

LAW OFFICES
LA RENE & KRIGER, P.L.C.

MARK J. KRIGER
N.C. DEDAY LA RENE
ALLISON L. KRIGER

PENOBSCOT BUILDING
645 GRISWOLD STREET, SUITE 1717
DETROIT, MICHIGAN 48226
TELEPHONE (313) 967-0100
FAX (313) 967-0199

July 13, 2018

Honorable Bill Schuette
Attorney General of the State of Michigan
525 West Ottawa Street
Lansing, Michigan 48933-1071

Dear Attorney General Schuette:

I represent Anne Bannister, Jack Eaton, Sumi Kailasapathy, and Jane Lumm, all of whom are members of the Ann Arbor City Council. I am writing on their behalf, urging you to reject the City Council's resolution seeking approval to add what the city Council characterizes as an "explanatory caption" to a ballot proposal that will appear on the November 7, 2018 Ann Arbor city ballot because the addition of the "explanatory caption" violates MCL 117.21(2) for the reasons explained below.

Background

Pursuant to a duly authorized certified petition, on June 18, 2018, the Ann Arbor City Council unanimously approved that the following question should appear on the November 6, 2018 Ann Arbor city ballot:

CHARTER AMENDMENT FOR THE CITY-OWNED PUBLIC LAND BOUNDED BY FIFTH AVENUE, AND WILLIAM, DIVISION AND LIBERTY STREETS TO BE DESIGNATED, IN PERPETUITY, AS AN URBAN PARK AND CIVIC CENTER COMMONS TO BE KNOWN AS THE "CENTER OF THE CITY," BY AMENDING THE ANN ARBOR CITY CHARTER ADDING A NEW SECTION 1.4 TO CHAPTER 1 OF THE CHARTER

Shall the city-owned public land bounded by Fifth Avenue, and William, Division and Liberty Streets be returned in public ownership, in perpetuity and developed as an urban park and civic center commons, known as the "Center of the City" by adding a new section for the purpose as explained above?

(A copy of the petition and the resolution are attached as exhibits A & B , respectively).

On July 2, 2018, by the thinnest of margins (6-5 vote), the Ann Arbor City Council passed a resolution to add the following language to the ballot question, which it characterizes as an “explanatory caption:”

The following information has been provided by the Ann Arbor City Council regarding the proposed charter amendment:

1. A buyer has agreed to purchase the surface and air rights above the Library Lane Garage to build a mixed-use development including retail, office space, a hotel, residential units, and a 12,000 square-foot public plaza. If closing is completed, the purchase price will be \$10,000,000. Fifty percent (50%) of the net proceeds will go into the City of Ann Arbor’s Affordable Housing Fund. The other fifty percent (50%) of net proceeds will go towards paying off the debt incurred in the 2018 purchase of the Y-Lot. The Charter Amendment does not provide funds for affordable housing or debt repayment.

2. The contemplated mixed-use building on top of the Library Lane Garage is estimated to generate \$2,300,000 per year in property taxes with \$536,000 per year going directly to the City.

3. In 2013, the Parks Advisory Commission (PAC) evaluated the use of City land for downtown parks. The PAC-adopted report states: “Existing downtown parks are not currently utilized to their potential. Given the limits of current parks funding, the development of new parks should not be approved without an identified funding source for capital development, ongoing maintenance, and programming.”

4. The Charter Amendment does not provide a funding source for the development, maintenance, or programming of a park and commons.

My clients opposed the resolution because, among other things, as stated above, they believe the resolution violates MCL 117.21(2). (A copy of the resolution, adopted by a 6-5 vote on July 2, 2018 is attached as exhibit C.)

We believe that the proposed “explanatory caption” is not permissible under MCL 117.21 for at least four reasons:

- First, because the applicable statute does not give the Council the authority to add an explanatory caption under the circumstances;

- Second, because the ballot question already contains an explanatory caption approved by the Council, the Council cannot now add a second explanatory caption;
- Third, because the proposed language cannot be characterized as a “caption;”
- Fourth, because, even if it can be so characterized, the “explanatory caption does not meet the other restrictions set forth in the governing statute factual averments contained in the “explanatory caption are not accurate, are misleading and contain material omissions that leave the voter with a misleading view of the sale agreement are critical to balanced presentation of the issue..

The Law

MCL 117.21(2) provides as follows:

(2) Proposed charter amendments and other questions to be submitted to the electors shall be published in full with existing charter provisions that would be altered or abrogated by the proposed charter amendment or other question . The purpose of the proposed charter amendment or question shall be designated on the ballot in not more than 100 words, exclusive of caption, that shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question. The text of the statement shall be submitted to the attorney general for approval as to compliance with this requirement before being printed. In addition, the proposed charter amendment in full shall be posted in a conspicuous place in each polling place. The form in which a proposed charter amendment or question shall appear on the ballot, unless provided for in the initiatory petition, shall be determined by resolution of the legislative body, and if provided for by the initiatory petition, the legislative body may add an explanatory caption.

In this instance, the language of the proposed ballot question was “provided for in the initiatory petition,” within the meaning of the last sentence of this provision, but that petition did not contain any provision allowing for the addition of a caption by the Council. (See Exhibit A-Petition) Under the circumstances, it is my opinion that the addition of *any* of the proposed language by the Council is improper, because no such addition was “if provided for by the initiatory petition.”

I understand that the Council reads the last sentence of the subsection differently, as allowing it to add a caption if the language of the proposal was dictated by the petition, and not the decision of the Council. I believe, however, that if this were the meaning intended by the drafters, they would have

repeated the phrase used in the statute to describe a petition-originated question (*i.e.*, “provided for **in** the initiatory petition”). Instead, the drafters of the statute did not repeat the use of the word “in” but instead used the word “**by**” the initiatory petition. By using the word “**by**” rather than “**in**,” the drafters obviously intended to convey a different meaning to the clause, if provided **by** the initiatory petition. Given that the drafters intended a different meaning to the clause, the only possible interpretation to the clause “if provided **by** the initiatory petition, the legislative body may add an explanatory caption, is that the petition must specifically authorize an explanatory caption. Indeed, the use of the word “by,” which connotes action, more clearly fits such an interpretation of the statute - a requirement that the petition **do** something - than does the use of the mere descriptive term “in.”

It is a well-known principle of statutory construction that “the use of different words connotes different meanings.” *City of Rockford v 63rd Dist. Court*, 286 Mich App 624, 627 (2009) (citing *United States Fidelity & Guaranty Co. v Michigan Catastrophic Claims Ass'n* (On Rehearing), 484 Mich. 1, 14 (2009). That is to say, “[i]f the Legislature had intended the same meaning in both statutory provisions, it would have used the same word.” *Honigman Miller Schwartz and Cohn LLP v City of Detroit*, ___ Mich App ___, 2018 WL 472190, *2 (2018)

Even if the City Council’s interpretation of MCL 117.21(2) is correct, in its resolution of June 18, adopting the petition’s phrasing of the ballot question, provided an explanatory caption. MCL 117.21 provides no authority to add a second explanatory caption. The June 18 resolution reads as follows:

RESOLVED, That the form in which the proposed charter amendment question shall appear on the ballot is hereby determined to be as written on the initiatory petition:

CHARTER AMENDMENT FOR THE CITY-OWNED PUBLIC LAND BOUNDED BY FIFTH AVENUE, AND WILLIAM, DIVISION AND LIBERTY STREETS TO BE DESIGNATED, IN PERPETUITY, AS AN URBAN PARK AND CIVIC CENTER COMMONS TO BE KNOWN AS THE “CENTER OF THE CITY,” BY AMENDING THE ANN ARBOR CITY CHARTER ADDING A NEW SECTION 1.4 TO CHAPTER 1 OF THE CHARTER

Shall the City-owned public land bounded by Fifth Ave, and William, Division and Liberty Streets be retained in public ownership, in perpetuity, and developed as an urban park and civic center commons, known as the “Center of the City” by adding a new section for the purpose **as explained above?** (Emphasis added).

(A copy of the resolution is attached as exhibit C.)

The “as explained above” language contained in the approved ballot question refers to the caption preceding the ballot question adopted by the June 18 resolution. The new proposed “explanatory caption” does not seek approval from the Attorney General to supplant the previously adopted explanatory caption, but seeks approval for a second explanatory caption. MCL117.21(2) provides for a single explanatory caption: “the legislative body may add an explanatory caption.” In this, the statute plainly speaks in the singular, not the plural.

Moreover, even if city council could add a second caption, the language proposed by the Council cannot be called a “caption,” in any proper sense of the word. While the statute does not define the term “caption,” the relevant portion of the “caption” entry in Webster's Unabridged Dictionary is as follows:

4 [influenced in meaning by Latin caput head] a: the heading or title of an article, story, document, chapter, or other composition or of a page or section b: the explanatory comment or designation accompanying a pictorial illustration usually as an underline or overline c: a movie or television subtitle

\Webster's Third New International Dictionary, Unabridged, s.v. “caption,” accessed July 04, 2018, <http://unabridged.merriam-webster.com>.

It is, of course, well established in Michigan decisional law that when a statute does not define a term, it is appropriate to consult the dictionary definitions for guidance. *See, e.g., People v Calloway*, 500 Mich 180, 895 NW 2d 165, 169 n. 17 (2017); *Ronnisch Constr. Group, Inc. v Lofts on the Nine, LLC*, 499 Mich 544, 559 n. 41 (2016).; *People v Peals*, 476 Mich 636, 641 (2006); *Title Office, Inc. v Van Buren Co. Treasurer*, 469 Mich 516, 522 (2004).

It is obvious that the proposed “explanatory caption,” which gives the history, revenue projections, and other such data, is far from a “heading or title,” or other wise conform to the dictionary - or common-sense - meaning of the word “caption,” even as modified by the term “explanatory.” The “explanatory caption, as discussed below, is not a caption but an editorial statement as to why the ballot proposal should be defeated.

Even if the Council’s proposal can somehow be shoehorned, however torturously, into the term “caption,” it is clearly out of synch with the other requirements of the statute and the factual averments contained in the explanatory caption are not accurate, are incomplete, misleading, and are anything but “fair and impartial.”

The proposed “explanatory caption” is 211 words, and is nakedly partisan, advancing a point of view that is clearly inimical to the ballot proposal. How does one square this language with the requirements of the statute that ballot questions must be “not more than 100 words, exclusive of

caption, that shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question?”

While this language does not in terms apply to “explanatory captions,” it defies logic and common sense to think that the legislature would have intended to require ballot proposals to be concise and neutral, while allowing them to be accompanied by verbose and advocative text, text which essentially negates the purposes to be served by the limitations placed on the questions themselves.

As the Michigan Court of Appeals stated in *Adams Outdoor Advertising, Inc. v Charter Tp. of Canton*, 269 Mich App 365, 370 (2006) in construing a statute:

This Court must consider the object of the statute and the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose. *Oberlies v Searchmont Resort, Inc.*, 246 Mich App 424, 429-430, 633 N.W.2d 408 (2001). In doing so, this Court may consider a variety of factors and apply principles of statutory construction, but **should also always use common sense**. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644, 513 N.W.2d 799 (1994). (Emphasis added).

See also, *Lash v City of Traverse City*, 271 Mich App 207, 212 (2006).

The object of MCL 117.21(2), is to present a ballot proposal to the voters in a concise, neutral and even-handed manner. The harm to be avoided is the inclusion of advocacy in the language of the ballot proposal. The so-called “explanatory caption” now proposed by the Ann Arbor City Council is neither concise nor even-handed. To interpret MCL 117.21(2) to allow an explanatory caption that clearly advocates for the defeat of the proposal, is more than twice as long as allowed for the proposal itself, and which is most definitely **not** “a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question” would be to abandon a common sense interpretation of the statute.

Moreover, the rules of statutory construction mandate that in interpreting a statute, “[W]ords in a statute should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the act as a whole.” As noted the purpose of MCL 117.21(2) is to ensure that ballot proposals are presented in a fair and impartial manner. To read the clause that “ballot questions must be “not more than 100 words, exclusive of caption, that shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question, to only apply to the question but not the caption clearly runs afoul of the rule that clauses should be read together “to harmonize the meaning giving effect to the statute as a whole.”

