



Royal Oak
DOWNTOWN
DEVELOPMENT AUTHORITY

Meeting Date: 09/21/2016

211 Williams Street
Royal Oak, MI 48067
Phone: (248) 246-3280
downtownroyalok.org

MEMORANDUM

DATE: September 15, 2016
TO: MEMBERS OF THE DOWNTOWN DEVELOPMENT AUTHORITY
SUBJECT: **696-MAIN DEVELOPMENT AGREEMENT - SINGH**

Attached is a copy of the referenced development agreement. Brandy Mathie from Kerr Russell Weber is scheduled to be at the DDA's September 21st meeting to provide an overview of the agreement.

In addition to any issues raised by Ms. Mathie the undersigned believes the timeline is rather lengthy based upon the period requested by the developer.

Assuming the "Effective Date" is September 21st, 2016 the "Closing Date" could be in July 2018 or approximately 22 months.

Respectfully Submitted,

Timothy E. Thwing
Executive Director

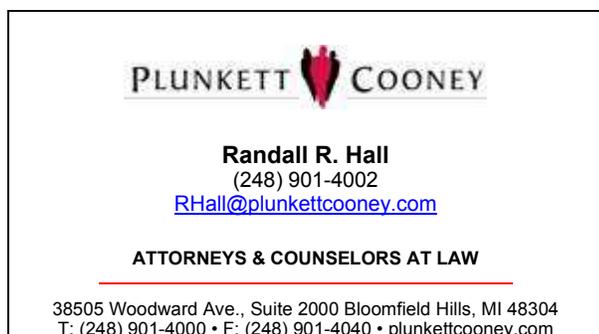
Enclosure/attachment

Timothy Thwing

From: Hall, Randy [RHall@plunkettcooney.com]
Sent: Wednesday, September 14, 2016 3:26 PM
To: Brandy Mathie (bmathie@kerr-russell.com)
Cc: TimT@ci.royal-oak.mi.us; Avi Grewal; Cowan, Dennis
Subject: Gateway Project - Guaranty and Development Agreement
Follow Up Flag: Follow up
Flag Status: Red
Attachments: Guaranty - Completion.DOCX; Development Agreement (9-14-16) - PC edits.DOC

Brandy, attached for your review are red-lined versions of the Unconditional Guaranty of Completion and the Development Agreement, both documents now identifying the Guarantors of the Developer's obligations. The attached Development Agreement is subject to our client's review of the project timeline which review is expected to be completed by tomorrow.

- Randy



DEVELOPMENT AGREEMENT
(Gateway Project, City of Royal Oak, Michigan)

PC Edits ~~9-14-16~~

Deleted: 8

Deleted: 12

THIS DEVELOPMENT AGREEMENT is made and entered into effective as of the ___ day of ~~September~~, 2016 (the “Effective Date”), by and between the Royal Oak Downtown Development Authority, a public body corporate (the “DDA”) and Singh Properties II LLC, a Michigan limited liability company (the “Developer”).

Deleted: August

ARTICLE 1
RECITALS

1.1 The DDA owns a parcel of land consisting of approximately 4.15 acres located within the Woodward/I-696 corridor in the City, the legal description for which is attached as Exhibit 1.1 (the “Development Parcel”).

1.2 The DDA desires to convey the Development Parcel to the Developer for the development of the Project subject to the terms and conditions of this Development Agreement.

1.3 The Development Parcel is to be developed for only the uses set forth in Section 3.2.2 below and no other.

1.4 The Development Parcel is to be acquired by the Developer from the DDA and sold by the DDA to the Developer and developed by the Developer in accordance with the terms and conditions of this Development Agreement.

1.5 This Development Agreement contains all of the terms and conditions governing the conveyance and transfer of the Development Parcel to the Developer and the acquisition of the Development Parcel and the development and construction of the Project by the Developer. The Development Parcel shall be developed by the Developer in strict accordance with the terms and conditions of this Development Agreement.

1.6 The DDA and the Developer wish to establish the terms and conditions under which the Development Parcel shall be acquired from the DDA and the Project developed, owned and maintained by the Developer.

1.7 The capitalized terms contained in this Development Agreement shall have the meaning given such terms in ARTICLE 2 and elsewhere in this Development Agreement.

NOW, THEREFORE, for and in consideration of the transfer of the Development Parcel by the DDA to the Developer, and the mutual covenants and agreements of the Parties contained herein, the receipt, adequacy and sufficiency of which is hereby acknowledge, the DDA and the Developer agree as follows:

ARTICLE 2
DEFINITIONS AND COVENANTS

In addition to certain terms defined in other sections of this Development Agreement, the DDA and the Developer agree that the following definitions and covenants contained therein shall apply to this Development Agreement:

2.1 “Building” has the meaning specified in Section 3.2.2.

2.2 “Building Plans” means the final plans and specifications and amendments, modifications and revisions thereto (including, Construction Documents), for the development and construction of the Building, approved by the DDA pursuant to this Development Agreement.

2.3 “City Ordinances” means all ordinances, enactments, rules, regulations and policies of the City of Royal Oak (the “City”), including, but not limited to, zoning and land use ordinances and requirements (specifically including, the zoning ordinance for the Project); building codes, ordinances, uses and requirements; safety and health ordinances and requirements; site plan and building plan review and approval guidelines, procedures, requirements and conditions; ordinances, rules and regulations governing utilities, roads, curb cuts, site improvements, sidewalks, lighting and similar improvements; ordinances and rules assessing tap-in fees, connection charges, use fees, and any other fees, charges and expenses; and police, safety and traffic rules and regulations.

2.4 “Closing” means the conveyance of the Development Parcel by the DDA to the Developer pursuant to ARTICLE 5.

2.5 “Closing Date” means that date defined in Section 3.4.2.

2.6 “Commencement of Construction” or “Commence Construction” means the date the last of the following is actually commenced: (a) fencing and other security measures required by this Development Agreement, (b) clearing, grading, land balancing, staking for building foundations, (c) the actual construction of the Site Improvements, or (d) the actual construction of the Building. Developer shall Commence Construction no later than twelve (12) months after the date of this Development Agreement or sixty (60) days after the Closing Date, whichever occurs first (the “Commencement Date”), subject to mutually agreed extensions of time, if any.

2.7 “Commencement Date” means the date Developer shall Commence Construction, which date shall be not later than the earlier of (i) twelve (12) months after the date of this Development Agreement and (ii) sixty (60) days after the Closing Date.

2.8 “Completion of Construction” or “Complete Construction” means with respect to any building component being constructed, the date the last of the following occurs: (a) substantial Completion of Construction of all Building structure and core Building elements, including utilities and operating systems, and related exterior improvements, such as paving, lighting and landscaping and excluding all interior finish and build out required or which may be required for the Building; (b) delivery to the DDA of a sworn certificate executed by the Developer and its architect and contractor certifying substantial or final completion of the Project in accordance with the City Ordinances, Laws and the terms and conditions of this Development Agreement, and (c) the issuance of a temporary (and payment and performance bonds if and to the extent required by City Ordinances) or final certificates of occupancy which permits occupancy of the Building and contains no conditions or uncompleted items, except for Weather Related Construction (as defined below). Notwithstanding the above, Developer shall be deemed to have achieved “Completion of Construction” or “Complete Construction” even if certain paving, landscaping and nonessential exterior improvements are not completed, if the reason for non-completion is due to delays resulting from seasonal climate and other weather conditions (collectively, “Weather Related Construction”).

2.9 “Construction Commitment” means the commitment for construction financing provided to the Developer from the Construction Lender providing financing for the construction and development of the Project which meets the following conditions: (a) all application fees, other fees, costs and expenses to procure the Construction Commitment have been paid by the Developer to the extent due, (b) the Construction Commitment is approved by the DDA (through the agent, employee or department of the DDA designated by the DDA for such purpose) in its reasonable discretion, which approval shall be given if the Construction Commitment for the Project provides sufficient funding to construct the Project, pursuant to the Financing Plan upon commercially reasonable terms for a comparable project, and (c) the Developer has accepted and signed the Construction Commitment.

2.10 “Construction Documents” means the final detailed construction drawings, plans, specifications and related documents and amendments, modifications and revisions thereto, for any component of the Project approved by the City pursuant to Section 3.5.1.

2.11 “Construction Lender” means the bank, insurance company, pension fund or other commercial or institutional lender providing construction financing for the construction and development of the Project pursuant to the Construction Commitment.

2.12 “Construction Schedule” means a detailed critical path-type schedule identifying the sequence and time of the construction of all buildings and improvements for each component comprising the Project, including all amendments and modifications thereto, approved by the City, which approval shall not be unreasonably withheld.

2.13 “Deposit” has the meaning specified in Section 5.4.

2.14 “Development Agreement” means this Development Agreement by and between the DDA and Developer.

2.15 “Developer” means the Developer specified on the first page.

2.16 “Due Diligence Period” means the period defined in Section 5.3.

2.17 “Effective Date” means the effective date of this Development Agreement specified on the first page.

2.18 “Encumbrance” means any mortgage, security interest, lien, construction lien, or encumbrance, whether arising voluntarily or involuntarily, by grant, operation of law, execution, levy, transfer, assignment or otherwise.

2.19 “Financial Plan” has the meaning specified in Section 4.1.

2.20 “Guarantor” means collectively, Lushman Grewal, an individual, and Singh Management CO., L.L.C., a Michigan limited liability company, jointly and severally.

2.21 “Improvements” means any and all improvement which may be constructed from time to time on, in, or above the Development Parcel including, but not limited to any and all buildings and structures, roads, driveways and walkways, utilities, storm water systems, and landscaping and streetscape improvements, which Improvements shall be constructed in accordance with the Site Plan and Construction Documents approved by the DDA and in compliance with all Laws and City Ordinances.

2.22 “Laws” means all laws, statutes, orders, ordinances, codes, rules, regulations or standards of any federal or state or similar governmental agency or authority having jurisdiction thereof, including, without limitation, building and use codes and requirements, Americans with Disabilities Act, handicap and similar legislation, safety and health laws and requirements, and environmental laws.

