

ARBOR SOUTH

PUBLIC-PRIVATE DEVELOPMENT AGREEMENT

by and between

EISENHOWER STATE LAND DEVELOPMENT COMPANY, LLC

a Delaware limited liability company

and

THE CITY OF ANN ARBOR

a Michigan municipal corporation

_____, ____, 2025

PUBLIC-PRIVATE AGREEMENT

This Public-Private Development Agreement (the “Agreement”) is made as of the ____ day of _____, 2025 (the “Effective Date”), by and between **EISENHOWER STATE LAND DEVELOPMENT COMPANY, LLC**, a Delaware limited liability company whose address is c/o Oxford Companies, LLC, 777 East Eisenhower, Suite 850, Ann Arbor, Michigan 48108 (the “Developer”) and the **CITY OF ANN ARBOR**, a Michigan municipal corporation whose address is 310 E. Huron, P.O. Box 8647, Ann Arbor, Michigan 48107 (the “City”).

RECITALS

WHEREAS, the Developer or its Affiliates (defined below) own certain parcels of real property consisting of approximately 17.59 + acres located at the intersection of Eisenhower Parkway and State Street, in Ann Arbor, Michigan, as more particularly described on **Exhibit A** to this Agreement (the “Property”);

WHEREAS, the Developer proposes to develop and construct a mixed use project on the Property to be known as Arbor South (the “Project”). The Project contemplated will require a total investment of approximately \$600,000,000.00 and is planned to include (i) approximately 1,000 residential apartment units (which shall include the Affordable Housing Building to be owned and operated by the Ann Arbor Housing Commission or its affiliates (“AAHC”) (as defined below) (ii) approximately 30 owner occupied residential units, (iii) an approximately 205 key hotel, and (iv) approximately 100,000 square feet of retail/commercial space, together with drives, walks, streetscapes, utilities, parking structures and public open space as generally shown on the site plan attached hereto as **Exhibit B** (the “Master Development Plan”);

WHEREAS, the Developer proposes to develop the Project in five phases. Each phase of the Project is identified on the Master Development Plan as Phase 1, Phase 2, Phase 3, Phase 4 and Phase 5 (each

individually being a “Phase”). The order in which the Phases of the Project are developed are described below;

WHEREAS, the privately owned components of the Project are contemplated to be served by three public parking structures (each a “Parking Structure”) that would be constructed in the approximate locations shown on the Master Development Plan. Unless otherwise elected by the City pursuant to the terms hereof, the Developer will construct a Parking Structure in each of Phases 2, 3, and 5 of the Project in conjunction with the Developer’s construction of the Developer Improvements within each Phase. Following Substantial Completion of a Parking Structure constructed by Developer in the relevant Phase, the City agrees, subject to the terms of this Agreement, to purchase the Parking Structure in such Phase from the Developer for the Parking Structure Purchase Price (defined herein). Following the purchase of a Parking Structure by the City (or the completion of construction of same if constructed by the City), the Parking Structure shall be used and operated as a public parking structure as more specifically set forth herein;

WHEREAS, subject to the terms of this Agreement, the City proposes to finance the Parking Structure Purchase Price for each Parking Structure constructed by the Developer by, inter alia, the issuance of Bonds (defined herein) which are to be issued with the full faith and credit of the City. The City anticipates issuing a separate and independent series of Bonds to finance each Parking Structure Purchase Price payable to the Developer or to fund the construction of same, if constructed by the City;

WHEREAS, payment by the City of the interest and principal due under the Bonds are intended to be funded by (i) the distribution to the City of annual tax increment revenues generated by the Project collected by the Washtenaw County Brownfield Authority pursuant to the Brownfield Plan and the Reimbursement Agreement (each as defined herein) and (ii) to the extent approved by the City, the Net Parking Revenues (defined herein) that arise from the operation of the Parking Structure;

WHEREAS, the City's commitment to issue the Bonds to fund the Parking Structure Purchase Price for each Parking Structure (or to undertake construction of a Parking Structure if the City elects to construct same) is subject to certain conditions having been satisfied by each of the Developer and the City, all as set forth herein;

WHEREAS, upon satisfaction of conditions described herein by both the City and the Developer for the Project and, thereafter, for each Parking Structure Phase, the parties contemplate executing a Commitment Agreement (defined below) which Commitment Agreement will legally bind the parties to perform, as to such Phase, the covenants and obligations stated herein as to such Phase (as modified by the Commitment Agreement) related to development of a Phase, the construction of the Developer Improvements, the Infrastructure Improvements and the Parking Structure within the Phase, and, if applicable, the purchase by the City of the Parking Structure Parcel constructed by the Developer for the Parking Structure Purchase Price; and

WHEREAS, the Developer and the City wish to set forth their respective undertakings and obligations with respect to the Project, the City's agreement to issue the Bonds and to purchase (or construct) the Parking Structures and the terms and conditions governing same, all as set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and other mutual covenants contained herein and other good and valuable considerations, the receipt and adequacy is hereby acknowledged, the Developer and the City hereby covenant and agree as follows:

Article 1 DEFINITIONS

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

- 1.1 "AAHC" shall mean the Ann Arbor Housing Commission.

1.2 “Affiliates” shall mean any entity controlled, directly or indirectly, by one or more of Brent Crawford, Robert Hoying, or Jeff Hauptman (the “Key Principals”). For the purposes of this definition, “control” shall mean the power to exercise, directly or indirectly, exclusive authority (whether through contract or otherwise) to direct the management and operations of an entity and whom collectively own at least fifty-one (51%) percent of the outstanding voting interests of such entity.

1.3 “Affordable Housing Building” shall mean a multifamily building as depicted on the Master Development Plan containing approximately 200, but not less than 150, Affordable Housing Units and such other elements as more thoroughly described and set forth in the Letter of Intent dated November 21, 2024 between Developer and AAHC.

1.4 “Affordable Housing Development Agreement” shall have the meaning provided in **Section 6.1**.

1.5 “Affordable Housing JV” shall have the meaning provided in **Section 6.1**.

1.6 “Affordable Housing Requirement” shall have the meaning provided in **Section 6.1**.

1.7 “Affordable Housing Payment in Lieu” shall have the meaning provided in **Section 6.2**.

1.8 “Affordable Housing Termination Event” shall have the meaning provided in **Section 6.2**.

1.9 “Affordable Housing Units” shall mean apartment units that are contained in the

Affordable Housing Building which will be restricted to individuals earning sixty percent or less of the area median income as determined and applied by the AAHC. The Affordable Housing Building shall include approximately 200 Affordable Housing Units (but not less than 150 Affordable Housing Units), as more thoroughly described in the Letter of Intent dated November 21, 2024 between Developer and AAHC, as supplemented and modified by the AAHC development agreement between AAHC and Developer.

1.10 “BANS” shall mean the Bond Anticipation Notes or Revenue Anticipation Notes issued at the direction and cost of Developer by the BANS Issuer for the construction of each Parking Structure to be acquired by the City.

1.11 “BANS Commitment” shall mean the commitment or commitments issued to Developer for one or more BANS issuances to be made by the BANS Issuer to fund the construction of a Parking Structure by Developer for ultimate ownership by the City within the Project.

1.12 “BANS Issuer” shall mean the issuer of the BANS which may be any of the City, the Public Finance Authority, the National Finance Authority, the Arizona Industrial Development Authority or such other public finance authority that Developer selects. Prior to the selection by Developer of a BANS Issuer, Developer shall provide the City with an opportunity to propose terms to Developer under which the City of Ann Arbor is prepared to be the BANS Issuer.

1.13 “Bonds” shall mean any taxable or tax-exempt general obligation bonds issued by the City (specifically excluding any BANS issued by the City), and backed by the full faith and credit of the City, in one or more issues and/or series, at a rate of interest as determined herein and

which shall be issued for the purpose of funding the City's financial obligations to purchase or construct each Parking Structure in accordance with and subject to the terms and conditions of this Agreement.

1.14 “Bond Funds” shall mean the remaining proceeds from the sale of each series of Bonds for each Parking Structure Phase that are actually made available to the City after all costs associated with issuance of such Bonds have been capitalized or paid in full as required by applicable law.

1.15 “Bond Indebtedness” shall mean the total face amount of each series of Bonds, which amount is intended to be sufficient to generate Bond Funds in an amount sufficient to cover the Parking Structure Purchase Price for each Parking Structure Phase and/or the construction thereof.

1.16 “Bond Issuance Deadline” shall mean for each series of Bonds to be issued by the City to fund the purchase of a Parking Structure constructed by Developer, the date on which the City elects to issue and attempt to sell the Bonds, but in no event later than forty-five(45) days after Developer has certified to the City that such Parking Structure has achieved Substantial Completion.

1.17 “Brownfield Redevelopment Authority” or “BRA” shall mean the Washtenaw County Brownfield Redevelopment Authority.

1.18 “Brownfield Plan” shall mean the Brownfield Plan applicable to the Project approved by the City of Ann Arbor, Developer and the BRA, as same may be amended from time to time, by and between the Developer and the Brownfield Redevelopment Authority, in form

acceptable to the City in each case, pursuant to the terms hereof which Brownfield Plan allows for the capture of increases in real property tax revenues, including school tax revenues (subject to the approval of the Michigan Strategic Fund), generated from the Project and provides that such amounts payable to the Developer thereunder may be assigned to the City pursuant to the terms of the Reimbursement Agreement which shall be in form acceptable to the City.

1.19 “Brownfield Property Tax Capture Revenue” or “BPTCR” means the incremental ad valorem real property tax revenue, including all permitted school tax revenues, generated by the Project and captured by the Brownfield Redevelopment Authority and available for disbursement to reimburse Eligible Activities, all as set forth and determined in accordance with the Brownfield Plan and related documents.

1.20 “City Council” shall mean the City Council of the City of Ann Arbor.

1.21 “City of Ann Arbor” shall mean the City of Ann Arbor in its capacity as a regulatory governmental authority (as distinct from the “City” as a party to this Agreement).

1.22 “Closing” means, with respect to each Parking Structure, the consummation of the conveyance of indefeasible fee simple marketable title of a Parking Structure Parcel from the Developer to the City in accordance with this Agreement and the Commitment Agreement (defined herein).

1.23 “Commitment Agreement” shall mean the written agreement of the City and Developer, to be entered into with respect to each Parking Structure Phase (as defined below) of the Project pursuant to the terms hereof, upon the waiver and/or satisfaction by each of the City and Developer of the conditions precedent to each party’s obligation to proceed with the

development of a Phase and the purchase and development of a Parking Structure. At a minimum, the Commitment Agreement will set forth the written acknowledgement of the parties (i) confirming the satisfaction or waiver of all contingencies to the commencement of construction of the Developer Improvements, Infrastructure Improvements, and the Parking Structure within the Phase and the City's obligation to purchase (or construct) a Parking Structure within the relevant Phase; (ii) obligating Developer to construct the Developer Improvements and the Infrastructure Improvements within a Phase and, if applicable, the Parking Structure to be located in the Parking Structure Phase; (iii) confirming whether the City will construct the Parking Structure or requires the Developer to do so and if constructed by the Developer obligating the City to purchase the Parking Structure on the Parking Structure Closing Date at the Parking Structure Purchase Price; (iv) obligating the Developer to subject the Phase to the SAD to be established by the City of Ann Arbor pursuant to the terms hereof; (v) confirming the amendment and update by all relevant parties, as necessary, of the Brownfield Plan and the Reimbursement Agreement and/or any Cooperation Agreement (as defined below) for the Project to incorporate the Parking Structure Phase, and/or the reimbursable costs and expenses authorized by this Agreement related the development of the Parking Structure within a Parking Structure Phase, the irrevocable and absolute assignment by Developer to the City of Developer's rights to BPTCR under the Brownfield Plan in amounts sufficient to pay the Bonds Indebtedness as same comes due; (vi) if applicable, obligating the Developer to close on the BANS for the construction of the Parking Structure in the Parking Structure Phase; (vii) obligating the Developer to close on the Construction Loan in an amount sufficient to fund the construction of all the Developer Improvements and Infrastructure Improvements within the Phase of the Project (other than the Parking Structure) after taking in to consideration the Developer Committed Equity pursuant to

the construction budget for the Developer Improvements and Infrastructure Improvements within a Phase, as reasonably approved by the City; (viii) confirming the approval of the Developer/Infrastructure Agreements including the plans, specifications, and pricing of the Developer Improvements and the Infrastructure Improvements for the Phase; (ix) obligating the Developer to provide a completion guaranty for the Parking Structure (if constructed by the Developer), the Developer Improvements, and the Infrastructure Improvements within the Phase from a party with net worth and financial liquidity acceptable to the City; (x) confirming approval of the Parking Structure Agreements (including the Parking Structure Improvements Plan, Parking Structure Construction Budget and the Parking Structure Construction Schedule); (xi) confirming approval of the Parking Structure Parcel Title Commitment and the Parking Structure Parcel Survey; (xii) confirming the approval of the Project Condominium, the Parking Structure Condominium within which the Parking Structure is a constituent unit and/or any amendments to the Project Condominium; (xiii) confirming the approval of the Project REA, and/or any amendments to the Project REA, to add or incorporate the Parking Structure Parcel and/or Parking Structure Phase, (xiv) confirming the approval by the City of tax characteristic of the costs to construct the Parking Structure as those which qualify as expenditures under tax exempt Bonds and those which will not qualify as expenditures under tax exempt Bond and the allocation of the Bond Indebtedness between tax exempt Bonds and taxable Bonds, (xv) confirming and establishing the Parking Structure Purchase Price, if applicable, (xvi) confirming the terms, conditions, and requirements of the Developer to construct the Parking Structure as preliminarily described in Article 5, (xvii) confirming the Closing procedures of the purchase and sale of a Parking Structure which are preliminarily described in Article 7, (xviii) confirming the contractual rights, obligations and remedies of each party in connection with the Commitment Agreement, and

(xix) confirming such other agreements and undertakings as may be required by the parties or either of them. The provision related to the construction, financing and sale of a Parking Structure would not be included in Commitment Agreements for Phases that do not include a Parking Structure. A template form of the Commitment Agreement is attached hereto as **Exhibit C**, which shall remain subject to the review, modification, negotiation, and approval of the parties.

1.24 “Construction Lender” shall mean the construction lender, or lenders, selected by Developer and that provide the Construction Loan Commitment for the Developer Improvements and the Infrastructure Improvements within the Project or in a Phase.

1.25 “Construction Loan” shall mean a loan or loans from a Construction Lender that shall be obtained in an amount sufficient to fund, when added to Developer’s Committed Equity (as defined below), all costs associated with the construction of the Developer Improvements and all Infrastructure Improvements within a Phase of the Project, specifically excluding the Parking Structure.

1.26 “Construction Loan Commitment” shall mean the commitment or commitments for one or more Construction Loans to be made by the Construction Lender for the Developer Improvements and the Infrastructure Improvements with respect to constructing all portions of a Phase of the Project, excluding the Parking Structure.

1.27 “Developer Committed Equity” shall mean evidence reasonably acceptable to the City confirming that the Developer has, as of the date of the Commitment Agreement, cash equity committed to the Phase, which, when added to the financing made available to Developer under the Construction Loan, is sufficient to fund all costs to complete construction of the Developer

Improvements and Infrastructure Improvements based on the Phase Developer Budget approved by the City.

1.28 “Developer Improvement Construction Schedule” shall mean the schedule to be attached to the Commitment Agreement, prepared by the Developer, and approved by the City setting forth the time period and milestones by which Developer shall complete construction of the Developer Improvements and Infrastructure Improvements within the Phase.

1.29 “Developer Improvements” has the meaning given it in **Section 2.1** of this Agreement, all of which shall be privately owned and subject to ad valorem real estate taxes.

1.30 “Development Period” shall mean, for each Parking Structure Phase, the period of time commencing on the date that Developer and the City execute and exchange the Commitment Agreement and continuing through the date that Substantial Completion has been achieved and final certificates of occupancy have been issued by the City of Ann Arbor, acting in accordance with its standard municipal approval process, for the Parking Structure and a final or temporary certificate of occupancy for the Developer Improvements and the Infrastructure Improvements within that Phase as may be required by the City of Ann Arbor. Upon completion of construction of the Parking Structure, the Developer Improvements, and the Infrastructure Improvements in a Phase in accordance with terms of this Agreement and the purchase by the City of the relevant Parking Structure, the Term of this Agreement as to such Phase shall be deemed expired.

1.31 “Infrastructure Improvements” shall mean the roads, curb cuts, storm sewers, sanitary sewers, water lines, and all other utility lines and improvements necessary and/or legally required for construction, use, and operation of all Developer Improvements and the Parking

Structures within a Phase.

1.32 “Laws” means all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements, including, without limitation, those relating to the environment, health and safety, disabled or handicapped persons.

1.33 “Mandatory Cure Items” means all liens, mortgages, mechanics liens, tax liens, or other encumbrance securing amounts due third parties.

1.34 “Net Parking Revenue” the total amount of gross revenue generated by a Parking Structure less all expenses, costs and reserves to maintain, repair and operate the Parking Structure, all as computed and determined by the City.

1.35 “Parking Structure” shall mean each parking structure which is constructed by Developer (on behalf of the City) or the City in accordance with the Parking Structure Agreements as approved by the City in a Commitment Agreement and contemplated to be conveyed to, purchased by and/or owned by the City (including all equipment, gating systems, and other components therein) within a Parking Structure Phase, which upon Substantial Completion, shall be a fully functioning and operational parking facility with unobstructed vehicular access to State Street and Eisenhower Parkway.

1.36 “Parking Structure Completion Date” shall mean the date at which a Parking Structure is Substantially Complete.

1.37 “Parking Structure Construction Budget” shall mean the budget approved by the City pursuant to the terms hereof and confirmed in the Commitment Agreement (including

estimated hard and soft costs) for each Parking Structure pursuant to the Parking Structure Agreements. The Parking Structure Construction Budget shall be developed by Developer in accordance with the terms hereof and otherwise on an open book, competitive bidding process approved by the City.

1.38 “Parking Structure Construction Schedule” shall mean the construction schedule proposed by the Developer and approved by the City as set forth herein for the construction of a Parking Structure as set forth herein and confirmed in the Commitment Agreement.

1.39 “Parking Structure Improvement Plans” shall mean the plans, specifications and drawings for the construction and development of the Parking Structure, initially prepared at the cost and expense of Developer (with a prorated share of such actual costs applicable to Parking Structure components owned exclusively by the City (and in which Developer has no interest or right of use) to be factored into the City’s Parking Structure Purchase Price) and approved by the City in accordance with the terms and conditions of this Agreement and included in the Commitment Agreement. The Parking Structure Improvement Plans shall include, but not be limited to, approval of the design professionals that are employed to design the Parking Structure, the selection of materials and methods of construction, the designed anticipated useful life of same, the layout and access points between the Parking Structure and publicly dedicated roads, the number and layout of parking spaces, the location and quality of electric vehicle charging stations, the design and vehicular circulation throughout the Parking Structure and the parking access and revenue control system.

1.40 “Parking Structure Parcel” shall mean a condominium unit on or in which a Parking Structure is located as set determined based on the Parking Structure Parcel Survey. It is

contemplated each Parking Structure Parcel which is a Unit shall not be subject to assessments or other requirements of the Condominium, as determined by the City.

1.41 “Parking Structure Purchase Price” shall mean, with respect to each Parking Structure, the purchase price agreed to be paid by the City to the Developer at Closing, in each case, as approved by the City and Developer and confirmed in the Commitment Agreement. The Parking Structure Purchase Price shall be negotiated taking into consideration (i) the value of the Parking Structure Parcel as approved by the City and (ii) all actual hard and soft costs incurred by Developer (without markup) related to the development and construction of the completed Parking Structure on the Parking Structure Parcel, all as reasonably approved by the City. On the Parking Structure Closing Date, the City shall pay to the Developer the agreed Parking Structure Purchase Price set forth in the applicable Commitment Agreement for the conveyance of the unencumbered fee simple marketable title for each Parking Structure, subject only to Permitted Encumbrances all as provided in the Commitment Agreement.

1.42 “Parking Structure Parcel Survey” means an ALTA survey of the Parking Structure Parcel, for each Parking Structure certified to ALTA requirements, prepared at Developer’s expense by an engineer or surveyor who is licensed in the State of Michigan and acceptable to City and Developer, which survey shall: (a) include a legal description of the Parking Structure Parcel by Unit in the Condominium (as shown on the Condominium Subdivision Plan) and/or by metes and bounds (including a reference to the recorded Condominium), and a computation of the area comprising the Parking Structure Parcel in gross square feet; (b) accurately show the location on the Parking Structure Parcel of all improvements, building and set back lines, fences, evidence of abandoned fences, ponds, creeks, streams, rivers, officially designated 100 year flood plains and

flood prone areas, canals, ditches, easements, roads, rights of way and encroachments; (c) be certified, and re-certified on an updated, “as-built” basis at the time of the completion of the Parking Structure, to the Developer, City and the Title Company; (d) legibly identify any and all recorded matters shown on the Parking Structure Parcel Title Commitment on said survey by appropriate volume and page recording references; (e) show the location of all adjoining streets; and (f) be satisfactory to the Title Company so as to permit it to delete the standard survey exception in the Title Policy to be issued to the Developer in connection with at the Closing.

1.43 “Parking Structure Parcel Title Commitment” means a current commitment issued by the Title Company to the City pursuant to the terms of which the Title Company shall commit to issue the Parking Structure Parcel Title Policy (as defined below) for each Parking Structure in accordance with the provisions of this Agreement, and subject to the Permitted Exceptions, and initially reflecting all matters which would be listed as exceptions to coverage on the Title Policy.