Finally, explanatory caption is not factually accurate and contains material omissions that render the “explanatory caption” misleading, in at least the following ways:

- The explanatory caption states, that, if the closing is completed “[f]ifty percent (50%) of the net proceeds will go into the City of Ann Arbor’s Affordable Housing Fund, while the other fifty percent (50%) of net proceeds will go towards paying off the debt incurred in the 2018 purchase of the Y-Lot.” While it is true that city council passed a resolution providing for the aforementioned distribution of funds, the resolution is not binding on a future council and there is an election in November with five of the 10 seats at issue. The election results could drastically alter the composition of council and the new council may rescind the previously passed resolution.¹
- While the “explanatory caption” provides an estimate of tax revenue, the developer has not yet submitted an actual project for approval and the projected tax revenue in the “explanatory caption” is speculative.
- As the “explanatory caption” states, the study stating that downtown parks are under utilized is over five years old and it is unknown whether the study’s conclusions are still valid.²
- Perhaps most importantly, the “explanatory caption” leaves the voter with the impression that the proposed development project is a basically, a *fait accompli*, which is simply not the case. The agreement to purchase provides for a number of contingencies that must occur before the closing takes place. For example, the purchaser must obtain all required zoning, site plan, and other permits for use as a multi-use complex. The purchase agreement, however, makes clear that the purchase agreement “shall not be construed as a warranty, guarantee, or a commitment by the seller” that the purchaser will receive the required zoning, site plan and other permits. See Section 6 of Purchase Agreement. A copy of the Purchase Agreement (without exhibits)

¹ See *City of Hazel Park v Potter*, 169 Mich App 714, 720 (1988), wherein an outgoing city council tried to protect the city manager by entering a contract which would prevent the incoming council from exercising its authority under the charter to remove the city manager. The court found that attempt to restrict authority under the charter rendered the employment contract invalid.

² It should also be noted that the very same study found strong public support for a park at this site. For obvious reasons, this fact is left out of the “explanatory caption.” To be fair, because the study is five years old, it is unknown whether strong public support still exists.

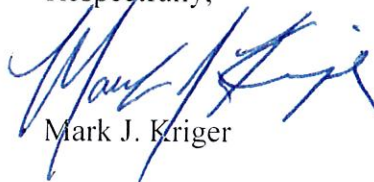
containing all of the contingencies, none of which are mentioned in the explanatory caption, is attached as exhibit D.

Of course, to reject the Council's proposed "explanatory caption" would not leave the Council members supporting the resolution without a remedy to publicize their views of the proposal. They, like any citizens, are certainly free to publicize their view of the ballot proposal by methods consistent with the First Amendment such as press releases, mailings, websites, newspaper editorials, resolutions,³ and the like - and are certainly better positioned than most of their fellow citizens to do so. What they cannot do, however, is include language on the ballot that violates MCL 117.21(2).

Finally, my clients want to emphasize that this letter should not be read as taking a position on the wisdom of the ballot proposal. In fact, my clients are not united on that question. They are united, however, on ensuring that the language of the ballot proposal is "a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question." MCL 117.21(2). The "explanatory caption" does not meet this statutory requirement.

Thank you for your attention to this matter.

Respectfully,



Mark J. Kriger

cc via electronic delivery and certified mail:

The Honorable Rick Snyder, Governor

B. Eric Restuccia, Chief Legal Counsel, Attorney General's Office

cc via electronic delivery:

Christopher Taylor, Mayor

Zachary Ackerman, Council Member

Anne Bannister, Council Member

³ For example, council passed resolution DC-1 at its July 2, 2018 meeting titled "Resolution in Support for Ann Arbor Area Transportation Authority (AAATA) Millage." That resolution expressed the council's support of a millage proposal that will appear on the August 7, 2018 ballot but the resolution will not appear as part of the ballot proposal. The council members opposing the ballot proposal are free to pass another resolution that would express their opposition to the Charter amendment regarding the downtown public space and publicize the resolution in any way they say fit short of including the language in the ballot proposal.

Letter to Attorney General Schuette, Page 9

Jack Eaton, Council Member

Julie Grand, Council Member

Sumi Kailasapathy, Council Member

Graydon Krapohl, Council Member

Jane Lumm, Council Member

Chip Smith, Council, Member

Chuck Warpehowski, Council Member

Kirk Westphal, Council Member

Stephen Postema, City Attorney

Samantha West, Executive Administrator, Governor's Legal Office

Exhibit A

[Details](#)

File #:	18-1149	Version: 1	Name:	7/2/18 - Explanatory Ballot Caption for Center of City
Type:	Resolution	Status:	Passed	
File created:	7/2/2018	In control:	City Council	
On agenda:	7/2/2018	Final action:	7/2/2018	
Enactment date:	7/2/2018	Enactment #:	R-18-277	
Title:	Resolution to Approve the Explanatory Caption to the Ballot Question Concerning the Center of the City Charter Amendment and to Authorize Submission to the Governor and Attorney General for Approval for the November 6, 2018 Ballot			
Sponsors:	Christopher Taylor, Kirk Westphal, Julie Grand			

[History](#) [Text](#)

Title

Resolution to Approve the Explanatory Caption to the Ballot Question Concerning the Center of the City Charter Amendment and to Authorize Submission to the Governor and Attorney General for Approval for the November 6, 2018 Ballot

Staff

Prepared by: Matthew Thomas, Associate City Attorney

Sponsors: Mayor Taylor and Councilmembers Westphal and Grand

Body

Whereas, Certain Ann Arbor electors circulated, signed, and delivered to the City Clerk petitions to place on the ballot at the November 6, 2018 general election the following question: "Shall the City-owned public land bounded by Fifth Ave, and William, Division and Liberty Streets be retained in public ownership, in perpetuity, and developed as an urban park and civic center commons, known as the "Center of the City" by adding a new section for the purpose as explained above?";

Whereas, The City Clerk has canvassed the petition and has certified the sufficiency of the number of signatures in the petition;

Whereas, Section 21(2) of the Michigan Home Rule City Act, MCL 117.21(2), allows the City Council to add an explanatory caption to the ballot question.

RESOLVED, The following Explanatory Caption shall be added to the ballot question concerning the Center of the City Charter Amendment which will be on the ballot at the November 6, 2018 general election:

The following information has been provided by the Ann Arbor City Council regarding the proposed charter amendment:

1. A buyer has agreed to purchase the surface and air rights above the Library Lane Garage to build a mixed-use development including retail, office space, a hotel, residential units, and a 12,000 square-foot public plaza. If closing is completed, the purchase price will be \$10,000,000. Fifty percent (50%) of the net proceeds will go into the City of Ann Arbor's Affordable Housing Fund. The other fifty percent (50%) of net proceeds will go towards paying off the debt incurred in the 2018 purchase of the Y-Lot. The Charter Amendment does not provide funds for affordable housing or debt repayment.
2. The contemplated mixed-use building on top of the Library Lane Garage is estimated to generate \$2,300,000 per year in property taxes with \$536,000 per year going directly to the City.
3. In 2013, the Parks Advisory Commission (PAC) evaluated the use of City land for downtown parks. The PAC-adopted report states: "Existing downtown parks are not currently utilized to their potential. Given the limits of current parks funding, the development of new parks should not be approved without an identified funding source for capital development, ongoing maintenance, and programming."
4. The Charter Amendment does not provide a funding source for the development, maintenance, or programming of a park and commons.

; and

RESOLVED, That the City Clerk submit this Resolution to the Governor and the Attorney General and take all necessary or advisable actions in connection with this proposed Charter Amendment for placement on the November 6, 2018 ballot.

Exhibit B

NOTICE

This form is in compliance with Michigan election law, MCL 166.488. Before using this form, it is strongly advised that you review the provisions of Michigan law which grant you the right to place your proposal on the ballot through a petitioning process to determine if any additional petition formatting requirements are specified. If additional requirements are specified under the governing statutes, this form cannot be used.

READ BEFORE CIRCULATING PETITION

The validity of signatures placed on this petition may be affected if the following is not observed.

Complete the heading of the petition before circulating it.

- Enter the city, township, or village and county where the petition will be circulated. Indicate whether the jurisdiction listed is a "city," "township" or "village." Do not list more than one city, township, or village. (Note: If a county proposal, the petition must be circulated on a city/township basis; this sheet cannot be circulated countywide.)
- Enter an appropriate description of your proposal.

Make sure that all signers properly complete the petition.

- Each signer must be registered to vote in the city, township or village listed in the heading.
- Each signer must sign and print his or her first and last name.¹
- Each signer must enter his or her full address. A rural route number is acceptable. A post office box is not acceptable.
- Each signer must enter his or her zip code. The failure of the circulator or an elector who signs the petition to enter a zip code or to enter his or her correct zip code does **not** affect the validity of the circulator's or signer's signature.
- Each signer must date his or her signature with the month, day and year.

Complete the circulator's certificate after circulating the petition.

- Sign and print your full name and enter the month, day and year.¹ Signatures on the petition which are dated after the date on the circulator's certificate are invalid.
- Enter your complete residence address (street and number or rural route - do not enter a P.O. Box), city or township, state, and zip code.
- If you do not reside in Michigan, enter your county of registration if you are registered to vote in your home state, and make a cross or a check mark in the box that precedes the final paragraph of the circulator certificate statement on the left side of the form.

Circulate the petition properly.

- Do not fail to question signers on their jurisdiction of registration.
- Do not complete the heading of the petition after signatures have been affixed on the petition.
- Do not leave the petition unattended.

¹The failure of the circulator or an elector who signs the petition to print his or her name or to print his or her name in the proper location does **not** affect the validity of the circulator's or signer's signature. However, a printed name located in the space designated for printed names does **not** constitute the signature of the circulator or elector.

²The failure of the circulator or an elector who signs the petition to enter a Zip Code or to enter his or her correct Zip Code does **not** affect the validity of the circulator's or signer's signature.

Proposed amendment adding a new Section 1.4 to the Ann Arbor City Charter:

Section 1.4. Center of the City

The City-owned public land bounded by Fifth Avenue, and William, Division and Liberty Streets, shall be retained in public ownership, in perpetuity, and developed as an urban central park and civic center commons known as the "Center of the City."



Exhibit C

Exhibit D

EXECUTION

AGREEMENT OF SALE

This Agreement of Sale ("Agreement") is entered into as of the 31st day of May, 2018 (the "Effective Date"), by and between the **City of Ann Arbor**, a Michigan municipal corporation ("Seller"), having an address at 310 E. Huron, P.O. Box 8647, Ann Arbor, Michigan 48107, and **Core Spaces Ann Arbor Fifth LLC**, a Delaware limited liability company ("Purchaser"), having an address at 540 W. Madison Street Suite 2500, Chicago, Illinois 60661.

RECITALS:

A. Seller is the owner of a certain parcel of real property located in the City of Ann Arbor, Washtenaw County, Michigan, more particularly described on Exhibit A hereto (the "Library Lot Property"), upon which Seller has developed and constructed, and the City of Ann Arbor Downtown Development Authority (the "DDA") operates, a 711 parking space underground and surface public parking garage (the "Parking Structure").

B. On February 27, 2015, Seller issued, through CBRE Group, Inc. ("CBRE"), an Offering Memorandum (the "Offering Memorandum") for the sale and development of the air space over and above the Parking Structure, all as more particularly set forth therein.

C. Purchaser submitted its response to the Offering Memorandum ("Offering Memorandum Submission") prior to the response due date on May 15, 2015, was selected as one of two finalists, and was invited to submit a Best and Final Offer ("BAFO"), which it did on November 17, 2015.

D. Purchaser was selected as the successful applicant and, on January 19, 2016, Seller's City Council passed Resolution R-16-021 (a copy of which is attached as Exhibit B), directing Seller's staff to enter into contract negotiations with Purchaser regarding Scheme B as detailed in the BAFO, subject to certain additional community benefits requested as more particularly set forth in the Resolution.