2.23 “Net Worth Certification” means a statement certified a certified public accountant from a nationally or regionally recognized accounting firm handling the business and personal affairs of the Developer and Guarantors (i) that the then collective net worth of the Developer and Guarantors is not less than Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00) determined in accordance with generally accepted accounting principles, consistently applied, (ii) including a summary balance sheet showing liquid assets (cash and marketable securities) of not less than \$TBD and (iii) certified by the Developer and Guarantors as true, accurate and complete in all material respects.

Deleted: Ten

Deleted: 10,000,000.00

2.24 “Parking” means the parking specified in the Site Plan containing not less than the number of parking spaces required by City Ordinances.

2.25 “Party” or “Parties” means either the DDA or Developer, individually, or the DDA and the Developer collectively which are the Parties to the Development Agreement.

2.26 “Permanent Commitment” means the commitment for permanent financing provided to the Developer from the Permanent Lender providing permanent financing for the Project, which meets the following conditions: (a) all application fees, other fees, costs and expenses to procure the Permanent Commitment have been paid by the Developer to the extent due and (b) the Developer has advised the DDA in writing that it has accepted and signed the Permanent Commitment.

2.27 “Permanent Lender” means the bank, insurance company, pension fund or other commercial or institutional lender providing permanent financing for the Project or any portion thereof.

2.28 “Permitted Mortgage” means any mortgage, security agreement, assignment of rents, loan agreement, guarantees and any related loan documents in connection with any loan given by a Construction Lender or Permanent Lender which provides proceeds used only for the development, construction or permanent financing of the Development Plan.

2.29 “Person” means an individual, corporation, partnership (either general or limited), trust, limited liability company, limited liability partnership, entity or other form of organization, or one or more of them, as the context may require.

2.30 “Plans” means collectively all of the following: the (a) Project Site Plan, (b) Site Construction Plans and (c) all plans, construction drawings, specifications and similar documents for any component of the Project approved by the City pursuant to Section 3.5.1. All Plans shall be prepared by architects and engineers selected by the Developer and reasonably approved by the DDA, the costs of all such Plans shall be paid for by the Developer, and the Developer shall provide the DDA with copies of all Plans (including all amendments, modifications, and revisions) in such quantities as requested by the DDA without cost or fee to the DDA.

2.31 “Preliminary Site Plan” means the proposed conceptual site plan for the Project prepared by the Developer in the form attached hereto as Exhibit 2.31 and reviewed and approved by the DDA pursuant to Section 3.2.1 below.

2.32 “Project” means the development of the Development Parcel as provided in this Development Agreement. The DDA has expressed a strong desire that the Project be for a mixed use with residential and retail and unless and until the DDA and Developer otherwise agree in writing, the Project shall include both in the Building. The Developer acknowledges and agrees that the Project and use of the Development Parcel is subject to the approval of the DDA in their discretion.

2.33 “Project Commencement Certificate” means the certificate delivered by the City to the Developer verifying Commencement of Construction of the Project in accordance with the terms of this Development Agreement. The Project Commencement Certificate may be recorded by the Developer for purposes of providing record notice of construction commencement.

2.34 “Project Completion Certificate” means the certificate delivered by the City to the Developer verifying Completion of Construction of the Project and final and Complete Construction of Weather Related Construction by the Developer in accordance with the terms of this Development Agreement. The Project Completion Certificate may be recorded by the Developer for purposes of providing record notice of such completion.

2.35 “Project Schedule” has the meaning specified in Section 3.4.

2.36 “Project Site Plan” means the final project site plan for the Project and amendments, modifications, and revisions thereto, including, but not limited to, the grading plan, road layouts, utility plans, lighting plans, staging plans, site improvements, elevations for all

buildings, storm retention system, floor plans, landscape plans, streetscape plans and all other plans necessary for site plan approval, submitted in accordance with all Laws and City Ordinances and approved by the City pursuant to City Ordinance.

2.37 “Singh” means Singh Development LLC.

2.38 “Site Construction Plans” means the final plans and specifications and amendments, modifications and revisions thereto, for the Site Improvements approved by the City as part of the City’s review of the Project.

2.39 “Site Improvements” has the meaning specified in Section 3.2.1.

2.40 “Transfer” or “Transferred” means the sale, exchange, assignment, conveyance, transfer or other disposition in one or more transactions or events, directly or indirectly, of legal or beneficial interest in all or any part of: (a) the Developer’s interest in the Development Parcel, (b) this Development Agreement or any beneficial interest therein, (c) more than fifty (50%) percent of the ownership interest in the Developer or any Person holding a legal or beneficial interest in the Developer, which constitutes more than fifty (50%) percent of the ownership interest in the Developer or of the right to manage the Developer, unless the right to manage and control the Developer or any such person is retained by Singh or an entity owned and controlled by Singh or (d) the right to manage or control the Developer or any Person holding a legal or beneficial interest in the Developer, which constitutes more than fifty (50%) percent of the ownership interest in the Developer or the right to manage the Developer. Transfer shall include the following events: (aa) the sale or liquidation of any assets not in the ordinary course of business, (bb) the merger, acquisition or consolidation of the transferor by or with any Person, (cc) the merger, acquisition or consolidation by the transferor of any other Person, (dd) any sale, exchange, transfer, pledge or redemption of any stock of the transferor or the issuance of any stock, stock options, preference, warrants or other change in the capitalization or ownership of the Transferor, or (ee) a change of control or other material change in the structure of the transferor.

ARTICLE 3

DESCRIPTION OF PROJECT

3.1 Project Site. The site for the Project shall be the Development Parcel and is depicted on Exhibit 3.1.

3.2 Components of Development. The development of the Development Parcel shall consist of all of the following components to be constructed by the Developer:

3.2.1 Site Improvements. All site improvements required for the development of the Project (“Site Improvements”), including, but not limited to, grading and land balancing for the entire Development Parcel; site utility mains, with distribution to the Building; water main loop for entire site perimeter; access roads, curb cuts and street improvements for the entire Development Parcel; interior circulation roads, deliveries and surface areas; site lighting; drainage, storm water lines, facilities and retention systems for the entire Development Parcel; mains for all utilities (water, storm water, sanitary sewer, gas, electricity, communications and other utility lines, facilities

and systems); landscaping; pool and recreation areas; streetscape improvements for the entire Project and all other site improvements necessary for the development of the Project, constructed in accordance with the Site Construction Plans for the Project. The Site Improvements shall include the Building, and related improvements, and Parking.

3.2.2 Building. A first class multi-story mixed-use building containing approximately 250,000 gross square feet, specified in and constructed in accordance with the Plans (the “Building”), including approximately 10,000 gross square feet of commercial retail space and approximately 240,000 gross square feet of residential space. Notwithstanding the foregoing, the parties acknowledge that the Developer is obtaining a market study to determine the economic feasibility of the entire Project, including the above mentioned commercial retail space in the Project. If the Developer determines on the basis of its market study that it is not economically feasible to include the above-mentioned commercial retail space the Developer may request that the DDA approve a revised Preliminary Site Plan for the Project which reduces or eliminates the commercial retail space. The DDA will have no obligation to approve any revisions to the Preliminary Site Plan to eliminate or reduce the commercial retail space and if the DDA is unwilling to approve such revisions to the Preliminary Site Plan, the Developer shall have the right to terminate this Agreement and receive a refund of the Deposit.

3.2.3 Parking. The Parking containing no less than the number of parking spaces required by the City and specified in and constructed in accordance with the Plans.

3.3 Project Site Plan. The various components of the Project shall be depicted in the Project Site Plan, which shall be reviewed and is subject to the approval of the DDA in its discretion. The Developer shall prepare and submit all preliminary and final versions of the Project Site Plan necessary to comply with the City Ordinances and seek the approval of the City within the time schedules set forth in Sections 3.4 and 3.5. The Developer shall also prepare and submit all Plans for each component in the Project necessary to comply with the City Ordinances and seek the approval of the City within the time schedules set forth in Sections 3.4 and 3.5.

3.4 Project Schedules and Deadlines. The following time schedules and deadlines comprising the Project Schedule shall be followed by the Developer unless otherwise agreed to in writing by the DDA or as extended pursuant to Section 3.5 and the target schedules and deadlines (“Target Project Schedule”) are set forth on the attached Exhibit 3.5:

3.4.1 Preliminary Site Plan and Project Site Plan. The Developer shall prepare and submit to the DDA, for approval, the Preliminary Site Plan within thirty (30) days after the Effective Date. The DDA shall review and comment on the Preliminary Site Plan within a reasonable time. The Developer shall, within a reasonable time, revise the Preliminary Site Plan to address comments from the DDA. Once the Preliminary Site Plan has been approved by the DDA, the Developer shall, within one hundred twenty (120) days submit the Preliminary Site Plan to the City for review and approval in accordance with City Ordinances. Once the Preliminary Site Plan has been approved by the DDA, the Developer shall not make material modifications to the Preliminary Site Plan, unless: (a) required by the City, or (b) the DDA approves such material modifications in writing. The Planning Department for the City shall determine if any

modification of the Preliminary Site Plan is material for the purposes of this Development Agreement. Once the Preliminary Site Plan, as may be modified above, has been approved by the City, it shall be the Project Site Plan for the purposes of this Development Agreement.

3.4.2 Closing Date. The Closing of the transfer of the Development Parcel to the Developer shall occur within five (5) business days from and after the date all of the conditions precedent set forth in Section 5.13 have been satisfied or otherwise waived by the DDA and the Developer unless extended pursuant to Section 3.5.3 (“Closing Date”).

3.4.3 Site Construction Plans. The Developer shall prepare and submit to the City for approval, the Construction Documents, the Site Construction Plans and all other Improvements to be constructed in the Project within one hundred eighty (180) days after the later of (i) DDA approval of the Preliminary Site Plan and (ii) the City Planning Commission final approval of the Preliminary Site Plan.

3.4.4 Completion of Construction. The Developer shall prosecute construction of the Site Improvements, Parking, Building and all other Improvements, with due diligence and shall not permit construction to cease or be halted for more than fifteen (15) consecutive days unless due to a Force Majeure Event. The Developer shall Complete Construction of the Project within thirty-six (36) months after the Commencement Date (“Completion Date”).