1.44 “Parking Structure Parcel Title Policy” means an ALTA Extended Coverage Owner’s Policy of Title Insurance, which shall be issued to the City in the amount of the Parking Structure Purchase Price. The Parking Structure Parcel Title Policy shall be issued at Closing subject only to the Permitted Exceptions and without the standard printed exceptions included in the ALTA standard form extended coverage policy of title insurance and affirmatively insuring vehicular access to Eisenhower Parkway and South State Street and all other appurtenant easements.

1.45 “Parking Structure Phase” shall mean the Phase of the Project in which a Parking Structure is located or is to be located.

1.46 “Permits” means all permits, licenses, approvals, entitlements, notifications, determinations and other governmental and quasi governmental authorizations required by applicable Laws, including without limitation zoning and land use approvals, required in connection with the ownership, development, construction, use, operation or maintenance of each Parking Structure, the Developer Improvements and the Infrastructure Improvements.

1.47 “Permitted Exceptions” shall mean, with respect to a Parking Structure Parcel, liens for taxes not yet due and payable, the Project Condominium, the Phase Condominium, the REA, Laws, matters disclosed by the Parking Structure Parcel Survey approved by the City, and all other items of record approved by the City prior to execution of the Commitment Agreement.

1.48 “Person” means a natural person, corporation, partnership, trust, association, limited liability company or other entity.

1.49 “Phase Approvals” has the meaning given it in **Section 3.1**.

1.50 “Phase Budget” shall mean the budget including estimated hard and soft costs of the Parking Structure Phase, inclusive of the Parking Structure Construction Budget and the budget for the construction of Developer Improvements and Infrastructure Improvements in the Phase in which a Parking Structure is located.

1.51 “Phase Completion” means: (i) all of the Developer Improvements and the Infrastructure Improvements within a Phase are Substantially Complete, (ii) streets (or drives), off-site utilities and systems necessary to the operation of the Phase have been substantially completed to the satisfaction of all governmental agencies having jurisdiction over same and are otherwise fully operational and functional, and (iii) such municipal approvals have in each instance been

issued by the City of Ann Arbor, acting in accordance with its standard, generally applicable approval process.

1.52 “Phase Completion Date” shall mean the date on which Phase Completion occurs.

1.53 “Phase Development Schedule” shall mean the period of time set forth in the Commitment Agreement to achieve the Phase Completion Date.

1.54 “Phase Pre-Development Period” shall mean as to any Parking Structure Phase, the date the Phase Notice is issued and ending one hundred eighty (180) days thereafter (or such other date as agreed to by the parties, in writing).

1.55 “Phase 2 Notice” shall mean this Agreement.

1.56 “Phase 3 Notice” shall mean the written notice given by the Developer to begin the Pre-Development Period for Phase 3 which notice shall be given, if at all, no later than June 30, 2028, as such date may be extended pursuant to **Section 3.9.1(k)**.

1.57 “Phase 5 Notice” shall mean the written notice given by the Developer to the City to begin the Pre-Development Period for Phase 5 which notice shall be given, if at all, no later than December 30, 2030, as such date may be extended subject to **Section 3.9.1(k)**.

1.58 “Project Pre-Development Period” shall mean as to the Project the period of time commencing on the Effective Date and ending one hundred eighty (180) days following the Effective Date (or such later date as may be agreed to by the City and Developer), and subject to the notice and extension period set forth in **Section 3.9.1(k)**.

1.59 “Project Condominium” means Arbor South, a business condominium covering the

lands described on the attached **Exhibit 1.17** to be formed by Developer pursuant to the Michigan Condominium Act and pursuant to the Master Deed of Arbor South to be approved by the City and Developer pursuant to the terms of this Agreement.

1.60 “Project Condominium Association” shall mean the association of co-owners established as part of the Project Condominium which have the power and authority to assess units in the Project Condominium as provided in the Project Master Deed and any related condominium documents for the Project Condominium.

1.61 “Project REA” shall mean a reciprocal easement agreement between the City and the Developer granting the City and Developer any necessary shared access and other rights with respect to the operation of the Parking Structures, to be recorded against the Project in connection with the first Closing. The Project REA shall include provisions acceptable to the City that allow the Developer to amend the Project REA to add connections to additional parcels, utility systems, infrastructure and facilities.

1.62 “Project Development Schedule” shall mean the final development schedule for the Project (including all Phases) proposed by Developer and approved by the City which shall include a proposed timeline for the completion of all pre-development, development, and construction activities relating to the Project, in accordance with this Agreement, which when finalized and agreed to shall be incorporated in this Agreement.

1.63 “Reimbursement Agreement” shall mean the Reimbursement Agreement initially among the City, Developer and the Brownfield Redevelopment Authority with respect to the Brownfield Plan, as approved by the City Council as same may be amended pursuant to this

Agreement. The Reimbursement Agreement shall provide that the right to distributions of TIR (as defined in the Reimbursement Agreement) may be assigned, in whole or in part, including pursuant to a Cooperation Agreement (as defined in **Section 2.7** below). The Reimbursement Agreement (i) shall confirm irrevocably the assignment by Developer to the City of that portion of the Developer's right to TIR under the Brownfield Plan in an amount required by the City but in no event less than the amounts necessary to fully and timely pay all Bond Indebtedness, in each case as a priority to any payment of TIR to the Developer and (ii) provide that if the City does not execute a Commitment Agreement for the purchase and or construction of a Parking Structure, TIR allocated to eligible expenses relating to the development and purchase of a Parking Structure shall not be available to Developer for any cost incurred by Developer to construct a privately owned Parking Structure or any other eligible expense of the Developer.

1.64 “Special Assessment District” or “SAD” shall mean the special assessment district encumbering the Developer Improvements within a Phase and such other properties as required by the City to be established by the City Council prior to the issuance of the Bonds for any Parking Structure, which SAD shall establish a minimum annual amount of ad valorem real estate taxes to be paid by the owners of the improvements within each Phase so as to assure the City that sufficient ad valorem real estate taxes are levied annually to generate sufficient distributable BPTCR (as determined by the City, in its sole discretion) to cover the annual debt service obligations of the City on the Bonds issued for a Parking Structure. The parties acknowledge that the City reserves the right to adopt and/or impose in the future, other special assessments, which may encumber other properties located in the City, including the Developer Improvements in all Phases.

1.65 “SEU” shall mean the Ann Arbor Sustainable Energy Utility.

1.66 “SEU Easement(s)” shall mean the easement or easements committed to be granted to the SEU by the Developer without cost pursuant to the terms hereof allowing the SEU to install subterranean SEU facilities within the easement areas within the Project to be identified at the sole cost and expense of the City and the SEU and subject to the reasonable approval of the Developer.

1.67 “Substantial Completion” or “Substantially Complete” means, for each Parking Structure or for each of the Developer Improvements: (i) all work described in the approved Parking Structure Improvement Plans, or the approved plans for the Developer Improvement, has been substantially completed, lien-free and in good, workmanlike condition and order, (ii) the Parking Structure, and/or Developer Improvement, is fully functional, operational and capable of use for its primary purpose, (iii) all work on the Parking Structure, or Developer Improvement, requiring inspection or certification by any governmental agency has been substantially completed and all requisite certificates, approvals and other necessary authorizations have been obtained, (iv) all Infrastructure Improvements and all streets (or drives), off-site utilities and systems necessary to the operation of the Parking Structure or Developer Improvement have been substantially completed and maintained to the satisfaction of all governmental agencies having jurisdiction over same and are otherwise fully operational and functional, (v) all fixtures and equipment necessary to the operation of the Parking Structure or Developer Improvement have been delivered to and installed and are in fully operational condition, (vi) a temporary certificate of occupancy or completion, as applicable, have been issued, and (vii) all areas of the Parking Structure are free of construction equipment, materials, and staging areas.

1.68 “Term” shall mean the term of this Agreement, which shall be the period of time commencing on the Effective Date and expiring on the earlier of (i) from time to time as to each

Parking Structure Phase upon the Phase Completion Date for each Phase or (ii) the earlier termination of this Agreement in accordance with the terms hereof.

1.69 “Title Company” shall mean the title company identified in the Commitment Agreement engaged to issue the policy of Title Insurance to the City insuring the Parking Structure, as mutually approved by Developer and the City.

Article 2 PROJECT PRE-DEVELOPMENT

2.1 Project. The Developer intends to develop the Project in five separate and independent Phases as shown on the Master Development Plan. Phase 2, Phase 3 and Phase 5 are each planned to include a Parking Structure. The Commitment Agreement for each Parking Structure Phase will confirm the exact configuration of all improvements within the relevant Phase. In addition, each Phase will also include specific “Developer Improvements” which shall collectively mean all of the buildings and improvements located, or to be located, in such Phase pursuant to the Master Developer Plan including mixed-use buildings with residential, hotel and retail uses, all as initially shown on the Master Development Plan and specifically excluding the Parking Structures within the Phase. The description of the Developer Improvements and the Infrastructure Improvements within a Phase may be subsequently modified and updated pursuant to the terms hereof, the Project Approvals (defined in **Section 2.2**), the Phase Approvals (defined in **Section 3.1**), or the Commitment Agreement. Any modification of the Developer Improvements or the Infrastructure Improvements following the execution of a Commitment Agreement within in a Phase which would (i) reduce the number of residential units within a Phase, or (ii) reduce the size of the non-residential components within that Phase, (iii) otherwise potentially reduce the anticipated demand for parking within the Project, or (iv) reasonably reduce the anticipated

BPTCR to be generated by a Phase or the Project shall require the prior written approval of the City (in addition to any approvals required by the City of Ann Arbor). Nothing herein shall negate the obligation of Developer to obtain any approvals required by the City of Ann Arbor.

2.2 Project Approvals. As a condition to the City's obligation to issue a Project Approval Notice pursuant to 2.12, Developer shall have obtained, at its sole cost, from the City and all governmental authorities having jurisdiction over the Project (including the City of Ann Arbor) all "Project Approvals" prior to the expiration of the Project Pre-Development Period. The Project Approvals shall include, but not be limited to, the (i) approval of the Master Development Plan which shall include the developmental features described on EXHIBIT 2.2 (i) attached hereto, (ii) all zoning approvals for the Project, (iii) the approval of the Phasing of the Project, (iv) the approval of the Infrastructure Improvements, and such other approvals for the Project required by applicable laws and/or desired by Developer with respect to the Project, (v) the City's receipt of a non-reimbursable payment from Developer no later than the issuance by the City of a Project Approval Notice in the amount of \$100,000.00 to fund the issuance of a traffic study ordered by the City intended to determine the extent of recommended alterations and/or modifications to roads and pedestrian improvements to South State Street and Eisenhower Parkway to address the impact of the Project, (vi) a planned unit development approval from the City of Ann Arbor or similar approval, or series of approvals, that assures the Developer that the Project can be developed in accordance with the Master Development Plan, (vii) approval by the City of the Project Condominium and/or Project REA with respect to the Project as contemplated by the Master Development Plan, (viii) all land divisions, subdivisions, combinations or consolidations deemed necessary or desirable by the Developer to create individual parcels for each Phase of the Project (which may involve platting or establishing a condominium as to all or portions of the Project),

(ix) all easements, vacations of easements, vacations of right of way areas and/or relocation or amendment of easements or right of way areas as deemed necessary by the Developer with respect to development of the Project pursuant to the Master Development Plan, (x) all site plan approvals, engineering approvals, health, safety and fire approvals and other similar permits or approvals that may be required by the City of Ann Arbor or other government bodies for the Project pursuant to the Master Development Plan, (xi) all building permits, construction permits, excavation and soil removal permits and similar permits or approvals for the Project that may be required by the City of Ann Arbor or other governmental bodies having jurisdiction over the Project; and (xii) the Brownfield Plan, the Reimbursement Agreement, and the approval by the MSF of the capture of school taxes in amounts stated in the Brownfield Plan. In each case, the Project Approvals shall be granted, signed or established by the necessary governmental authorities, their related agencies and/or any utility or service providers and be on terms and conditions that are acceptable to the Developer and the City. The Project Approvals shall not be deemed to have been received until any applicable period of time to contest or appeal the issuance of the Project Approvals has passed without the filing of a contest or appeal. The Project Approvals shall be deemed to be updated, modified and/or amended to the extent that Developer and the City and all other governmental authorities have approved the Phase Approvals (defined below) and/or issued subsequent approvals or permits that include changes, adjustments or modifications to, or from, the terms of the Project Approvals. Upon obtaining all Project Approvals, Developer shall deliver to the City a written notice confirming the Developer's receipt of all Project Approvals (the "Developer Project Approval Notice") which shall include copies of all such Project Approvals.

2.3 Agreement. To the extent the execution of this Agreement is a required Project Approval, the execution and exchange hereof shall satisfy such requirement.

2.4 Termination During Project Pre-Development Period. In the event Developer fails to provide the Developer Project Approval Notice prior to the expiration of the Project Pre-Development, as may be extended as provided in **Section 2.12**, or if the City fails to approve the Project Approvals provided by the Developer in the Developer Project Approval Notice within thirty (30) days of the City's receipt of same from the Developer, then the City or Developer shall each have the right to terminate this Agreement, without liability or cost, by providing written notice to the other, whereupon the Parties shall be released of all of their respective obligations hereunder, except those that expressly survive the termination of this Agreement.

2.5 Project Covenants of the Developer. During the Project Pre-Development Period, the Developer covenants and agrees to undertake commercially reasonable efforts to obtain the Project Approvals as well as the following actions with respect to the Project, all of which shall constitute a necessary Project Approval:

2.5.1 Entity Structure and Information. The Developer has delivered to the City prior to the Effective Date, the following entity information with respect to itself and the Affiliates of the Developer. By execution hereof, Developer recertifies all of the below information previously provided to the City is accurate and complete as of the Effective Date and shall be recertified as accurate and complete in connection with each Commitment Agreement (the "Entity Documents"):

a. An organizational chart showing the identity of the parties then owning or controlling more than 25% of the interests in the Developer and/or the Affiliates of the Developer, and the relationships among Developer and each of their Affiliates proposed to be the parties to the Parking Structure Agreements.

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

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

d. Good Standing Certificate from the State of Michigan Department of Licensing and Regulatory Affairs for the Developer and, if applicable, its Affiliates proposed to be the parties to the Parking Structure Agreements.

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

Following the Effective Date of this Agreement, the Key Persons are and shall remain in control of the Developer or each of the Affiliates proposed to be the parties to the Parking Structure Agreements during the performance of the Developer's and the Affiliate's obligations under the Parking Structure Agreements.

2.5.2 Confidential Information. If any information required to be provided to the City by Developer hereunder contains confidential information of the Developer or its Affiliates, the City will reasonably cooperate with the Developer to develop methods and procedures by which such information may be kept confidential.

2.6 Preliminary Project Development Schedule.

a. No later than thirty (30) days following the Effective Date, Developer will deliver to the City for its review, comment, and approval a preliminary Project Development Schedule for the Project (and all Phases of the Project) thereof, which shall include a proposed timeline for the commencement and completion (and other relevant milestones) of all pre-development, development, and construction activities relating to the Project (and all Phases of the Project). The Commitment Agreement or the other Project Documents shall provide and confirm the time-lines for the commencement and completion by the Developer of the specific components of a Phase, including the Parking Structures, the Developer Improvements, and the Infrastructure Improvements. Following the execution of a Commitment Agreement for any Parking Structure Phase, compliance with the Phase Project Schedule set forth in the Commitment Agreement shall govern and control the obligations of the parties as to such Phase only and, to the extent of any change from the Project Development Schedule described above, shall be deemed to amend the Project Development Schedule unless otherwise expressly provided by the City.

b. The Project Development Schedule for the Project shall be subject to amendment upon the approval of the City, which approval shall not be unreasonably withheld, and which may be evidenced by updates to the Project Development Schedule included in the executed Commitment Agreements.

2.7 Brownfield Plan; Michigan Strategic Fund.

2.7.1 In connection with the Project Approvals, Developer will pursue approvals for a proposed Brownfield Plan and Reimbursement Agreement (including the approval of the Michigan

Strategic Fund (“MSF”) for the capture of school taxes) for the Project in form and content acceptable to the City. All such approvals for the Brownfield Documents (including MSF approvals) shall be obtained on or before the expiration of the Project Pre-Development Period, as same may be extended pursuant to **Section 2.12**, failing which City shall have the right, at any time thereafter, to terminate this Agreement without cost or liability by providing written notice to Developer. Once approved by the City, the Brownfield Redevelopment Authority (and the MSF), the approved Brownfield Plan and Reimbursement Agreement (collectively “Brownfield Documents”) shall not be amended without the prior written consent of the City.

2.7.2 In connection with the Phase Approvals for each Phase, Developer shall submit any proposed amendments or updates to the Brownfield Documents, and/or as part of the BANS Commitment (including a Cooperation Agreement), in connection with such Phase to the City, the Brownfield Redevelopment Authority, and the MSF for consideration and approval by the City of Ann Arbor, the City, and the Brownfield Redevelopment Authority. If such updates and amendments are approved by the City (and to the extent required, by the City of Ann Arbor), and the Brownfield Redevelopment Authority, the terms of such amendment and updates shall be incorporated into the Brownfield Documents and shall thereafter govern the Project. It is anticipated that the BANS Issuer shall require a conditional pledge of the BPTCR payable under the Reimbursement Agreement in connection with the construction financing for the Phase 2 Parking Structure. Any such conditional pledge of the BPTCR shall be subject to the execution of an agreement among the City, Developer, the BRA and the BANS Issuer containing such terms and conditions as the parties may agree (the “Cooperation Agreement”). It is further contemplated that the Commitment Agreement or a Cooperation Agreement may contain terms by which the

City pledges to the Developer and/or the BANS Issuer the BPTCR allocated to the City to cover Bond Indebtedness for that Phase in the event the City is determined to have breached its obligation to purchase a Parking Structure constructed by Developer. The terms and conditions of any such pledge by the City, if any shall be stated in the Commitment Agreement or in the Cooperation Agreement. It shall be a condition precedent to the issuance of the Approval Notice by the City for any Phase which includes a Parking Structure financed by BANS which require a pledge of the BPTCR that a Cooperation Agreement be executed by the City, Developer and the BANS Issuer as a condition of any pledge to a BANS Issuer of the BPTCR, all in form and content reasonably acceptable to the City.

2.8 Tax Division. Promptly following the Effective Date, and prior to and as a condition of the City issuing the City Project Approval Notice (as defined below), the Developer will initiate and diligently pursue and obtain a division of the Project Property into one or more separate tax parcels which align with the Phasing Plan depicted in the Master Development Plan. The Developer acknowledges and agrees that all tax parcels for the Project will be subjected to and encumbered, inter alia, by the Special Assessment District and subject to the special assessments levied thereby.

2.9 Developer Due Diligence. Developer represents that it has satisfied itself with state and quality of title to the Property, the physical condition thereof, including environmental condition thereof, and the adequacy of the soils and all conditions related thereto have been satisfied and waived.

2.10 Preliminary Site Plan Approval. Developer confirms it has obtained conditional approval from the City of Ann Arbor for the site plan for the Project, a copy of which is attached

hereto as the Master Development Plan. The Developer acknowledges that any amendments to the Master Development Plan will be subject to the review and approval of various departments and bodies of the City of Ann Arbor, including, without limitation, the Planning Department and City Council, and that such reviews and approvals shall be conducted in accordance with the City of Ann Arbor's standard municipal planning and development procedures. The Master Development Plan has taken into account, and any amendments thereto shall take into account, the impact of the Project on existing easements, rights of way, and utility lines, facilities and equipment, and shall address the preservation or substitution (to the extent feasible) of all such existing easements and rights of way.

2.11 Bond Resolution Notice of Intent.

2.11.1 At a time selected by the City but, in all events, prior to the expiration of the Project Pre-Development Period, the City will petition the City Council to adopt a resolution (the "Inducement Resolution") authorizing the issuance of the Bonds in an amount not less than One Hundred Sixty-Six Million Three Hundred Ninety Thousand (\$166,390,000.00) DOLLARS to be issued in separate series with the proceeds of each series intended to finance the Parking Structure Parcel Purchase Price for each individual Parking Structure constructed by the Developer or, if constructed by the City, the cost to construct same. Developer acknowledges that the adoption of the Inducement Resolution shall trigger the opportunity of the public to require a referendum on the decision to issue the Bonds (a "Special Election"). If sufficient signatures are obtained which require City of Ann Arbor to orchestrate a Special Election, the City of Ann Arbor and Developer shall engage in negotiations to allocate the cost of such Special Election between them. In the event the parties are unable to reach agreement on the cost allocation of the Special Election

and for the timing of same (it being agreed that neither party shall be obligated to incur any costs associated _____ with _____ any Special Election) within thirty (30) days of the determination that such Special Election is required then, in that event, the City shall have the right to terminate this Agreement upon written notice to the Developer and upon the issuance of such termination notice this Agreement shall terminate and each party released from all obligations hereunder. If a Special Election is held, the City's obligation to proceed beyond the Pre-Development Period and to issue any Bonds shall be subject to the affirmative vote by the public authorizing same and the expiration of any appeal period or termination of any litigation opposing such issuance in relation thereto.

2.11.2 The City shall order the publication of the Inducement Resolution with respect to the issuance of the Bonds not later than five (5) business days after the Inducement Resolution authorizing the Bonds has been adopted.

2.11.3 After (i) any referendum period applicable to the issuance of the Bonds shall have expired without any further requirement for a referendum on the issuance of the Bonds or (ii) any required public referendum shall have been held and result in an approval for the City to issue the Bonds, the City shall proceed to issue and market the Bonds for sale pursuant and subject to the terms of this Agreement.