E. Seller's Staff and Purchaser entered into negotiations pursuant to Resolution R-1-021, resulting in a certain Memorandum dated March 9, 2017, from Purchaser to Seller (the "Deal Points Response", a copy of which is attached as Exhibit C hereto), being a response by Purchaser to negotiated deal points.

F. Purchaser presented the project to Seller's City Council at a council workshop on March 16, 2017, as reflected in and accompanied by the PowerPoint presentation attached as Exhibit D hereto (the "Workshop PowerPoint").

G. On April 17, 2017, Seller's City Council passed Resolution R-17-121 (the "Authorizing Resolution", a copy of which is attached as Exhibit E hereto), authorizing and approving the sale contemplated sale of the Property (as defined hereinbelow) to Purchaser, all as more particularly set forth therein.

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Seller and Purchaser agree as follows:

1. INCORPORATION AND PRIORITY OF DOCUMENTS.

A. Seller and Purchaser acknowledge and agree that the terms and conditions of the transaction(s) contemplated in this Agreement and the project to be constructed by Purchaser (the "Project") shall be defined and controlled by the following documents, and in the event of any conflict between or among such documents, the following order of priority shall control in their interpretation and meaning:

- (i) This Agreement;
- (ii) The Authorizing Resolution;
- (iii) The Deal Points Response;
- (iv) The Workshop PowerPoint;
- (v) The BAFO; and
- (vi) The Offering Memorandum Submission.

B. Notwithstanding the foregoing, resort to interpretation with reference to the documents listed in (ii) through (vi) in Subsection 1.A shall only apply in the event any such document is expressly referenced in this Agreement, or the clear intent of the parties is not discernable by a reading of this Agreement alone. The parties acknowledge, and agree that parts of documents (iii), (iv), (v), and (vi) contain conceptual architectural plans, designs, and renderings, as well as sample images of building exteriors (collectively the "Conceptual Design"). The parties agree that the Conceptual Design provides an overall concept for the Project in terms of architectural design, massing, materials, quality and vision that generally satisfies Seller's planning and building expectations for the Project, but that the final design of the Project may be altered and redesigned in the Entitlements process subject to the rights of the parties set forth in Section 6. The parties also acknowledge and agree that parts of documents (iii), (iv), and (v) contain pictures and examples of proposed infrastructure, facilities and amenities for the required public plaza (collectively "Plaza Elements"). The parties agree that these Plaza Elements provide general examples of the type and quality of each improvement, and that the final Plaza Elements are subject to Section 12.D below, and to any modifications that may occur as part of the Entitlements process subject to the rights of the parties set forth in Section 6. In addition, the parties acknowledge and agree that estimated schedules, timelines and delivery dates provided in documents (v) and (vi) have been superseded by this Agreement. Purchaser agrees to submit plans for the Project that shall be for a mixed-use project containing, at a minimum, the following core components: (i) approximately 3,000 square feet of ground floor retail; (ii) approximately 20,000 square feet of office; (iii) approximately 70,000 square feet

of hotel; and (iv) approximately 250,000 square feet of multifamily residential apartments. The parties further acknowledge and agree that the actual plans, drawings, site plans, renderings and other information that is developed as part of the Entitlements process shall be binding on the Purchaser and the Seller to the extent approved by the Seller and to the extent accepted by the Purchaser as provided in Section 6 hereof. In such event, such approved and accepted plans shall replace, override and supersede anything therein conflicting with the matters set forth in the documents identified in Subsection 1.A.(ii) through (vi), but such documents shall otherwise remain in force and effect with respect to the matters set forth therein.

2. SALE; THE PROPERTY.

On the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell, convey and transfer to Purchaser, and Purchaser agrees to purchase and acquire from Seller, the Property. The term "Property" shall include and consist of one or more condominium units in the condominium project to be established in accordance with Section 7 hereof prior to or at Closing. The parties agree that the Property (i.e., Purchaser's condominium unit or units) shall generally comprise the air rights over and above the Library Lot Property extending vertically from the existing top surface of the Parking Structure, but shall be subject to existing Library Lane, the Perimeter Drive, and the various vehicular and pedestrian ingress/egress drives, elevator lobby and stairways into and out of the Parking Garage, all as conceptually shown on Exhibit F hereto, each of which shall be established as part of a unit, common element (limited or general) or as an easement in accordance with the process set forth in Section 7 hereof. The parties agree that the Property shall be entitled to all Floor Area Ratio ("FAR") rights and other zoning rights associated with the Library Lot Property, and if necessary, such rights shall be assigned to the Property at Closing. The conveyance will be subject to (i) the building envelope restriction depicted on Exhibit F, and (ii) the City's reserved rights to place one or more antennae or other communication devices and related equipment (collectively the "Communication Equipment") on the roof of the structure to be developed and constructed by Purchaser in a location that is determined by Purchaser in its reasonable discretion; and provided that (i) Purchaser shall have the right to approve, in its reasonable discretion, the size, weight, height and dimensions of the Communications Equipment; (ii) such Communications Equipment shall not be of such a size or nature that it would prevent Purchaser from installing its own antennae or other communications devices and related equipment on the roof of such structure; and (iii) such Communications Equipment will not interfere with residential common area amenities and/or mechanical systems.

3. PURCHASE PRICE; ADJUSTMENTS AND CREDITS.

A. The purchase price for the Property is Ten Million and no/100 Dollars (\$10,000,000.00) (the "Purchase Price"), which shall be payable as follows:

- (i) One Hundred Thousand and no/100 Dollars (\$100,000.00) (the "Deposit") prior to or upon Purchaser's execution of this Agreement, by wire transfer of immediately available federal funds to be deposited in an interest

bearing escrow account with Liberty Title Agency, attention: Thomas Richardson, at 111 North Main Street, Ann Arbor, Michigan 48104, as escrow agent for this transaction ("Escrow Agent"). The Deposit, and all interest earned thereon, shall be deemed fully earned and non-refundable except (x) in the event of damage, destruction or condemnation as permitted in Sections 21 and/or 22, below, or (y) in the event Seller defaults hereunder, or (z) if a Purchaser contingency or condition set forth in this Agreement is not satisfied or waived in writing by Purchaser, and/or if a termination right of Purchaser set forth herein is timely and properly exercised. In the event that this Agreement terminates based on (x), (y) or (z) above, the Deposit, together with all interest thereon, shall be delivered to Purchaser. At Closing (as hereinafter defined) the Escrow Agent shall deliver the Deposit, together with accrued interest thereon, to Seller and credit such amount against the Purchase Price.

- (ii) The balance of the Purchase Price, after deducting the Deposit plus interest, if any, earned thereon, and subject to adjustment for prorations and credits as provided in this Agreement, by wire transfer of immediately available federal funds, to the account of Seller or as Seller may otherwise direct, at Closing.

B. Seller shall pay the cost (if any) of the Title Commitment (defined in Section 4A), and the premium for a standard owner's policy without "standard exceptions". All state, county and local transfer taxes shall be paid by the party identified in the applicable law or local ordinance. Purchaser shall pay all recording costs for its mortgage and the Deed (defined in Section 11) and the cost of any additional endorsements requested by Purchaser. Seller and Purchaser shall each pay one-half of any escrow fees charged by the Title Company (defined in Section 4A) and shall be responsible for the fees of their respective attorneys and/or advisors. The obligations of the Parties to pay the foregoing costs and expenses shall survive the termination of this Agreement.

C. The Library Lot Property is currently exempt from real property taxes and assessments. All ad valorem taxes and special assessments levied and which become a lien on the Property after the Closing Date shall be Purchaser's responsibility, all in accordance with the applicable provisions of the Michigan Condominium Act, being Act 59 of 1978, as amended (the "Condominium Act").

D. Water and sewer use charges, if any, which relate to any period prior to the Closing Date shall be paid by Seller, and all water and sewer use charges against the Property which relate to any period after the Closing Date shall be paid by Purchaser, regardless of when any lien therefor accrues or attaches to the Property; and

E. Charges, if any, for utilities, electricity and natural gas with respect to the Property and relating to any period after the Closing Date shall be paid by Purchaser.

4. TITLE; SURVEY.

A. As evidence of title, as soon as reasonably practicable after the Effective Date, Seller shall cause to be issued and furnished to Purchaser a title insurance commitment dated subsequent to the Effective Date, from Liberty Title Agency as agent for Chicago Title Insurance Company (the "Title Company") (the "Title Commitment") covering the Library Lot Property, and will cause the Title Company to issue to Purchaser at Closing an ALTA Owner's Title Policy, without standard exceptions, covering the Property in the amount of the Purchase Price, naming Purchaser as the insured. The Title Commitment shall be accompanied by legible copies of any instruments of record or other instruments concerning title reflected in the Title Commitment (the "Title Documents"). Purchaser shall have thirty (30) days after the delivery of the Title Commitment and Title Documents in which to (a) examine title to the Property and (b) to notify Seller in writing of Purchaser's objection to any matter shown thereon. Upon notice from Purchaser of its foregoing objection to any matter shown on the Title Commitment, Seller shall have a period of thirty (30) days within which to give notice to Purchaser of which, if any, of the matters to which Purchaser has objected that Seller will cure, eliminate or obtain title insurance from the Title Company insuring against. Seller shall have no obligation to cure or eliminate any encumbrances or exceptions to which Purchaser objects. With respect to any such encumbrances or exceptions which Seller elects not to cure, Purchaser may, at Purchaser's option, and within ten (10) days after its receipt of Seller's notice (a) irrevocably waive its objections to and accept title subject to such encumbrances or exceptions; or (b) terminate this Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect. Failure by Purchaser to timely (x) object to any matter shown in the Title Commitment, or (y) give notice of its waiver of objections or termination of this Agreement as permitted in the foregoing sentence, shall be deemed to be an irrevocable waiver of all such matters to which Purchaser might have objected, or had objected, as the case may be, and an election by Purchaser to proceed to Closing. As to those encumbrances or exceptions which Seller elects to cure, Seller shall cause the same to be cured or insured over prior to or at Closing. Encumbrances or exceptions to title shown on the Title Commitment to which Purchaser does not timely object or which are waived and accepted by Purchaser, expressly or by implication hereunder, or which are insured over by Seller, are herein referred to as the "Permitted Exceptions". The cost of the title insurance policy, including without limitation any endorsements Purchaser wishes to obtain, shall be borne by Purchaser; however, the refusal or inability of the Title Company to provide any such endorsement(s) shall not be a basis for termination of this Agreement.

B. If Purchaser desires to obtain any survey in addition to that contained within the Condominium Subdivision Plan which will be prepared in connection with and included as part of the Master Deed of the Condominium of which the Property shall be one or more Units, it shall do so at its own cost and expense. Seller shall have no further obligation with respect to title to the Property or any survey matters not set forth in this Section 4.

5. PURCHASER'S DUE DILIGENCE.

A. Purchaser shall have the period of sixty (60) days after the Effective Date (the "Due Diligence Period") within which to conduct and complete any document review, feasibility and physical investigation of the Property as Purchaser may in its discretion undertake. If the results of Purchaser's review and investigation are not acceptable to Purchaser, in Purchaser's sole discretion and for any or no reason, then Purchaser may, at its option, cancel this Agreement by written notice to Seller prior to the expiration of the Due Diligence Period in full termination of this Agreement and neither party shall have any further obligations under this Agreement to the other party except for the obligations of Purchaser contained in this Agreement which expressly survive the Closing or termination of this Agreement. If Purchaser's due diligence has not been completed within the Due Diligence Period, Purchaser may have up to two (2) extensions of the Due Diligence Period of not more than thirty (30) days each, provided that Purchaser shall give written notice of its election to exercise such extension(s) prior to the end of the Due Diligence Period, as the same may be extended. Upon expiration of the Due Diligence Period (including any extensions thereof) without this Agreement being terminated, Purchaser shall be deemed to have been satisfied or waived any and all conditions to its obligation to close the transaction except as otherwise set forth herein, including without limitation, the rights of Purchaser to terminate based on Entitlements pursuant to and in accordance with Section 6, the conditions set forth in Section 18, and defaults of this Agreement by Seller.