3.5 Permits.

3.5.1 Issuance of Building Permits. If the City fails to issue building permits within a reasonable time after approval of the Plans and Construction Documents for any component, which causes an actual delay in the Closing Date, then the Closing Date shall be extended for each day of delay caused by the failure of the City to issue such building permit.

3.5.2 Force Majeure. The Project Schedule and other time requirements for any component shall be extended for delays due to any one or more of the following events affecting such component which are beyond the Developer’s control and not capable of avoidance through the exercise of due diligence 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 of the 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 DDA or the City to timely grant approvals and consents and perform reviews and inspections pursuant to this Development Agreement, (c) fires, casualty, floods, epidemics, (d) unavailability of materials on a national level, severe weather conditions which exceed in the aggregate thirty (30) days, (e) labor disputes, strikes or lockouts and not caused by the use of non-union labor, (f) restrictive governmental laws or regulations or similar events beyond the Developer’s Reasonable Control (“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 provides the DDA with a written notice of such extension within fifteen (15) business days of the Force Majeure Event, (bb) a Developer Default has not occurred and is continuing (other than a Developer Default which will be cured by a Force Majeure extension) and (cc) extensions for delays due to Force Majeure Events shall not, in the aggregate exceed one hundred eighty (180) days. Within thirty (30) days after the end of a Force Majeure Event, the Developer shall submit a written memorandum to the DDA describing the Force Majeure Event, the duration of delay and a revised Project Schedule, which shall be subject to the reasonable approval of the DDA, which shall not be unreasonably withheld.

3.5.3 Conditional Extension of Completion Date. If the Developer does not Complete Construction of the Project by the Completion Date, as the same may be extended as provided herein, but the Developer and its contractors are actively proceeding in good faith and with due diligence to Complete Construction of the Project and a Developer Default does not otherwise then exist under this Development Agreement, the Developer shall be entitled to an extension of the Completion Date of up to Ninety (90) days, provided and so long as: (a) the Developer provides written notice to the DDA of such extension on or prior to the Completion Date, (b) with such written notice, the Developer provides the DDA with a revised Project Schedule, a statement of the reasons for the extension and reasonable evidence of the Developer's ability to Complete Construction of the Project within such extension period, and (c) the extension pursuant to this Section 3.5.3. and all extensions due to Force Majeure Events do not, in the aggregate extend the Completion Date by more than One Hundred and Eighty (180) days.

ARTICLE 4

FINANCING THE PROJECT

4.1 Funding Sources. The Developer shall finance the purchase of the Development Parcel and the construction of the Project and all Improvements through its own private sources and the loans provided by the Construction Lender and Permanent Lender. At least fifteen (15) days before requesting Permits to Commence Construction from the City, the Developer shall prepare and submit to the DDA, a detailed plan for the financing of the purchase of the Development Parcel and the construction of the Project and all Improvements identifying all land acquisition, development, construction, financing, brokerage, architects, engineers, consultants and related project fees, costs and expenses in such detail as reasonably requested by the DDA, together with subsequent modifications and amendments thereto (collective the "Financial Plan"). The Financial Plan shall be subject to the review and approval of the DDA's financial advisor, which approval shall not be unreasonably withheld if the Financial Plan is sufficient to develop and construct the Development Parcel, in accordance with the terms of this Development Agreement. The DDA shall provide written objections within ten (10) days of receipt of the Financial Plan. In the event of such objections, the Developer and the DDA shall use good faith efforts to mutually resolve such objections.

4.2 Developer's Financial Representations. The Developer represents and covenants that:

4.2.1 The Developer has the capability of securing the financing necessary to meet all of its financial obligations created under this Development Agreement and shall provide evidence of that ability by providing: (a) the DDA or its financial advisor with the Financial Plan, (b) the City Attorney or his or her designee with an updated Net Worth Certification for the Developer, (c) the City Attorney with Net Worth Certifications of the Guarantors, and (d) the DDA with a copy of a Construction Commitment from the Construction Lender. Except for the Financial Plan provided pursuant to Section 4.1, the Net Worth Certifications and Construction Commitment required by this Section 4.2.1 shall be provided to the DDA not less than thirty (30) days prior to the Commencement Date. The Developer shall also provide the DDA with a copy of the Permanent Commitment from the Permanent Lender within ten (10) days after the Permanent Commitment is signed by the Developer (such permanent commitment shall not be delivered if such financing is approved after Developer Completes the Project). None of the DDA, the City Attorney, nor the City's economic advisor will publicly disclose the Financial Plan, Net Worth Certifications, Construction Commitments and Permanent Commitments, except for disclosures required by law, except to the extent exempt pursuant to MCL 15.243(1)(f), disclosures of information which is in the public domain and disclosures to their consultants, advisers and attorneys provided that such consultants, advisors and attorneys shall also agree to not publicly disclose the Financial Plan, Net Worth Certifications, Construction Commitments and Permanent Commitments, except for disclosures required by law, except to the extent exempt pursuant to MCL 15.243(1)(f) and disclosures of information which is in the public domain

4.2.2 The Developer, or a related entity, shall act as general contractor for the Project. The Developer agrees to provide or cause its contractors to provide, all other bonds, letters of credit or other security required for the construction of improvements (including public improvements) as specifically required by City Ordinances.

4.2.3 The Developer agrees to disclose to the City attorney prior to Closing, any and all Persons that have a ten (10%) percent or more equity interest, directly or indirectly, in the Developer.

ARTICLE 5

TRANSFER OF THE DEVELOPMENT PARCEL

5.1 Sale. The DDA shall sell and the Developer shall purchase from the DDA the Development Parcel for the sum of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) (the "Purchase Price") which shall be payable in full on the Closing Date. The Purchase Price shall be paid by wire transfer with federal funds immediately available in Detroit, Michigan.

5.2 Conveyance. On the Closing Date, the DDA shall convey and transfer to the Developer by covenant deed, fee simple title to the Development Parcel free of all mortgages and liens, but subject to the right of reversion of the DDA set forth herein, the conditions, covenants and restrictions contained in this Development Agreement and all restrictions of record, easements, building and use codes, regulations and restrictions, zoning ordinances, encroachments, matters which would be revealed from an inspection and/or survey of the Development Parcel and real estate taxes and special assessments not yet due and payable (collectively "Permitted Restrictions"). Any easements of record created after the date of this Agreement by the DDA shall be subject to the approval of the Developer. It is the intent of the DDA and Developer that the conveyance of the Development Parcel to the Developer shall be a fee simple determinable, with the DDA retaining a possibility of reverter which shall automatically ripen into a fee simple interest in the DDA upon the failure of the Developer to Commence Construction of the Project as and when required by this Development Agreement due to a Developer Default (a "Reversion Event"). Upon the occurrence of a Reversion Event, the DDA shall provide the Developer with written notice ("Reversion Default Notice") that it intends to record a notice with the Oakland County Register of Deeds (which notice shall be in accordance with MCLA § 565.451(a)), confirming the Reversion of the Development Parcel to the DDA due to the Developer's Default ("Reversion Notice"), unless the Developer's Default is cured within ten (10) business days after the Reversion Default Notice. If the Developer's default is not cured within ten (10) business days after the Reversion Default Notice, the DDA shall be entitled to record the Reversion Notice. Upon the occurrence of a Reversion Event which is not cured with ten (10) business days after the Reversion Default Notice: (i) fee simple title to the Development Parcel shall automatically revert in the DDA without the need for any action by the DDA or the Developer and without the need for the execution and delivery of any deed or other document and (ii) the DDA shall refund to the Developer within sixty (60) days after the Reversion Default Notice the amount of the Purchase Price less the reasonable costs incurred by the DDA in securing and readying (including demolition of site improvements if appropriate) the Development Parcel for sale. The recording of the Reversion Notice by the DDA shall provide record notice of the reversion of the Property to the DDA. The covenant deed shall be in the form attached hereto as Exhibit 5.2. The reversionary interest of the DDA shall be released upon the execution and delivery of the Project Commencement Certificate.

5.3 Developer's Due Diligence Period. The Developer shall have ninety (90) days from the Effective Date ("Due Diligence Period") to: (a) complete its due diligence investigation of the Development Parcel, which shall include without limitation, an investigation of: (i) the availability of utility services, applicable zoning ordinances, use regulations and building codes (including requirements for rezoning and variances as necessary), making soil tests, borings and other engineering and architectural tests, obtaining environmental reports, determining the availability of governmental approvals ("Site Conditions"), and (ii) the condition of title pursuant to Section 5.5 to determine whether there are any Title Defects (as defined in Section 5.5); and (b) obtain all approvals required under this Development Agreement and applicable Laws and City Ordinances. The Developer may conduct such other investigations, as Developer deems necessary, but shall not have the right to terminate this Development Agreement for a lack of financing, unfavorable financing terms and conditions, financing unfeasibility, unavailability or insufficient guarantors required for financing, insufficient equity and similar financing matters without forfeiting the Non-refundable Portion of the Deposit ("Financing Matters").

If at any time prior to the expiration of the Due Diligence Period, the Developer shall determine, in its sole and absolute discretion, that it is not satisfied with the Development Parcel, then Developer shall deliver written notice of such dissatisfaction to the DDA, thereby terminating this Development Agreement (“Developer’s Termination Notice”). Upon such a timely Developer’s Termination Notice, the Developer shall be entitled to an immediate return of the Deposit as permitted pursuant to Section 5.4. If a timely Developer’s Termination Notice is not provided, then the Developer shall be deemed to have approved its investigation of the Development Parcel and shall continue to perform the Developer’s obligations under this Development Agreement.