2.12 City Project Approval Notice. At such time as the City has satisfied itself with respect to the Project Pre-Development contingencies set forth in Article 2 above, it shall advise the Developer in writing of such intent to proceed (the "City Project Approval Notice"), it being agreed that such City Project Approval Notice, if given, shall be given no later than thirty (30) days following delivery to the City of the Developer Project Approval Notice, provided however

to the extent that a Developer Project Approval Notice is not provided by the Developer prior to the Project Pre-Development Period, the Project Pre-Development Period shall be deemed extended, shall continue, and shall not expire until the earlier of (i) a written agreement as to an extended expiration date of the Project Pre-Development Period is executed by the City and the Developer or (ii) the City delivers a notice to the Developer (the “Project Expiration Notice”) and the Developer fails or is unable to deliver the Developer Project Approval Notice within thirty (30) days from receipt of the Project Expiration Notice.

2.13 Authorization to Purchase. Subject to the terms and conditions described in this Agreement and without binding either party to either acquire or sell all or any portion of a Parking Structure Parcel or to undertake any other activities contemplated herein, City and Developer agree that the following parameters shall govern and control the purchase and sale of the Parking Structure Parcels. Any deviation or modification to the articulated terms and conditions described in this **Section 2.13** may require the approval of the City Council for the City of Ann Arbor:

(i) the Parking Structure Purchase Price payable by the City for the Parking Structure Parcel in Phase 2 (which Parking Structure Parcel shall be a unit in a condominium in which the Parking Structure will be constructed) excluding the costs of the design, construction and financing of the Parking Structure shall not exceed \$4,380,000.00 and the Parking Structure Purchase Price for the Parking Structure Parcel in Phase 2 if constructed by the Developer shall not exceed \$4,380,000.00 for the unimproved Parking Structure Parcel *plus* an amount for completion and delivery of the Parking Structure, including the costs of the design, construction and financing thereof as described herein, which additional amount shall not exceed \$55,597,430.00. The Parking Structure in Phase 2 shall have dedicated and insurable access to a publicly dedicated road and all necessary

utilities and shall have the dimensions and be generally located as described in the Master Development Plan attached hereto as Exhibit B.

(ii) the Parking Structure Purchase Price payable by the City for the Parking Structure Parcel in Phase 3 (which Parking Structure Parcel shall be a unit in a condominium in which the Parking Structure will be constructed) excluding the costs of the design and construction of the Parking Structure shall not exceed \$3,890,000.00 Dollars and the Parking Structure Purchase Price for the parking Structure in Phase 3 if constructed by the Developer shall not exceed \$3,890,000.000 for the unimproved Parking Structure Parcel *plus* an amount for completion and delivery of the Parking Structure, including the cost of design, construction and financing thereof as described herein, which additional amount shall not exceed \$47,886,700.00. The Parking Structure in Phase 3 shall have dedicated and insurable access to a publicly dedicated road and all necessary utilities and shall have the dimensions and be generally located as described in the Master Development Plan attached hereto as Exhibit B.

(iii) the Parking Deck Purchase Price payable by the City for the Parking Structure Parcel in Phase 5 (which shall be a unit in a condominium in which the Parking Structure will be constructed) excluding the cost of the design, construction and financing shall not exceed \$4,110,000.00 Dollars and the Parking Structure Purchase Price for the Parking Structure in Phase 5 if constructed by the Developer shall not exceed \$4,110,000.00 for the unimproved Parking Structure Parcel *plus* an amount for completion and delivery of the Parking Structure, including the costs of design construction and financing as described herein, which additional amount shall not exceed \$50,525,870.00. The Parking Structure in Phase 5 shall have dedicated and insurable access to a publicly dedicated road and all necessary utilities and shall have the dimensions and generally be located as reflected in the Master Development Plan attached hereto as Exhibit B.

The City Administrator for the City of Ann Arbor is therefore authorized to negotiate a final Purchase Price for each Parking Structure in each Parking Structure Phase, enter into a Commitment Agreement for each Parking Structure within a Parking Structure Phase if in each case the City Administrator determines that all applicable contingencies set forth in this Agreement applicable to such Parking Structure Phase have been met or are appropriate to waive, an appraisal for the relevant Parking Structure Parcel certified to the City has been obtained by the City, the Purchase Price for the Parking Structure Parcel in each phase does not exceed the Purchase Price limits described above, and funding is otherwise available for the Purchase Price so negotiated either through authorized Bonds, an approved City budget or other appropriate funding source.

Article 3 PHASE DEVELOPMENT

3.1 Phase Approvals. Following the issuance and approval of all Project Approvals and the adoption of the Inducement Resolution by the City and the waiver of the requirement for a referendum, Developer shall have the right to initiate the process of obtaining all Phase Approvals (as defined below) for each Phase of the Project by the issuance and delivery to the City of a Phase Notice for a particular Phase. Upon the issuance of a Phase Notice for a Phase, the Developer shall, at its sole cost, apply for and exert commercially reasonable efforts to obtain all approvals from the City of Ann Arbor and from all applicable governmental authorities having jurisdiction over the Phase for the construction, use, and occupancy of the components of the Phase, including the Parking Structure, Developer Improvements and Infrastructure Improvements to be located in a Phase of the Project (the “Phase Approvals”). The Phase Approvals shall be obtained within the relevant Phase Pre-Development Period and shall include such permits, approvals, and entitlements that are legally necessary or desired by Developer with respect to the development of the Phase of the Project. The Phase Approval applications shall conform to the

Project Approvals in all material respects; it being acknowledged that any material modifications to a Project Approval contained in a Phase Approval application may require same to be submitted to the City of Ann Arbor for approval. The Project Approvals shall include all approvals required by applicable Law for the construction, occupancy, and use of the Parking Structure, the Developer Improvements, or the Infrastructure Improvements within or required by the improvements within the Phase together with (i) any modifications to any zoning or site plan approval previously approved by the City of Ann Arbor or similar approval, or series of approvals, that assures the Developer that the Phase, Parking Structure, Developer Improvements or Infrastructure Improvements can be developed in accordance with this Agreement; (ii) approval of, or amendments to, the Project Condominium and/or Project REA with respect to the Phase; (iii) creation or establishment of, or amendments to, all condominium units, land divisions, subdivisions, combinations or consolidations deemed necessary or desirable by the Developer to create individual parcels within the Phase; (iv) all easements, vacations of easements, vacations of right of way areas and/or relocation or amendment of easements or right of way areas as deemed necessary by the Developer within the Phase; (v) all site plan approvals, engineering approvals, health, safety and fire approvals and other similar permits or approvals that may be required by the City of Ann Arbor or other government bodies for the Parking Structure, Developer Improvements and/or Infrastructure Improvements within the Phase; and/or (vi) all Permits, that may be required by the City of Ann Arbor or other governmental bodies for the Parking Structure, Developer Improvements and/or Infrastructure Improvements within the Phase. In each case, the Phase Approvals shall be granted, signed or established by the necessary governmental authorities, their related agencies and/or any utility or service providers and subject to terms and conditions that are acceptable to the Developer in its sole discretion. The Phase Approvals shall not be deemed

to have been received until any applicable period of time to contest or appeal the issuance of the Phase Approvals has passed without the filing of a contest or appeal. In the event the Developer fails to provide written notice to the City that the Developer has obtained the Phase Approvals within the applicable Phase Pre-Development Period, as same may be extended pursuant to **Section 3.9.1(k)**, the City shall have the right at any time thereafter to terminate this Agreement as to such Phase and any future Phases without cost or liability by written notice to the Developer.

3.2 Parking Structure Agreements. Following the issuance of a Phase Notice, Developer and the City shall also work together, cooperate and attempt to reach a written agreement with respect to the plans, specifications, and configuration of Parking Structure located in such Phase, and the access thereto, which shall include, but are not limited to, the following (collectively the “Parking Structure Agreements”): (i) the boundaries and/or configuration of the Parking Structure Parcel; (ii) approval of the Parking Structure Parcel Survey; (iii) approval of the Parking Structure Parcel Title Commitment; (iv) approval of any amendments to the Project Condominium or the Project REA to incorporate the Parking Structure or for special terms related to the Parking Structure and the terms and conditions of the Phase Condominium; (v) approval of the Parking Structure Improvement Plans; (v) approval of the Parking Structure Construction Budget; (vi) approval of the contract with the general contractor for the Parking Structure; (vii) approval of the Parking Structure Construction Schedule and estimated Parking Structure Completion Date; (viii) confirmation and approval of the BANS Commitment that relates to the Parking Structure; (ix) the Parking Structure Parcel Purchase Price; (x) the amount of the Bond Indebtedness contemplated to be issued by the City with respect to the Parking Structure Purchase Price and the allocation of same between taxable and tax exempt bond; (xi) a completion guaranty issued by an entity acceptable to the City with a net worth and liquidity acceptable to the City

guaranteeing completion of the Parking Structure Improvements, the Infrastructure Improvements, and the Developer Improvements within a Phase; (xii) confirmation by the City that the estimated amount of Brownfield Property Tax Recapture Revenue, and such other sources of repayment which the City agrees to apply to the retirement of the Bonds Indebtedness are sufficient to support the repayment obligations of the City under the Bond Indebtedness; (xiii) the hard and soft costs associated with the design and construction of the Parking Structure, (xiv) the bidding process for soliciting bids to design and construct the Parking Structure which shall be on an open book basis and all such bids shall be evaluated by the Developer based on the factors described on Exhibit 3.2, (xv) any amendments to the Brownfield Plan, the Reimbursement Agreement or any Cooperation Agreement including amendments arising from or that related to the BANS, and (xvi) such other items as the City or the Developer reasonably may require.

3.2.1 In the event the City and Developer have not reached written agreement on the Parking Structure Agreements within the applicable Phase Pre-Development Period following the issuance of a Phase Notice such that Developer is unable or unwilling to provide the Approval Notice, then either Developer or the City shall have the right, at any time thereafter, to terminate this Agreement with respect to such Phase and all future Phases, subject to the notice and extension rights set forth in **Section 3.9.1(k)**, without liability and/or cost by providing written notice of such election to the other party. To the extent the City is not satisfied with any of the due diligence materials provided to the City (i.e., surveys, title work, environmental reports, soil reports) or the Parking Structure Agreements, the City shall provide written notice to the Developer detailing its objections promptly after receiving drafts thereof and the Developer shall respond to such written objections included in the City notice within ten (10) business days of receipt indicating in writing whether the Developer will undertake efforts to resolve the objection to the reasonable satisfaction

of the City prior to the execution of the Commitment Agreement. If, however, the Developer elects in writing not to resolve any objections to the due diligence materials made by the City under this Section, then within thirty (30) days after its receipt of such election, the City shall provide written notice of either (i) its willingness to proceed without such resolution and such a waiver by the City shall be set forth in the Commitment Agreement or (ii) its election to terminate this Agreement as to the particular Phase and all future Phases. The agreements of the parties with respect to the Parking Structure Agreements shall be incorporated into the Commitment Agreement for each Phase. Developer will pay the cost for all title work, surveys, environmental and geotechnical information, and other due diligence, including copies of title policies, title exception documents, surveys, environmental reports, assessment data with respect to the items identified in **Section 3.2**, but such costs or the allocated share thereof as approved by the City applicable to the Parking Structure shall be included in the Parking Structure Purchase Price.

3.2.2 City's Right to Construct the Parking Structure. Notwithstanding the construct contained in this Agreement that the Developer shall be obligated to construct the Parking Structure, the City reserves the right in connection with the Parking Structure in Phase 3 and/or Phase 5 to elect, in its sole discretion to undertake the obligation to construct a Parking Structure. Any such election by the City to undertake construction of a Parking Structure shall be made during the Pre-Development Period for the applicable Phase. In such event, the City and Developer shall endeavor to negotiate the manner, means, and allocation of costs associated with the construction of the Parking Structure and the elements thereof on which the Developer Improvements will rely and/or require access, all of which shall be articulated in the Commitment Agreement. Developer agrees to fully cooperate with the City in the event the City exercises its rights under this **Section 3.2.2** and the Commitment Agreement shall so confirm said election and

the terms and conditions under which the City shall complete such construction.

3.3 Developer Improvements and Infrastructure Improvements Agreements.

Following the issuance of a Phase Notice, Developer shall work with the City in an attempt to reach agreement with respect to the Developer Improvements and Infrastructure Improvements (collectively the “Developer/Infrastructure Agreements”) which shall include: (i) the specific number of residential, or hotel units and size of commercial space proposed by Developer to be included within the Phase; (ii) if applicable, the Developer shall confirm with the AAHC the specific number of Affordable Housing Units to be included within the Affordable Housing Building; (iii) the Phase Budget; (iv) any required or desired amendments or updates to the Brownfield Plan and/or the terms of the Reimbursement Agreement that arise from the Phase; (v) the Construction Loan Commitment (including the amount and basic terms of the Construction Loan(s) with respect to the Developer Improvements and the Infrastructure Improvements to be established in the Phase as approved by Developer); (vi) the terms, conditions, and issuer of the completion guaranty with respect to the Developer Improvements and the Infrastructure Improvements; (vii) the Phase Development Schedule and Phase Completion Date; and (viii) evidence that Developer has sufficient Developer Committed Equity and Construction Loan Commitments to construct the Developer Improvements and the Infrastructure Improvements.

3.4 Phase Notice.

3.4.1 Phase 2 and Phase 1. Notwithstanding the fact that a Developer Approval Notice has not been issued by the Developer, by execution hereof, the Developer confirms its election to proceed with Phase 1 and Phase 2 of the Project and its commitment to pursue all Project Approvals pursuant to the terms of **Section 2.2**, above.

3.4.2 Phase 3 and 5. Developer's election to proceed with Phase 3, and thereafter Phase 5, shall be evidenced by a written communication delivered to the City stating the Developer's intent to proceed with such Phase (any such notice a "Phase Notice"). Upon the City's receipt of a Phase Notice, the Phase Pre-Development Period shall commence and Developer and the City will thereafter undertake commercially reasonable efforts to satisfy the contingencies set forth in **Section 3.1, 3.2, and 3.3** as it relates to such Phase, it being agreed that Developer's issuance of the Phase Notice and the undertakings of the City and the Developer to satisfy and address the contingencies with respect to such Phase shall not be a binding obligation of the parties to proceed with such Phase but, rather, a commitment to exert commercially reasonable efforts to satisfy the contingencies described in **Section 3.1, 3.2, and 3.3** with respect to such Phase. Within fourteen (14) days of the issuance of a Phase Notice for Phase 3 and 5, the Developer shall deliver to the City a written proposal with any desired modification to the duration of the Phase Pre-Development Period and the time period by which Developer shall obtain the Phase Approvals and the time period for Developer and the City to reach agreement on the Parking Structure Agreements and the Commitment Agreement for such Phase. When and if approved by the City in writing, said time periods shall govern the Phase Pre-Development Period and milestones of the relevant Phase. The Developer shall not be entitled to issue a Phase Notice (and the City shall not be obligated to undertake efforts to satisfy the contingencies associated such Phase) in the event that any of the following have occurred: (i) Developer is in default of its obligations hereunder which remains uncured following notice and the expiration of any applicable cure period; (ii) Developer has not complied with any then applicable Phase Development Schedule or the Project Development Schedule with respect to the Developer Improvements or the Infrastructure Improvements with respect to a previous Phase as set forth in, and subject to any cure or extension

rights contained in, the Commitment Agreement applicable to such previous Phase; (iii) with respect to Phase 3, if the Approval Notice is not delivered by June 30, 2028, subject to extension as provided in **Section 3.9.1(k)**; (iv) with respect to Phase 5, the Approval Notice is not delivered by December 31, 2030 (subject to extension as provided in **Section 3.9.1(k)**); (v) the Developer shall have failed to comply with any then applicable Parking Structure Construction Schedule for a previous Phase and subject to the rights of Developer set forth in the Commitment Agreement for such Phase; (vi) with respect to Phase 3, if the Developer has breached its obligations under the agreement between Developer and the AAHC for Phase 1, including but not limited to its failure to comply with the Phase 1 Construction Schedule following receipt of written notice of such failure from the AAHC to Developer and the failure of Developer to cure such failures within sixty (60) days following receipt of such notice; (vii) Developer or the then owner of any Phase has defaulted in its obligations to pay real estate taxes and other assessments timely and prior to the accrual of penalties or interest; (ix) payments to the City under the Reimbursement Agreement for BPTCR necessary to timely pay the annual debt service obligations of the City on the then outstanding Bond Indebtedness for any reason have been interrupted for any reason unrelated to the acts of the City; provided, that if the interruption is not related to a failure of the Developer that the City may elect to provide such Phase Notice, or (x) with respect to Phase 5, Developer and the AAHC have not made arrangements to satisfy the parking requirements imposed on the Affordable Housing Building which do not require the City to provide to residents of the Affordable Housing Building parking rights in any Parking Structure owned and operated by the City that are not otherwise provided to the public or would, in the City's sole discretion, cause or support a challenge to the tax exempt nature of the Bonds.

3.5 Phase Bond Analysis. As part of the Parking Structure Agreements associated with

each Parking Structure Phase, the City, with the cooperation and input from the Developer, will perform a financial analysis to determine and confirm that the estimated annual BPTCR payable to the City pursuant to the Reimbursement Agreement and the Brownfield Plan is sufficient to assure the City, in its sole discretion, that it will receive BPTCR in amounts necessary to fully cover and retire the annual repayment obligations of the City under the Bond Indebtedness to be incurred by the City in connection with the Parking Structure Parcel Purchase Price, together with the interest rate and terms of the Bonds. As part of the Parking Structure Agreements, the City and Developer shall confirm the terms of the SAD and the allocation of the special assessments to parcels of land, or condominium units, to be established within the Phase. Developer agrees that all financing encumbering the Developer Improvements shall be subject to and subordinated to, the SAD obligations. In connection with such financial analysis, the City may agree, in its sole discretion, to include, in the means and sources of repayment of the Bond Indebtedness, such portion of the excess Net Parking Income anticipated to be generated by the Parking Structure within a Phase.

3.5.1 The Developer shall provide to the City for its review and approval all information requested by the City related to the Developer Improvements and the Infrastructure Improvements within each Parking Structure Phase, including the aggregate cost to construct same, proof of financing for the Developer Improvements and the Infrastructure Improvements, including the Construction Loan Commitment, and evidence of sufficient available funds related thereto, as part of the Developer Improvements and Infrastructure Improvements Agreements and the Phase Development Documents.

3.6 Commitment Agreement. At such time that the City and Developer have reached

agreement upon and/or accepted the terms of the Project Approvals and otherwise waived and/or satisfied the Phase Approvals (including the Parking Structure Agreements and the Developer Improvements and Infrastructure Agreements) which shall be, in all events, before the expiration of the Phase Pre-Development Period, then such approvals and agreements shall be set forth, or incorporated by reference, in the Commitment Agreement that relates to the Phase the Developer desires to commence (each a “Commitment Agreement”). The Commitment Agreement shall confirm the satisfaction by the Developer and City with all aspects of their respective due diligence and the other items referenced herein with respect to such Phase. Once executed, the Commitment Agreement shall govern the parties respective obligation as to the Phase of the Project to which it applies and shall set forth the specific terms and conditions related to construction of the Parking Structure (if a Parking Structure Phase is involved), issuance of the BANS, the terms of the Reimbursement Agreement or Cooperation Agreement with respect to the BANS, construction of the Developer Improvements, the Infrastructure Improvements, and the Parking Structures (including, without limitation, the incorporation of sustainable building and site features and multi-modal transportation infrastructure improvements and Vision-Zero improvement described in the attached **Exhibit 2.2(i)**), the commitment of Developer to fund the improvements to South State Street and/or Eisenhower Parkway recommended by the traffic study consistent with the improvements approved by the City, the terms and location of any SEU Easement(s) applicable to such Phase the face amount and structure of the Bonds to be issued by the City, and timing of the closing on the purchase and sale of the Parking Structure Parcel by the City following Substantial Completion of the Parking Structure.

3.7 Parking Structure Phases. Phase 2, Phase 3 and Phase 5 of the Project will contain a Parking Structure. As such, Phase 2, Phase 3 and Phase 5 are respective “Parking Structure

Phases” and each will have their own independent Commitment Agreement. Phase 1 and Phase 4 of the Project do not contain Parking Structures and while a Commitment Agreement will be required for Phase 4, the provisions of the Commitment Agreement for Phase 4 will not address construction of the Parking Structure, financing of the Parking Structure and the sale of the Parking Structure. During the term hereof upon the City’s request, whether as part of the Commitment Agreement or at any other time, Developer shall grant SEU Easements to the City in locations within the Project where subterranean SEU facilities are feasible and do not prevent Developer’s construction and operation of the Project, including under roads, buildings, sidewalks, areas containing other utility easements, open areas, and other locations. When available, Developer shall subscribe to the SEU as its energy provider, provided that the SEU is cost-neutral as compared to other energy providers or in cases where the tenants and Developer elect to subscribe for other reasons.

3.8 Pre-Development Period General Conditions. The following general conditions will apply during the Pre-Development Period for Phase 2, Phase 3, and Phase 5:

3.8.1 Costs. Each party will bear its own costs, except to the extent a party incurs liability under a specific obligation to the contrary as set forth in this Agreement.