B. Due Diligence Materials. During the Due Diligence Period, Seller will make available to Purchaser all historical documents and information relating to the Library Lot Property and the Parking Structure, including without limitation architectural and engineering drawings, specifications and related documents, construction documents, soils reports, engineering studies, submittals, testing data, and environmental reports and analyses (the "Due Diligence Materials"). Purchaser, its employees, attorneys and consultants, shall be provided access to the Due Diligence Materials during Seller's normal business hours. Purchaser, its employees, attorneys and consultants shall be entitled to view all Due Diligence Materials on-site, but shall not take or remove any Due Diligence Materials, provided, however, that Purchaser may upon request and at its sole cost and expense, make photocopies or other reproductions thereof. Seller shall reasonably cooperate with Purchaser and will provide electronic copies of any Due Diligence Materials that are in Seller's possession in the ordinary course. Seller makes no warranty or representation whatsoever with respect to the currency, accuracy or completeness of any or all of the Due Diligence Materials, and the existence or review of the Due Diligence Materials shall not relieve Purchaser of its obligation to make all necessary and appropriate independent investigations and conclusions with respect to the Property, its condition and adequacy thereof for Purchaser's intended use.

C. Limited Right of Entry. Seller grants to Purchaser and its employees, attorneys, engineers and consultants (collectively, "Consultants"), the license and permission to enter, from time to time, upon the Library Lot Property and the Parking Structure for the purpose

of conducting a physical inspection and an environmental investigation. Such entry, inspection and investigation shall be subject to the following:

- (i) Purchaser shall notify Seller by telephone or email at least two (2) business days in advance, in writing, of the time, date and purpose of any proposed entry and Seller shall be permitted, if it elects, to have its consultants or employees present at all times during such entry to observe the activities of Purchaser and its Consultants. Seller shall permit entry to the Library Lot Property as soon as reasonably practicable after receipt of Purchaser's notice, but in no event later than three (3) business days thereafter. Purchaser may, alternatively, provide to Seller a proposed schedule for such inspections and testing, by designating blocks of days or times during which it proposes to undertake such activities. Seller will not unreasonably withhold or delay its approval of such schedule(s), provided that the same do not unreasonably interfere with the regular operation of the Parking Structure. The failure of Seller, or its consultants or employees, to appear at the date and time of any entry, inspections or testing by Purchaser in accordance with the requirements set forth above shall not prevent Purchaser, or its Consultants, from undertaking such work.
- (ii) Should Purchaser, after initial due diligence and review of existing environmental data, determine a need for environmental sampling of soil, groundwater or other media at the Library Lot Property, then Purchaser shall notify Seller of the need and provide for Seller's approval a proposed work plan detailing the location and media to be sampled, the constituents to be analyzed for each sample, and the precautions that Purchaser and its Consultants will take to ensure safety and to minimize any disruptions or impact at the Library Lot Property. Seller shall not unreasonably withhold or delay consent to Purchaser's work plan. Purchaser shall be responsible for carrying out the work plan as approved by Seller and shall be responsible for the total cost of the work, which shall in no event damage the Parking Structure, nor disturb or interfere with the regular and unimpeded operation of the Parking Structure.
- (iii) In the event that Purchaser makes any soil borings on the Library Lot Property pursuant to an approved work plan, such bore holes will be filled and the Library Lot Property (and the Parking Structure) restored to its previous condition as soon thereafter as reasonably practicable given the nature and extent of the boring undertaken. All spoil resulting from the boring will be containerized, promptly removed from the Library Lot Property, and properly and legally disposed off-site by Purchaser or its Consultants at its cost.

- (iv) In the event that any temporary groundwater monitoring wells are installed on the Library Lot Property pursuant to an approved work plan, such temporary wells shall be removed, the bore holes filled, and the Library Lot Property (including without limitation the Parking Structure) restored to its original condition as soon thereafter as reasonably practicable given the nature and extent of the wells so installed. All spoil resulting from the installation of wells and all liquids resulting from production and/or sampling of wells, and all sampling waste will be containerized, promptly removed from the Library Lot Property, and properly disposed of off-site by Purchaser at its cost.
- (v) Purchaser's exercise of the right of entry herein granted shall be at Purchaser's sole risk and Purchaser hereby forever releases and discharges Seller, the DDA, their respective council and board members, officers, directors, agents, employees, consultants, and contractors from any liability to Purchaser, of any type whatsoever, resulting from loss or injury in the course of Purchaser's exercise of the right of entry herein granted, to Purchaser, its Consultants and its and their counsel and board members, officers, directors, agents, and employees. Purchaser hereby shall indemnify and save harmless Seller, the DDA, their respective officers, directors, agents, employees, consultants, and contractors from any loss, expense, cost, fine, or penalty whatsoever, including, without limitation, reasonable attorney fees, resulting from entry upon the Property for the purpose of conducting the environmental investigations and of Purchaser, its Consultants, and its and their officers, directors, agents, and employees, in the exercise of the right of entry herein granted. Notwithstanding the foregoing, Purchaser shall have no indemnification obligation with respect to the mere discovery or disclosure (if required by applicable law) of a pre-existing condition at the Library Lot Property by Purchaser. The obligations of Purchaser under this Section 5.C(v) shall survive the Closing or earlier termination of this Agreement.
- (vi) Except as set forth in Section 5.D, below, the limited license and permit to enter the Library Lot Property under this Section 5.C shall terminate and cease to exist upon expiration of the Due Diligence Period or termination of this Agreement for all activities included within the scope of Purchaser's right of due diligence hereunder; provided, however, that Purchaser shall have access to the Library Lot Property for non-due diligence related purposes (e.g., surveying and engineering necessary to the design of its project and other non-invasive activities, at reasonable times and upon such terms and conditions thereto as may be reasonably imposed by the DDA as operator of the Parking Structure).

- (vii) Prior to commencing such inspections and inspection related activities, Purchaser or its Consultants shall deliver to Seller and the DDA evidence that Purchaser and such Consultants maintain general liability insurance in an amount not less than one million dollars and, with respect to Purchaser, in an amount not less than two million dollars by an insurer with a minimum AM Best Rating of A-, VII, naming Seller and the DDA as additional insureds and shall maintain such insurance coverage at all times during the performance of such inspections and inspection related activities.

D. Environmental Update. Notwithstanding the foregoing, the Purchaser shall have the right to conduct investigations in connection with the update of environmental studies, reports or analysis of the Library Lot Property within forty-five (45) days prior to Closing (“Environmental Update Period”). In connection with such updates, the Purchaser shall have the same Limited Right of Entry as is set forth in Section 5.C. (i)-(v) above during such period. In the event such updates to the environmental studies or analysis reveal a material and adverse change in the environmental condition of the Library Lot Property when compared to the original environmental reports, studies or analysis, then Purchaser shall the right to terminate this Agreement by providing written notice to Seller prior to the expiration of the Environmental Update Period. In such event, this Agreement shall terminate, the Deposit including all interest thereon shall be refunded to Purchaser and the parties shall be released and discharged from any and all obligations hereunder with the exception of such terms and conditions that are expressly intended to survive termination of this Agreement.

E. Confidentiality. Except as and to the limited extent, if any, expressly set forth in this Agreement, any and all information furnished by Seller to Purchaser, its employees, attorneys, consultants and contractors (including the Due Diligence Materials), and any and all information acquired by Purchaser in the course of its investigation of the Property pursuant to this Agreement, shall be strictly maintained by Purchaser as confidential. Purchaser may reveal any of said information to its lenders, investors, members, officers, trustees, employees, attorneys, consultants and contractors engaged in advising Purchaser; provided, however, that Purchaser shall inform all such officers, trustees, employees, attorneys and third parties of the confidentiality obligations applicable to them. The parties acknowledge that Seller is subject to the Michigan Freedom of Information Act, P.A. 442 of 1976, as amended, and the Michigan Open Meetings Act, P.A. 267 of 1976, as amended, as well as other applicable federal and state laws regarding information that upon request, shall be made available to the public. Any and all documents and records provided to Seller may be released by Seller [or its agents] subject to state or federal law. Purchaser shall not be required to maintain the confidentiality of information that (i) is or becomes publicly available other than as a result of acts by it in breach of this Agreement, (ii) is in its possession prior to disclosure by Seller (other than as a result of prior disclosure to the receiving party by Seller), (iii) is disclosed to the receiving party by a third party on a non-confidential basis, provided that the source of such information is not to be prohibited from transmitting such information to the receiving party by a contractual, legal, fiduciary or other obligation to Seller, (iv) is independently derived by the receiving party

without the aid, application or use of the information disclosed by Seller, (v) has been approved for release by prior written authorization of Seller (which approval may be in the form of an e-mail), or (vi) is required to be disclosed pursuant to law, statute or regulation.

6. ENTITLEMENTS PERIOD.

A. During the Entitlements Period, which "Entitlements Period" is defined to be the period that runs from the Effective Date of this Agreement and ends on the date that is three hundred sixty (360) days from the Effective Date, Purchaser shall promptly develop and draft applications, initiate, file and diligently pursue all reasonable actions necessary to obtain the Entitlements from the appropriate governmental agencies. As used herein, "Entitlements" shall mean and refer to all required zoning, site plan and other permits and approvals of governmental bodies and agencies having jurisdiction thereover, necessary for Purchaser's contemplated development of the Property as a multi-use complex as contemplated by and set forth in this Agreement. Seller agrees to reasonably cooperate with Purchaser in connection with Purchaser's efforts to obtain the Entitlements; provided however that nothing herein or in any of the various documents referred to or incorporated herein shall be construed as a warrant, guarantee, or a commitment by Seller that any such Entitlements will be approved by Seller. Purchaser further acknowledges and agrees that Seller's deliberations with respect to land use, zoning and/or site-planning requests are separate and not dependent on Seller's decision with respect to entering into this Agreement. Furthermore, in no event shall Purchaser's efforts impede or impact Seller's exclusive right and title to the Property or modify the existing zoning of the Property prior to Closing and conveyance of title to Purchaser. Without limiting the foregoing, Purchaser acknowledges, covenants and agrees that it shall be obligated to follow and adhere to the City of Ann Arbor Downtown Design Guidelines, and in particular but not by way of limitation Purchaser shall present the Project to the Ann Arbor Design Review Board. The Project shall be reviewed by the Seller's Design Review Board consistent with the requirements of the Ann Arbor City Code. In addition to this required review, Purchaser shall present the Project to the Design Review Board a second time in order to provide an additional opportunity for review and comment by the Board.

B. Notwithstanding the foregoing, the parties agree that Purchaser shall have the exclusive right to develop and submit various applications for approval in connection with its efforts to obtain the Entitlements and nothing herein (including in any of the various documents referred to or incorporated herein) shall be construed or interpreted to require Purchaser to accept or approve any proposed change or modification to any of the applications, plans, concepts and/or information submitted by Purchaser. In addition, the Purchaser shall have the right to treat an approval of an Entitlement as a "denial" in the event that an Entitlement is granted, but is subject to a term or condition that materially deviates from, or is not expressly included within or contemplated by, (i) the terms of this Agreement; (ii) the Deal Points Response (to the extent applicable and not otherwise superseded as provided herein); and/or (iii) the application, design or proposal, including any amendments

or adjustments thereto, that are submitted or proposed by Purchaser in connection with the desired Entitlement.