5.4 Deposit. A good faith deposit (the “Deposit”) of Seventy Five Thousand and 00/100 Dollars (\$75,000.00), which shall be non-refundable under the circumstances specified in this Development Agreement, has been or will be given to the DDA by the Developer contemporaneously with the execution of this Development Agreement and shall be held by the DDA and disposed of in accordance with the following terms and conditions:

5.4.1 If no Closing takes place as a result of: (a) the Developer’s delivery of a Developer’s Termination Notice because of Title Defects, an unacceptable Survey or Site Conditions which prevent, impair or increase the reasonably anticipated cost for the Construction of the Project, (b) the failure of a condition precedent contained in Sections 5.13.4, 5.13.2, 5.13.3 or 5.13.8, or (c) the occurrence of a default by the DDA not cured within any notice and cure period, the Deposit shall be disbursed to the Developer, as the sole and exclusive remedy of the Developer.

5.4.2 If no Closing takes place as a result of the Developer’s delivery of a Developer’s Termination Notice for any reason other than Title Defects, an unacceptable Survey or Site Conditions which prevent, impairs or increases the reasonably anticipated costs for the Construction of the Project, the Deposit shall be disbursed to the Developer, as the sole and exclusive remedy of the Developer.

5.4.3 If no Closing takes place as a result of: (a) a Developer Default, or (b) the failure of a condition precedent contained in Sections 5.13.4, 5.13.5, 5.13.6 and 5.13.7, the Deposit shall be forfeited as liquidated damages by the Developer and retained by the DDA, as the sole and exclusive remedy of the DDA.

5.4.4 The DDA and Developer acknowledge and agree that upon: (a) a Developer Default which results in no Closing, or (b) the failure of a condition precedent contained in Sections 5.13.4, 5.13.5, 5.13.6 and 5.13.7, damages would be difficult to determine and that the forfeiture of the Deposit by the Developer and the disbursement of the Deposit to the DDA, is fair and reasonable under the circumstances as a recovery for the exclusive acquisition and development rights given to the Developer hereunder, and constitutes the sole and exclusive remedy of the DDA.

5.4.5 The Deposit shall not be held by the DDA in a separate account, may be co-mingled with other funds or accounts of the DDA and the Developer shall not be entitled to any interest, earnings or investment income thereon. The Developer shall only be entitled to a return of the principal amount of the Deposit if the Deposit is to be

returned to the Developer pursuant to the terms and conditions of this Development Agreement.

5.4.6 If Closing takes place, the Deposit shall be retained by the DDA and credited against the Purchase Price.

5.5 Survey, Title Insurance and Objections to Title. The Developer, at its sole cost and expense, shall promptly obtain an ALTA survey (the "Survey") for the Development Parcel from a competent land surveyor and provide copies thereof to the City and DDA. Within thirty (30) days after the Effective Date, the DDA shall deliver to the Developer a title insurance commitment ("Title Commitment") for an owner's fee policy of title insurance, without standard exceptions (ALTA Policy Form B-1992) issued by Fidelity National Title Insurance Company (the "Title Company") insuring marketable, fee simple title subject only to the exceptions contained therein, in the amount of the Purchase Price, naming the Developer as the insured together with copies of all instruments of record listed in the Title Commitment. The Developer may request such endorsements to the title policy and such "insuring over" of title encumbrances and exceptions by the Title Company as the Developer shall deem necessary. The DDA shall cooperate with the Developer in obtaining such endorsements and "insuring over," provided, however, the DDA shall have no obligation (except for providing the standard seller's affidavit) to incur any costs and expenses, obligations or liabilities (including any indemnification) in connection with such "insuring over," any endorsements required by Developer to the title policy or any other title matters. The legal description embodied within the Title Commitment shall be the description of the Development Parcel used for the covenant deed given pursuant to Section 5.2.

The Developer shall have thirty (30) days from and after the later of (a) its receipt of the Title Commitment and copies of all instruments of record listed in the Title Commitment, (b) the Effective Date (the "Title Examination Period") or (c) its receipt of the Survey, to approve or to object to the condition of title disclosed in the Title Commitment or survey as determined by the Developer, in its reasonable discretion ("Title Defects"). If the Developer provides the DDA with written notice of Title Defects prior to the expiration of the Title Examination Period, the DDA shall within thirty (30) days of such written notice: (a) remedy the Title Defects, (b) insure over the Title Defects, or (c) provide the Developer with written notice that the DDA will not remedy such Title Defects. If such Title Defects are not remedied or insured over by the DDA or such notice of refusal to remedy such Title Defects is given by the DDA to the Developer, this Development Agreement shall terminate, the Developer, the City and the DDA shall be relieved of any further liability under this Development Agreement, and the Deposit shall be returned to the Developer unless such Title Defects are waived in writing by the Developer.

The Title Commitment shall be updated for the Closing and in the event such updated Title Commitment ("Updated Title Commitment") discloses any new exceptions or conditions to title rendering the Development Parcel unsatisfactory as determined by the Developer in its reasonable discretion ("New Title Defects"), the Developer shall have the option of either waiving such New Title Defects or terminating this Development Agreement by written notice to the DDA on or before the Closing Date, in which event the Deposit shall be returned to the Developer and the Developer, the City and the DDA shall have no further liability under this Development Agreement. The Developer shall pay for all title insurance premiums for owner's

title policy endorsements requested by the Developer, one-half of any escrow or closing fees, recording fees for the covenant deed and all other closing costs and expenses normally imposed on the purchaser in commercial real estate closings.

The DDA shall pay the cost of recording any curative instruments, the cost of any applicable transfer taxes, the title premium for the Developer's owner's title policy (except the cost of any title endorsements which shall be the sole obligation of the Developer) and one-half of the cost of any escrow or closing fees. Each party shall pay its own legal fees.

5.6 Investigative Reports. The Developer shall provide the DDA with copies of all surveys, engineering reports, environmental reports, soil borings, site engineering, topographical surveys and all other data, summaries, assessments, investigations and reports (collectively the "Investigative Reports") generated by or for the Developer in connection with its due diligence investigation of the Development Parcel pursuant to this Development Agreement upon expiration of the Due Diligence and/or termination of this Development Agreement.

5.7 Proration of Taxes and Assessments. The Development Parcel is owned by the DDA and not currently subject to real property tax liability. All taxes and assessments (including special assessments) affecting the Development Parcel which become a lien after the Closing Date shall be paid by the Developer. All installments of special assessments levied against the Development Parcel after the Closing Date shall be paid by the Developer.

5.8 Brokerage Commission. The Developer and the DDA, to the extent legally permitted, shall indemnify, defend and hold each other harmless from and against any and all commissions, fees, costs or expenses incurred by or due to any real estate broker engaged by or based upon a contact with the indemnifying party, respectively for or by reason of the transfer of the Development Parcel.

5.9 Condition of the Development Parcel. The Developer acknowledges that it will during the Due Diligence Period have an opportunity to investigate the condition of the Development Parcel. The Developer acknowledges and agrees that it will either exercise and/or waive such opportunity and the Developer agrees not to make any claim against the City or DDA in connection with such investigation. The Developer makes the following further agreements and acknowledgments: (a) that it is responsible for making and will be granted the opportunity during the Due Diligence Period to make all investigations (above ground and below ground) deemed necessary by the Developer to determine whether the Development Parcel (i) contains any toxic or hazardous waste or materials (as defined or regulated by federal, state or local laws), (ii) contains wetlands or is subject to adverse conditions, (iii) contains adequate soil conditions, (iv) is in satisfactory condition, and (v) is suitable for the Developer's intended use; (b) that the DDA has made no representations or warranties of any kind with regard to the condition (above ground or below ground) of the Development Parcel, (c) that it is purchasing the Development Parcel "as is", (d) that it waives any right to bring any claim against the DDA of any nature whatsoever with regard to the physical condition of the Development Parcel, and (e) that upon transfer of title the Developer assumes all responsibility for any damages arising from an event or occurrence after the Closing caused by the physical conditions existing on the Development Parcel as of the Closing Date. The DDA shall assign to the Developer, any claims either has

against third parties for such damages arising from an event or occurrence after the Closing based upon the physical conditions existing on the Development Parcel as of the Closing Date.

5.10 DDA Representations and Warranties. The DDA hereby makes the following representations and warranties to the Developer, which representations and warranties shall be true and correct as of the date hereof, shall be deemed to have been renewed and restated as of the Closing Date, and shall survive the Closing.

5.10.1 The DDA has authority to enter into this Development Agreement and to perform and carry out all obligations, covenants and provisions hereof. The authority of the DDA shall be evidenced by appropriate resolutions.

5.10.2 The DDA has not entered into any other agreements for the sale or transfer of the Development Parcel or any part thereof and there are no lawsuits pending or to the best of the knowledge of the DDA threatened against the DDA or the Development Parcel which will affect the transaction contemplated hereby, except as disclosed on Schedule 5.10.2 to this Development Agreement.

5.10.3 Neither the execution nor delivery by the DDA of this Development Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, charter or governing documents, or any agreement to which the DDA is a party or by which the DDA is bound.

5.11 Developer Representations and Warranties. The Developer makes the following representations and warranties to the DDA, which representations and warranties shall be true and correct as of the date hereof, shall be deemed to have been renewed and restated as of the Closing Date, and shall survive the Closing and shall continue until all of the obligations of the Developer under this Development Agreement have been fully performed:

5.11.1 Organization. The Developer is duly organized and validly existing, in good standing under the laws of the state of organization, qualified to do business under the laws of its state of organization and the State of Michigan and has all requisite power and authority to own and operate its respective assets and properties, to carry on their respective business as now being conducted, and to enter into and perform the terms of the Development Agreement. The Developer has provided the DDA with an accurate and complete copy of its respective organizational documents (“Organizational Documents”) in effect as of the date of this Development Agreement, and agrees to provide accurate and complete copies of any revisions or modifications to the Organizational Documents until the Developer’s obligations with respect thereto have terminated pursuant to Section 10.1.

5.11.2 Project Manager. The Developer’s manager for the Project shall be Avi Grewal (the “Project Manager). The architect engaged by the Developer for the Project and the Project Manager shall not be changed, without the prior written consent of the DDA, which consent shall not be unreasonably withheld, until the Developer completes the performance of its obligations under this Development Agreement. If the

architect engaged by the Developer or the Project Manager is changed prior to Completion of Construction, the Developer shall provide written notice to the City identifying the replacement architect or Project Manager.

5.11.3 Authorization. The execution and delivery by the Developer of this Development Agreement and consummation of the transactions contemplated hereby have been duly authorized by all necessary action.