3.8.2 Cooperation. The City and Developer shall promptly and in good faith cooperate with each other in connection with the review, comment, revision, and approval of the matters requiring the approval of the City pursuant to this Agreement and otherwise in connection with all pre-development activities; provided, however, that the foregoing shall not obligate the City of Ann Arbor to modify or otherwise deviate from its standard municipal planning and development review and approval process. Each of the Developer and the City agree that in the

event it encounters issues which, if not resolved, would result in a party's election to terminate this Agreement or a refusal to proceed with a Phase, then, in that event, prior to any election to terminate this Agreement or irrevocable election to not proceed with a Phase, it shall provide at least thirty (30) days advance written notice to the other party advising the other party of the issue which imperils that party's ability to proceed under this Agreement or the relevant Phase. The party receiving such notice shall have the right, but not the obligation, to attempt to resolve such issues to the issuing party's satisfaction and if such issue is not resolved to the issuing party's satisfaction within the thirty (30) day time period stated above, then in that event, either party shall have the right at any time thereafter, to terminate this Agreement or the relevant Phase without liability or cost and this Agreement and the parties obligation to proceed with a Phase shall terminate as of the date stated in any notice. No termination of this Agreement or election to not proceed with a Phase shall void or negate the parties' obligations under a previously executed Commitment Agreement.

3.8.3 Termination Rights Applicable to Phase 3 and Phase 5.

a. In the event that any approval of the City and/or City of Ann Arbor is required pursuant to this Agreement, including, without limitation, the Site Plan Approval and approval of the Project Budget, Construction Plans, Construction Contract or the Project Documents for Phase 3 or Phase 5, is not given or if the City and Developer are unable to reach agreement on the terms of the Commitment Agreement or any other Phase Documents for Phase 3 or Phase 5, in each case despite the efforts described in **Subsection 3.8.2** above, either party may terminate this Agreement in accordance with the procedure set forth in **Section 3.9.1(k)**.

b. Upon any termination under this **Subsection 3.8.3** as to Phase 3

and/or Phase 5, this Agreement shall terminate as to the involved Phase and all future Phases and the parties shall have no further obligations under this Agreement, except to the extent specifically stated in this Agreement to survive termination. The termination of this Agreement shall not affect the rights or obligations of either party with respect to any executed Commitment Agreement.

3.9 Phase 2 Pre-Development Period. Following the Effective Date, the City and Developer shall exert commercially reasonable efforts to satisfy the following Phase 2 Pre-Development Contingencies:

3.9.1 Developer's Phase 2 Pre-Development Obligations. During the Phase 2 Pre-Development Period, the Developer agrees to undertake the following tasks:

a. Preliminary Phasing Plan. Within thirty (30) days of the Effective Date, Developer will use good faith efforts to deliver to the City for its review, comment, and approval a preliminary Project Phasing Plan for Phase 1 and 2 that provides a plan and timeline for the construction and development of the various elements of Phase 1 and 2.

b. Preliminary Parking Structure Budget. Within thirty (30) days of the Effective Date, Developer will use good faith efforts to deliver to the City for its review, comment, and approval a preliminary Project Budget for the Parking Structure within Phase 2.

c. Preliminary Parking Structure Construction Plans and Specifications.

(i) Within sixty (60) days of the Effective Date, Developer will use good faith efforts to submit to the City for the review, comment, and approval by the City proposed plans and specifications (the "Specifications") for the Parking Structure

within Phase 2.

(ii) Within 60 days of the finalization and approval by the City of the Specifications for the Parking Structure in Phase 2, Developer will use good faith efforts to deliver to the City preliminary construction plans for the Parking Structure within Phase 2 which fully comport with the Specifications for the City's review, comment, and approval, which construction plans shall be sufficiently detailed to permit a determination of the maximum price pricing for the Parking Structure. The construction plans for the Parking Structure shall be subject to the approval of the City, which approval shall not constitute approval by the City of Ann Arbor.

(iii) Upon the approval of the construction plans for the Parking Structure, Developer shall submit same to the City for approval until finally approved. The timing of when a building permit must be issued will be contained in the Commitment Agreement.

(iv) Once the construction plans for the Parking Structure are approved by the City of Ann Arbor, same shall not be amended without the prior written consent of the City of Ann Arbor.

d. Preliminary Project Construction Schedule. Within 60 days of approval of the Construction Plans for the Parking Structure, Developer will use good faith efforts to deliver a preliminary Construction Schedule for the Parking Structure within Phase 2 to the City for its review, comment, and approval, which if approved by the City, shall be incorporated into the Commitment Agreement.

e. Budget and Construction Contract.

(i) Within 90 days following the approval of the Construction Plans, Developer will use good faith efforts to deliver to the City a draft of the Construction Budget and the Construction Contract for the Parking Structure in Phase 2 pursuant to the approved Plans and Specifications. Developer has disclosed the structure in which a Parking Structure is located may have private components which are to be constructed and owned by Developer or the use of which will be shared. The Parking Structure Budget shall contain segregated and/or an allocation of pricing for each private component, shared component, and the public component of the Parking Structure for the review, comment, or approval of the City. Without limiting the City's approval rights in accordance herewith, the City and Developer agree that, except as otherwise provided in this Agreement, the Construction Contract shall include, without limitation, the following material terms: (i) Developer shall be responsible for the "turn-key" construction of the Parking Structure described in the Construction Contract, including, without limitation, all planning, pricing, permitting, and construction activities with respect thereto; (ii) Developer shall engage a Contractor acceptable to the City for the construction of the Parking Structure; (iii) all contracts with architects and engineers involved in the design of the Parking Structure (the "Subcontracts") shall be subject to the prior review and approval of the City, which approval shall not be unreasonably withheld; (iv) upon the completion of the Parking Structure and the conveyance of same to the City, all warranties and guaranties and all surviving counterparty obligations under the Construction Contract and any subcontractor and all suppliers of materials and equipment shall be assigned to the City without cost pursuant to assignments in form and substance reasonably acceptable to City; and (v) with

respect to the Parking Structure, the Developer shall be obligated to cause the Contractor to obtain such payment and/or performance bonds as may be required by the City which shall be itemized in the Construction Contract. Without limiting the City's approval rights set forth in this Agreement, the pricing for the Construction Contract shall be determined on an "open-book" basis with multiple bids (if available) obtained with respect to each major trade.

(ii) The Construction Contract and all Subcontracts for a Parking Structure shall be subject to approval of the City, and its component departments with respect to site plan review, zoning, building permits, building codes or other development and construction approvals necessary for the Project and the Parking Structure. Following approval of the Construction Budget and the Construction Contract and all Subcontracts, the Developer shall not amend or terminate the Construction Budget or the Construction Contract or any Subcontract without the prior written consent of the City.

f. Construction Financing. As a condition to the execution of a Commitment Agreement for any Parking Structure Phase, Developer will make available to the City for review and approval (or its counsel) evidencing that Developer has entered into firm financing commitments with the Construction Lender providing financing for the construction of the Developer Improvements and Infrastructure Improvements within such Phase of the Project, together with evidence of the availability of the Developer Committed Equity which will fully fund all costs to Substantially Complete all Developer Improvements and Infrastructure Improvements within Phase 2 together with such other documents as may be reasonably requested by the City to evidence Developer has the committed financing and equity to complete the

construction of the Developer Improvements and Infrastructure Improvements Phase.

g. Purchase Price. Within 90 days following the finalizing of the Parking Structure Construction Budget, Developer shall use good faith efforts to submit to the City for the City's review, comment, and negotiation, a proposed parking deck purchase price. If and when approved, same shall be incorporated in the Commitment Agreement. The Parking Structure Purchase Price shall be computed based on the Parking Structure Budget, the mutually approved land value, and such other direct third party costs of Developer as specified in **Section 1.36**, as approved by the City.

h. SAD. Prior to (and/or immediately after) the execution of a Commitment Agreement (and as an express condition to the City's obligations under the Commitment Agreement), the City and the Developer shall negotiate the proposed form of the SAD and, once approved, seek the approval of the City Council thereto. Once approved by the City Council the City of Ann Arbor shall levy the assessments created thereby.

i. Affordable Housing. Developer shall finalize with the AAHC and thereafter deliver to the City the executed Affordable Housing Development Agreement with AAHC confirming the commitment of the Developer to partner with the AAHC to construct the Affordable Housing Building on terms and conditions acceptable to the City and the AAHC and Developer shall have paid or provided a guaranty to the City to secure the prompt future payment of the Affordable Housing Payment in Lieu pursuant to **Section 6.2** hereof.

j. Other Phase Documents. The Developer and City shall negotiate in

good faith with respect to all other Phase Documents not otherwise described in this **Section 3.9**.

k. Developer Approval Notice. When the Developer has determined that it is satisfied and/or is prepared to waive the conditions to its obligation to proceed beyond the Phase Pre-Development Period for Phase 2 set forth in this **Section 3.9** as to the Parking Structure, the Developer Improvements, and the Infrastructure Improvements in Phase 2, it shall provide written notice to the City of such fact (the “Phase 2 Approval Notice”), it being agreed that such Phase 2 Approval Notice shall be given no later than the expiration of the Phase Pre-Development Period for Phase 2; provided however, to the extent that a Phase 2 Approval Notice is not provided by such date, the Phase Pre-Development Period for Phase 2 shall be deemed extended, shall continue and shall not expire until the earlier of (i) a written agreement as to an extended expiration date is executed by City and Developer, or (ii) the City delivers a notice of expiration to Developer (the “Expiration Notice”) and Developer fails or is unable to deliver the Phase 2 Approval Notice within thirty (30) days from receipt of the Expiration Notice. The Phase 2 Approval Notice shall not be binding until the parties have executed and exchanged the Commitment Agreement for Phase 2. Upon the Developer’s issuance of the Phase 2 Approval Notice and provided the City has similarly issued its Phase 2 Approval Notice, the Developer and the City shall work with each other to finalize a mutually acceptable Commitment Agreement. The Commitment Agreement shall confirm each party’s commitment to proceed with the relevant Parking Structure Phase subject only to such additional terms and conditions and commitment as the parties may then agree including the timing of the issuance by the City of the Bonds. The Commitment Agreement shall contain the following additional terms:

- (i) A certification of Developer that it irrevocably agrees to

construct Developer Improvements and the Infrastructure Improvements in Phase 2 in accordance with the terms and conditions of this Agreement and the Commitment Agreement, subject only to the completion and/or waiver by City and the Developer and its Affiliates of any other commitments and/or contingencies expressly set forth in the Commitment Agreement.

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

3.9.2 City’s Phase 2 Pre-Development Period Obligations. During the Phase 2 Pre-Development Period, the City agrees to undertake the following tasks:

a. Title Matters. The City will reasonably cooperate with Developer to address any objections made by the City during the Phase 2 Pre-Development Period to the condition of title to the Parking Structure Parcel as evidenced by the Title Commitment and Survey, including, without limitation, any existing easements and rights of way.

b. Tax Division. The City will review and provide comments on the legal description for the Parking Structure Parcel and, upon such approval, the Developer shall make an application to the City of Ann Arbor for the division of the Project into separate tax parcels such that the Parking Structure Parcels of the Project shall constitute a separate tax parcel.

c. SAD. The Developer acknowledges and agrees that the tax parcels within each Phase of the Project (including Phase 4) not constituting Parking Structure Parcels will be subjected to and encumbered, inter alia, by one or more Special Assessment Districts and subject to the special assessments levied thereby, which special assessments shall be treated as ad valorem real estate taxes and assessments that are or may otherwise be levied or assessed upon all the lands within the Project in accordance with applicable Law. Promptly following the approval by the City of the Parking Structure Purchase Price for Phase 2, and provided that the Developer and the City have both issued an Approval Notice, the City will prepare and deliver to Developer the City's proposed terms for the Special Assessment District, which shall set forth, at a minimum, (i) the proposed annual minimum levy of ad valorem real estate taxes required by the City to be levied on the lands within the Project to be assessed therefor so as to assure the City of sufficient Brownfield Property Tax Capture Revenue (as determined by the City) to retire the Bond Indebtedness under the Bonds issued to purchase the Parking Structure within Phase 2 and (ii) the proposed timeframe in which to fully recover such monetary obligations of the City through Special Assessment District assessments. The City and Developer shall thereafter negotiate in good faith and with commercially reasonable diligence to agree upon final terms for the Special Assessment District. Upon the approval by Developer of the SAD terms, the City will submit the SAD to City Council for its review and approval. It shall be a condition precedent to the City's execution of the Commitment Agreement that the SAD be irrevocably approved by all relevant

owners of lands and the City of Ann Arbor and the roll spread over the relevant lands so encumbered within the Phase.

d. Bond Analysis. The City shall commence and diligently proceed to:

(i) Confirm, in the City's sole discretion, the amount of Bond Indebtedness to be incurred, which shall be sufficient to pay the Parking Structure Purchase Price and all issuance costs.

(ii) Confirm, in the City's sole discretion, that the estimated annual BPTCR payable to the City under the Reimbursement Agreement shall be sufficient to assure the City, in its sole discretion, that it will receive BPTCR in amounts necessary to fully cover and retire the annual repayment obligations of the City under the Bond Indebtedness to be incurred by the City taking into consideration in the means and sources of repayment, such portions of the excess net income the City determines, in its sole discretion, anticipated to be generated by the Parking Structure within a Phase;

(iii) Determine whether the bonds will be issues on a tax-exempt basis, a taxable basis or both, in its sole discretion; and

(iv) Provided the foregoing conditions have been satisfied, petition the City Council for a resolution authorizing the issuance and sale of the Bonds in the amount of the Bond Indebtedness at such interest rates and in such form as may be approved by the City, all in accordance with of applicable Laws.

e. Limitation on City Bond Obligations. Generally, the City's sole obligation with respect to the final issuance and sale of the Bonds for any Parking Structure within

a Phase shall be to take such steps as are necessary and within the City's control to offer the Bonds for competitive sale subject to the requirements of Law. The City has not made and makes no guaranties or representations concerning the interest rates at which the Bonds will sell or as to whether the Bonds will sell. Developer acknowledges and agrees that the municipal bond market is not predictable by the City, that changes may occur in that market which adversely affect the marketability of the bonds, or the interest rates borne by the Bonds or both. In the event that the City is unable to sell sufficient Bonds to finance the cost of the Parking Structures or the terms of such sale are unacceptable to the City, then the City shall have the right to seek alternative financing arrangements with respect to the Parking Structures, in which case the performance obligations of the parties under this Agreement shall be adjourned for a reasonable amount of time (not to exceed 90 days) during which the City may investigate and pursue such alternative financing arrangements.

f. Bond Funds. Upon the issuance and sale of the Bonds, the City will maintain the Bond Funds in a separate depository account controlled by the City in compliance with all applicable laws until the same are either payable to Developer for the costs of the purchase and/or construction of a Parking Structure within the Project in accordance with the Construction Contract, or, if not advanced, used to repay or defease the Bonds in accordance with applicable law.

g. Cooperation. The City will cooperate with requests by Developer for estoppel certificates, evidence of Bond Funds or other information as reasonably requested by the Developer or its lenders in connection with the construction of the Developer Improvements and the Parking Structure.

h. Developer Entity Structure and Information. The City shall have satisfied itself with respect to the information provided by the Developer relative to the Developer and each Affiliate of the Developer which shall be a party to a Project Document pursuant to **Section 2.5.1**.

i. Preliminary Development Schedules. The City shall have approved the Preliminary Development Schedules submitted by the Developer pursuant to **Section 2.6**.

j. Due Diligence. The City shall have satisfied itself with respect to the due diligence investigations relating to the Parking Structure Parcel including the environmental condition thereof.

k. Site Plan Approval. The City shall have approved the site plans for the Phase.

l. Phasing Plan. The Developer and the City shall have agreed upon a mutually acceptable Phasing Plan for the Phase.

m. Parking Structure Budget. The City shall have satisfied itself with respect to and approved the Budget for the Parking Structure.

n. Parking Structure Construction Plans. The City shall have satisfied itself with respect to and approved the Parking Structure Construction Plans.

o. Parking Structure Construction Schedule. The City shall have satisfied itself with respect to and approved the Construction Schedule.

p. Construction Contract. The City shall have satisfied itself with

respect to and approved the terms and conditions of the Construction Contract for the Parking Structure.

q. REA. The City shall have approved the form of the REA as it relates to the Project.

r. Project Condominium and Phase Condominium. The City shall have approved the form of the Project Condominium and the Phase Condominium.

s. Developer Improvement Budget. The City shall have approved the budget for the Developer Improvements and the Infrastructure Improvements and the financing therefore and the Completion Guaranty.

t. Affordable Housing. The City shall have approved the Affordable Housing Development Agreement between the Developer and the AAHC relative to the construction of the Affordable Housing Building and reached a definitive and binding agreement with Developer to secure the Developer's obligation to pay to the City the Affordable Housing Payment in Lieu, pursuant to **Section 6.2** hereof.

u. City Approval Notice. At such time as the City has satisfied itself with respect to the Phase 2 Pre-Development contingencies set forth in **Section 3.9.2** above, it shall advise the Developer of such intent to proceed ("City Phase 2 Approval Notice"), it being agreed that such intent to proceed, if given shall be given no later than thirty (30) days following delivery of the Developer Phase 2 Approval Notice, but shall not be binding until the parties have executed and exchanged the Commitment Agreement, the Developer has issued the Developer Phase Approval Notice and all conditions, contingencies, and commitments of the City and the

Developer and its Affiliates set forth in the Commitment Agreement are satisfied and/or waived. Upon the City's issuance of the City Approval Notice and provided the Developer has similarly issued the Developer Approval Notice, the City and the Developer shall work cooperatively to finalize an acceptable Commitment Agreement. The Commitment Agreement must be finalized and signed by the Parties within thirty (30) days but in all events prior to the date on which the City is scheduled to issue and/or offer for sale the Bonds and/or the Developer commences construction within Phase 2.

3.9.3 Phase 2 Termination Rights.

a. In the event that (i) any approval of the City or the City of Ann Arbor required pursuant to **Section 3.9.2**, including, without limitation, the Site Plan Approval, Parking Structure Plans, and approval of the Phase Budget, Construction Plans, Construction Contract or the Project Documents is not given prior to the expiration of the Phase 2 Pre-Development Period, which shall be subject to the notice and extension rights set forth in **Section 3.9.1(k)**, in each case, despite the efforts described in **Subsection 3.8.2** above, or (ii) the Special Election, if required and undertaken, fails to approve the issuance of the Bonds or the City is thereafter unable to issue and/or sell sufficient Bonds required by the City to be issued before the execution of the Commitment Agreement in accordance with **Subsection 3.9.2(d)** above (including extension of time periods referenced therein), then the City shall not be deemed to be in default under this Agreement and either party may, at any time thereafter, terminate this Agreement with respect to such Phase and all future Phases.

b. In the event the parties shall fail to execute and exchange the Commitment Agreement for Phase 2 within thirty (30) days of the issuance of the Developer Phase

2 Approval Notice by the Developer and the City Phase 2 Approval by the City (or such later date as may be agreed to by the City and Developer), and/or the Parties have not satisfied and/or waived all conditions stated therein which are a contingency to the City's obligation to issue and sell the Bond and the Developer's obligation to commence construction of the Developer Improvements, Infrastructure Improvements and the Parking Structure, then either party may, at any time thereafter, terminate this Agreement by providing written notice to the other party that specifically identifies the defect, failure of a condition or other grounds or basis for the unwillingness of the terminating party to enter the Commitment Agreement and the parties shall work together and cooperate for a period of sixty (60) days to cure and/or resolve such issue and, in the course of such negotiation, shall comply with **Section 3.8.2**. If, after such 60 day period, the parties are unable to reach agreement and executed the Commitment Agreement, then this Agreement shall terminate solely as to such Phase.

c. Upon any termination under this **Subsection 3.9.3**, the parties shall have no further obligations under this Agreement with respect to such Phase and no liabilities to the other for damages or costs, except to the extent any liability has accrued under the specific indemnification obligations set forth in this Agreement.

d. This Agreement and the Project Documents shall terminate automatically and without further action by either party if a Special Election (to the extent required) seeking approval for the issuance and sale of the Bonds fails, or upon the failure of the City to adopt the Inducement Resolution. In such event, the City shall advise the Developer in writing of such failure and this Agreement shall terminate effective as of the date of such notice without liability or cost to the other, in which event neither party shall be deemed in default of this

Agreement.

e. In the event that Developer defaults under a Commitment Agreement which remains uncured after any required notice and the expiration of any applicable cure period as contained in any Commitment Agreement, then in addition to any remedies available to the City under the Commitment Agreement same shall be a default by the Developer hereunder and City shall have these remedies available to it in **Section 9.1**.

3.9.4 Phases 3 and 5. The terms and conditions of **Section 3.9** shall generally apply to Phase 3 and 5 following the issuance of a Phase Notice therefor, except that the parties shall agree upon the dates by which certain terms and conditions must be achieved in relation to Phase 3 or 5 within a reasonable time (not to exceed 30 days) after issuance of the Phase Notice for such Phase. The parties respective obligations to proceed beyond the Phase Pre-Development Period for Phase 3 and 5, respectively, shall be contingent upon the execution and delivery of a Commitment Agreement which substantially complies with the terms hereof, as same relate to the Phase 2 contingencies.

Article 4 INTENTIONALLY OMITTED

Article 5 CONSTRUCTION

5.1 Development Covenants of Developer. Developer and the City agree that each Commitment Agreement shall contain the terms detailing the covenants and obligation of the Developer in connection with the construction of all improvements within a Phase. Subject to such

modifications as may be agreed to by the City and the Developer, the Developer and City agree the following provisions of this **Section 5.1** shall be incorporated in the Commitment Agreement for each Phase.

5.1.1 Construction Contract. Developer shall enter a guaranteed maximum price construction contract (the “Construction Contract”) with a general contractor that is approved by the City as part of the Parking Structure Agreements. The Parking Structure Construction Schedule included in the Parking Structure Agreements will include milestones with respect construction of the Parking Structure. Developer will provide monthly reports to the City with respect to the progress of construction. At the City’s option, Developer shall collaterally assign to the City all of Developer’s right, title, and interest under the Construction Contract. Once approved by the City, the Developer shall not amend, modify, or terminate the Construction Contract without the City’s consent.