C. If Purchaser has not obtained the Entitlements, is denied the Entitlements, or has been provided modified or conditioned Entitlements, then Purchaser may, at its option, cancel this Agreement by written notice to Seller prior to the expiration of the Entitlements Period in full termination of this Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and neither party shall have any further obligations under this Agreement to the other party except for the obligations of Purchaser contained in this Agreement which expressly survive the Closing or termination of this Agreement. If and so long as the Entitlements have not been obtained prior to the end of the Entitlements Period despite Purchaser's diligent and continuous pursuit thereof, the City Administrator shall have, on behalf of Seller and in his absolute discretion and without further approval of Seller's City Council, the authority to grant Purchaser not more than two (2) extensions of the Entitlements Period of not more than ninety (90) days each, provided that Purchaser shall give written notice of its desire to obtain such extension(s) prior to the end of the Entitlements Period, as the same may be extended, and by delivering an additional \$25,000.00 deposit to Seller for the first such extension, and an additional \$25,000.00 deposit to Seller for the second such extension, which additional funds shall be considered added to and part of the Deposit for all purposes hereunder and shall apply to the Purchase Price at Closing ("Extension Payments").

7. ESTABLISHMENT OF CONDOMINIUM PROJECT.

A. The Property shall be conveyed to Purchaser in the form of one or more vertical air space units within and part of a condominium project to be established on the Library Lot Property, and to be drafted and approved by the parties in accordance with the terms of Sections 7.B and 7.C. The Parking Structure shall be a separate unit (owned by Seller) in the condominium project, and the exact descriptions and definitions of the various units, building envelope(s), general common elements, limited common elements, as well as the rights and responsibilities of Seller and Purchaser as co-owners (as defined in the Condominium Act), and of the condominium association, shall be established and set forth in the Master Deed, Condominium Bylaws and Condominium Subdivision Plan for the project (without limitation, the "Condominium Documents"). The Condominium Documents shall be prepared by the parties and shall be approved by the parties prior to the expiration of the Due Diligence Period; provided, however, that if the parties, acting in good faith, have not completed and approved the Condominium Documents within the original sixty (60) day Due Diligence Period, and if Purchaser has not otherwise extended the Due Diligence Period pursuant to Section 5.A, Seller may in its discretion elect to extend the Due Diligence Period solely for the purpose of providing such additional time as may be necessary to achieve such completion and approval process, but in no event shall the Due Diligence Period as so extended exceed one hundred twenty (120) days in the aggregate. The approved Condominium Documents, subject to future updates identified below and/or other mutually acceptable modifications to the Condominium Documents, shall be executed and recorded at Closing. Purchaser, at its sole cost and expense, will engage licensed civil engineers and

surveyors (the identify and qualifications of which shall be subject to Seller's approval, which shall not be unreasonably withheld or delayed), who will prepare the Condominium Subdivision Plan, and the parties agree that such Condominium Subdivision Plan to be approved during the Due Diligence Period will be complete subject only to the identification of structural support elements (such as columns, footings, foundations, and similar elements) and such other details, if any, as may be necessary to identify matters that may be set forth in the Master Deed by reference thereto, which will be added as soon as reasonably practicable to an updated draft of the Condominium Subdivision Plan to be completed prior to Closing. The obligations of Purchaser under this Section 7.A shall survive the Closing or earlier termination of this Agreement. Once approved by the parties as provided above, the Condominium Documents shall not be modified prior to execution and recording without the express written consent of the Seller and Purchaser, which consent shall not be unreasonably conditioned, withheld or delayed. Following execution and recording of the Condominium Documents, the amendment provisions of the Condominium Documents shall govern modifications or amendments; provided, however, that in no event shall the Condominium Documents be amended in any manner or respect that would be inconsistent with or violate the Integration of Documents provisions of Section 29 of this Agreement without the express prior written consent and joinder of Seller.

B. While it is contemplated that the Parking Structure shall comprise a single condominium unit, the Property may at the request of Purchaser or at the election of Seller be divided into one or more condominium units, including by way of example the contemplated multiuse building and the public area (as further defined and describe in Section 12, below). The Condominium Documents shall also contain provisions that authorize Purchaser (or any future owner of the Purchaser's unit(s)) to subdivide or consolidate units and/or to enlarge, contract or modify boundaries between Purchaser's unit(s) without the approval of any other unit owner or any Condominium Association. Seller and Purchaser agree that the Condominium Documents will provide that certain structural components/support elements of the Parking Structure shall, and certain elevators, stairways, utilities, fixtures and equipment that are determined to serve both the Parking Structure and Purchaser's contemplated project may be designated as common elements of the condominium project, with responsibilities for management, maintenance, repair and replacement being determined by the parties in connection with drafting of the Condominium Documents. The Condominium Documents shall carry forward the agreement set forth in Section 2 between Seller and Purchaser that Seller may use a portion of the roof of the Project to mount an antenna and related equipment for the purposes of wireless voice and data access (i.e. transmission and reception) as approved by Purchaser and that Purchaser shall have the same rights, subject to and to the extent permitted by applicable Federal, state and/or local law.

C. Notwithstanding any and all terms and conditions contained herein, with the sole exception of the agreements contained in Section 7.A and B. above, all of the terms and conditions of the Condominium Documents shall be subject to the mutual approval of Purchaser and Seller, which shall not be unreasonably withheld. In the event the parties cannot agree on the terms and conditions of all of the Condominium Documents on or before

the expiration of the Due Diligence Period, either party shall have the right to terminate this Agreement by providing written notice to the other in which case the Deposit and all interest thereon shall be refunded to Purchaser and all of the rights and obligations among the parties shall terminate with the exception of those rights and obligations that are expressly intended to survive Closing or termination of this Agreement.

8. SELLER'S REPRESENTATIONS AND WARRANTIES.

A. Seller hereby represents and warrants to Purchaser the truth and accuracy of each of the following, as of the Effective Date, and to be restated as of the Closing Date:

- (i) Seller is a governmental unit of the State of Michigan and has the full power and authority to enter into this Agreement and carry out the transactions contemplated hereby, and the persons executing this Agreement on behalf of Seller are or shall be duly authorized to execute this Agreement and any deeds, bills of sale, assignments or other instruments or documents reasonably necessary to carry out the transactions contemplated by this Agreement.
- (ii) Seller is not a "foreign person" as that term is defined in Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Code").
- (iii) Except as previously (or prior to Closing, as the case may be) disclosed by Seller to Purchaser, Seller has not been served with and has not received written notice of, any pending litigation or proceedings, or, to the best of Seller's knowledge, threatened or anticipated, relating to the Library Lot Property.
- (iv) Except as previously (or prior to Closing, as the case may be) disclosed by Seller to Purchaser, or provided to Purchaser within five business days of the Effective Date, there are no contracts, agreements, commitments, equipment leases, written or oral, affecting the Property which would be binding on the Purchaser or which would run with the Property.
- (v) No person or entity has an option, right of first refusal, right of first offer, lease or similar interest or right with regard to the Property.
- (vi) Seller has no Knowledge of any defect, deficiency or other existing physical condition of the Parking Structure that would have a material adverse effect on the development and construction of the Project as contemplated by this Agreement. For purposes hereof, "Knowledge" shall mean and refer to the actual knowledge of Howard Lazarus, the City Administrator, after such inquiry of City officials as he may deem appropriate.

B. The foregoing representations and warranties shall survive the conveyance of the Property by Seller to Purchaser for a period of twelve (12) months.

9. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

A. Purchaser hereby represents and warrants to Seller the truth and accuracy of each of the following, as of the Effective Date, and to be restated as of the Closing Date:

- (i) Purchaser is duly organized, validly existing and in good standing as a limited liability company in the State of Delaware, and is duly qualified to do business in the State of Michigan.
- (ii) All necessary corporate action has been taken to duly authorize the execution and delivery of this Agreement and all documents and instruments contemplated by this Agreement, and the performance by Purchaser of the covenants and obligations to be performed by it hereunder. The person or persons executing this Agreement have been duly authorized to bind Purchaser.
- (iii) The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby by Purchaser will not conflict with, violate or result in the breach of any provision of its organizational documents or conflict with or violate any statute, law, rule, regulation, ordinance, order, writ, injunction, judgment or decree of any court or any local, state or federal governmental or regulatory authority applicable to Purchaser.
- (iv) Purchaser has received no written notice that any litigation materially affecting the ability of Purchaser to acquire the Property, to construct the Project or to carry out its obligations to Seller is pending or to its knowledge currently threatened.
- (v) Purchaser is solvent and able to pay its debts and obligations as they mature and there are no actions in law, in equity or similar proceedings which pending or to its knowledge threatened against Purchaser which might result in a material and adverse to Purchaser financial condition or materially affect Purchaser's assets as of the date of this Agreement which would prevent it from being able to pay its debts or undertaking the development of the Property and its obligations under this Agreement.
- (vi) Purchaser has not entered into and will not enter into any transaction not in the ordinary course of its business which would prevent it from being able to pay its debts as they may then exist or financially prevent it from performing its obligations under this Agreement or any other agreements

entered into by the parties in connection with the development of the Property.

B. The foregoing representations and warranties of Purchaser shall survive the Closing and conveyance of the Property by Seller to Purchaser for a period of twelve (12) months.

10. CLOSING DATE.

The delivery of the Transfer Documents and the other actions contemplated to occur in connection therewith under this Agreement (the “Closing”) shall take place at a mutually agreed upon location at 10:00 am local time on the Closing Date. The “Closing Date” shall be a date that is agreed to by the parties but shall be no later than the expiration of the Entitlements Period, which as of the Effective Date is no later than November 22, 2019, absent written agreement of Seller and Purchaser, time being of the essence. Closing may be effected on an escrowed basis through the title insurance company.

11. DOCUMENTS TO BE DELIVERED AT CLOSING.

A. On the Closing Date, Seller shall convey the Property to Purchaser by delivery of the following documents (collectively, the “Transfer Documents”), each to be in form and substance satisfactory to Seller and reasonably satisfactory to Purchaser:

- (i) The Condominium Documents, fully executed and in recordable form;
- (ii) A good and sufficient Covenant Deed to the Property, subject to the Right to Repurchase contemplated by Section 16 of this Agreement, and to the Permitted Exceptions, but otherwise consistent with and limited in accordance with the terms of a standard Covenant Deed in Michigan;
- (iii) The documents (including an owner’s affidavit) that are necessary to enable Purchaser to obtain an Owner’s Policy of title insurance, with standard exceptions deleted, in the form and amounts required by this Agreement and that insures Purchaser as fee simple title owner of the Property subject only to the Right to Repurchase and the other Permitted Exceptions.
- (iv) A “non-foreign affidavit” executed by Seller, stating that the Seller is not a foreign person as defined in Section 1445 of the Code;
- (v) Seller’s executed counterpart copy of the Affordable Housing Covenant contemplated by Section 13 of this Agreement;
- (vi) Seller’s and the DDA’s executed counterpart copy of the Parking Agreement contemplated by Section 14 of this Agreement;

- (vii) Seller's executed counterpart copy of the Construction and Cross-Easement, Development and Construction Agreement contemplated by Section 15 of this Agreement;
 - (viii) A closing statement duly executed by Seller providing for the prorations and adjustments, if any, required under this Agreement;
- B. Also on the Closing Date, Purchaser shall deliver the following to Seller:
- (i) The Purchase Price, adjusted to reflect the Escrow Deposit (to be delivered to Seller by the Escrow Agent as set forth in Section 2.A. (i), and subject to such other adjustments and prorations, if any, contemplated by this Agreement;
 - (ii) Payment of all accrued and unpaid fees and costs of the engineers and surveyors engaged by Purchaser in connection with the preparation of the Condominium Documents as set forth in Section 7;
 - (iii) A closing statement duly executed by Purchaser providing for the payments prorations and adjustments, if any, required under this Agreement; and
 - (iv) Such other documents and instruments, if any, as may be required by the Title Company in connection with the Closing, the conveyance of the Property, closing and recording charges, and the issuance (at Purchaser's expense) of the Title Policy and any endorsements thereto.