5.11.4 Restraints. Neither the execution nor delivery of this Development Agreement nor the consummation of the transaction contemplated hereby by the Developer is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, the Developer's Organizational Documents, or any agreement to which the Developer is a party or by which it is bound.

5.11.5 Disclosure. No representation or warranty made by any of the Developer, or any written statement or certificate furnished to the DDA pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

5.11.6 Litigation. The Developer Parties have no notice of and there is no pending or, to the best of the Developer's knowledge, threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect the Developer from carrying out the covenants and promises made herein.

5.11.7 Financial. The Developer is financially able to complete the Project. The Developer certifies that any and all financial information provided to the DDA is true and accurate in all material respects and does not omit any information which would cause such to be misleading or untrue in any material respect.

5.11.8 Development Parcel Condition. The Development Parcel is being acquired in its "as is" condition by the Developer and the DDA has made no representations or warranties with respect to the condition of the Development Parcel and the Developer has waived certain claims against the DDA as set forth in this Development Agreement.

5.12 Closing and Conveyance of Development Parcel. The DDA and the Developer shall complete the Closing on the Closing Date. The Closing shall be held at the offices of the DDA or such other location as mutually acceptable to the Parties. The DDA shall convey to the Developer, by covenant deed in the form attached as Exhibit 5.2, fee simple title to the Development Parcel free and clear of all mortgages and liens and subject to the Permitted Restrictions. The Developer shall be entitled to sole and exclusive possession and occupancy of the Development Parcel at the time of Closing, free and clear of all tenancies, occupancies, or other rights to possession.

5.13 Conditions Precedent to Closing. Notwithstanding anything to the contrary set forth in this Development Agreement, the obligation of the DDA and Developer to consummate the sale and purchase of the Development Parcel shall be subject to and conditioned upon the satisfaction of the following conditions precedent:

5.13.1 Project Site Plan; Use of Development Parcel. The Preliminary Site Plan and use of the Development Parcel have been approved by the DDA, in its discretion, and Project Site Plan is in compliance with all City Ordinances, Laws and this Development Agreement.

5.13.2 Due Diligence. The Due Diligence Period has expired without Developer delivering a Developer's Termination Notice.

5.13.3 Title. Title to the Development Parcel is in the condition required by this Development Agreement and the Developer has not terminated this Development Agreement as a result of any Title Defects or New Title Defects, and at Closing the Title Company shall have delivered a "marked commitment" for the issuance of an Owner's Title Insurance Policy in the form required by this Development Agreement.

5.13.4 Permits; Plan and Construction Documents. Developer shall have obtained any and all licenses, approvals and permits (including, building permits) necessary for the development of the Development Parcel. Moreover, all Plans and Construction documents have been delivered to the City.

5.13.5 Investigative Reports. The Developer has provided the City and DDA with the Investigative Reports pursuant to Section 5.6.

5.13.6 Representations. The representations and warranties of the Developer contained in Section 5.11 shall be true and correct in all material respects as of the date of the Development Agreement and the date of Closing.

5.13.7 No Default. There shall be no Developer Default that has not been cured during any applicable cure period.

5.13.8 Guaranty. The Developer has delivered the Guaranty to the City as required by Section 6.7.

5.13.9 Litigation. There shall be no injunctions or similar legal order affecting the Development Parcel, nor shall there be pending any litigation against the DDA or the Developer, which would prevent the DDA from conveying the Development Parcel to the Developer, prevent the Developer from purchasing the Development Parcel, or would prevent the DDA or the Developer from performing its obligations under this Development Agreement.

5.14 Conditions Precedent to Commencement of Construction. Notwithstanding anything to the contrary set forth in this Development Agreement, the Developer shall be obligated to satisfy of the following conditions precedent prior to Commencement of Construction:

5.14.1 Construction Documents Approval. The Construction Documents shall have been approved by the City (including all appropriate departments) in accordance with City Ordinances.

5.14.2 Financing Commitments and Statements. The Developer has provided the DDA with the Construction Commitment and Net Worth Certifications required by Section 4.2.

5.14.3 Construction Contracts, Schedules and Plans. The Developer has delivered to the DDA the construction contract and schedules, plans and submissions required under Section 6.3.

5.14.4 Investigative Reports. The Developer has delivered to the DDA the Investigative Reports then required under Section 5.6.

5.14.5 Insurance. The Developer has delivered to the DDA the insurance policies required under Section 6.6.

5.14.6 Performance Bonds. The Developer has delivered to the DDA the payment and performance bonds required by Section 6.8.

5.14.7 No Default. There shall be no Developer Default that has not been cured during any applicable cure period.

5.15 Termination for Failure to Close. Upon the failure of the conditions precedent in Section 5.13 to be satisfied and the Closing to occur in accordance with the terms of this Development Agreement, this Development Agreement shall terminate unless the unsatisfied conditions in Section 5.13 are waived by a written agreement signed by the DDA and the Developer, or the terms and conditions of this Development Agreement are amended by a written amendment signed by the DDA and the Developer. Upon such termination, the Development Agreement shall be null and void and the DDA and the Developer shall be relieved of any further obligations and liabilities (except those which survive termination) under this Development Agreement. Upon such termination, the Deposit will be disposed of in accordance with the provisions of Section 5.4. Within five (5) business days of such termination, the Developer shall deliver copies of the following to the DDA, without costs or expense to the DDA, unless such was previously delivered to the DDA: (a) the Survey required pursuant to Section 5.5, (b) all Investigative Reports required pursuant to Section 5.6 and (c) any market study, feasibility reports and similar reports for the components of the Project.

ARTICLE 6

DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

6.1 Storm Water and Sewer Capacity and Utilities. The Developer acknowledges that development of the Development Parcel will require a storm water system sufficient to handle storm water drainage in accordance with all City Ordinances, policies and/or requirements. The Developer agrees, at its sole cost and expense, to perform all engineering work, prepare all engineering plans and, as part of the construction of the Site Improvements, construct all storm water lines, facilities and retention ponds and all sanitary sewer lines, connectors, interceptors

and facilities necessary to facilitate development of the Site Improvements by the Developer. Upon completion of its Due Diligence Period, the Developer shall have determined whether all lines, systems and facilities for water, storm water, sanitary sewer, gas, electricity, telephone, cable, communications and all other utilities (collectively "Utility Lines") are of sufficient size and capacity for the development of the Project. During the Construction of the Project, the Developer shall construct, improve, expand or otherwise install all Utility Lines of sufficient and adequate size and capacity at the sole cost and expense of the Developer.

6.2 Construction Quality and Construction Liens. The Developer shall construct all Improvements on the Development Parcel in a good and workmanlike manner employing a quality contractor, construction manager or design/building ("General Contractor") possessing the requisite experience and competency to construct such Improvements. Each of the Improvements shall be constructed free of all liens, except the lien of the Construction Lender, Permanent Lender, current taxes and special assessments ("Permitted Liens"). Any construction liens or other liens (other than Permitted Liens) shall be released or discharged by the Developer within thirty (30) days of the date filed by either recording a discharge of lien, filing a statutory bond for the removal of the lien, or insuring over the lien with the Title Company or otherwise addressed in a manner reasonably acceptable to the DDA.

6.3 Construction Contracts. Unless the Developer acts as its own general contractor, the Developer shall provide the DDA with a full and complete copy of the construction contract with the General Contractor (as defined in Section 6.2), respectively, within five (5) days prior to the Commencement Date.

6.4 Construction Plans and Progress Reports. Prior to the Commencement of Construction, the Developer shall submit the Construction Schedule to the DDA, and shall obtain necessary approvals from the City relative to Developers plans to provide temporary protective measures for surrounding properties, enclosure of the Development Parcel for construction activities, usage, any request for closure of any roads adjacent to the Development Parcel, and similar construction matters as reasonably requested by the City to the extent not otherwise included in the Project Site Plan. The Developer shall provide the DDA and/or the City, as appropriate, with any modifications or changes to the foregoing, which changes and modifications shall be subject to the reasonable approval of the DDA and/or the City, as appropriate.

6.5 Other Reports and Documents. Until the Developer has fully performed its obligations under this Development Agreement, the Developer shall timely provide the DDA with the Investigative Reports required under Section 5.6 and the Construction Commitment and Permanent Commitment required under Section 4.2. Upon the request of the DDA, the Developer shall further provide copies of the following documents to the DDA, without cost or expense to the DDA: loan agreements, mortgages and related transaction documents with any Construction Lender or Permanent Lender.

6.6 Insurance. Until the Completion of Construction, the Developer shall procure and maintain in full force and effect the insurance coverages specified in this Section 6.6, provide the DDA with certificates of insurance and upon written request of the DDA, copies of all policies, amendments and renewals, include as additional insureds, the DDA and all elected and appointed

officials, all employees and volunteers, all boards, commissions and/or authorities and their respective board members, employees and volunteers, and require that all policies not be cancelled, modified or reduced without at least thirty (30) days prior written notice to the DDA, with deductibles and amounts reasonably approved by the DDA, if such deductibles and amounts satisfy the requirements of the Construction Lender, and issued by insurance companies licensed to do business in the State of Michigan reasonably approved by the DDA. All certificates of insurance and requested policies of insurance required under this Section 6.6 shall be supplied to the City at least fifteen (15) days prior to the Commencement of Construction and all renewal policies shall be provided to the City fifteen (15) days prior to the expiration of the current policies.

6.6.1 During the construction period and until the issuance of a Project Completion Certificate, the Developer shall carry Commercial General Liability insurance on an "Occurrence Basis" with limits of liability of not less than Five Million (\$5,000,000) Dollars (including any umbrella coverage) per occurrence and/or aggregate combined single limit, for personal injury, death, bodily injury or property damage. Such insurance shall cover both on-site and offsite areas, including any construction staging or material storage areas. The insurance coverage shall include subsequent claims based upon events occurring during the construction period. The insurance coverage may be provided by blanket insurance provided such insurance provides for the payment of a scheduled amount of insurance for the Project which cannot be reduced or affected by losses in connection with other properties and the terms and conditions for such blanket insurance are reasonably acceptable to the City. The Developer shall provide the DDA with copies of all relevant portions of such blanket insurance applicable to the Project, including provisions regarding coverage and exclusions of coverage for the insurance initially procured and all renewals thereof, such blanket insurance shall name the DDA as additional insured and otherwise comply with the requirements of this Section 6.6. The insurance coverage shall include, by way of extension or endorsements, the following: (a) Contractual Liability, (b) Products and Completed Operations, (c) Independent Contractors Covered, (d) Form General Liability extensions or equivalent, and (e) deletion of all Explosion, Collapse and Underground Exclusions.