5.1.2 Parking Structure Improvement Plans. Developer shall construct the Parking Structure strictly in compliance with the Parking Structure Improvement Plans, the Parking Structure Agreements, and the Phase Development Documents.

5.1.3 Parking Structure Financing. Prior to commencing construction of the Parking Structure and as a condition precedent to the City’s obligation to issue Bonds, the Developer shall provide to the City proof of committed financing for the Parking Structure, the Developer Improvement and all Infrastructure Improvements within a Phase (including the BANS Commitment) and evidence of sufficient Developer Committed Equity, as part of the Parking Structure Agreements and the Phase Development Documents.

5.1.4 Construction. The Developer will cause the General Contractor to commence construction of the Parking Structure in accordance with the requirements of the Parking Structure Agreements and the Commitment Agreements and will proceed diligently to construct and develop, without interruption, the Parking Structure through the Parking Structure Completion Date in accordance with the approved Parking Structure Improvement Plans, subject to Force Majeure. The following terms and conditions shall also apply to the construction of the Parking Structure, Developer Improvements, and Infrastructure Improvements within the Phase:

a. Construction Site Obligations. All staging and storage of construction materials and equipment shall be conducted on and limited to the parcels owned by Developer. Developer shall use reasonable efforts to construct the Parking Structure, Developer Improvements, and Infrastructure Improvements and conduct its activities with minimal disruption to residents and owners of neighboring properties and to traffic patterns in and around the area. Before commencing construction, Developer shall take reasonable interim measures to ensure temporary screening of construction activities from such neighboring properties, and to prevent movement of wind-blown debris, dust and soil onto neighboring properties. Developer shall provide its own site security protection during construction for the improvements within a Phase in a manner as determined solely by Developer.

b. Schedule. The Developer covenants and agrees to cause the General Contractor to complete the Parking Structure, Developer Improvements, and Infrastructure Improvements in accordance with the Parking Structure Construction Schedule or any other shorter time period for the completion of construction of the Parking Structure as may be required by the BANS Issuer, subject to *force majeure*.

c. Safety Standards. During the period of any construction within a Phase, the Developer shall erect or cause to be erected a fence or other suitable construction barrier(s) in accordance with customary construction safety practices and all applicable regulatory requirements and shall take all other safety measures reasonably designed to protect children and pedestrians from such construction.

d. Further Assurances. Developer covenants and agrees to provide notice to the City of the occurrence or non-occurrence of any event having a material adverse effect on Developer's ability to complete the Parking Structure, Developer Improvements, and Infrastructure Improvements in accordance with the schedules set forth in a Commitment Agreement to fulfill its obligations under this Agreement.

5.1.5 Inspections. Developer will allow the City, and their respective agents where appropriate, and at reasonable times during construction hours to inspect all or any portion of the Parking Structure during the course of construction and any improvements that could materially affect its use, access, stability, quality or useful life of the Parking Structure. The City is under no duty to supervise or inspect the construction but may do so solely for the purpose of protecting its security and preserving its rights under this Agreement.

5.1.6 No Liens or Encumbrances. Except for any concessional liens granted by Developer in connection with the Construction Loan, the Developer shall keep the Parking Structure Parcel free from all liens and fulfill the applicable requirements of construction lien law, including the filing of a Notice of Commencement and such other documents as may be reasonably required by the BANS Issuer, the City or the Title Company.

5.1.7 Insurance. Prior to or concurrently with the Developer's commencement of construction of the Parking Structure, the Developer will submit to the City (a) evidence of comprehensive public liability insurance, naming the Developer as the insured and the City as an additional insured, as their interests may appear against claims on account of personal injury, death and property damage incurred upon or about the Parking Structure Parcel. Such insurance must be written with limits of not less than (i) \$2,000,000 in respect of personal injury to or death of any number of persons arising out of any one occurrence, and (ii) \$1,000,000 per occurrence in respect to any instance of property damage, and (iii) builders' risk insurance issued by an insurance company satisfactory to the City in an amount equal to 100% of the full replacement value of the Parking Structure. Certificates of insurance evidencing such coverage shall be submitted to the City prior to the commencement of performance under the Commitment Agreement, and at least thirty (30) days prior to the expiration dates of expiring policies. Developer shall notify the City in writing if the insurance coverage amounts carried by Developer are reduced below the coverage amounts set forth above or if it receives any notice of termination of such coverages.

Article 6 SPECIAL PROVISIONS

Affordable Housing. Developer acknowledges that the policies of the City of Ann Arbor require that if the City of Ann Arbor approves a brownfield plan for a development which contains residential units, the developer benefited by the brownfield plan must commit to designate a certain percentage of residential units so constructed as affordable housing units intended to be leased to tenants which satisfy the financial requirements of the City of Ann Arbor and the AAHC (the "Affordable Housing Requirements"). As the Developer proposes to obtain BPTCR pursuant to the Brownfield Plan and the Reimbursement Agreement to reimburse itself for certain eligible

activities, Developer must satisfy the Affordable Housing Requirements of the City of Ann Arbor triggered by the BRA Plan. In lieu of restricting residential rental units in the Project to the Affordable Housing Requirement, Developer agrees to pursue a partnership with the AAHC (“the Affordable Housing JV”) to develop the Affordable Housing Building including the Affordable Housing Units in Phase 1 of the Project pursuant to the terms of this Agreement. The City of Ann Arbor acknowledges that the completion of development of the Affordable Housing Building by the Affordable Housing JV pursuant to the terms hereof shall satisfy the Affordable Housing Requirements of the Developer.

6.1 Affordable Housing. Following the Effective Date, Developer agrees to negotiate in good faith with the AAHC a definitive agreement (the “Affordable Housing Development Agreement”) for the creation of the Affordable Housing JV of which the AAHC and Developer or their Affiliates are a controlling constituent member or partner and the development and financing of the Affordable Housing Building and the Affordable Housing Units within Phase 1 containing the terms and conditions as set forth in the Letter of Intent dated November 21, 2024, between the AAHC and Developer and such other terms as the AAHC and Developer may approve. The Developer agrees that the Affordable Housing Development Agreement shall obligate the Developer to contribute and/or donate to the Affordable Housing JV money, infrastructure, and/or services that equal or exceed \$10,500,000 in value (including at least \$7,500,000 of monetary contribution - whether through a rebate of some or a portion of the Developer’s fee under the LIHTC financing or otherwise). The terms and conditions of the Affordable Housing Development Agreement shall be subject to the reasonable review and approval of the City of Ann Arbor. It is contemplated that the principal source of financing used by the Affordable Housing JV for the development of the Affordable Housing Building will be

through the Michigan State Housing Development Authority pursuant to a low-income housing tax credit structure (“LIHTC”). It shall be a condition precedent to the execution of a Commitment Agreement for Phase 2 by the City that the AAHC and Developer shall have executed an acceptable form of Affordable Housing Development Agreement confirming the undertakings of the AAHC and the Developer in connection with the formation of the Affordable Housing JV and the development of the Affordable Housing Building, including the required contributions of the Developer in connection with such activities.

6.2 Fee-in-Lieu Payment. If the Affordable Housing Building and/or the Affordable Housing Units are not or cannot be constructed for any reason, including a Developer default under the Affordable Housing Development Agreement, the Developer’s obligation to satisfy the Affordable Housing Requirements will be deemed satisfied if Developer pays to the City the Affordable Housing Payment in Lieu (as defined below) in accordance with this Article 6.2. The Affordable Housing Payment in Lieu shall be computed on a Phase-by-Phase basis pursuant to the terms of this Section 6.2 prior to the execution of, and specifically described in, the Commitment Agreement applicable to each of Phase 2, Phase 3 and Phase 5. If for any reason the City is not participating in Parking Structure Phase and the Developer is entitled to BPTCR, then the Payment in Lieu shall still be due and payable in accordance with the terms of this Section 6.2 for that Phase which shall be computed in accordance with the terms of this Section 6.2 and paid to the City as a condition to the issuance of building permits for that Phase and/or or the commencement of construction of the Developer Improvements therein. Following the execution of the AAHC Development Agreement and upon the earlier of (i) the City executing a Commitment Agreement for each of Phase 2, Phase 3 and Phase 5, or (ii) the commencement of construction of the Developer Improvements in a Phase which include residential rental units, Developer shall either

tender that portion of the Affordable Housing Payment in Lieu computed for that Phase in escrow to a mutually acceptable third party or provide to the City a guaranty of the payment of that portion of the Affordable Housing Payment in Lieu applicable to the Phase in form and content acceptable to the City from the Developer and such third parties as are acceptable to the City in the City's sole discretion. Upon an Affordable Housing Termination Event, the pro rata portions of the Affordable Housing Payment in Lieu that have been escrowed or are subject to a guaranty shall be released to the City (or paid by the guarantor parties). A failure to timely pay to the City the Affordable Housing Payment in Lieu timely shall constitute a default of the Developer hereunder and under any then existing Commitment Agreements and the City shall have all rights and remedies available to it hereunder, and under any Commitment Agreement, at law and or in equity. The Affordable Housing Payment in Lieu shall equal the sum of \$18,900,000 in the aggregate (assuming all Phases of the Project are constructed). A pro rata portion of such Affordable Housing Payment in Lieu shall be established for each Phase of the Project which shall be computed by multiplying \$126.00 times the residential square footage in such Phase assuming the Project contains approximately 1,000,000 total residential square feet. The escrow agreement pursuant to which the Affordable Housing Payments in-Lieu are held (or the guaranty therefore) shall provide that such funds shall be released (or paid) to the City upon an Affordable Housing Termination Event (as defined below). Upon completion of the Affordable Housing Building pursuant to the Affordable Housing Development Agreement, all escrowed sums and all guaranties thereof shall be released to Developer. An "Affordable Housing Termination Event" shall be deemed to occur on the earlier of the following: (i) the date that the AAHC informs the City that the Affordable Housing Development Agreement has been terminated for any reason, including but not limited to, failure to obtain the necessary LIHTC funding commitments, failure of the AAHC and

Developer to reach agreement on the terms and conditions of the Affordable Housing Building, or a default of the AAHC or the Developer thereunder or (ii) January 1, 2028, unless the City, the AAHC and the Developer mutually agree in writing prior to December 31, 2027 to an extension of this time to facilitate further LIHTC applications or other financing of the Affordable Housing Building. The Affordable Housing Development Agreement shall provide that the first application for a LIHTC loan shall be made by March 1, 2026. If the LIHTC award is not obtained upon the first application, each of the AAHC and Developer shall be obligated to promptly reapply for LIHTC financing in the earliest next available LIHTC application period following such rejection of the LIHTC application or apply for such other financing that the City, AAHC, and Developer agree is appropriate. The Affordable Housing Development Agreement shall obligate AAHC and Developer to diligently pursue such LIHTC financing and to timely apply for and petition for such awards. The City shall be a third party beneficiary of the Affordable Housing Development Agreement and any termination of same shall require the prior written approval of the City. Developer acknowledges by execution hereof that the amount of the Affordable Housing Payment in Lieu has been negotiated freely between the parties, and the Developer expressly and irrevocably waives any right to renegotiate or otherwise assert a legal challenge to same. So long as the Developer timely pays to the City the Affordable Housing Payment in Lieu as required by this Article 6, the Developer shall be deemed to have satisfied the Affordable Housing Requirement. The terms and conditions of this Article 6 shall survive the termination of this Agreement.

Article 7

CLOSING

7.1 Closings. Developer and City agree that each Commitment Agreement shall

contain terms detailing the covenants, obligation and procedures of the City and Developer applicable to each purchase and sale of a Parking Structure. Subject to such modifications as may be agreed to by the parties, the following provisions shall be included in each Commitment Agreement relating to the parties obligation to Close on the purchase and sale of a Parking Structure.

7.1.1 Conditions Precedent to Closing.

a. City's obligation to proceed to Closing for any Parking Structure is subject to the satisfaction at the time of Closing (or earlier, as may be set forth in each condition below) of each of the following conditions (any one of which may be waived in whole or in part in writing by the City at or prior to Closing), satisfaction of which shall be communicated by the City to Developer:

(i) All the representations and warranties by Developer set forth in this Agreement and the Commitment Agreement which have not otherwise been waived by the City shall be true and correct at and as of the Closing Date in all material respects as though such representations and warranties were made both at and as of the Effective Date and at and as of the Closing Date.

(ii) Developer shall have performed in all material respects all covenants, agreements and conditions required by this Agreement and any Commitment Agreement to be performed by Developer which have not been waived by the City prior to or as of the Closing Date.

(iii) The Parking Structure to be acquired shall have been

Substantially Completed in accordance with the Parking Structure Improvement Plan and all approvals for its use and occupancy shall have been issued by all governmental authorities.

(iv) There shall have been no material adverse change in the condition of title to the Parking Structure Parcel, or any part thereof, or any adverse matter disclosed by any newly obtained updates to the due diligence reports, investigations and studies relating to the physical condition of the Parking Structure Parcel.

(v) The Parking Structure shall be free from any tenants or occupants and personal property belonging to Developer, the Contractor, and there shall be no leases, licenses, or other occupancy agreements affecting the Parking Structure Parcel.

If any condition to Closing specified in this **Section 7.1** is not satisfied as of the Closing Date, the City shall, (i) notify Developer of the failure of such condition in which event the Developer shall have thirty (30) days to cure such unsatisfied Closing condition. In the event that Developer is unable to cure the Closing condition within the stated time, the City may elect to terminate this Agreement by written notice to Developer and/or pursue its remedies, or (ii) waive such condition whereupon the parties hereto shall proceed with the transaction herein contemplated (subject, however, to the satisfaction of all other conditions set forth in this Agreement).

b. Developer's obligation to proceed to Closing hereunder is subject to the satisfaction at the time of Closing (or earlier, as may be set forth in each condition below) of the following condition (which may be waived in whole or in part in writing by Developer at or prior to Closing), satisfaction of which shall be communicated by Developer to the City:

(i) the City shall have performed in all material respects all covenants, agreements and conditions required by this Agreement to be performed by the City prior to or as of the Closing Date.

If the condition to Closing specified above is not satisfied as of the Closing Date, Developer, shall notify the City of the failure of the condition and the City shall have thirty (30) days to cure such unsatisfied Closing Condition . In the event that the City is unable to cure, the Developer may notify City of the failure to cure and of Developer's election to terminate this Agreement and/or pursue its remedies stated in the Commitment Agreement, or (ii) waive such condition whereupon the parties hereto shall proceed with the transaction herein contemplated.

7.1.2 Time and Place of Closing. Closing of the transaction provided for hereunder shall take place, if at all, thirty (30) days following the Substantial Completion of the Parking Structure and satisfaction of the City's Closing Conditions (the "Closing Date"), as same may be extended under this Agreement (the "Closing"). Subject to the foregoing, each Closing shall be held through escrow with the Title Company.

7.1.3 Closing.

a. Exclusive possession of the Parking Structure Parcel shall be given to the City upon execution and delivery at Closing of a covenant deed, in the form attached hereto as **Exhibit 7.1.3**, fully executed and acknowledged by Developer (the "Deed"), subject only to the Permitted Encumbrances. The Deed shall be prepared by Developer at Developer's expense.

b. At Closing, Developer shall also deliver to the City the following:

(i) A certificate, dated as of the Closing Date and signed by

Developer under penalties of perjury, confirming that Developer is not a foreign person or entity subject to the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended in the form approved by the Parties.

(ii) Such resolutions and certificates as may be reasonably required by the Title Company to evidence the due authorization of the execution and performance of this Agreement and the documents to be delivered pursuant thereto, Developer's organizational documents, and all affidavits, indemnities, agreements and other instruments or documents reasonably required by the Title Company.

(iii) A duly executed closing statement.

(iv) A duly executed Bill of Sale for the Personal Property in the form approved by the Parties.

(v) A duly executed Real Estate Transfer Tax Valuation Affidavit.

(vi) An assignment of all warranties issued by the Contractor, Architects, or any supplier of equipment.

(vii) Complete copies of all owner/operator manuals issued by the manufacturer of said equipment.

(viii) As-built drawing for the Parking Structure.

(ix) Reaffirmation of Developer's representations and warranties.

(x) Bill of Sale for all equipment and personal property identified in the Parking Structure Improvement Plans.

c. At Closing, the City shall deliver to Developer the following:

(i) A duly executed closing statement (along with the balance of the Purchase Price remaining due at time of Closing).

(ii) Documentation to establish to the Title Company's reasonable satisfaction the due authorization of the City's execution and delivery of all documents contemplated by this Agreement.

(iii) Such other documents and instruments as the Title Company may reasonably request to consummate the purchase of the Premises in accordance with the terms hereof.

7.1.4 Payment of Real Estate Taxes, Maintenance Costs, Utilities, Transfer Taxes, Closing Costs and Other Charges.

a. All real estate taxes, assessments (general and special), water and sewer rents, fees and utility costs shall be apportioned pro-rata between Developer and the City as of the Closing Date. All real estate taxes billed in the year of Closing and current installments of assessments shall be prorated on a due date basis assuming same are payable in advance. Developer shall pay for any maintenance and repair costs and any and all other charges, costs, fees and expenses with respect to the Parking Structure Parcel ordered by it to the date of Closing. The City shall pay for any and all charges, costs, fees and expenses with respect to the Parking Structure Parcel after the date of Closing.

b. The City shall pay (i) all recording fees for recording the Deed, (ii) unless otherwise set forth herein, all costs associated with its due diligence, including the cost of appraisals, architectural, engineering, and environmental reports and financing, (iii) all survey costs directly incurred by it, and (iv) the premium for any extended coverage and any endorsements ordered by the City.

c. Developer shall pay (i) all transfer taxes imposed on the recording of the Deed; (ii) all recording fees for discharges to eliminate Mandatory Cure Items or other Title Defects that Developer elects to cure in accordance with this Agreement; and (iii) the costs and expenses of the Title Commitment and premiums for any base policy of title insurance with standard exceptions, including endorsement requested by Developer.

d. The City and Developer shall split equally all escrow fees and other charges charged by the Title Company.

7.1.5 Pre-Closing Covenants. Developer hereby covenants with the City that from and after the Commitment Date of any Phase and until Closing:

a. Developer shall continue to carry appropriate property and liability insurance covering the Phase. At the Closing, Developer may cancel such insurance policies and the rebate of the prepaid premium shall be paid to Developer;

b. Unless agreed to in writing by the City, Developer will not enter into any leases or occupancy agreements, service agreements or management agreements affecting the Parking Structure or any portion thereof that will be binding on the City following the Closing; Developer will ensure that the Parking Structure is in material compliance with all applicable Laws

prior to Closing; any notices sent to Developer or ordinances duly adopted and effective prior to the Closing Date with respect to any municipal or other governmental mandated improvements are to be complied with by Developer at the expense of Developer;

c. Developer has not and will not engage in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other money laundering regulations or conventions, including, without limitation, the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), or any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time (“Anti-Terrorism Order”) or on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, Financial Action Task Force, U.S. Office of Foreign Assets Control, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, all as may be amended from time to time; and

d. if, to Developer’s Knowledge, there is any material change concerning the Parking Parcel, the representations, warranties, and covenants contained in this

Agreement, or any other material information heretofore or hereafter furnished by a Developer to the City concerning the Parking Structure, Developer shall notify the City promptly in writing.

7.1.6 Risk of Loss.

a. If, prior to Closing, (i) any of the Parking Structures being constructed by Developer are damaged or destroyed such that the cost of repair or replacement of such improvements is reasonably likely to exceed a sum to be negotiated by the Parties (“Material Damage”) or (ii) any condemnation proceeding is commenced or threatened in writing by a governmental or quasi-governmental agency with the power of eminent domain (“Condemnation”), then:

(i) The Developer shall have the right, by written notice to the City to fully repair and restore all such Material Damage at its sole cost so long as such restoration is completed in accordance with the Parking Structure Agreements within 180 days of such casualty, Developer is solely responsible for all such costs and all additional debt service obligations under the BANS and the Parking Deck Purchase Price is not increased.