12. DESIGN OF PROJECT; PUBLIC PLAZA.

A. Purchaser covenants and agrees that the Project to be submitted for Entitlements and developed on and within the Property shall be in all material respects consistent with and as described in Scheme B of its BAFO, as further modified and refined the Deal Points Response, the Workshop PowerPoint and the Authorizing Resolution, particularly in the following sections of the Deal Points Response: “Design”, “Building Design”, “Streetscape/Pedestrian”, “Zoning and Development Standards”, “Sustainability” (as modified by Subsection 12.B, below), “Connectivity” (as modified by Subsection 12.C, below), “Driveway Access” (as modified by Subsection 12.C, below), and “Public Plaza” (as modified by Subsection 12.E, below), and further consistent with the core components (including approximate square footages) identified in, and subject to, Subsection 1.B and Section 6. The parties further agree that the actual plans, drawings, site plans, renderings and other information that is developed for the project and that is contained in the applications as part of the Entitlements process shall actually be binding on the Purchaser and the City to the extent approved by the City and to the extent accepted by the Purchaser in accordance with, and subject to, Section 6 hereof.

B. Notwithstanding anything contained to the contrary in the section of the Deal Points Response entitled “Sustainability”, Purchaser shall design and develop the Property to meet and achieve the requirements for Gold certification under LEED Versions 2009, whether or not Purchaser actually seeks such certification.

C. The existing Perimeter Drive along the North and East sides of the Library Lot Property shall be defined in and established by the condominium Master Deed (in accordance with Section 7 hereof) as either part of Seller’s unit, as a limited common element appurtenant to Seller’s unit, or as a separate easement granted by the condominium to the City at Closing. The design and construction of the Property shall preserve the Perimeter Drive and take into account, in particular but without limitation, the following:

- (i) During construction Purchaser shall, to the extent commercially practicable utilizing industry standard construction and safety practices, keep the Perimeter Drive open to the public for ingress and egress to adjacent properties, as well as garbage and recycling removal for adjacent properties. Purchaser shall provide Seller, as well as all adjacent property owners impacted by any necessary temporary closure with written or emailed notice indicating the date of the closure and proposed duration of the closure seven (7) days prior to any such closure.
- (ii) Following completion of construction, the Perimeter Drive shall remain open to the public for ingress and egress to adjacent properties, as well as garbage and recycling removal for adjacent properties. At a minimum, the current configuration and dimensions of the Perimeter Drive, as shown on Schedule 12.C(x), attached hereto and incorporated herein by reference,

shall be maintained. Any construction shall accommodate the required turning radius of garbage and recycling service vehicles, as shown on the Solid Waste Details attached hereto as Schedule 12.C(y) and incorporated herein by reference. (Storage for trash and recycling receptacles may be provided within the building that is incorporated in the Project. Storage provided within the building will not need to be constructed consistent with the bin enclosure details as shown on Schedule 12.C(y).)

- (iii) The Perimeter Drive shall have at least 25'0" height clearance for garbage and recycling service vehicles.
- (iv) Seller shall reserve all rights with respect to, and to add, future underground utilities and communications lines and easements (as well as any other improvements, grants of rights or easements as it may deem necessary or appropriate in its sole discretion) under the surface of the Perimeter Drive, except for any underground utilities and communications lines necessary for Purchaser's construction on the Property pursuant to approved plans and specifications for Purchaser's project, provided that such installations and easements shall not materially and adversely affect Purchaser's construction or operation of the Project as the same are contemplated by this Agreement.
- (v) Subject to deviations, if any, permitted by the City Administrator in his sole discretion, any building on the Property shall be set back not less than 15'0" from the east property line, and not less than 12'4" from the north property line.

D. Library Lane shall have at least 25'0" height clearance for garbage and recycling service vehicles.

E. The Public Plaza component of the Property's development may, subject to the agreement of the parties as part of the process set forth in Section 7 hereof, be included within a condominium unit separate from the balance of Purchaser's project, rather than within a single condominium unit comprising all elements of the project. The development, operation and rules/regulations with respect to the Public Plaza and Purchaser's responsibilities with respect thereto shall, at Seller's option, be included within the Condominium Documents or within a separate document to be recorded prior to recordation of the Condominium Documents, but shall in any event be in form and substance satisfactory to Seller and Purchaser. Purchaser shall in any event (but not by way of limitation) include not less than five (5) of the design features in the "Plaza Area Plan" portion of the Workshop PowerPoint, other than and excluding credit for the "information spot", "bike parking", and "outdoor dining terrace".

13. WORKFORCE HOUSING COVENANT.

A. During the Due Diligence Period, Seller and Purchaser shall negotiate and enter into a perpetual Workforce Housing Covenant to be recorded against the Property prior to or at Closing, which Covenant shall contain the following minimum requirements and such other terms and conditions as are acceptable to Seller and Purchaser:

- (i) Twelve percent (12%) but not fewer than 35 of the residential units in the project shall be leased at 150% of Fair Market Rents ("FMR") utilized by the United States Department of Housing and Urban Development ("HUD") and applicable to the Ann Arbor market area to applicants who qualify with household incomes ranging from 60% to 100% of Area Median Income ("AMI") pursuant to Section 42 of the Internal Revenue Code;
- (ii) Additionally, and at the option of Seller, notice of such election to be given not later than 90 days prior to the Closing Date, two and one-half percent (2.5%), but not fewer than an additional nine (9) of the residential units within the project shall be leased at 150% of FMR to applicants who qualify with household incomes ranging from 60% to 100% of AMI; provided, however, that Seller shall pay, or shall cause the DDA to pay, Purchaser \$1,475,000.00 on Closing as consideration for such additional affordable units; and
- (iii) The workforce units under this Section 13 offered shall be a mix of efficiencies, studios, and one bedroom units, and shall not be materially different from units rented at standard rates (e.g., same size, same finishes and amenities).

14. PARKING.

A. During the Due Diligence Period, Seller, Purchaser and the DDA shall negotiate a Parking Agreement substantially conforming to the terms and conditions set forth in the section of the Deal Points Response titled "Parking", and otherwise in a form that is reasonably acceptable to Purchaser, Seller and the DDA. The parties agree that such terms shall include the standard terms and conditions offered by the DDA for monthly parking space rental agreements and that the monthly parking costs charged to Purchaser shall be no more than the parking costs charged by the DDA and/or Seller in connection with the parking facilities located at, or known as, Fourth and Williams Street, Fourth and Washington Street and the Library Lot. The maximum number of parking spaces available for lease by Purchaser under the Parking Agreement shall be reduced by the number of parking spaces that are completely or partially occupied in the Parking Structure by the Project or any elements of the Project. The Parking Agreement will be for a term of twenty (20) years with two fifteen (15) year renewal terms which will be similar to the terms contained in other DDA parking contracts. The Parking Agreement shall also contain terms and conditions mutually satisfactory to Seller, the DDA and Purchaser, in their reasonable discretion, for the utilization of portions of the Parking Structure for temporary construction period parking and staging, and such other matters as may impact the Parking Structure and its operations during construction of Purchaser's project.

15. CROSS-EASEMENT, DEVELOPMENT AND CONSTRUCTION AGREEMENT.

A. During the Entitlements Period, Seller, Purchaser and the DDA shall negotiate, and prior to or at Closing they shall enter into, a Cross-Easement, Development and Construction Agreement ("CDCA") setting forth the relative rights and obligations of the parties, including without limitation any necessary easements to be granted, during and in connection with the actual development and construction of the Project, in form consistent with the Parking Agreement under Section 14 and otherwise reasonably acceptable to Seller and Purchaser. Given the complexity of the Project and the interrelationship of the Project and the Library Lot Property (including without limitation the Parking Structure, Library Lane and the Perimeter Drive as shown on Exhibit F hereto) the CDCA shall, among other things, require and insure that Seller and the DDA shall, subject to any closure or other provisions determined by appropriate governmental agencies for public safety and to insure the efficient and orderly construction of the project over the Parking, continuously and without interruption or impairment operate the Parking Structure subject to possible temporary interruptions scheduled in advance for construction purposes for its intended use throughout construction of the Project, and that Seller, the DDA, other users and the public shall be afforded, subject to the foregoing limitations, continuous and uninterrupted ingress to and egress from the Parking Structure during construction of the project. Seller, Purchaser and the DDA shall grant any necessary or appropriate easements and cross easements to facilitate orderly construction of the Project. Such CDCA shall also include provisions that require Purchaser to comply with the Completion Assurances set forth in Section 28 hereof prior to commencing construction of the Project. Seller's rights under the CDCA shall be an express in rem right coupled with an interest in the Property and the Project.

B. Purchaser warrants and represents to Seller that, prior to and in connection with submission of its BAFO and the Deal Points Response, Purchaser, its architects and engineers, and its other relevant consultants have carefully reviewed, fully understand and have fully taken into account the Library Lane Underground Parking Structure Future Development Report, prepared by Carl Walker, a copy of which is attached hereto as Exhibit G (the "Walker Report"). Prior to the execution of this Agreement, or during the Due Diligence Period, Purchaser has, or shall have, completed a comprehensive review and analysis of all plans, specifications, construction documents and reports for the Parking Structure, and shall have made adequate and complete inquiry of Seller, the DDA, Carl Walker, and such other engineers, surveyors, contractors and other consultants as may be necessary or appropriate to fully understand the Parking Structure and the requirements and best practices for development and construction of Purchaser's project thereon. The CDCA shall, without limitation, provide for and require that the design and construction of Purchaser's project be coordinated in all respects with Seller, all applicable City Departments and staff, Seller's engineers and other consultants, the DDA and its consultants, and Carl Walker, and that such construction shall connect to the Parking Structure infrastructure as contemplated in the Walker Report and with as little interference with the ongoing operation of the Parking Structure as a public parking garage as practicable.

16. RIGHT OF REPURCHASE.

A. The conveyance of the Property to Purchaser at Closing shall be subject to a reserved right of repurchase (the "Seller's Right of Repurchase"), set forth in the Covenant Deed or by separate instrument recorded simultaneously therewith, giving Seller the irrevocable right and option to repurchase the Property, subject to the terms set forth in this Section 16, if and in the following events (the "Repurchase Events"):

- (i) If Purchaser fails to commence actual physical construction of the Project on the Property within five (5) years from the Closing Date; or
- (ii) If Purchaser fails to substantially complete all construction activities such that only punch list items remain for completion and issuance of certificates of occupancy for the residential units and all other elements within the Project requiring a certificate of occupancy, within seven (7) years from the Closing Date.

B. If a Repurchase Event occurs, Seller may (but shall not be required to) elect to repurchase the Property by written notice to Purchaser in the manner set forth in Section 24 of this Agreement (the date of such notice is referred to herein as the "Exercise Date"). The purchase price ("Repurchase Price") shall be the fair market value of the Property in its as-is, with all faults, state as of the Exercise Date, taking into account the status of title to the Property, the then-condition of the Property, and, if the construction of the project has commenced prior to the Repurchase Event, the incomplete status of construction

of the Project thereon, and the adverse impact of the incomplete Project in its then-state on the value of the Parking Structure as well as on the future marketability of the Property. Such purchase and sale shall convey the Property in its then as-is, where-is condition without representations or warranties of any kind.

C. Seller and Purchaser shall attempt in good faith to reach agreement on the fair market value for the Repurchase Price, but failing to reach such agreement within thirty (30) days following the Exercise Date, the following procedure shall apply. Seller and Purchaser shall each select, within fifteen (15) days after the expiration of the foregoing thirty (30) day period, a duly licensed commercial real estate appraiser (MAI) licensed to practice in the State of Michigan and with not less than ten (10) years experience in the Ann Arbor real estate market. The two appraisers so selected shall attempt to reach agreement on fair market value on the basis set forth in Subsection 16.B within thirty (30) days of their selection. If they are unable to reach agreement within that period, the two appraisers shall together select a third appraiser with the same qualifications, whose determination of fair market value hereunder shall be rendered within thirty (30) days of his/her appointment, and which shall be final and binding on the parties. The determination of fair market value hereunder shall be enforceable by action in any circuit court having jurisdiction thereover. Each party shall be responsible for the costs of its appointed appraiser and the parties shall split evenly the cost of the third appraiser, if any.

D. Seller shall close on the repurchase of the Property within ninety (90) days following the determination of fair market value under Subsection C, above.