6.6.2 The Developer shall carry, and shall require all contractors and subcontractors to carry, Workers Compensation insurance, including Employer's Liability coverage in the statutory amounts required under Michigan law.

6.6.3 During construction of the Project, the Developer shall carry a Builder's Risk policy, the Developer shall maintain in full force and effect an "All Risk of Physical Loss" policy insuring the Project against fire, vandalism, malicious mischief, earthquake, and such other perils covered by the broadest form of extended coverage available in the amount of the full replacement value of the improvements for any such component and such insurance policy shall include an endorsement naming the DDA as an additional insured, as its interest may appear. It is the intent of the Parties that the DDA shall be entitled to the benefit of such insurance in the event the Development Parcel reverts to the DDA pursuant to ARTICLE 7. The Developer shall obtain the agreement of any Construction Lender or Permanent Lender to use the proceeds of such insurance for rebuilding subject to normal and customary provisions.

6.6.4 The Developer or the Developer's contractor operating motor vehicles in connection with the Project shall carry Motor Vehicle Liability insurance, including Michigan no-fault coverages with minimum limits of Five Million (\$5,000,000) Dollars per occurrence, combined single-limit for bodily injury and property damage. The insurance coverage shall include all owned, non-owned and hired vehicles.

6.7 Guaranty. Prior to the Closing, the Developer shall deliver to the DDA a Guaranty guaranteeing (a) the accuracy, completeness and truthfulness of the representations and warranties made by the Developer in this Agreement, and (b) Completion of the Project in accordance with the Project Schedule set forth in Section 3.4 (as the same may be modified pursuant to Section 3.5). The Guaranty in the form attached as Exhibit 6.7 shall be executed and delivered by the Guarantor. If the Developer fails to timely deliver the Guaranty, then the City shall not thereafter be required to issue any building permits, approve any Plans or Construction Documents or perform any other obligations under this Development Agreement. The Guaranty shall include legal and other costs incurred by the DDA and the City to enforce such Guaranty. At least thirty (30) days prior to the delivery of the Guaranty, the Guarantor shall deliver to the City Attorney current Net Worth Certification, upon which the DDA can rely. Guarantor shall join in the execution of this Development Agreement solely for purposes of agreeing to perform Guarantor's obligations under this Section 6.7.

6.8 Bonds. The Developer shall secure and deliver to the City all bonds required by the City Ordinances for the issuance of building permits for such improvements.

6.9 Construction Traffic. The Developer shall route all construction traffic to and from the Project along routes set forth in the staging plan (including any modifications) approved from time to time by the City, and shall abide by all reasonable requirements imposed by the City with regard to construction traffic and use its best efforts to require all parties involved in construction activities to obey all posted speed limits, warning signs and all traffic and safety laws, ordinances and regulations.

6.10 Compliance with Laws. The Developer shall comply with all Laws and all City Ordinances applicable to the construction, ownership, maintenance, operation and use of the Project.

6.11 Site Security. During the course of any construction, the Developer shall adequately secure the Development Parcel twenty-four (24) hours a day to safeguard and protect the Development Parcel from theft and damage and persons from personal injury or death. The Developer shall fence the entire perimeter of the Development Parcel with fencing with a height of six feet as required by the approved staging plan. The Developer shall use its best efforts to minimize and control dust and blowing debris from being generated at the Development Parcel. The Developer shall periodically remove refuse from and maintain the Development Parcel in sanitary and sightly condition. The Developer shall not permit grass and weeds to grow more than six inches in height. The Developer shall maintain, repair and clean all private walkways and areas open to the public on the Development Parcel. Notwithstanding the above, this Section 6.11 is not intended to create any obligation or duty for the Developer beyond what is required of the Developer under applicable laws and ordinances.

6.12 Protection of Neighboring Properties. The Developer shall use commercially reasonable efforts to conduct construction activities with minimal disruption to residents and owners of property neighboring the Project. Prior to commencing such construction, the Developer shall insure that the construction activities are adequately and continuously screened from neighboring properties and the movement of wind-blown debris, dust and soil onto neighboring properties is minimized and controlled. Notwithstanding the above, this Section 6.12 is not intended to create any obligation or duty for the Developer beyond what is required of the Developer under applicable laws and ordinances.

6.13 Indemnity. The Developer hereby indemnifies, defends and holds the DDA 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, ownership, maintenance and operation of the Project 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 Development Agreement. Notwithstanding the foregoing, this Indemnity shall not apply to Indemnified Claims resulting from the ultra vires acts of DDA officials and employees based on willful and intentional conduct, which is arbitrary and capricious and constitutes bad faith.

6.14 Streetscape Improvements. The Developer, at its sole cost and expense, shall provide all streetscape improvements around such portion of the perimeter of the Project as required by the DDA. All streetscape improvements shall be consistent with the typical streetscape design, including, but not limited to, decorative lighting, concrete pavers, street trees, benches, trash receptacles and irrigation. A copy of the typical specifications is attached as Exhibit 6.14. The Developer acknowledges that compliance with this Section 6.14 and the construction of other public improvements in connection with the Project shall require performance guarantees, bonds, letters of credit and other assurances for completion as required by City Ordinances.

6.15 Taxes and Assessments. From and after the Closing Date, the Developer, its successors and assigns shall pay on or before the date by which penalties are assessed, all real estate taxes and special assessments levied against those portions of the Development Parcel owned respectively, by the Developer, its successors and assigns.

6.16 Adjacent Properties. The Developer shall be responsible for the effect of the development of the Project upon adjacent land and buildings, including, but not limited to, damage or injury, restriction or limitation of access, noise, vibration, interruption of utilities, construction debris and any other related matters. Notwithstanding the above, this Section 6.16 is not intended to create any obligation or duty for the Developer beyond what is required of the Developer under applicable laws and ordinances.

6.17 Survival. The Developer acknowledges and agrees that all of the obligations of the Developer under this Development Agreement survive the Closing and shall be covenants

running with the land and binding upon the Developer, its successors and assigns for the benefit of the DDA and their respective successors and assigns until and to the extent such obligations are expressly terminated in accordance with the provisions of this Development Agreement as provided in Section 10.1 hereof.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

7.1 Default by Developer. Each of the following shall constitute a default (“Developer Default”) of the Developer under this Development Agreement, after giving effect to any applicable notice and cure periods identified:

7.1.1 The Developer fails to comply with the Project Schedule set forth in Section 3.4, as the same may be modified pursuant to Section 3.5.3.

7.1.2 Any financial representation in Section 4.2 or any representation or warranty of the Developer pursuant to Section 5.11 or contained in any document provided by the Developer to the DDA proves to be untrue or misleading in any material respect when made.

7.1.3 The Developer fails to close on the acquisition of the Development Parcel pursuant to Section 5.12, except for failure of the conditions precedent to Closing in Section 5.13 to be satisfied.

7.1.4 The Developer fails to discharge or address any lien as required by Section 6.2. and such failure remains uncured for fifteen (15) days following written notice by the DDA.

7.1.5 The Developer fails to procure and maintain in full force and effect the insurance required by Section 6.6., unless such failure involves only terms and conditions of the policies (other than required insurance amounts, deductibles and coverages) to which the DDA have provided written objection, in which event the Developer has failed to cure such objections within fifteen (15) days after written notice by the DDA;

7.1.6 The Developer fails to pay all real estate taxes and special assessments as required by Section 6.15.

7.1.7 In the event the Developer makes any assignment or transfer in violation of ARTICLE 8.

7.1.8 The Developer is in default beyond any notice and cure period in any of the terms and conditions of any loan document with any Construction Lender or any Permanent Lender and such Construction Lender or Permanent Lender institutes or takes actions: (a) to foreclose any Permitted Mortgage by advertisement or judicially, or for the appointment of a receiver for the Project or (bi) to recover damages against the Developer or any guarantor, (c) to enforce the loan documents against the Developer or any

Guaranty against any guarantor or (d) to take any other enforcement action or institute suit against the Developer or any guarantor or accepts a deed in lieu of foreclosure.

7.1.9 The Developer ceases doing business, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or for reorganization, files an answer admitting the allegations in any creditor-filed petition for bankruptcy or reorganization, applies for or permits the appointment of a receiver, fails to have any bankruptcy, reorganization or liquidation proceedings instituted against it dismissed within sixty (60) days of filing, is unable to meet its obligations as they become due or otherwise seeks the relief of any federal or state bankruptcy or insolvency laws.

7.1.10 The Developer's failure, other than as set forth in subsections 7.1.1 through 7.1.9, to perform any of its obligations under this Development Agreement, which remain uncured for a period of thirty (30) days following written notice by the DDA, unless the default cannot be cured through the exercise of good faith and due diligence (including the expenditure of necessary funds), in which event the Developer shall be entitled to an additional period of time to cure as reasonably determined by the DDA, but in no event beyond ninety (90) days, provided and so long as the Developer has diligently commenced the cure within such thirty (30) day period, completion of the cure within the thirty (30) days was not avoidable by the exercise of due diligence, and the Developer continues to prosecute the cure with due diligence and in good faith.

7.1.11 The Developer fails to make the Compensatory Payments required under Section 7.2.5 or fails to timely pay any real estate tax bill which includes any such Compensatory Payments when due and payable, which includes any Delinquent Compensatory Payments as required under Section 7.2.5.