(ii) Subject to the Developer restoration rights under subsection (i) above, the City may elect, within ten (10) business days from and after its receipt of written notice of any Material Damage or written notice of such Condemnation, by written notice to Developer, to terminate this Agreement, and if necessary the time of Closing shall be extended to permit such election. In the event of an election to terminate, neither party shall have any liability to the other by reason hereof, except for any provision of this

Agreement that is expressly intended to survive the termination of this Agreement; or

(iii) In the event the City does not elect to terminate pursuant to **subsection (a)(i)** above, the transaction contemplated hereby shall be closed without a reduction in the Purchase Price, and Developer shall have the right but not the obligation to undertake any restoration and/or reconstruction necessary to comply with its obligation under any loan and/or under applicable law and in a good and workmanlike manner with like kind repairs, and if such restoration and/or reconstruction is not fully completed at the Closing, Developer shall assign to the City all of Developer's right, title, and interest in any insurance proceeds or Condemnation award paid or payable to Developer, if any, after deducting therefrom all of the costs and expenses incurred by Developer associated with Developer's efforts to restore, and or reconstruct the improvements, and, in the case of Material Damage, Developer shall pay to the City at Closing an amount equal to the deductible under Developer's policy of casualty insurance. Developer shall execute and deliver to the City all required proofs of loss, assignments of claims and other similar items. In connection with any restoration and/or reconstruction permitted to be taken by Developer hereunder that Developer reasonably estimates will not be completed prior to Closing, Developer and the City shall reasonably cooperate to agree on the scope of work to be performed by Developer.

b. If, prior to Closing, any of the Parking Structure is damaged or destroyed and such damage is not Material Damage, the City shall remain obligated to close hereunder with no abatement in the Purchase Price subject to the Developer restoring the improvement within such period of time as may be stated in the applicable Commitment

Agreement following such damage and affecting all required repairs in accordance with the Parking Structure Agreements as a condition of Closing. Alternatively, at the election of the City, the parties shall close without the repairs being completed on the assumption the City shall undertake the repairs, in which event Developer shall assign to the City all of Developer's right, title, and interest in any insurance proceeds to be paid to Developer in connection with such damage or destruction and the City shall receive a credit against the Purchase Price from Developer in an amount equal to the deductible amount under Developer's casualty insurance policy and Developer shall execute and deliver to the City all required proofs of loss, assignments of claims and other similar items.

c. If, prior to Closing, any of the Developer Improvements and/or the Infrastructure Improvements being constructed by Developer within a Phase are damaged or destroyed such that the cost of repair or replacement of such improvements is reasonably likely to exceed a sum to be negotiated by the Parties ("Material Damage") then (i) the Developer shall, by written notice to the City, commit to fully repair and restore all such Material Damage, at its sole cost and expense, and to complete such restoration in accordance with the Developer/Infrastructure Agreements within the period of time to be negotiated by the Parties set forth in the applicable Commitment Agreement days of such casualty, it being acknowledged that Developer shall be solely responsible for all costs and expenses associated with such restoration. If the Developer fails to undertake the restoration obligations as described above or, following such election, fails to complete same within the time periods stated above then, in that event, the City may elect, at any time after the Developer fails to undertake such restoration obligations or ten (10) Business Days after a default in such restoration obligation to terminate this Agreement by written notice to Developer and, if necessary, the time of Closing shall be extended to permit such election. In the

event of any election to terminate by the City, neither party shall have any liability to the other by reason thereof, except for the provisions of this Agreement that are expressly intended to survive the termination of this Agreement unless the City otherwise has agreed in the Commitment Agreement to assign to the Developer the BPTRC payable to the City applicable to the Bond Indebtedness to be incurred for the Parking Structure within such Phase. Any restoration undertaken by the Developer shall be supported by the Completion Guaranty. The City's obligation to consummate a transaction relating to the purchase of a Parking Structure shall be delayed until such time as the Developer has substantially completed the restoration obligations described above or provided adequate assurances to the City that such restoration will be completed in accordance with the provisions hereof.

Article 8 REPRESENTATIONS AND WARRANTIES

8.1 City Representations and Warranties. The City represents and warrants to the Developer as of the Effective Date:

8.1.1 It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Michigan and its Charter.

8.1.2 It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

8.1.3 It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out its obligations contemplated by this Agreement. Execution, delivery and performance by City do not and will not violate or conflict with any provision of law applicable to

City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound wherein a violation, conflict or default would materially and adversely affect the City's ability to carry out its obligations under this Agreement.

8.1.4 This Agreement has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the obligations of City contemplated herein are legal, valid and binding obligations of City, enforceable in accordance with their terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

8.1.5 There is no litigation pending or, to the knowledge of the individuals signing this Agreement on behalf of the City, threatened against or by the City wherein an unfavorable ruling or decision would materially and adversely affect the City's ability to carry out its obligations under this Agreement.

8.1.6 It will do all things in its power that are reasonable and necessary in order to maintain its existence and assure the assumption of its obligations under this Agreement by any successor public body.

8.2 Developer Representations and Warranties. The Developer represents and warrants as of the Effective Date which representations and warranties shall be remade as of the date of any Commitment Agreement and again as of the Closing on any purchase by the City of a Parking

Structure:

8.2.1 It is a limited liability company duly organized and validly existing and in full force and effect under the laws of the State in which it was formed and has power to do business in the State of Michigan.

8.2.2 It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer that would impair its ability to carry out its obligations contained in this Agreement.

8.2.3 It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

8.2.4 This Agreement has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

8.2.5 There is no litigation pending or, to the knowledge of the Developer, threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

8.2.6 Developer represents and warrants to the County that neither it nor any of

its Affiliates or any representatives of the Developer and its Affiliates (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (“OFAC”) pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the “Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “Orders”); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or detained on charges involving money laundering or predicate crimes to money laundering.

8.2.7 Other Information. To its best knowledge as of the Effective Date and as of the day of any Commitment Agreement, all other written information, reports, papers and data prepared by the Developer and given to the City by the Developer are accurate and correct in all material respects and substantially complete insofar as completeness may be necessary to give the City a true and accurate knowledge of the subject matter. To the extent Developer or any of its Key Persons becomes aware that any information previously provided to the City by the Developer is incorrect and/or materially misleading, the Developer shall provide prompt written notice thereof to the City.

8.3 Transfer Restrictions.

8.3.1 Developer shall not assign or transfer its rights and obligations arising under this Agreement at any time without the prior written consent of the City which may be withheld in its sole discretion provided however Developer may assign its rights with respect to each Phase of

the Project to an Affiliate of Developer which is a single purpose entity which satisfies the control requirements herein . Prior to completion of construction of the Developer Improvements and the Infrastructure Improvements within any Phase and other than collateral assignment in connection with the Construction Loan or refinance thereof and/or the BANS, Developer shall not assign or transfer its rights and obligations under any Commitment Agreement and Developer shall not sell, convey, dispose, alienate, hypothecate, assign, pledge, mortgage, grant a security interest in or other transfer or further encumbering of the Developer's interest in the Developer Improvements or Infrastructure Improvements or any portion thereof in any Phase without the written approval of the City which approval may be withheld in its sole discretion; provided, however, and notwithstanding the foregoing, transfers of non-voting ownership interests constituting forty-nine (49%) percent or less of all such equity in Developer shall be permitted as long as there is no change of control of the Key Persons. Notwithstanding anything contained herein to the contrary, however, in all events, the Developer and its Affiliates shall be permitted to enter into Construction Loans associated with the development of the Developer Improvements and the Infrastructure Improvements subject to the terms hereof.

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

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

or litigation by or against it.

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

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

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

8.8 Required Notices. As soon as it has knowledge thereof, Developer will promptly

notify City of any of the following:

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

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

8.9 Covenant of Developer. Developer covenants and agrees that no employee, agent, consultant, officer, or elected official or appointed official of the City who exercises or has exercised any functions or responsibilities with respect to this Agreement or the Project, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business, during or after their tenure. The foregoing restrictions shall apply to all activities that are part of the Project.

Article 9 DEFAULTS AND REMEDIES

9.1 Developer Default. Any one or more of the following shall constitute a "Developer Default" under this Agreement and shall be identified in a "Notice of Default" to be delivered from City to Developer in accordance with the following:

9.1.1 Default by the Developer in the due and punctual payment, performance or

observance of any obligation of the Developer under this Agreement, which default the Developer does not cure within fourteen days from delivery of such notice unless a different period for cure is provided elsewhere herein;

9.1.2 Any representation or warranty made by the Developer in this Agreement was at the time made or becomes false or misleading in any material respect; or

9.1.3 The filing by the Developer of a petition for the appointment of a receiver or a trustee; of a general assignment for the benefit of creditors; the entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Developer as debtor; or the filing by the Developer of an insolvency proceeding with respect to the Developer or any proceeding with respect to the Developer for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

9.1.4 Any dissolution, termination, or partial or complete liquidation of Developer, or any of its Affiliates.

9.1.5 A transfer by Developer in violation of the transfer restrictions contained herein.

9.1.6 A default by Developer under any Commitment Agreement beyond all applicable grace and/or cure periods.

9.2 Remedies for Developer Default. During any time a Developer Default exists and is continuing hereunder, the City at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

9.2.1 Terminate this Agreement as to all future Phases and/or pursue all available remedies available to the City, as expressly set forth herein.

9.3 City Default. Any one or more of the following shall constitute a “City Default” hereunder and shall be identified in a “Notice of Default” to be delivered from Developer to City in accordance with the following:

9.3.1 Default by City in the due and punctual payment, performance or observance of any obligation of City under this Agreement, as to which the Developer has given a Notice of Default to the City, which default the City does not cure within fourteen days from delivery of such notice unless a different period for cure is provided elsewhere herein;

9.3.2 Any representation or warranty made by City in this Agreement is false or misleading in any material respect as of the time made; or

9.3.3 Any report, certificate or other document furnished by City to the Developer pursuant to this Agreement is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City.

9.4 Remedies for City Default. During any time a City Default exists and is continuing hereunder, the Developer, at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

9.4.1 Terminate this Agreement and to pursue all remedies available to the Developer as expressly set forth herein;

9.4.2 In no event shall the City be liable for speculative, consequential, or

punitive damages under or in connection with this Agreement.

9.5 The parties agree that the Commitment Agreement to each Phase shall separately define what constitutes an event of default, the notice and cure rights of each party and the remedies of each to such default under a Commitment Agreement. Subject in all events to the terms of the Commitment Agreement it is contemplated the remedies available under a Commitment Agreement to a party due to a default of the other party shall include specific performance. The exercise of any remedy available to a party under **Section 9.2 or 9.4** due to a default hereunder shall not limit, negate or preclude any party from pursuing any remedy available to it under a Commitment Agreement.

9.6 Interest. Except as otherwise expressly provided herein, amounts that are due and payable by the Developer to City under this Agreement will bear interest if not paid when due, until paid, (a) at the prime rate published in the “Money Rates” section of the Wall Street Journal from time to time for the first 30 days after due, and (b) at the higher of the rate provided for in clause (a) or 8% per annum beyond the first 30 days after due.

9.7 Costs of Enforcement. If an action is brought by a Party for the enforcement of any provision of this Agreement, the prevailing Party, shall be entitled to recover all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys’ fees and expenses, from the defaulting Party.

Article 10 MISCELLANEOUS

10.1 City Action. Where any consent, approval, or other action of the City is required or requested under this Agreement including the extension of time period and/or any other

modification or amendment, such consent, approval, or other action may be provided by the City Administrator for the City or its designee unless such consent, approval, or other action of the City requires the approval of the City Council pursuant to the express provisions of this Agreement or applicable law or the City Administrator determines, in its sole discretion, that such action should be approved by the City Council. The City Administrator is specifically authorized to negotiate and execute a Commitment Agreement for each Phase as contemplated by this Agreement on such terms and conditions as it shall determine to be in the best interest of the City assuming the City Administrator has determined that (i) all applicable contingencies set forth in this Agreement have been met or are appropriate to waive, (ii) the Parking Structure Purchase Price does not exceed the maximum amounts stated herein, (iii) an appraisal for the Parking Structure Parcel has been obtained or waived by the City Administrator, and (iv) funding of the purchase is available either through the issuance of authorized Bonds, an approved City budget or other appropriate services.

10.2 Costs. Except as specifically set forth in this Agreement or in a separate writing, each of the parties will bear their own costs and fees with respect to actions taken as required by this Agreement or in support of such obligations.

10.3 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 the City, to:	City of Ann Arbor
	Guy Larcom City Hall
	301 East Huron Street

Ann Arbor, Michigan 48107-8647
Attention: City Administrator
Email:
Phone:

With copy to:

City of Ann Arbor
Guy Larcom City Hall
301 East Huron Street
Ann Arbor, Michigan 48107-8647
Attention: Atleen Kaur, Esq.
Email: akaur@a2gov.org
Phone:

and

Miller, Canfield, Paddock & Stone, P.L.C.
101 North Main Street, 7th Floor
Ann Arbor, Michigan 48104
Attn: Joseph M. Fazio, Esq.
Email: fazio@millercanfield.com
Phone: 734-668-7633

If to the Developer, to:

Eisenhower State Land Development
Company, LLC
c/o Oxford Companies, LLC
777 East Eisenhower, Suite 850
Ann Arbor, Michigan 48108
Attention Jeff Hauptman
Email:
Phone:

With copy to:

c/o Crawford Hoying, Ltd.
6640 Riverside Drive, Suite 500
Dublin, Ohio 43017
Attention: Jeff Roberts
Email: jroberts@crawfordhoying.com
Phone: 614-335-2022

And

Honigman LLP
650 Trade Centre Way
Suite 200
Kalamazoo, Michigan 49002
Attn: J. Patrick Lennon
Email: lennon@honigman.com
Phone: 269-337-7712

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 the City and Developer may deliver notices on behalf of their respective clients.

10.4 Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by the Developer and City. The parties acknowledge and agree that any agreement that is entered by the parties that is in furtherance of or entered pursuant to this Agreement, such as the Commitment Agreement or the Parking Structure Agreements, shall supersede and/or amend this Agreement to the extent the terms of such agreements are inconsistent with or conflict with the terms of this Agreement.

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

10.6 Recordation. This Agreement, or a memorandum thereof, reasonably acceptable to the parties, shall be recorded in the Office of the Register of Deeds for Washtenaw County, Michigan.

10.7 Recitals. The Recitals set forth above are accurate and are hereby incorporated into this Agreement.

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

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

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

10.11 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan. Exclusive jurisdiction for any claim hereunder shall be the Washtenaw County Circuit Court.

10.12 Mutual Cooperation. Each party to this Agreement shall (i) take all actions required of it by the terms of this Agreement as expeditiously as possible; (ii) cooperate, to the fullest extent possible, with the other party to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Project, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, Permits, licenses, approvals and any other consents or permissions necessary for the construction or operation thereof; (iii) execute and deliver all reasonable documents necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or agreements as may be required by the Developer's lenders with respect to the Project to secure the Developer's financing from such

lenders; and (iv) use its reasonable efforts to assist the other party to this Agreement in the discharge of their respective obligations hereunder.

10.13 Force Majeure. Except as may be provided by the terms of a Commitment Agreement (the terms of which will govern and control), the Project Schedule, each Parking Structure Schedule, and other time requirements for completion of any Parking Structure, Infrastructure Improvements or Developer Improvements shall be extended for delays due to any one or more of the following events affecting such Parking Structure or Developer Improvements which are beyond the Developer's control and not capable of avoidance through the exercise of due diligence and planning by a reasonably prudent Developer of an equivalent project, proper advance planning and the reasonable expenditure of funds ("Developer's Reasonable Control"):

(a) acts of god or a public enemy, (b) acts or inaction of the government which affect the commencement of construction or the completion of construction, including without limitation the failure of the City of Ann Arbor or the City to timely grant approvals and consents and perform reviews and inspections pursuant to this Agreement, (c) fires, casualty, floods, tornados, (d) unavailability of materials on a national level, (e) severe weather conditions which exceed in the aggregate thirty (30) days, (f) labor disputes, strikes or lockouts not caused by the use of non-union labor, or (g) any health pandemic, public health emergency (whether officially declared or not) or similar event ("Force Majeure Events"). The Project Schedule for such delayed component shall be extended for the number of days of delay due to Force Majeure Events, subject to the following requirements: (aa) the Developer shall provide the City with a written notice of the existence of a Force Majeure event within five (5) business days of the Developer becoming aware of a Force Majeure Event, (bb) a Developer Default has not occurred and is continuing and (cc) extension for delays due to Force Majeure Events shall not, in the aggregate exceed ninety (90) days. Within ten

(10) days after the Developer becomes aware of a Force Majeure Event, the Developer shall submit a written memorandum to the City describing the Force Majeure Event, the duration of delay and a revised Project Schedule, along with any corresponding change in order to revise the Project Budget which shall be subject to the approval of the City.

10.14 Entire Agreement. The Agreement, including all exhibits attached hereto and made a part hereof, contains all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

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

10.16 Indemnity of Developer. The Developer hereby indemnifies, defends and holds the City and its elected and appointed officials, employees and volunteers, attorneys, consultants and advisors, agents and representatives (“Indemnified Parties”) harmless from and against any and all claims, causes of action, in law or in equity, suits, arbitrations, administrative or governmental proceedings, demands, rights, contracts, agreements, promises, liens, encumbrances, liabilities, personal injuries and deaths, damages, losses, costs or expenses of any nature whatsoever (collectively “Indemnified Claims”) which may be imposed upon, incurred by or asserted against the Indemnified Parties arising out of the construction of the Parking Structure by the Developer, any violations of Laws or City Ordinances by the Developer or any failure of the Developer to

comply with the provisions of this Agreement. Notwithstanding the foregoing, this Indemnity shall not apply to Indemnified Claims resulting from the ultra vires acts of County officials and employees based on willful and intentional conduct, which is arbitrary and capricious and constitutes bad faith.

10.17 Joint Drafting. This Agreement has been negotiated by the Parties and each Party has joined in and contributed to the drafting of this Agreement. Accordingly, there shall be no presumption favoring or burdening any one or more of the Parties hereto based upon draftsmanship.

10.18 Press Announcements. During the term hereof, Developer shall not issue press releases and/or release other information to the media about the Project or respond to media inquiries, in each case, without the prior written approval of the City.

10.19 Third-Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder.

10.20 Conflicts. In the event of any conflict between this Agreement and any agreement attached as an exhibit, or any other document executed pursuant to or in furtherance of this Agreement or the Project, this Agreement shall control, unless such other agreement is signed by the City and expressly provides to the contrary.

10.21 Time is of the Essence. Time is of the essence with respect to all time and notice deadlines set forth in this Agreement.

[signatures on the following pages]

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

CITY OF ANN ARBOR,
a Michigan municipal corporation, as authorized by

By: _____

Mayor, City of Ann Arbor

By: _____

Clerk, City of Ann Arbor

EISENHOWER STATE LAND DEVELOPMENT
COMPANY, LLC, a Delaware limited liability company

By: _____
Jeff Hauptman, Manager

EXHIBIT A

THE PROPERTY

(LEGAL DESCRIPTION)

09-12-04-300-048

2991 S STATE ST

PRT OF SW 1/4 T3S R6E COM SW COR SEC 4TH N 1 DEG 53 MIN W 75 FT FOR POB TH CONT N 1 DEG 53 MINW 175 FTTH N 87 DEG 0 MIN E 210 FTTHS 1 DEG 53 MIN E 175 FTTHS 87 DEG 9 MIN W 210 FT TO POB EXC THAT PRT LYING IN S STATE ST; ALSO BEG AT A PT N 1 DEG 53 MIN 00 SEC W 48 FT & N 87 DEG 9 MIN 00 SEC E 51.85 FT FROM SW COR OF SD SEC 4TH N 2 DEG 3 MIN 13 SEC W 27 FT TH N 87 DEG 9 MIN 00 SEC E 158.23 FT TH S 1 DEG 53 MIN 00 SEC E 27 FT TH S 87 DEG 9 MIN 00 SEC W 158.15 FT TO POB

09-12-04-300-067

2800 E BOARDWALK DRIVE

UNIT 1 789 EISENHOWER CONDOMINIUM UNIT 2 789 EISENHOWER CONDOMINIUM LEGAL DESCRIPTION OF CONDOMINIUM PREMISES COMMENCING AT SW COR SEC 4, T3S R6E, TH N 87 DEG 11 MIN 00 SEC E 722.13 FT ALONG S LINE OF SEC AND C/L OF EISENHOWER PARKWAY, TH N 02 DEG 49 MIN 00 SEC W 50.41 FT TO A POINT ON THE N R-O-W LINE OF EISENHOWER PARKWAY THE P.O.B. TH N 01 DEG 53 MIN 00 SEC W 394.62 FT; TH S 87 DEG 58 MIN 40 SEC W 72.72 FT; TH N 01 DEG 53 MIN 00 SEC W 419.80 FT; TH S 87 DEG 01 MIN 00 SEC W 96.76 FT; TH N 01 DEG 53 MIN 00 SEC W 178.60 FT; TH N 87 DEG 01 MIN 00 SEC E 635.25 FT; TH S 01 DEG 53 MIN 00 SEC E 983.39

983.39

FT; (983.99 FEET ASSESSED) ALONG W R-O-W LINE OF BOARDWALK DRIVE TO A POINT ON THE N R-O-W LINE OF EISENHOWER PARKWAY; TH ALONG R-O-W LINE S 85 DEG 32 MIN 50 SEC W 426.81 FT; S 87 DEG 09 MIN 00 SEC W 39.30 F TO THE P.O.B. BEING PART OF THE SW 1/4 OF SEC 4 T3S, R6E, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN.
SPLIT/COMBINED ON 12/05/2017 FROM 09-12-04-300-049; SPLIT ON 03/13/2024 INTO 09-12-04-300-066, 09-12-04-300-067;

**Proposed Legal Description for the parcels identified as 2803 and 2845 S State Street
(formerly identified as 09-12-04-300-044 and 09-12-04-300-065)**

Situated in the City of Ann Arbor, County of Washtenaw, State of Michigan, and is described as follows:

CURRENT

Unit Nos. 2 STATE-EISENHOWER CONDOMINIUM, according to the Master Deed recorded in Liber 5311, Page 492, First Amendment to Master Deed recorded in Liber 5316, Page 457, and Second Amendment to Master Deed recorded in Liber 5535, Page 951, as amended, and designated as Washtenaw County Condominium Subdivision Plan No. 688, together with rights in general common elements and the limited common elements as shown on the Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

And

**LEGAL DESCRIPTION FOR A PARCEL OF LAND LOCATED IN THE SW 1/4 OF SECTION 4,
T3S, R6E, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN**

Commencing at the SW corner of Section 4, T3S, R6E, City of Ann Arbor, Washtenaw County, Michigan; thence N87°09'14"E 210.00 feet along the South line of said Section 4; thence N01°52'58"W 48.01 feet to the POINT OF BEGINNING;

thence continuing N01°52'58"W 27.00 feet;

thence N87°09'00"E 180.07 feet;

thence S01°53'00"E 25.84 feet;

thence S86°46'54"W 180.09 feet along said Northerly Right-of-Way line of Eisenhower Parkway to the POINT OF BEGINNING. Being part of SW 1/4 of Section 4, T3S, R6E, City of Ann Arbor, Washtenaw County, Michigan, and containing 0.109 acres of land, more or less.

and

Part of the Southwest 1/4 Section 4, Town 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan, described as:

Commencing at the West ' post of Section 4, Town 3 South, Range 6 East, Washtenaw County, Michigan; thence along the West line of the Section and the centerline of State Street South 1°53'00" East 1916.78 feet for a Place of Beginning; thence North 87°01'00" East 200.0 feet; thence South 1°53'00" East 62.0 feet; thence South 87°01'00" West 200.0 feet to the West line of the Section and the centerline of State Street; thence along the West line of the Section and the centerline-of State Street, North 1°53'00" West 62.0 feet to the Place of Beginning. Excepting that portion heretofore conveyed to the City of Ann Arbor for the widening of South State Street described as commencing at the Southwest corner of Section 4, Town 3 South, Range 6 East, in the City of Ann Arbor, Washtenaw County, State of Michigan; thence North 1°53'00" West along the West line of said Section 4, a distance of 679.40 feet to the Point of Beginning; thence continuing North 01°53'00" West along said West line, 62.00 feet; thence North 87°01'00" East 49.77 feet; thence South 02°03'20" East, 62.00 feet; thence South 87°01'00" West, 49.96 feet to the Point of Beginning.

