or more provisions of this Agreement or in any instrument or other document delivered pursuant to this Agreement or the application thereof to any person or circumstance shall to any extent be declared or determined to be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

25.04 Entire Agreement. This instrument, including the exhibits listed in Section 1.03 which are attached hereto and which are made a part of this Agreement, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein.

25.05 Terminology. Unless the context otherwise expressly requires, the words “herein”, “hereof”, and “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision.

25.06 Captions. The headings of the Articles, Sections and other subdivisions in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

25.07 Cumulative Remedies; Jurisdiction; Venue. The rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided by law or equity. All actions arising under this Agreement shall be governed by, subject to, and construed according to the laws of the State of Michigan. Developer agrees, consents and submits to the personal jurisdiction only of any competent State court in Berrien County, Michigan or Federal Court of competent jurisdiction for any action brought against it arising

out of this Agreement and no other courts or tribunals. Developer agrees that service of process at the address and in the manner specified in Article 24 will be sufficient to put Developer on notice. Developer also agrees that it will not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction interpretation and enforcement of this Agreement, in any courts other than those in Berrien County, Michigan or Federal Court of competent jurisdiction and no other courts or tribunals. Developer agrees to obtain in writing the same agreement as contained in this Section from any Associate with respect to any contracts issued in pursuance of this Agreement and provided the City with copies of these agreements.

25.08 Affiliates. If any Affiliate of Developer shall take any action which, if done by Developer would constitute a breach of this Agreement, the same shall be deemed a breach by Developer, subject to the notice and cure provisions of this Agreement.

25.09 Force Majeure. In the event of enforced delay in the performance by either party of obligations under this Agreement due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, or severe weather, the time for performance of such obligations shall be extended for the period of the enforced delays; provided that the party seeking the benefit of the provisions of this Section shall within thirty (30) 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.

25.10 Provisions Not Merged With Deed. No provision of this Agreement is intended to or shall be merged by reason of any Deed transferring title to the Property from the City to Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

25.11 Counterparts. This Agreement may be executed in counterparts each of which shall be deemed to be an original document but together shall constitute one instrument.

25.12 Singular and Plural, etc. As used herein, the singular include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

25.13 Time of the Essence. Time is of the essence of this Agreement.

25.14 Authority of City. Notwithstanding anything in this Agreement or otherwise to the contrary, the City shall not be authorized or obligated to sell the Property to Developer until this Agreement has been fully executed by the duly authorized representative of the City pursuant to the resolution of the City of Buchanan Commission as approved by the Mayor of the City. Any amendments or modifications of this Agreement must likewise be duly authorized in a dated writing authorized by resolution of the City Commission as approved by the Mayor.

25.15 Non-Assignment. Developer shall not pledge as security, use as collateral, assign, delegate, or subcontract this Agreement or any of the rights and obligations conferred on Developer under this Agreement without the prior signed and dated written consent of the City. Except as provided in this Section, any attempted or actual assignment in violation of this Section shall be null and void.

25.16. Iran Economic Sanctions Act. Developer certifies, warrants and represents that it is not an Iran-linked business, as defined in the Iran Economic Sanctions Act, Michigan Public Act 517 of 2012, MCL 129.311.

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

WITNESSES:

DEVELOPER

_____ company

Print: _____

By: _____

Its: _____

Print

STATE OF MICHIGAN)
)ss.
COUNTY OF BERRIEN)

The foregoing instrument was acknowledged before me on _____, 20__, by _____, the ____ of _____, LLC, a _____ on behalf of said company.

Notary Public

County, Michigan
My commission expires: _____

WITNESSES:

CITY OF BUCHANAN,
a Michigan public body corporate

Print: _____

By: _____

Print: _____

Its: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF BERRIEN)

The foregoing instrument was acknowledged before me on _____, 20__ , by _____, _____ of the City of Buchanan, a Michigan public body corporate, on behalf of the City.

Notary Public

County, Michigan
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Land in the City of Buchanan, County of Berrien, State of Michigan being more particularly described as:

Commonly known as: _____

Description CORRECT

ENGINEER OF SURVEYS

By: _____

Date: _____

EXHIBIT B

SITE PLAN SUMMARY

GENERAL DESCRIPTION:

ZONING AND MASTER PLAN AND DEVELOPMENT PLAN RESTRICTIONS:

SITE PLAN AND EXTERIOR TREATMENTS:

PARKING:

LANDSCAPING, LIGHTING AND FENCING:

REFERENCES:

EXHIBIT C

QUITCLAIM DEED

Subject to the following paragraph, the **City of Buchanan**, a Michigan public body corporate whose address is 302 Red Bud Trail N. Buchanan, MI 49107 ("**Grantor**"), quitclaims to _____, a Michigan _____, whose address is _____ ("**Grantee**"), the premises located in the City of Buchanan, Berrien County, Michigan, described as:

(See attached Exhibit A)

(the "**Property**"), for the sum of _____ (\$_____.00), subject to and reserving to the City of Buchanan its rights under public easements and rights of way, easements of record, applicable zoning ordinances, development plans pursuant to Act 344 of 1945, as amended, and restrictions of record.