7.2 Default Remedies of the City and DDA. Upon an occurrence of a Developer Default, the DDA shall be entitled to the rights and remedies provided by Section 7.2.1, Section 7.2.2, 7.2.3, 7.2.4 and 7.2.5. The rights and remedies under each of Section 7.2.1, 7.2.2, 7.2.3, 7.2.4 and 7.2.5 shall be the sole and exclusive remedies of the DDA for each Developer Default expressly specified in such section.

7.2.1 Failure to Close. Upon a Developer Default, which results in the Developer's failure to close pursuant to ARTICLE 5, the DDA shall be entitled to the following remedies:

7.2.1.1 Terminate this Development Agreement by written notice to the Developer.

7.2.1.2 Forfeit the Developer's Deposit and retain the Deposit as liquidated damages.

7.2.1.3 Enforce the Developers obligation to provide the survey pursuant to Section 5.5, Investigative Reports pursuant to Section 5.6 and other reports and documents pursuant to Section 6.5 to the extent such have not been provided by the Developer.

7.2.2 Failure to Commence Construction. Upon a Developer Default, which results in the Developer's failure to Commence Construction of the Project, as required in this Development Agreement, the DDA shall be entitled to the following remedies, as its sole and exclusive remedies for such Developer Default:

7.2.2.1 Specifically enforce the obligations of the Developer under this Development Agreement.

7.2.2.2 Terminate the Developer's rights under this Development Agreement, without releasing the Developer of its obligations under this Development Agreement required to be performed prior to and including the date of termination, which shall survive such termination.

7.2.2.3 Upon the Developer's failure to timely cure a Developer Default following a Reversion Default Notice, record a Reversion Notice with the Oakland County Register of Deeds (which notice shall be in accordance with MCL §565.451(a)). The recorded Reversion Notice shall provide evidence that fee simple title to the Development Parcel has automatically reverted to the DDA pursuant to the fee simple determinable conveyance by the DDA to the Developer. As further evidence of the reversion of title to the DDA, the DDA shall be entitled to exercise the irrevocable power of attorney provided by the Developer to the DDA in the form attached as Exhibit 7.2.2.3 to execute on behalf of the Developer the covenant deed in the form attached as Exhibit 5.2 for purposes of confirming the reversion of the Development Parcel to the DDA. The Developer shall deliver possession of the Development Parcel to the DDA, free and clear of all tenancies, rights of occupancy, or other rights of possession created by or resulting from the acts or omissions of the Developer or the Developer's interest in the Development Parcel. The Developer shall, at its sole cost and expense, clear title to the Development Parcel of all delinquent real estate taxes and special assessments, liens and Encumbrances (other than those listed in the title insurance policy for the Development Parcel pursuant to Section 5.5) so that title is in the same condition as when conveyed by the DDA to the Developer. The Developer, at its sole cost and expense, shall provide the DDA with an Owner's Title Insurance Policy issued by the Title Company or other title company satisfactory to the DDA insuring marketable, insurable, fee simple title to the reverted Development Parcel in the same condition as when conveyed to the Developer. In the event the Developer fails to provide such Owner's Title Insurance Policy, the DDA shall obtain such at the cost of the Developer and the Developer shall immediately reimburse the DDA for the cost thereof upon written request. In the event the Developer fails to clear title as required by this Section 7.2.2.3, or pay any other amounts, costs and expenses required of Developer hereunder, the DDA may pay all such amounts, expenses and costs necessary to clear such title and pay any other amounts, costs and expenses required of Developer hereunder and the Developer shall immediately reimburse the DDA for all such amounts incurred in connection therewith upon written request. The Developer shall indemnify, defend and hold the DDA harmless from and against any and all mortgages, liens, encumbrances, claims and liabilities (including

claims for personal injury, death and property damage) against the Development Parcel subject to reversion created or arising from and after the Closing Date. The Developer shall execute any and all documents, perform all obligations and take all other actions necessary to effect the reversion and fulfill the intent of this Section. The Developer shall also deliver to the DDA the survey pursuant to Section 5.5, Investigative Reports pursuant to Section 5.6 and all other reports and documents pursuant to Section 6.5 to the extent such has not been previously provided by the Developer. The obligations of the Developer under this Section 7.2.2.3 shall survive the reversion of title to the DDA and the termination of this Agreement. If the DDA exercises its reversion right, the DDA shall refund to the Developer within sixty (60) days after the Reversion Default Notice the amount of the Purchase Price less the reasonable costs incurred by the DDA in securing and readying (including demolition of site improvements if appropriate) the Development Parcel for sale.

7.2.2.4 Upon the request of the DDA, assign any and all contracts or agreements (“Agreements”) executed by the Developer with any Person in connection with the development of the Project pursuant to a written assignment under which the DDA or its assignee will assume the obligations of the Developer under such Agreements from and after the date of Assignment, and the Developer will not be released of any obligations under such Agreement arising prior to the date of the assignment, and the Developer shall indemnify, defend and hold the DDA harmless from and against any and all obligations of the Developer arising prior to the date of the assignment. The Developer agrees not to execute any Agreement, which would prohibit the assignment required under this Development Agreement, and shall insert a provision in each such Agreement permitting this assignment to the DDA.

7.2.2.5 Exercise any of the rights and remedies available under Section 7.5, as to the Construction Lender.

7.2.2.6 Recover all damages resulting from the Developer’s breach of this Development Agreement.

7.2.2.7 Withhold the performance of any obligations of the DDA under this Development Agreement.

7.2.2.8 Be entitled to all other remedies available at law or in equity.

7.2.2.9 The foregoing remedies of the DDA shall be cumulative and the exercise of any one or more remedies shall not preclude the exercise of any other remedies.

7.2.3 Failure to Complete Construction. Upon a Developer Default, which results in the Developer’s failure to Complete Construction of the Project (including any component thereof) within the Project Schedule set forth in Section 3.4 as extended

pursuant to Section 3.5.3., the DDA, shall be entitled to the following remedies, as its sole and exclusive remedies for such Developer Default:

7.2.3.1 Specifically enforce the obligations of the Developer to Complete Construction of the Project.

7.2.3.2 Terminate the Developer's rights under this Development Agreement without releasing the Developer of its obligations under this Development Agreement required to be performed prior to and including the date of termination, which shall survive such termination.

7.2.3.3 Enforce the Completion Guaranty pursuant to Section 6.7.

7.2.3.4 Enforce the performance and payment bonds pursuant to Section 6.8.

7.2.3.5 Petition a court of competent jurisdiction for the appointment of a receiver selected by the DDA to Complete Construction in place of the Developer of the Project under construction and subject to a Developer Default. The Developer hereby consents to the appointment of such receiver. Such receiver shall have no obligation to the creditors of the Developer or any other Party contracting with the Developer or any other person or entity involved in the construction of the Project, except for work performed pursuant to contracts or agreements with the receiver to complete the Project.

7.2.3.6 Exercise the rights and remedies under Sections 7.2.2.3 and 7.2.2.4.

7.2.3.7 Exercise any of the rights and remedies available under Section 7.5.

7.2.3.8 Recover all damages resulting from the Developer's breach of this Development Agreement.

7.2.3.9 Withhold the performance of any obligations of the DDA under this Development Agreement.

7.2.3.10 Be entitled to all other remedies available at law or in equity.

7.2.4 Other Defaults. Upon a Developer Default (other than a Default governed by Sections 7.2.1, 7.2.2, 7.2.3 and 7.2.4), the DDA shall be entitled to the following remedies:

7.2.4.1 Specifically enforce the obligations of the Developer under this Development Agreement.

7.2.4.2 Suspend the Developer's rights under this Development Agreement, without releasing the Developer of its obligations under this Development Agreement, until such Developer Default is cured.

7.2.4.3 Recover all damages resulting from the Developer's breach of this Development Agreement.

7.2.4.4 Withhold the performance of any obligations of the DDA under this Development Agreement, including but not limited to, providing any authorizations, approvals or consents, or taking any other actions required of the DDA under this Development Agreement.

7.2.4.5 Be entitled to all other remedies available at law or in equity.

7.2.5 Payment of Compensatory Payments. Upon the Developer's failure to either: (a) commence construction by the Commencement Date (as such Commencement Date may be extended due to Force Majeure Events), or (b) diligently pursue completion of construction in accordance with the Construction Schedule as same may be modified, the Developer shall pay compensatory payments (each being a "Compensatory Payment") to the DDA in an amount equal to Five Thousand and 00/100 Dollars (\$5,000.00). The Developer's obligation to make Compensatory Payments shall arise: (a) in the event of a failure to commence construction by the Commencement Date, then commencing upon the Commencement Date and continuing thereafter on each succeeding same day of the month until the Developer commences construction of the Project as required by this Development Agreement or, (b) in the event Developer ceases construction of the Project prior to completion and fails to re-commence construction within thirty (30) days after written notice from the City of such failure (except if the cessation is as a result of a Force Majeure event), then on the thirtieth (30th) day after notice and continuing thereafter on each succeeding same day of the month until the Developer recommences construction of the Project as required by this Agreement (each being a "Compensatory Payment Date"). If the Compensatory Payment Date is on the 31st day of a month with only 28 or 30 days, for those months, the Compensatory Payment Date shall be the last day of the applicable month. Each Compensatory Payment shall be paid upon the applicable Compensatory Date without demand, setoff, deduction or proration of any kind and Developer shall not be entitled to any refund in whole or in part in the event the Developer commences construction of the Project during the twelve (12) month period covered by the Compensatory Payment. In the event the Developer fails to pay any Compensatory Payment on a Compensatory Payment Date and such failure remains uncured following five (5) business days of written notice by the City to the Developer (a "Delinquent Compensatory Payment"), the DDA, at its option, to the extent legally permissible, without further notice and opportunity to cure to the Developer, shall have the right to cause the City to assess the amount of the Delinquent Compensatory Payment as a special assessment and add such special assessment to the next real property tax bill due for the real property taxes assessed against the Development Parcel. The Developer, on behalf of itself, its Transferees, successors and assigns, acknowledges and waives any and all notices required for such special assessment and agrees and acknowledges that the special assessment for the Delinquent