Parcel Identification No. 09-12-04-300-044

Commonly known as: 2803 S. State Street, Ann Arbor, MI 48104

EXHIBIT C

FORM OF COMMITMENT AGREEMENT

ARBOR SOUTH

COMMITMENT AGREEMENT

PHASE _____

This Commitment Agreement (“**Agreement**”) is entered into as of the _____ day of _____, 202__ (the “**Effective Date**”), by and between the **CITY OF ANN ARBOR**, a Michigan municipal corporation (“**City**”), having an address at 310 E. Huron, P.O. Box 8647, Ann Arbor, Michigan 48107, and **EISENHOWER STATE LAND DEVELOPMENT COMPANY, LLC**, a Delaware limited liability company, having an address at 777 East Eisenhower Parkway, Suite 850, Ann Arbor, MI 48104 (“**Developer**”).

RECITALS

A. WHEREAS, Developer and City are parties to that certain Public-Private Agreement dated _____, 2025 (the “**PPA**”) with respect to the project known as Arbor South (the “**Project**”). Unless otherwise defined herein, the capitalized terms utilized in this Agreement shall have the meaning ascribed to them in the PPA;

B. WHEREAS, the Developer has obtained the Project Approvals and the Phase Approvals with respect to the Parking Structure, the Developer Improvements and the Infrastructure Improvements to be located in Phase _____ of the Project (the “**Phase**”). The final approved site plan for the Phase is attached hereto as Exhibit “A” and the final approved site plan for the Parking Structure is attached hereto as Exhibit “B”;

C. WHEREAS, the Developer and the City have agreed to the Parking Structure Agreements for the Phase and all of the Parking Structure Agreements are listed on Exhibit “C” (the “**Parking Structure Agreements**”);

D. WHEREAS, the Developer and the City have agreed to the Developer Improvements and Infrastructure Improvements for the Phase and all of the agreements which describe the Developer Improvements and Infrastructure Improvements are listed on Exhibit “D” (the “**Developer Improvements and Infrastructure Improvements Agreements**”);

E. WHEREAS, the City has accepted the physical condition of the Parking Structure Parcel based on the current conditions of the Parking Structure as disclosed by the Due Diligence Materials for the Phase and has agreed to accept the Parking Structure in the condition described by the Due Diligence Materials, all of which are listed on Exhibit “E”;

F. WHEREAS, Developer has submitted, and the City has approved, the plans, schedules, budgets, and other materials describing or applicable to the construction of the Parking Structure, the Developer Improvements, and the Infrastructure Improvements within the Phase, all of which are described in Exhibit “F” (the “**Phase Development Documents**”).

G. WHEREAS, Developer has waived all contingencies to its obligation to commence construction of the Phase, including the Parking Structure, the Developer Improvements and the Infrastructure Improvements in the Phase;

H. WHEREAS, the City has performed such financial and legal due diligence as deemed necessary or appropriate by the City, (i) has agreed to purchase the Parking Structure from Developer for the Parking Structure Purchase Price described below, (ii) has adopted the resolution of the City Council dated _____ to issue bonds to fund the Parking Structure Purchase Price (the “**Bond Resolution**”) which issuance shall occur prior to the Bond Issuance Deadline, and (iii) has agreed to use the Bond Funds for the purchase of the Parking Structure Parcel (inclusive of the completed Parking Structure), all in accordance with the terms and conditions set forth herein;

I. WHEREAS, the Developer has agreed to construct the Parking Structure the Developer Improvements and the Infrastructure Improvements and to sell the Parking Structure Parcel to the City, in accordance with the terms and conditions set forth herein.

AGREEMENT

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 and with the intent to be legally bound, the Developer and the City agree as follows:

1. INCORPORATION OF EXHIBITS.

The Exhibits attached hereto are hereby incorporated into this Agreement. In the event of a conflict or inconsistency with the terms of this Agreement and the terms of an Exhibit, the terms of the Exhibit shall govern and prevail. The Recitals set forth above are accurate and are hereby incorporated into this Agreement.

2. APPROVAL AND SATISFACTION OF CONDITIONS.

The parties agree that all terms, conditions and contingencies set forth in the PPA with respect to that Party’s obligation to proceed with the construction and development of the improvements within the Phase have been approved, satisfied, and/or waived subject only to the terms and conditions set forth herein. Specifically, and notwithstanding the foregoing, the City and Developer agree as follows:

(a) The Project Approvals and the Phase Approvals have been obtained, in accordance with and subject to, the documents and other terms and conditions set forth on Exhibit “A” or Exhibit “B”;

(b) The Parking Structure Agreements identified on attached Exhibit “C” are approved, in accordance with and subject to, the terms of the respective Parking Structure Agreements.

(c) The Developer Improvements and Infrastructure Improvements Agreements identified on attached Exhibit “D” are approved, in accordance with, and subject to, the terms of the respective Developer Improvements and Infrastructure Improvements Agreements.

(d) The Due Diligence Materials for the Phase and the Parking Structure Parcel are approved, in accordance with and subject to, the respective Due Diligence Materials set forth on Exhibit “E”.

(e) The Phase Development Documents for the Phase listed in Exhibit “F” are approved, subject to and in accordance with, their respective terms.

3. ESTABLISHMENT OF PARKING STRUCTURE PARCEL AND RECORDING

OF PROJECT REA.

Developer shall establish and create the Parking Structure Parcel pursuant to the Phase Development Documents and strictly in accordance with the Parking Structure Agreements within fourteen (14) days of the Effective Date. The parties acknowledge and agree that such Parking Structure Parcel shall be created pursuant to the recording of the Condominium or an amendment thereto, in the form described in the Parking Structure Agreements. In connection with the establishment of the Parking Structure Parcel, Developer shall also establish and record, if required by the Purchaser, within fourteen (14) days of the Effective Date the Project REA, or an amendment to Project REA in the form approved by the City and referenced in Exhibit "E", that provides vehicular, pedestrian and utility connections to and from the Parking Structure Parcel in the manner contemplated by the Parking Structure Parcel Agreement. The recorded documents establishing the Parking Structure Parcel (and any Condominium) and the Project REA shall be delivered to the City by Developer within fourteen (14) days from the date of this Agreement. It shall be a condition precedent to the City's obligation hereunder that the Developer create the Parking Structure Parcel and record the Project REA.

4. CREATING THE SPECIAL ASSESSMENT DISTRICT.

If not established prior to the date hereof, the City, with the support of Developer, shall petition the City Council to create the SAD and thereafter levy the assessments against the Developer Improvements within the Phase in the amount and for the time periods reflected in the Phase Development Documents. Developer shall timely execute any agreements, consents, and approvals required to create the SAD and levy the assessments, all of which shall be a condition precedent to the issuance of the Bonds. It shall be a condition precedent to the City's obligation to issue and sell the Bonds described in the Bond Resolution that the SAD shall be irrevocably levied against the Phase.

5. CONSTRUCTION AND FINANCING OF CONSTRUCTION.

(a) The City confirms it has completed its underwriting and financial analysis and has adopted the Bond Resolution to agree to issue the series of the Bonds, in an amount that is sufficient to pay the Parking Parcel Purchase Price no later than the Bond Issuance Deadline subject to the terms and conditions contained herein. The completion of the sale of the Bonds shall constitute the "**Bond Closing**".

(b) The City and Developer agree to cause the Parking Structure to be established, developed and constructed in accordance with the terms of the Parking Agreements and the Phase Development Documents. Developer agrees to comply with the terms and conditions of Parking Agreement and the Phase Development Documents with respect to construction of the Parking Structure.

(c) Developer agrees to close on the Construction Loan by _____ and thereafter cause the Developer Improvements to be constructed within the Phase and the Infrastructure Improvements to be located within the Phase to be established and constructed in accordance with the terms of the Developer Improvements and Infrastructure Improvements Agreements and the Phase Development Documents.

(d) Developer agrees to close on the BANS pursuant to the BANS Loan Commitment described within the Phase Development Documents by _____ and to use the proceeds to

finance the construction of the Parking Structure pursuant to the Parking Structure Agreements and the Phase Development Documents on the terms and conditions set forth in the BANS Commitment. In connection with the closing of the BANS Loan, the City agrees to execute the Cooperation Agreement described in the Phase Development Documents.

(e) On even date herewith, the Developer has caused a completion guaranty to be executed and delivered to the City in the form approved by the City (the “Completion Guaranty”) which guarantees the completion of construction of the Developer Improvements, the Infrastructure Improvements and the Parking Structure.

6. SUBSTANTIAL COMPLETION OF PARKING STRUCTURE AND DUE DILIGENCE UPDATES.

(a) Developer shall provide written notice to City at least _____ days before the Parking Structure and the Infrastructure Improvements are each Substantially Complete and again upon achieving Substantial Completion of the Parking Structure and Infrastructure Improvements (the “**Substantial Completion Notice**”). It shall be a condition precedent to the City’s obligation to issue and sell the Bond and to close that the Infrastructure Improvements and the Parking Structure be substantially completed in accordance with the terms hereof.

(b) The Developer shall have twenty-one (21) days from the Substantial Completion Notice to deliver to the City updated Due Diligence Materials showing no change in the condition of the Parking Structure Parcel (the “**Due Diligence Materials Updates**”). The City shall have thirty (30) days to review the updated Due Diligence Materials, inspect the Parking Structure and Infrastructure Improvements, and to confirm same have been constructed in accordance with the terms hereof. In the event the Due Diligence Materials Updates disclose a material and adverse change when compared to the original Due Diligence Materials, or the Parking Structure or Infrastructure Improvements have not been constructed in accordance with the Parking Structure Agreement or the Phase Development Documents then the City shall have a right to provide a notice of objections to Developer indicating the material and adverse change(s) prior to the expiration of such twenty-one day period. Developer shall have fourteen (14) days from receipt of the City’s notice of objections to indicate whether Developer will cure such material and adverse change at or prior to Closing (defined below). If the Developer refuses or fails to respond to the City within such fourteen (14) day period that it will cure such changes prior to Closing, Developer shall be in default hereunder and, in addition to its other remedies, then the City shall have the right to terminate this Agreement as to such Parking Structure Parcel by providing written notice to Developer no later than seven (7) days after of notice from the Developer that it will not cure or the expiration of the Developer’s period to respond.

7. SALE OF PARKING STRUCTURE PARCEL.

(a) Conditions Precedent to Closing.

i. City’s obligation to proceed to Closing for the Parking Structure is subject to the satisfaction at the time of Closing (or earlier, as may be set forth in each condition below) of each of the following conditions (any one of which may be waived in whole or in part in writing by the City at or prior to Closing), satisfaction of which shall be communicated by the City to Developer:

(1) All the representations and warranties by Developer set forth in this

Agreement which have not otherwise been waived by the City shall be true and correct at and as of the Closing Date in all material respects as though such representations and warranties were made both at and as of the Effective Date and at and as of the Closing Date.

(2) Developer shall have performed in all material respects all covenants, agreements and conditions required by this Agreement to be performed by Developer which have not been waived by the City prior to or as of the Closing Date.

(3) The Parking Structure to be acquired shall have been Substantially Completed in accordance with the Parking Structure Improvement Plan and all approvals for its use and occupancy shall have been issued by all governmental authorities.

(4) There shall have been no material adverse change in the condition of title to the Parking Structure Parcel, or any part thereof, or any adverse matter disclosed by any newly obtained updates to the Due Diligence materials.

(5) The Parking Structure shall be free from any tenants or occupants and personal property belonging to Developer, the Contractor, and there shall be no leases, licenses, or other occupancy agreements affecting the Parking Structure Parcel.

If any condition to Closing specified in this Section 7A(1) is not satisfied as of the Closing Date, the City shall, (i) notify Developer of the failure of such condition in which event the Developer shall have ____ days to cure such unsatisfied Closing condition. In the event that Developer is unable to cure the Closing condition within the stated time, same shall constitute a default by Developer hereunder, the City may elect to terminate this Agreement by written notice to Developer and/or pursue its remedies, or (ii) waive such condition whereupon the parties hereto shall proceed with the transaction herein contemplated (subject, however, to the satisfaction of all other conditions set forth in this Agreement).

ii. Developer's obligation to proceed to Closing hereunder is subject to the satisfaction at the time of Closing (or earlier, as may be set forth in each condition below) of the following condition (which may be waived in whole or in part in writing by Developer at or prior to Closing), satisfaction of which shall be communicated by Developer to the City:

(1) the City shall have performed in all material respects all covenants, agreements and conditions required by this Agreement to be performed by the City prior to or as of the Closing Date.

If the condition to Closing specified above is not satisfied as of the Closing Date, Developer, shall notify the City of the failure of the condition and the City shall have thirty (30) days to cure such unsatisfied Closing Condition . In the event that the City is unable to cure, the Developer may notify City of the failure to cure and of Developer's election to terminate this Agreement and/or pursue its remedies stated herein, or (ii) waive such condition whereupon the parties hereto shall proceed with the transaction herein contemplated.

(b) Time and Place of Closing. Closing of the transaction provided for hereunder shall take place, if at all, thirty (30) days following the Substantial Completion of the Parking Structure and satisfaction of the City's Closing Conditions (the "**Closing Date**"), as same may be extended under this Agreement (the "**Closing**"). Subject to the foregoing, each Closing shall be held through escrow with the Title Company.

(c) Closing.

i. Exclusive possession of the Parking Structure Parcel shall be given to the City upon execution and delivery at Closing of a covenant deed, in the form attached hereto as Exhibit ___, fully executed and acknowledged by Developer (the "**Deed**"), subject only to the Permitted Encumbrances. The Deed shall be prepared by Developer at Developer's expense.

ii. At Closing, Developer shall also deliver to the City the following:

(1) A certificate, dated as of the Closing Date and signed by Developer under penalties of perjury, confirming that Developer is not a foreign person or entity subject to the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended in the form attached as Exhibit C.

(2) Such resolutions and certificates as may be reasonably required by the Title Company to evidence the due authorization of the execution and performance of this Agreement and the documents to be delivered pursuant thereto, Developer's organizational documents, and all affidavits, indemnities, agreements and other instruments or documents reasonably required by the Title Company.

(3) A duly executed closing statement.

(4) A duly executed Bill of Sale for the Personal Property required to be installed by Developer pursuant to the Parking Structure Agreement in the form attached as Exhibit D.

(5) A duly executed Real Estate Transfer Tax Valuation Affidavit.

(6) An assignment of all warranties issued by the Contractor, Architects, or any supplier of equipment.

(7) Complete copies of all owner/operator manuals issued by the manufacturer of said equipment.

(8) As-built drawing for the Parking Structure.

(9) Reaffirmation of Developer's representations and warranties contained herein and in the PPA.

(10) The Parking Structure Parcel Title Policy based on the approved Parking Structure Title Commitment, in an amount not less than the Parking Structure Parcel Purchase Price, and containing such endorsements and additional coverage as may be procured by City. In connection therewith, Developer agrees

to cause the requirements that have been accepted by Developer in the Parking Structure Parcel Title Commitment to be satisfied at or prior to Closing.

(11) Evidence that the general contractor and all other contractors and materials providers have been paid in full for all services and materials provided with respect to the Parking Structure.

(12) Assignment of the Parking Structure Improvement Plans and the Parking Structure Agreements that relate to the design, development and construction of the Parking Structure.

(13) To the extent not assigned prior to Closing, an unconditioned and absolute Assignment of the Developer's rights with respect to the Brownfield Plan relating to the Parking Structure and to other Eligible Activities of the City including rights to reimbursements or payments under the Reimbursement Agreement in accordance with the Phase Development Documents in each case duly acknowledged and approved by all parties to the Brownfield Plan and the Reimbursement Agreement.

(14) A Certificate from Developer certifying to the City that the Developer Improvements and the Infrastructure Improvements for the Phase have [been] completed in accordance with the Developer Improvements and Infrastructure Improvements Agreements and the Phase Development Review.

(15) To the extent not previously executed and delivered, such documents as are reasonable and necessary to cause the BRA to pay the Brownfield Property Tax Recapture Revenue applicable to the Parking Structure to the City in amounts sufficient to fund the payment of debt service with respect to the Bonds that were issued to purchase the Parking Structure.

iii. At Closing, the City shall deliver to Developer the following:

(1) A duly executed closing statement (along with the balance of the Purchase Price remaining due at time of Closing).

(2) Documentation to establish to the Title Company's reasonable satisfaction the due authorization of the City's execution and delivery of all documents contemplated by this Agreement.

(3) Such other documents and instruments as the Title Company may reasonably request to consummate the purchase of the Premises in accordance with the terms hereof.

(d) Payment of Real Estate Taxes, Maintenance Costs, Utilities, Transfer Taxes, Closing Costs and Other Charges.

i. All real estate taxes, assessments (general and special), water and sewer rents, fees and utility costs shall be apportioned pro-rata between Developer and the City as of the Closing Date. All real estate taxes billed in the year of Closing and current installments of assessments shall be prorated on a due date basis assuming same are

payable in advance. Developer shall pay for any maintenance and repair costs and any and all other charges, costs, fees and expenses with respect to the Parking Structure Parcel ordered by it to the date of Closing. The City shall pay for any and all charges, costs, fees and expenses with respect to the Parking Structure Parcel after the date of Closing.

ii. The City shall pay (i) all recording fees for recording the Deed, (ii) unless otherwise set forth herein, all costs associated with its due diligence, including the cost of appraisals, architectural, engineering, and environmental reports conducted by it and financing, (iii) all survey costs directly incurred by it, and (iv) the premium for any extended coverage and any endorsements ordered by the City.

iii. Developer shall pay (i) all transfer taxes imposed on the recording of the Deed; (ii) all recording fees for discharges to place title in the condition required and/or to cure or other Title Defects; and (iii) the costs and expenses of the Title Commitment and premiums for any base policy of title insurance with standard exceptions, including endorsement requested by Developer.

iv. The City and Developer shall split equally all escrow fees and other charges charged by the Title Company.

(e) At Closing the City shall (i) pay the Parking Structure Parcel Purchase Price (as defined in the Phase Development Documents) to the Title Company, for delivery to the Developer (as adjusted by charges and credits set forth herein and a Closing Statement that is executed by the parties at Closing (exclude SAD)), (ii) execute the documents referenced in the Developer Deliveries to confirm acceptance of such documents to the Developer; (iii) in connection with the issuance of the Parking Structure Parcel Title Policy, to cause the requirements that have been accepted by City in the Parking Structure Parcel Title Commitment to be satisfied at or prior to Closing; (iv) execute such documents as are reasonable and necessary to terminate the Cooperation and cause the Brownfield Property Tax Recapture Revenue to be paid to the City and to thereafter be used for payment of debt services with respect to the Bonds that were issued to purchase the Parking Structure Parcel; and (v) such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by the City.

8. REPRESENTATIONS AND WARRANTIES.

(a) City Representations and Warranties. The City hereby represents and warrants to Developer the truth and accuracy of each of the following, as of the Effective Date, and as of the Closing, that:

i. It is a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Michigan and its Charter.

ii. It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

iii. It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out its obligations contemplated by this Agreement. Execution, delivery and performance by City do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or

result in a default under any agreement or instrument to which City is a party or by which it is bound wherein a violation, conflict or default would materially and adversely affect the City's ability to carry out its obligations under this Agreement.

iv. This Agreement has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the obligations of City contemplated herein are legal, valid and binding obligations of City, enforceable in accordance with their terms, except as limited by applicable relief, liquidation, conservership, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

v. There is no litigation pending or, to the knowledge of the individuals signing this Agreement on behalf of the City, threatened against or by the City wherein an unfavorable ruling or decision would materially and adversely affect the City's ability to carry out its obligations under this Agreement.

vi. It will do all things in its power that are reasonable and necessary in order to maintain its existence.