This Deed is given subject to the terms, covenants and conditions of a Development Agreement dated _____, 20__, entered into by the parties hereto and which is incorporated herein by reference and recorded on _____, 20__ in the Office of the Register of Deeds for the County of Berrien in Liber ____ on Pages ____ through ____ inclusive, none of the terms, covenants and conditions of which shall be deemed merged in this Deed. The covenants therein recited to be covenants running with the land are hereby declared to be covenants running with the land enforceable by the City as therein set forth.

The following language is included pursuant to MCL Sections 560.109(3) and 560.109(4), added by 1996 PA 591, and applies only if the Property is not platted: "The Grantor grants to the Grantee the right to make all divisions under Section 108 of the Land Division Act, 1967 PA 288, MCL 560.108." and "The grantor grants to the grantee the right to make all division(s) under section 108 of the land division act, 1967 PA 288, MCL 560.108." and "This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act."

This deed is dated as of _____, 20__.

WITNESSES:

City of Buchanan, a Michigan public body corporate

Print:

By: _____

Print

Its: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF BERRIEN)

The foregoing instrument was acknowledged before me on _____, 20__, by _____, of the City of Buchanan, a Michigan public body corporate, on behalf of the City.

Print: _____
Notary Public, Berrien County, Michigan
My commission expires: _____
Acting in the County of _____

EXHIBIT D

IRREVOCABLE POWER OF ATTORNEY

_____, a Michigan _____ company (herein called the "Principal"), whose address is _____, does hereby nominate, constitute and appoint the _____ for the City of Buchanan, 302 Red Bud Trail N, Buchanan, MI 49107, as its true and lawful attorney-in-fact, with full power and authority hereby conferred to execute in its name and on its behalf one or more deeds (herein called the "Deeds") conveying the Property (as more particularly described in Exhibit A hereto) to the City of Buchanan upon a default by the Principal in the terms and conditions of a certain Agreement to Purchase and Develop Land (herein called the "Agreement") entered into between the City of Buchanan and the Principal on or about _____.

Upon such uncured default by the Principal as specified in the Agreement, and recording of a notice of default by the City, all rights and interest to and in the Property shall automatically vest back in the City and the City shall have the power upon the execution of this irrevocable Power of Attorney to execute on behalf of the Principal one or more Deeds conveying all rights, title and interest to and in the Property to the City.

Pursuant to the terms hereof, the Corporation Counsel shall have the power to bind the Principal thereby as fully and to the same extent as if such Deeds were signed by the duly authorized officers of the Principal, and all the acts of said attorney, pursuant to the authority herein given, are hereby ratified and confirmed. This Power of Attorney is coupled with an interest and is irrevocable by Principal, or its successors or assigns.

In witness whereof, Principal has caused this document to be signed by its duly authorized officer on _____.

WITNESSES:

PRINCIPAL

_____, a Michigan _____

Print:

By: _____

Print: _____

Print:

Its: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF BERRIEN)

The foregoing instrument was acknowledged before me on _____, 20____, by _____, the _____ of _____, a Michigan _____ on behalf of said company.

Print: _____
Notary Public, Berrien County, Michigan
My commission expires: _____
Acting in the County of _____

EXHIBIT E

CERTIFICATE OF AUTHORITY FOR COMPANY

I, _____ the _____ of _____, a Michigan _____ (the "Company")

DO HEREBY CERTIFY that the following is a true and correct excerpt from *[check appropriate box]*

- the minutes of a meeting of the _____ of the Company duly called and held on
- a consent in lieu of a meeting, with signed consents received from all of the _____ of the Company on or before the date hereof.

and that the same is now in full force and effect:

"RESOLVED, that any _____ of the Company, is hereby authorized to execute and deliver, in the name and on behalf of the Company, any agreement or other instrument or document in connection with any matter or transaction with the City of Buchanan that shall have been duly approved; the execution and delivery of any agreement, document, or other instrument by any of such _____ to be conclusive evidence of such approval."

I FURTHER CERTIFY that the following persons are _____:

_____ – Shareholder/Membership Interest __

_____ – Shareholder/Membership Interest __

I FURTHER CERTIFY that any of the aforementioned _____ of the Company are authorized to execute or guarantee and commit the Company to the conditions, obligations, stipulations and undertakings contained in the attached Agreement, and that all necessary approvals have been obtained in relationship thereto.

IN WITNESS THEREOF, I have set my hand this _____ day of _____, 20__.

Print: _____
Its: Manager

EXHIBIT F

Developer's Acknowledgment of Receipt of Development Plan
[If applicable, as referenced in Section 1.12 of this Agreement]

Developer hereby acknowledges receipt of a copy of the Development Plan referenced in Section 1.12 of this Agreement and acknowledges its applicability to the Property.

DEVELOPER

By: _____

Print: _____

Its: _____

Date: _____