E. The Seller's Right of Repurchase shall be senior in priority to any rights of any mortgagee or lienholder against the Property, which liens, mortgages and security interests shall transfer to the proceeds of Seller's repurchase in the same priority and to the same extent such liens and security interests had against the Property. In addition, and notwithstanding the foregoing, the Seller's Right of Repurchase shall terminate, expire and be forever discharged upon the issuance of the necessary certificates of occupancy required under Section 16.A.(ii) above, provided that Purchaser has timely complied with the requirements of Section 16.A.(ii). To the extent that any document recorded against the property references the Seller's Right of Repurchase, Seller shall cooperate with Purchaser in releasing such document upon the issuance of the necessary certificates of occupancy required under Section 16.A.(ii) above based on Purchaser's timely compliance with Section 16.A.(ii).

17. BROKERS.

The parties represent to each other that, except for CBRE, Inc. ("CBRE"), no broker, salesperson, finder or other comparable person or entity has in any way been involved with this transaction and that no party has a right to claim any finder's fee, commission or other compensation by reason of this transaction. Purchaser shall be solely responsible for and directly pay to CBRE any and all fees, commissions and other charges payable to CBRE pursuant to that certain Agreement Between CBRE, Inc. and The City of Ann Arbor for Professional Services

dated as of October 2, 2014 (the "CBRE Contract"), a copy of which has been furnished to Purchaser and which Purchaser has reviewed and understands. Seller and Purchaser each agree to indemnify, save and hold harmless the other from and against any and all claims, losses, costs, damages and expenses (including reasonable attorney's fees) for brokerage commissions or finder's or other fees related to a breach of its foregoing warranty and representation. The provisions of this Section shall survive the Closing.

18. CONDITIONS TO OBLIGATION TO CLOSE.

A. Seller's and Purchaser's obligation to close on the transaction contemplated herein is subject to and conditioned upon the following being true as of the Closing Date:

- (i) No litigation or administrative proceeding shall have been commenced or threatened, and no legislative action shall have been taken or enacted, that could, in the City Administrator's sole judgment and discretion, and/or in the reasonable judgment of the Purchaser, have the effect of preventing or impairing Purchaser's or Seller's ability to carry out the terms of this Agreement or the construction and completion of Purchaser's project as contemplated hereby.

B. Seller's obligation to close on the transaction contemplated herein is subject to and conditioned upon the following being true as of the Closing Date: Purchaser shall not be in default under any provision of this Agreement, nor shall any event or condition exist that, with the passage of time, would constitute an event of default hereunder.

C. Purchaser's obligation to close on the transaction contemplated herein is subject to and conditioned upon the following being true as of the Closing Date: Seller shall not be in default under any provision of this Agreement, nor shall any event or condition exist that, with the passage of time, would constitute an event of default hereunder;

D. A party shall exercise a foregoing condition to Closing by providing written notice to the other party and providing the other party 14 days to cure the unsatisfied condition. In the event that a cure, or other mutually acceptable resolution of the unsatisfied condition, is not achieved within such period, then this Agreement shall terminate and the Deposit and all interest thereon shall be refunded to Purchaser and all of the rights and obligations among the parties shall terminate with the exception of those rights and obligations that are expressly intended to survive Closing or termination of this Agreement.

19. AS-IS TRANSACTION; ENVIRONMENTAL PROVISIONS.

A. Without limiting the express environmental covenants, terms and conditions set forth in this Section 19, Purchaser acknowledges and agrees that it is acquiring, and at Closing will accept, the Property "AS IS, WHERE-IS, and WITH ALL FAULTS", and that the sale by Seller to Purchaser of the Property is made without any representations or

warranties of any nature whatsoever, express or implied; it being the intention of Seller and Purchaser to expressly revoke, release, negate and exclude all representations and warranties, including, without limitation, any representations or warranties concerning the nature, quality, construction, condition, state of repair or lack of repair, of the Property, or any part thereof; the Environmental Condition (as defined in Subsection 19.B, below) of the Property, or any part thereof; the suitability of the Property, or any part thereof, for any specific purpose or use; the merchantability of the Property, or any part thereof, or the economic feasibility or the income to be derived from the Property, or any part thereof; the compliance of the Property, or any part thereof, with any statute, regulation, rule or ordinance affecting the same, including without limitation, Environmental Law (as defined in Subsection 19.B, below); any and all express or implied representations and warranties created by any affirmation of fact or promise or by any description of the Property, any and all express or implied representations and warranties pertaining to any environmental, geological, structural or other condition or hazard or the absence thereof heretofore, now or hereafter affecting in any manner the Property, and any and all other express or implied representations and warranties by Seller, the DDA, or their respective councils and board members, officers, partners, managers, employees and/or agents whatsoever. Purchaser further acknowledges and agrees that, in purchasing and closing on the purchase of the Property, Purchaser is and shall be relying solely on its own investigation and evaluations of the Property and the Library Lot Property, and that Purchaser has not relied and is not (and shall not be) relying on any information provided or to be provided by Seller or the DDA, whether within the Due Diligence Materials, or otherwise.

B. As used herein:

- (i) “Environmental Condition” means the presence of any Hazardous Substance in any amount in, on, under, migrating onto, or emanating from any portion of the Property, including without limitation, any improvements on the Property, whether known or unknown at the time of the Closing.
- (ii) “Environmental Law” means any applicable federal, state, or local law, including the common law, relating to (x) the protection of the environment (including air, water vapor, surface water, groundwater, drinking water supply, surface or subsurface land), human health, or occupational health and safety, (y) the exposure to, presence of, or the use, storage, recycling, treatment, generation, transportation, processing, disposal, handling, labeling or release of Hazardous Substances, and including without limitation any statutes, rules and regulations regarding soil or groundwater contamination, or the disposal or existence, in or on the Property, buildings, improvements or any part thereof, of any Hazardous Substance.
- (iii) “Hazardous Substance” means any material, substance, toxic, chemical, contaminant, pollutant, or waste as defined by any Environmental Law or

listed in any regulations as required by Environmental Laws, and includes but is not limited to any petroleum, petroleum products, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous waste, toxic substances, toxic chemicals, chemicals, pesticides, radioactive materials, polychlorinated biphenyls, metals, and any other element, compound, mixture, solution, substance, material, waste or the like that may pose a present or potential danger to human health, safety, and the environment.

C. Purchaser shall comply with applicable laws with regard to assume, accept and satisfy all responsibilities and liabilities arising under any Environmental Law solely with respect to the Property, whether existing or arising in the future, known or unknown, foreseen or unforeseen, affecting buildings, improvements, or land, surface or subsurface, and whether brought by a governmental agency, Purchaser's employee, or any other third party, and agrees to indemnify, defend and hold Seller and the DDA, and their successors, assigns, council and board members, shareholders, partners, directors, officers, managers, persons, agents, employees, and representatives harmless from and against any such liability. The rights and remedies provided in this Agreement, and as may exist under applicable laws, shall be Purchaser's sole and exclusive remedy, if any, with respect to environmental matters against Seller or the DDA. Subject to its rights under applicable law, Purchaser hereby releases and waives, to the fullest extent permitted by law, any and all claims and causes of action (including rights of contribution, if any) that it might have against Seller and the DDA or their successors, assigns, council and board members, shareholders, partners, directors, officers, managers, persons, agents, employees, and representatives for any claims resulting from the Environmental Conditions on the Property, the presence of Hazardous Substances on the Property, or arising under Environmental Law. This release shall run with the land and shall be memorialized in the deed records for the Property. PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY AND THE ENVIRONMENTAL CONDITION OF THE PROPERTY ARE SOLD, TRANSFERRED AND CONVEYED ON A "WHERE IS/AS IS/WITH ALL FAULTS" BASIS AND THAT ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED. Notwithstanding the foregoing, the parties agree that Purchaser shall have no liability or responsibility for the Library Lot Property and/or the Parking Lot Structure or any other land and/or property that is owned by persons or entities other than Purchaser to the extent any adverse event or condition is not caused or contributed to by Purchaser's intentional or negligent act or omission to act.

D. The parties agree that the rights and obligations under this Section 19 shall be binding on Seller, Purchaser, and their respective successors and assigns.

E. The covenants and obligations in this Section 19 shall survive the Closing of this Agreement in perpetuity. In addition, to the extent this Agreement is terminated prior to Closing, the representations, warranties and covenants set forth above that relate to environmental damage that is caused in whole or in part by the act or failure to act of Purchaser, or its agents or representatives, shall survive such termination. The foregoing obligations of

Purchaser shall be in addition to the obligations of Purchaser set forth in Section 5.C. of this Agreement.

20. DEFAULT.

A. If Seller breaches this Agreement and has not cured such breach within fourteen (14) days of written notice from Purchaser, then Purchaser may, as its election, (i) terminate this Agreement by written notice to Seller, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further liability or obligation to the other except as expressly set forth herein, or (ii) seek specific performance.

B. If Purchaser defaults hereunder (other than its indemnification obligations pursuant to and as assumed herein) and fails to cure such default within fourteen (14) days of written notice from Seller, then Seller may, by written notice to Purchaser and with or without terminating this Agreement, retain the Deposit. Notwithstanding the foregoing, if Purchaser defaults with respect to its indemnification obligations in connection with damages caused as a result of inspections contemplated by Sections 5.C., 5.D. and/or as a result of required payments to Purchaser's engineer in connection with Section 7, then in addition to terminating the Agreement and retaining the Deposit as set forth above, Seller may also bring an action for damages arising therefrom.

C. In no event shall either party seek or be entitled to damages (other than as expressly described in Section 20.A and B. above), whether actual, consequential or punitive.

21. DAMAGE OR DESTRUCTION.

If and in the event the Parking Structure and/or other improvements on the Library Lot Property are damaged or destroyed for any reason or by any cause prior to the Closing, then: (i) if less than fifty percent (50%) of the Parking Structure is damaged or destroyed, and the damage or destruction does not impair the structural integrity of the Parking Structure, Seller shall repair the damage or destruction and the Closing shall be delayed until such time as such repair has been completed, or (ii) if fifty percent (50%) or more of the Parking Structure is damaged or destroyed, or the damage or destruction impairs the structural integrity of the Parking Structure, either Purchaser or Seller shall have the right to terminate this Agreement without liability on the part of either party, by written notice to the other party within fourteen (14) days following the determination by Seller (and notice to Purchaser by Seller) of the extent of damage or destruction. If neither party elects to terminate, then the parties shall proceed to Closing, subject to the foregoing delay, in accordance with this Agreement, with no adjustment of the purchase price.

22. CONDEMNATION OF PROPERTY OR LIBRARY LOT PROPERTY PENDING CLOSING.

If condemnation proceedings against all, or a portion of, the Property (or the Library Lot Property) are commenced by a governmental entity other than Seller, or if Seller

upon threat of condemnation in good faith engages in negotiations relative to granting a deed in lieu of condemnation, prior to the Closing Date, either Purchaser or Seller shall have the right to terminate this Agreement without further liability on the part of either party, by so notifying the other party within fourteen (14) days of Seller's notification to Purchaser in writing as to said condemnation or initiation of negotiations in lieu thereof, in which event the deposit shall be returned to Purchaser.

23. CARE AND MAINTENANCE OF LIBRARY LOT PROPERTY.

From the date of this Agreement until the Closing Date, Seller and/or the DDA as applicable) shall maintain the Library Lot Property and the Parking Structure in accordance with its/their current standards and practices therefor, but neither Seller nor the DDA shall have any other obligation whatsoever with respect to the Library Lot Property and/or the Property.