(b) Developer Representations and Warranties. The Developer hereby represents and warrants to Developer the truth and accuracy of each of the following, as of the Effective Date, and as of the Closing, that:

i. It is a limited liability company duly organized and validly existing and in full force and effect under the laws of the State in which it was formed and has power to do business in the State of Michigan.

ii. It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer that would impair its ability to carry out its obligations contained in this Agreement.

iii. It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

iv. This Agreement has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

v. There is no litigation pending or, to the knowledge of the Developer, threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

vi. Developer shall obtain prior to the commencement of construction and maintain during the term hereof appropriate property and liability insurance covering the Phase in such amounts as the City may reasonably require. At the Closing, Developer may cancel such insurance policies as to the Parking Structure and the rebate of the prepaid premium shall be paid to Developer;

vii. Unless agreed to in writing by the City, Developer will not enter into any leases or occupancy agreements, service agreements or management agreements affecting the Parking Structure or any portion thereof that will be binding on the City following the Closing; Developer will ensure that the Parking Structure is in material compliance with all applicable Laws prior to Closing; any notices sent to Developer or ordinances duly adopted and effective prior to the Closing Date with respect to any municipal or other governmental mandated improvements are to be complied with by Developer at the expense of Developer;

viii. Developer has not and will not engage in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other money laundering regulations or conventions, including, without limitation, the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), or any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Anti-Terrorism Order") or on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, Financial Action Task Force, U.S. Office of Foreign Assets Control, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, all as may be amended from time to time; and

ix. Developer shall notify the City promptly in writing if, to Developer's Knowledge, there is any material change concerning the Parking Parcel, the representations, warranties, and covenants contained in this Agreement, or any other material information heretofore or hereafter furnished by a Developer to the City concerning the Parking Structure.

9. BROKERS.

The parties represent to each other that 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. Developer agrees to indemnify, save and hold harmless the City 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 City agrees to pay any fees due a broker engaged by it and with whom it has executed an agreement.

The provisions of this Section shall survive the Closing.

10. ACKNOWLEDGEMENT.

Developer acknowledges Developer shall not be entitled to any TIR reflected in the BRA Plan to reimburse the Developer for the costs to construct the Parking Structure except in the event the City defaults in its obligation to close on the purchase of same in accordance with the terms hereof in which event Developer shall be entitled to an assignment by the City as to the TIR (as defined in the Reimbursement Agreement) allocated to the Bond Indebtedness to be incurred pursuant to the Bond Resolution.

11. DEFAULT.

(a) If Developer defaults hereunder and fails to cure such default within fourteen (14) days of written notice from City, then City may, by written notice to Developer: (i) terminate this Agreement and recover from the Developer any sums of money that are due and payable by the Developer to or for the benefit of the City under this Agreement; (ii) commence an action for specific performance or other equitable relief against the Developer with respect to the defaulted obligations; and (iii) enforce, or avail itself of, any other remedies available to it at law or in equity; and recover all of its damages, fees and costs, including without limitation, its attorneys and legal fees and costs.

(b) If City defaults hereunder and fails to cure such default within fourteen (14) days of written notice from Developer, then provided Developer is not otherwise in default Developer may, by written notice to City: (i) terminate this Agreement, cause the City to assign all rights under the Reimbursement Agreement to the TIR applicable to the Parking Structure and all rights to reimbursements therein to Developer; (ii) except for obligations requiring City Council approval, commence an action for specific performance against City with respect to the defaulted obligations; and/or (iii) in the absence of the remedy of specific performance due to the acts of the City [to] avail itself of, any other remedies available to it at law or in equity including recovering all of its actual damages, fees and costs, including without limitation, its attorneys and legal fees and costs. In no event shall the City be liable for speculative, consequential, or punitive damages.

12. 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 City: City of Ann Arbor
Guy Larcom City Hall
301 East Huron Street
Ann Arbor, Michigan 48107-8647
Attention: City Administrator
Email:

With copy to: City of Ann Arbor
Guy Larcom City Hall
301 East Huron Street
Ann Arbor, Michigan 48107-8647

Attention: Atleen Kaur, Esq.
Email: akaur@a2gov.org

and

Miller, Canfield, Paddock & Stone, P.L.C.
101 North Main Street, 7th Floor
Ann Arbor, MI 48104
Attn: Joseph M. Fazio, Esq.
Email: fazio@millercanfield.com

If to Developer: Eisenhower State Land Development Company, LLC
c/o Oxford Companies, LLC
777 East Eisenhower, Suite 850
Ann Arbor, Michigan 48108
Attention Jeff Hauptman
Email:
Phone:

With copy to: c/o Crawford Hoying, Ltd.
6640 Riverside Drive, Suite 500
Dublin, Ohio 43017
Attention: Jeff Roberts
Email:
Phone:

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 the City and the Developer may deliver notices on behalf of their respective clients.

13. 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 Developer, nor its board of directors, officers, directors, shareholders, partners, members, employees or agents shall disclose to any third party (other than to the City and/or consultants, attorneys or agents), or publicly announce, the content of this Agreement unless (i) approved, in writing, by the Developer and the City; (ii) required by applicable law, rule, regulation or ordinance; or (iii) required by court order. In any event, the Developer 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, the Developer may make a public announcement stating that the Developer and the City have entered into an agreement for the acquisition and development of the Property for a mixed use residential housing project.

14. 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 the Developer and the City. 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 the Developer and the City 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 the Developer and the City, 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.

(j) No City official (whether elected or appointed), officer, employee, board member, council member (including, without limitation, any member of the City Commission), attorney, agent, representative, advisor, or consultant shall have any personal liability under this Agreement

or otherwise in any manner arising out of or in connection with the Project.

(k) Risk of Loss.

i. If, prior to Closing, the Parking Structure being constructed by Developer is damaged or destroyed such that the cost of repair or replacement of such improvements is reasonably likely to exceed _____ (“**Material Damage**”), then:

(1) The Developer shall have the right, by written notice to the City to fully repair and restore all such Material Damage to the Parking Structure at its sole cost so long as such restoration is completed in accordance with the Parking Structure Agreements within ____ days of such casualty, Developer is solely responsible for all such costs and all additional debt service obligations under the BANS and the Parking Structure Purchase Price payable to the City is not increased. If such restoration is undertaken, the Closing shall be delayed until the restoration of such Material Damage is completed.

(2) Subject to the Developer restoration rights under subsection 1 above, the City or the Developer may elect, within ten (10) business days from and after its receipt of written notice of any Material Damage, by written notice to other, to terminate this Agreement, and if necessary the time of Closing shall be extended to permit such election. In the event of an election to terminate, neither party shall have any liability to the other by reason hereof, except for any provision of this Agreement that is expressly intended to survive the termination of this Agreement; or

(3) In the event the City or the Developer does not elect to terminate pursuant to subsection 2 above, Developer shall undertake any restoration and/or reconstruction necessary to comply with its obligation under any loan and/or under applicable law and in a good and workmanlike manner with like kind repairs the Closing shall be delayed until such Material Damage is fully restored, and if the City elects to Close prior to the date the Material Damage is restored, Developer shall assign to the City all of Developer’s right, title, and interest in any insurance proceeds or payable to Developer, if any, after deducting therefrom all of the costs and expenses incurred by Developer associated with Developer’s efforts to restore, and or reconstruct the improvements, and, in the case of Material Damage, Developer shall pay to the City at Closing an amount equal to the deductible under Developer’s policy of casualty insurance. Developer shall execute and deliver to the City all required proofs of loss, assignments of claims and other similar items. In connection with any restoration and/or reconstruction permitted to be taken by Developer hereunder that Developer reasonably estimates will not be completed prior to Closing, Developer and the City shall reasonably cooperate to agree on the scope of work to be performed by Developer.

ii. If, prior to Closing, any of the Parking Structure is damaged or destroyed and such damage is not Material Damage, the City shall remain obligated to close hereunder with no abatement in the Parking Structure Purchase Price subject to the Developer restoring the improvement within ____ days of such damage and affecting all required repairs in accordance with the Parking Structure Agreement as a condition of

Closing. Alternatively, at the election of the City, the parties shall close without the repairs being completed on the assumption the City shall undertake the repairs, in which event Developer shall assign to the City all of Developer's right, title, and interest in any insurance proceeds to be paid to Developer in connection with such damage or destruction and the City shall receive a credit against the Purchase Price from Developer in an amount equal to the deductible amount under Developer's casualty insurance policy and Developer shall execute and deliver to the City all required proofs of loss, assignments of claims and other similar items.

iii. If, prior to Closing, any of the Developer Improvements and/or the Infrastructure Improvements being constructed by Developer are damaged or destroyed such that the cost of repair or replacement of such improvements is reasonably likely to exceed \$_____ ("**Material Damage**") then: (i) the Developer shall, by written notice to the City, commit to fully repair and restore all such material damage, at its sole cost and expense, and to complete such restoration in accordance with the Developer Improvement and Infrastructure Improvement Agreements within ____ days of such casualty, it being acknowledged that Developer shall be solely responsible for all costs and expenses associated with such restoration, (ii) if the Developer fails to undertake the restoration obligations as described in Subsection (i) above or, following such election, fails to complete same within the time periods stated above then, in that event, the City may elect within ten (10) business days after the Developer fails to undertake such restoration obligations or ten (10) business days after a default in timely complicity such restoration obligation by written notice to Developer to terminate this Agreement and, if necessary, the time of Closing shall be extended to permit such election. In the event of any election to terminate by the City, neither party shall have any liability to the other by reason thereof, except for the provisions of this Agreement that are expressly intended to survive the termination of this Agreement. Any restoration undertaking by the Developer of the Developer Improvements shall be supported by the Completion Guaranty. The City's obligation to consummate a transaction relating to the purchase of a Parking Structure shall be delayed until such time as the Developer has substantially completed the restoration obligations described above or provided adequate assurances to the City that such restoration will be completed in accordance with the provisions hereof.

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

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

matter. To the extent Developer or any of its Key Persons becomes aware that any information previously provided to the City by the Developer is incorrect and/or materially misleading, the Developer shall provide prompt written notice thereof to the City.

(n) Developer shall not assign or transfer its rights and obligations arising under this Agreement at any time without the prior written consent of the City which may be withheld in its sole discretion. Prior to completion of construction of the Developer Improvements and the Infrastructure Improvements within the Phase and other than in connection with the Construction Loan and/or the BANS, Developer shall not assign or transfer its rights and obligations under any Commitment Agreement and Developer shall not sell, convey, dispose, alienate, hypothecate, assign, pledge, mortgage, grant a security interest in or other transfer or further encumbering of the Developer's interest in the Developer Improvements or Infrastructure Improvements or any portion thereof in any Phase without the written approval of the City which approval may be withheld in its sole discretion; provided, however, and notwithstanding the foregoing, transfers of non-voting ownership interests constituting forty-nine (49%) percent or less of all such equity in Developer shall be permitted as long as there is no change of control of the Key Persons. Notwithstanding anything contained herein to the contrary, however, in all events, the Developer and its Affiliates shall be permitted to enter into Construction Loans associated with the development of the Developer Improvements and the Infrastructure Improvements subject to the terms hereof.

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

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

(q) Covenant of Developer. Developer covenants and agrees that no employee, agent, consultant, officer, or elected official or appointed official of the City who exercises or has exercised any functions or responsibilities with respect to this Agreement, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business, during or after their tenure. The foregoing restrictions shall apply to all activities that are part of the Phase.

(r) Costs of Enforcement. If an action is brought by a Party for the enforcement of any provision of this Agreement, the prevailing Party, shall be entitled to recover all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys' fees and expenses, from the defaulting Party.

(s) City Action. When any consent, approval or other action of the City is required and/or requested under this Agreement including the extension of time period and/or any other modification or amendment, such consent, approval, or other action may be provided by the City Administrator for the City or its designee unless such consent, approval, or other action of the City requires the approval of the City Council pursuant to the express provisions of this Agreement or applicable law or where the City Administrator determines, in its sole discretion, that such action should be approved by the City Council.

(t) Force Majeure. The Parking Structure Schedule, and other time requirements for completion of any Parking Structure, Infrastructure Improvements or Developer Improvements within the Phase shall be extended for delays due to any one or more of the following events affecting such Parking Structure or Developer Improvements which are beyond the Developer's control and not capable of avoidance through the exercise of due diligence and planning by a reasonably prudent Developer of an equivalent project, proper advance planning and the reasonable expenditure of funds ("Developer's Reasonable Control"): (a) acts of god or a public enemy, (b) acts or inaction of the government which affect the commencement of construction or the completion of construction, including without limitation the failure of the City of Ann Arbor or the City to timely grant approvals and consents and perform reviews and inspections pursuant to this Commitment Agreement, (c) fires, casualty, floods, tornados, (d) unavailability of materials on a national level, (e) severe weather conditions which exceed in the aggregate thirty (30) days, (f) labor disputes, strikes or lockouts not caused by the use of non-union labor, or (g) any health pandemic, public health emergency (whether officially declared or not) or similar event ("Force Majeure Events"). The Project Schedule for such delayed component shall be extended for the number of days of delay due to Force Majeure Events, subject to the following requirements: (aa) the Developer shall provide the City with a written notice of the existence of a Force Majeure event within five (5) business days of the Developer's realization that Force Majeure Event has occurred, (bb) a Developer Default has not occurred and is continuing and (cc) extensions for delays due to Force Majeure Events shall not, in the aggregate exceed ninety (90) days. Within ten (10) days after a Force Majeure Event, the Developer shall submit a written memorandum to the City describing the Force Majeure Event, the duration of delay and a revised Project Schedule, along with any corresponding change order to revise the Project Budget which shall be subject to the approval of the City.

[Signatures on Following Page]

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

City:

CITY OF ANN ARBOR, a Michigan municipal
corporation

By: _____

Name: _____

Title: Mayor

Dated: _____

By: _____

Name: _____

Title: City Clerk

Dated: _____

Developer:

EISENHOWER STATE DEVELOPMENT
COMPANY LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Dated: _____

EXHIBIT A

APPROVED SITE PLAN FOR PHASE

EXHIBIT B

APPROVED SITE PLAN FOR PARKING STRUCTURE

EXHIBIT C

PARKING STRUCTURE AGREEMENTS

EXHIBIT D

**DEVELOPER IMPROVEMENTS AND INFRASTRUCTURE IMPROVEMENTS
AGREEMENTS**

EXHIBIT E

PHASE DEVELOPMENT DOCUMENTS

EXHIBIT 2.2(i)

SITE FEATURES IN SUPPORT OF ANN ARBOR MOVING

TOGETHER TOWARDS VISION ZERO AND ADDITIONAL DEVELOPER COMMITMENTS

The Arbor South project will incorporate the following features. Unless otherwise specified herein, the location of the following items shall be as depicted in the Site Plan approved by the Planning Commission on June 17, 2025.

- **Bicycle Infrastructure:**
 - **Boardwalk Bike Lanes:** Installation of new bike lanes on both sides of Boardwalk, from Oakbrook to Eisenhower, as part of Phase I of the Project.
 - **On-Site East/West Connectivity:** Creation of new dedicated bike lanes along the northern drive of the Project to provide continuous east/west connectivity between South State Street and Boardwalk.
 - **Bicycle Parking:** Bicycle parking in excess of the amount required by ordinance shall be installed throughout the Project for use by the general public.
- **Pedestrian Improvements:**
 - **South State Street Intersection:** If warranted by traffic analysis and City approval, installation of a new signalized intersection along South State Street.
 - **Boardwalk Crosswalks:** Provide new crosswalks on Boardwalk Street featuring pedestrian-activated, high-visibility beacon systems.
 - **Other Crosswalks:** Install enhanced pedestrian crossings at South State Street and Eisenhower Parkway.
 - **Parking Structure Access:** Include an ingress/egress point on the north side of the Phase V parking structure in order to reduce vehicle traffic through the central pedestrian corridor and enhance pedestrian safety.
- **Public Restrooms:** Incorporate public restrooms within the parking structures, if directed by the City.
- **Parking for Affordable Housing:** Developer shall, at its sole cost and expense, provide parking for residents of the Affordable Housing Component in a location situated south of the Affordable Housing Component. Such parking shall be available from the date the Affordable Housing Component opens for occupancy until commencement of construction of Phase V of the Project.
- **Public Transit Enhancements:**
 - **AAATA Bus Shelters:** Developer shall construct and install enhanced bus shelters and stops as part of the Project incorporating best practices for mobility, ADA accessibility, and rider safety, which shall include reasonably direct ADA access between the aforementioned bus shelters and the Project.
 - **Future Bus Rapid Transit (BRT) Station:** Developer shall, in coordination with the City and TheRide, reserve space in an identified location along South State Street to accommodate a future Bus Rapid Transit (BRT) stop consistent with TheRide's 2045 Long Range Plan.
 - **Bus Pass Program:** Developer shall provide **100 annual bus passes** for affordable housing residents for the first **five (5) years** of operation of the affordable housing component.
 - **Improvements within this category shall not be reimbursable with tax increment.**

Exhibit 2.2(i) (cont.)

Sustainability Commitments

Sustainability Features in Support of the A²ZERO Carbon Neutrality Plan

The Arbor South project will incorporate the following sustainability measures:

PHASE I

- **Energy Efficiency**
 - Designed to meet or exceed the 2021 Energy Code through advanced construction methods.
 - Full energy modeling to be provided upon design completion.
- **Electrification**
 - All 1,000+ market-rate and affordable residential units are fully electric.
 - Natural gas service limited to 30 for-sale condominium units but electric options will be offered in this market segment (meaning these could also be all-electric).
- **On-Site Renewable Energy:**
 - A closed-loop geothermal system and solar energy components will be included in the Affordable Housing Component.
 - Solar will be installed on the roofs
 - Solar will be installed on all parking structures
 - An easement will be granted for geothermal installation through the City's Sustainable Energy Utility should the Utility find the site a strong contender for geothermal
- **Electric Vehicle (EV) Charging**
 - 989 EV-C spaces in structured parking.
 - 248 EV-I spaces in structured parking (evenly distributed by structure and level).
 - 114 EV-C spaces in surface/on-street parking.
 - 21 EV-I spaces in surface/on-street parking (evenly distributed).
- **Lighting**
 - All exterior lighting will use LED DarkSky-compliant luminaires.
 - Interior lighting will be LED with occupancy sensors in multifamily corridors.
- **Multi-Modal Transit and Reduced Vehicle Use**
 - Low parking ratios, mixed-use design and shared parking in order to reduce vehicle dependency and avoid parking spaces dedicated to a single user group.
 - Access to transit via collaboration with AAATA to enhance bus stops along State and Eisenhower, including installation of updated shelters.
 - Improved walkability and bikeability through dedicated infrastructure within and proximate to the site, including enhanced safety measures at intersections.
- **Stormwater Management**
 - Designed to meet 100-year storm event standards per WCWRC requirements.
 - Utilizes underground detention with subsurface infiltration.
 - Includes one rain garden and multiple bioretention cells.
 - Additional bioretention opportunities to be considered as design progresses.

- **Water Conservation**
 - Use of EPA WaterSense plumbing fixtures and Energy Star appliances.
 - Native, drought-tolerant landscaping to reduce irrigation needs.
- **Tree Planting:** Planting of approximately 215 trees, each with a minimum 3-inch caliper.
- **Construction Materials:** Primary structural framing to use wood for reduced embodied carbon.
- **Demolition Waste Management Plan:**
 - **Key Objectives:**
 - Divert a significant portion of demolition waste from landfills through recycling and reuse.
 - Promote on-site waste separation to improve recycling efficiency.
 - Maximize reuse of salvageable materials where feasible.
 - **Planned Waste Management Strategies:**
 - **Pre-Demolition Assessment:** Identify recyclable and reusable materials such as wood, concrete, brick, metals, and fixtures prior to demolition.
 - **On-Site Sorting:** Materials will be separated into designated containers for easier recycling and disposal.
 - **Reuse and Donation:** Salvageable items will be reused on-site when possible or donated to local reuse organizations.
 - **Recycling:** Non-reusable materials will be transported to appropriate recycling facilities. The team will aim to meet or exceed industry-standard diversion rates.
 - **Execution and Oversight:**
 - The demolition contractor will prepare a detailed plan tailored to site conditions and construction sequencing.
 - Waste hauling will be performed by licensed carriers, with all materials delivered to approved recycling and disposal facilities.
 - The contractor will maintain documentation of materials diverted and recycled, including receipts and logs, for review as needed.

FUTURE PHASES

Sustainability features incorporated into Future Phase of the project will be governed by Phase-Specific PPAs, but shall include the following measures, at a minimum:

- **Geothermal Energy:**
 - Geothermal systems will be incorporated into future phases provided the following conditions are met:
 - City's Sustainable Energy Utility deems the site a strong contender for geothermal and is interested in supporting the geothermal installation
 - Development team is open to further City coordination and funding partnerships, including SEU buyout of geothermal systems.
- **Other components:** Sustainability features incorporated into Future Phases will, on a proportional level, be at least as robust as those for Phase I for all of the categories described above.

Exhibit 3.2

CITY OF ANN ARBOR BEST VALUE PROCUREMENT – ARBOR SOUTH PARKING STRUCTURES

Criteria	Sub-Criteria	Evidence Required	Scoring Approach	Max Points	Points Awarded	Evaluation Notes
1. Price	- Bid amount	Bid form submission	Lower cost = higher score	10		
2. Qualifications, Experience & Accountability	- Company experience - Key personnel experience - References (last 5 years) - Subcontractor disclosure	Organizational chart, resumes, references, subcontractor list	Quality and relevance of experience = higher score	10		
3. Workplace Safety	- Safety program & representative EMR (3-year average) - OSHA 10-hr completion - Safety violation history & corrective actions	Safety manual, EMR reports, OSHA certifications, violation records	Stronger programs and lower EMR = higher score	10		
4. Workforce Development	- Pay & benefits documentation - Apprenticeship program participation - Reliance on 1099 workers	HR policies, employee pay & benefits information, DOL apprenticeship agreement, workforce disclosures	Better benefits, active apprenticeships, fewer 1099s = higher score	10		
5. Social Equity & Sustainability	- % workforce in Ann Arbor/Washtenaw County - EEO programs - Non-discrimination policies - Environmental record	Workforce demographics, EEO policies, compliance records	Higher local employment, strong EEO, clean environmental record = higher score	10		
6. Work Plan	- Project schedule - Methods and approach	Detailed project execution plan	Clear, practical, and efficient plans = higher score	10		
TOTAL SCORE				60		

08/18/2025