24. NOTICES.

All notices permitted or required to be given hereunder shall be in writing and sent by a nationally recognized overnight courier service (such as Federal Express), certified mail, postage prepaid, return receipt requested, hand delivered, or by electronic mail (provided that a hard copy of such electronic mail is also delivered by an overnight carrier) addressed as follows:

If to SELLER:

City of Ann Arbor
Guy Larcom City Hall
301 East Huron Street
Ann Arbor, Michigan 48107-8647
Attention: Howard S. Lazarus
City Administrator
Email: hlazarus@a2gov.org

With copy to:

Stephen K. Postema
City Attorney
Guy Larcom City Hall
301 East Huron Street
Ann Arbor, Michigan 48107-8647
Email: spostema@a2gov.org

And copy to:

Butzel Long
301 East Liberty Street, Suite 500
Ann Arbor, Michigan 48104
Attention: James C. Adams
Email: adamsj@butzel.com

If to PURCHASER:

Core Campus Investment Partners LLC
1643 N. Milwaukee Ave., 5th Floor
Chicago, Illinois 60647
Attention: Marc Lifshin
Email: marel@corespaces.com

and:

Core Campus Investment Partners LLC
540 W. Madison Street, Suite 2500
Chicago, Illinois 60661
Attention: David B. Nelson
Email: dnelson@drwholdings.com

With copy to:

Honigman Miller Schwartz and Cohn
650 Trade Centre Way
Suite 200
Kalamazoo, MI 49002-0402
Attention: J. Patrick Lennon
Email: lennon@honigman.com
and

Roberts McGivney Zagotta LLC
55 W. Monroe Street
Suite 1700
Chicago, IL 60603
Attention: Michael S. Roberts
Email: mroberts@rmczlaw.com

or to such other address or addresses as the parties may designate from time to time by notice given in accordance with this Section. Any such notice shall be deemed given on the date of delivery to such Overnight Courier, or hand delivery, as the case may be. All notices given in accordance with the terms hereof shall be deemed received on the date of delivery (or, in the case of electronic mail, the date of transmission) if delivered (or, in the case of electronic mail, transmitted) before 5:00 p.m. local time on a business day in the place of the recipient, and if otherwise delivered, on the next business day following the date of such delivery or when delivered personally. Attorneys for Purchaser and Seller may deliver notices on behalf of their respective clients.

25. CONFIDENTIALITY AND JOINT ANNOUNCEMENTS.

Until such time as this Agreement has become public by virtue of the Michigan Freedom of Information Act and/or the Michigan Open Meetings Act, neither Purchaser, nor its board of directors, officers, directors, shareholders, partners, members, employees or agents shall disclose to any third party (other than Purchaser's consultants, attorneys or agents), or publicly announce, the content of this Agreement unless (i) approved, in writing, by Seller and Purchaser; (ii) required by applicable law, rule, regulation or ordinance; or (iii) required by court order. In any event, Purchaser shall not make any public announcements or issue any press releases regarding this Agreement or the transaction contemplated hereby without the prior written approval of the City Administrator. At and after such time as this Agreement becomes public by virtue of the Michigan Freedom of Information Act and/or the Michigan Open Meetings Act, Purchaser may make a public announcement stating that Purchaser and Seller have entered into an agreement for the acquisition and development of the Property for a mixed use residential housing project.

26. NO ASSIGNMENT BY PURCHASER.

Except as otherwise permitted in accordance with Section 29 hereof, this Agreement and the rights and obligations of Purchaser may not be assigned, hypothecated or otherwise transferred by Purchaser (whether as a gift or for consideration, outright or as security, by operation of law, or otherwise) except with the prior written consent of Seller, which consent may be withheld in Seller's sole discretion; provided, however, that Purchaser may assign this Agreement without Seller's consent to an Affiliate (as defined below) of Purchaser so long as a copy of the written assignment and assumption thereof is provided to Seller. Any assignment, hypothecation or other transfer of this Agreement in contravention of this paragraph shall be voidable at Seller's sole election. For the purposes of this paragraph, the term "Affiliate" means (a) an entity that directly or indirectly controls, is controlled by, or is under common control with Purchaser, and/or (b) an entity at least a majority of whose economic interest is owned or controlled by Purchaser. The term "control" means the power to direct the management of such entity, either directly or indirectly, through voting rights, ownership or contractual obligations. The foregoing restriction on assignments shall not prevent or limit the rights of Purchaser, or an Affiliate, to receive investments, capital contributions, loans and/or equity in exchange for the transfer of ownership interests or other rights within such entities subject to terms and conditions that are acceptable to Purchaser and/or Affiliate in its sole discretion. In addition, the parties

agree that the terms of this Section 26 are only intended to apply to the assignment of this Agreement and, as such, shall terminate and be of no further effect as of closing.

27. MISCELLANEOUS.

A. This Agreement, which may be executed in multiple counterparts, or by electronic signature and/or delivery (with the same effect as if original execution copies) is to be governed by and construed under the laws of the State of Michigan that are applied to contracts made and to be performed in that state concerning real property located therein, is to take effect as a sealed instrument, sets forth the entire contract between the parties, merges all prior and contemporaneous agreements, understandings, warranties or representations, and may be cancelled, modified or amended only as set forth herein or by a written instrument executed by both Seller and Purchaser. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement.

B. No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing, signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default. If any action by any party shall require the consent or approval of another party, the consent or approval of the action on any one occasion shall not be deemed a consent to or approval of that action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.

C. This Agreement may be executed in counterparts which together shall be deemed to constitute a single, integrated document.

D. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, personal representatives, successors, and assigns.

E. Neither party is the agent, partner or joint venture partner of the other; neither party has any obligation to the other except as specified in this Agreement.

F. No party other than Seller and Purchaser and their successors and assigns, shall have any right to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of Seller and Purchaser, and their respective successors or assigns, and not for the benefit of any other party.

G. TIME IS OF THE ESSENCE OF AND ALL UNDERTAKINGS AND AGREEMENTS OF THE PARTIES HERETO.

H. Whenever this Agreement requires that something be done within a specified period of days, that period shall (i) not include the day from which the period commences, (ii) include the day upon which the period expires, (iii) expire at 5:00 p.m. local time on the day upon which the period expires, and (iv) unless otherwise specified in this

Agreement, be construed to mean calendar days; provided, that if the final day of the period falls on a Saturday, Sunday or legal holiday, the period shall extend to the first business day thereafter.

I. If one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained within the body of this Agreement.

28. COMPLETION ASSURANCES.

Prior to, and as an express condition of, commencing construction of the Project, Purchaser shall provide Seller with the following assurances of performance and completion (collectively the "Completion Assurances"): (i) evidence that Purchaser has received a commitment from a construction lender in amounts, and with terms and duration, reasonably satisfactory to Purchaser's lender for the full construction of the Project; (ii) an agreement from Purchaser to provide Seller substantially the same completion assurances and guaranties that it is providing to its construction lender; (iii) evidence that Purchaser or Purchaser's general contractor has caused major subcontractors to the Project to deliver payment and performance bonds in the full amount of their contract or subcontracts, as the case may be, but only to the extent required by Purchaser's construction lender and subject to the standards and requirements of the Purchaser's construction lender; and (iv) copies of insurance certificates from the Purchaser's general contractor and its subcontractors for insurance in amounts required by Purchaser's lenders and otherwise satisfying the requirements of the Condominium Documents. The parties agree that, provided Purchaser's lender is a recognized institutional construction lender with assets and experience consistent with the size and nature of the Project and otherwise operates as a commercially reasonable lender, the acceptance or approval of any of (i) through (iv) above by Purchaser's lender shall be deemed sufficient for acceptance and approval by the Seller and shall govern to the extent of any disagreement between Purchaser and Seller as to whether the foregoing condition (or individual standards) have been satisfied and further agree that, unless there is an event of default by Purchaser, Purchaser (and or any guarantor of Purchaser's obligations) shall not, under any circumstances, be required to provide, and Seller shall not be entitled to, any financial statements, account balances or other non-public financial information of Purchaser or any guarantor of Purchaser's obligations. Upon request by Purchaser's lender, Seller agrees to negotiate in good faith and enter into a commercially reasonable tri-party or intercreditor agreement with such lender upon such terms and conditions as may be reasonably requested by Purchaser's lender and reasonably satisfactory to Seller that shall address their respective rights in the event of a default by Purchaser, which agreement may include typical but commercially reasonable standstill provisions. The terms of this Section 28 shall survive Closing of this Agreement and shall expire and terminate upon issuance of a final certificate of occupancy for the Project and all portions thereof.

29. INTEGRATION OF DOCUMENTS.

A. It is the express intention of the parties and a condition of the sale contemplated herein that this Agreement, the Authorizing Resolution, the Deal Points Response, the Workshop PowerPoint, the BAFO, the Offering Memorandum Submission (all subject to the express terms of this Agreement), the Condominium Documents, the Workforce Housing Covenant, the CDCA and the Covenant Deed (the "Project Documents") shall be construed as part of a single unitary transaction which governs the acquisition and completion of the Project in the form approved by the Seller and which may not be assigned in part, but may be assigned as a whole, and without the consent of Seller, in connection with (i) the sale or transfer of the Project (it being agreed that, in the event of a sale of a condominium unit with respect to the Project, the Project Documents may be assigned to the purchaser of such unit [so that the obligations under the Project Documents, to the extent still applicable, will be binding against such purchaser] but shall also be retained by the owner of any other condominium unit [so that the obligations under the Project Documents, to the extent still applicable, continues to be binding against all unit owners]; (ii) as collateral or as part of security for any loan or financing that is made in connection with the Project, or any portion thereof; and/or (iii) the foreclosure, deed in lieu of foreclosure and/or other similar transfer or assignment that arises from failure to perform in connection with any loan or financing applicable to the Project.

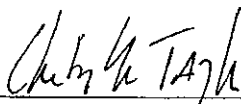
B. In the event of a sale or assignment, including a sale or assignment by a Receiver or a Bankruptcy Trustee, Seller shall be provided with adequate information about the Purchaser, including information to demonstrate the Purchaser's willingness and ability to complete the Project in accordance with the Project Documents.

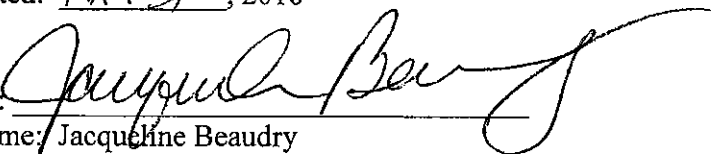
C. The terms of this Section 29 shall be subject to the terms of the tri-party identified in Section 28 hereof, shall survive Closing of this Agreement and shall expire and terminate upon issuance of a final certificate of occupancy for the Project and all portions thereof.

[Signatures on Following Page]

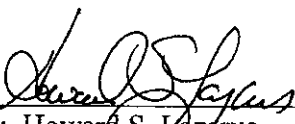
This Agreement is executed as of the date first set forth above.

SELLER: CITY OF ANN ARBOR, a Michigan municipal corporation

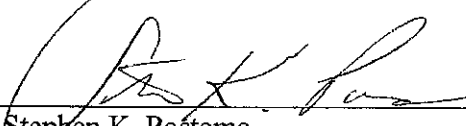
By: 
Name: Christopher M. Taylor
Title: Mayor
Dated: May 31, 2018

By: 
Name: Jacqueline Beaudry
Title: Clerk
Dated: May 31, 2018

Approved as to Substance:

By: 
Name: Howard S. Lazarus
Title: City Administrator
Dated: May 31, 2018

Approved as to Form:

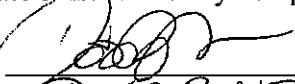
By: 
Name: Stephen K. Postema
Title: City Attorney
Dated: May 31, 2018

[Additional signature page follows.]

[Signature page to Agreement of Sale]

PURCHASER: CORE SPACES ANN ARBOR FIFTH LLC,
a Delaware limited liability company

By: Convexity Management LLC, a
Delaware limited liability company, Manager

By: 
Name: DAVID B. NELSON
Title: Vice President
Date: May 31, 2018

By: Core Campus Manager, LLC, a
Delaware limited liability company, Manager

By: _____
Name: _____
Title: _____
Date: _____, 2018


[Signature page to Agreement of Sale]

PURCHASER: CORE SPACES ANN ARBOR FIFTH LLC,
a Delaware limited liability company

By: Convexity Management LLC, a
Delaware limited liability company, Manager

By: _____
Name: _____
Title: _____
Date: _____, 2018

By: Core Campus Manager, LLC, a
Delaware limited liability company, Manager

By: 
Name: Marc Lishin
Title: Manager
Date: May 31, 2018