Compensatory Payment shall be levied with and collected in the same manner as real property taxes, including the fact that such special assessment constitutes a lien upon the Development Parcel giving the City the same rights and remedies for the collection of all other real property taxes or payment of such amount to the City. The Developer, on behalf of itself, its Transferees, successors and assigns, acknowledges and waives any right to challenge any such special assessment, the lien of such special assessment, and the levy and collection of such special assessment as real property taxes. Such special assessment, lien and levy shall not cure the Developer's default and shall be in addition to all other remedies of the DDA under ARTICLE 7 including, without limitation, the rights and remedies of the DDA under Section 7.2.2. The Compensatory Payments shall be paid by the Developer to the DDA upon each Compensatory Payment Date as partial liquidated damages (and not as a penalty) to compensate the DDA for the lost tax revenue resulting from the failure of the Developer to construct the Project. The Parties acknowledge and agree that the Compensatory Payments will not compensate the DDA for all damages incurred by the DDA and the lost tax revenue to the DDA as a result of the Developer's failure to construct the Project nor prevent the DDA from exercising any other rights and remedies available to the DDA. The Parties acknowledge and agree that it would be impossible to determine the nature and amount of all damages incurred by the City and the lost tax revenue resulting from the failure of the Developer to construct the Project and that the amount of the Compensatory Payments is a reasonable determination of such partial liquidated damages. So long as the Developer is timely paying Compensatory Payments pursuant to this Section 7.2.5, the DDA shall not have the right to exercise its remedies pursuant to Section 7.2.3 for failure to Commence Construction of the Project. The payment of such Compensatory Payments shall not however relieve the Developer of the obligation to perform any other obligations or preclude the DDA from enforcing its rights and remedies for a breach of any such obligation or the right of the City to enforce the City Ordinances.

7.3 Default Remedies of the Developer. If the r DDA fails or neglects to perform a covenant or obligation on its part to be performed under this Development Agreement after the notice and opportunity to cure required by this Section 7.3 has been given to the DDA, the Developer's sole and exclusive remedies shall be as follows: (a) if the Default involves the failure to provide consents or approvals, then an extension of the Project Schedule pursuant to Section 3.5.3 and the right to seek specific performance of the issuance of such consents or approvals as permitted in this Section 7.3, and (b) if the Default involves a failure other than providing consents and approvals, then (i) the right to seek the recovery of Damages (as defined herein), and (ii) the right to receive immediate refund of the Deposit. The DDA shall not be in default in any term or condition of this Development Agreement, unless and until, the Developer has provided the DDA with written notice that the DDA has failed to comply with an obligation of the DDA under this Development Agreement and the DDA has failed to cure such within thirty (30) days of written notice, unless the nature of the noncompliance is such that it cannot be cured with due diligence within such thirty (30) day period, in which event the DDA has failed to commence the cure within such thirty (30) day period and thereafter diligently pursue the cure. The Developer shall not be entitled to specifically enforce this Development Agreement or any other remedy available at law or in equity other than the recovery of Damages (as defined herein). Damages shall mean only the reasonable, direct third party expenses actually paid by the Developer from and after the Effective Date until the date of default, for the Survey,

architectural fees and expenses, consulting fees and expenses, title costs, reasonable legal fees and application and loan commitment fees, but in no event in excess of the amount of Fifty Thousand (\$50,000.00) Dollars. The following shall be conditions precedent to the Developer's right to seek recovery of Damages against the DDA: (aaa) all of the conditions precedent in Section 5.13 required by the Developer have been satisfied or tendered, and (bbb) the default by the DDA must have been based upon willful and intentional conduct which is arbitrary and capricious and constitutes bad faith. The Developer acknowledges its understanding that the DDA and the City are separate entities and the DDA has no authority over the City in the granting of approvals, permits or other City functions and the Developer waives any claims, damages or disputes against the DDA arising out of the City's refusal or failure to issue any approval or permit required for the Development of the Project.

7.4 Conveyance of Plans. Upon a Developer Default described in Section 7.2.1, 7.2.2 and 7.2.3, the Developer shall, within three (3) business days of request by the DDA, without any charge to the DDA, convey all plans, and all other studies, reports, tests, engineering work, surveys, design and construction plans, working drawings and all other materials pertaining to the component of the Project to which the Developer Default applies in the possession of or owned by the Developer. The obligations of the Developer under this Section 7.4 shall survive the reversion of the Development Parcel to the DDA pursuant to ARTICLE 7, the re-conveyance of the Site pursuant to ARTICLE 7 or the termination of this Development Agreement.

7.5 Obligations of Construction Lender. Upon a Developer Default of the Developer described in Section 7.2.2 or Section 7.2.3, the Construction Lender shall have the following obligations and the DDA shall have the following rights against the Construction Lender:

7.5.1 Purchase of Construction Lender's Mortgage. Upon written notice to the Construction Lender of the Developer Default which is not cured by the Construction Lender pursuant to Section 8.3, the DDA, or its assignee, shall have the right to purchase the construction mortgage and any other security held by the Construction Lender by paying the sum of the following amounts in immediately available funds at Closing: (a) all principal and interest due and owing to Construction Lender through the date of purchase, (b) the cost of any improvements, if any, made by the Construction Lender, provided such improvements were pursuant to the Plans, (c) any real estate taxes, special assessments and insurance premiums paid by the Construction Lender, and (d) all prepayment charges and other amounts due under the Loan documents. The Construction Lender shall transfer and assign to the DDA, or its assignee, without warranty or representation (except for warranties of title and certification of all amounts due to the Construction Lender) the construction mortgage, construction loan agreements, security agreement, assignment of rents and leases, financing statements, guarantees and all other loan documents (collectively "Loan Documents") executed in connection with the Construction Loan transaction.

7.5.2 Sale of Foreclosed Property. In the event the Construction Lender acquires the Development Parcel or any portion thereof or succeeds to the interest of the Developer in the Development Parcel or any portion thereof pursuant to a foreclosure sale, a deed-in-lieu of foreclosure, transfer, bankruptcy sale, or similar transfer (whether or not any rights of redemption of the Developer have expired), for a period of six (6)

months after the date the Construction Lender acquires title to and possession of the Development Parcel or succeeds to the interest of the Developer in the Development Parcel, the DDA, or its assignee, shall have the right to purchase the interest acquired by the Construction Lender by paying the sum of the following amounts in immediately available funds: (a) all principal and interest due and owing to Construction Lender through the date of purchase, (b) the cost of any improvements, if any, made by the Construction Lender, provided such improvements were pursuant to the Plans, (c) any real estate taxes, special assessments and insurance premiums paid by the Construction Lender, and (d) all prepayment charges and other amounts due under the Loan documents. The Construction Lender shall transfer such interest to the DDA, or its assignee, without warranty or representation (except for warranties of title and certification of all amounts due to the Construction Lender) by covenant deed and bill of sale, free and clear of all liens and encumbrances created by the Construction Lender or Developer, other than the construction mortgage given to the Construction Lender if the DDA elects to have such mortgage not merged into the conveyance. In the event there has been no such merger, the Construction Lender shall, transfer and assign to the DDA, or its assignee, the Loan Documents executed in connection with the Construction Loan transaction.

7.6 Non-Liability of City Officials and Employees. No City or DDA official, officer, employee, board member, council member, elected or appointed official, attorney, consultant, advisor, agent or representative, shall be personally liable to the Developer for any default or breach by the DDA of any obligation under this Development Agreement or in any manner arising out of the performance of this Development Agreement by any Party or the Project.

ARTICLE 8

TRANSFER, ASSIGNMENT OR MORTGAGE

8.1 Transfer Restrictions. Prior to the Completion of Construction of the Project in accordance with this Development Agreement, the Developer shall not Transfer the Development Parcel or portion thereof, Improvements constructed or being constructed or any interest therein, without the prior written consent of the DDA, which consent may be withheld at the sole and absolute discretion of the DDA, except for: (i) an assignment to an entity affiliated with the Developer or Singh, and (ii) an assignment of the Developer's interest in this Development Agreement for security purposes only to a Construction Lender or Permanent Lender.

8.2 Mortgage or Encumbrance. Prior to completion of the Project, the Developer shall not voluntarily or involuntarily, by grant, operation of law, execution, levy or otherwise, create an Encumbrance upon the Development Parcel or any portion thereof, Improvements constructed or being constructed or any interest therein, without the prior written consent of the DDA, which consent may be withheld at the sole and absolute discretion of the DDA, except for a Permitted Mortgage given to a Construction Lender or Permanent Lender, and easements required for the Project. The Developer shall provide the DDA with prompt notice of any Permitted Mortgage given to a Construction Lender or Permanent Lender and provide the DDA with copies of the recorded mortgage, assignment of rents, loan agreement, guaranties and

related documents in connection with such Permitted Mortgage. The Developer shall also promptly provide the DDA with copies of any Encumbrances of which it has knowledge.

8.3 Notice and Cure Rights. The DDA shall give the Construction Lender and Permanent Lender, written notice of any Developer Default and such Construction Lender and Permanent Lender shall have the right (but not the obligation) to cure such Developer Default within thirty (30) days after such written notice, unless the Developer Default cannot be cured within such thirty (30) days through the exercise of good faith and due diligence (including the expenditure of necessary funds), in which event such Construction Lender or Permanent Lender shall be entitled to an additional period of time to cure as reasonably determined by the DDA, but in no event beyond ninety (90) days, provided and so long as the Construction Lender or Permanent Lender has diligently commenced the cure within such thirty (30) day period, completion of the cure within thirty (30) days was not avoidable by the exercise of due diligence, and the Construction Lender or Permanent Lender continues to prosecute the cure with due diligence and in good faith (“Lender’s Cure Right”). The DDA shall not exercise any of its remedies under this Development Agreement against the Construction Lender, Permanent Lender or Developer, during such cure period or if such Lender timely cures such Developer Default, but such cure period shall not restrict, limit or delay the payment or collection of the Deferred Payment or the enforcement of any rights or remedies of the r DDA against the Developer for any other Developer Default for which the Construction Lender or Permanent Lender has not exercised the Lender’s Cure Right. If requested by any Construction Lender or Permanent Lender (each a “Lender”), the DDA agrees to negotiate in good faith and upon commercially reasonable terms a so-called “tri-party” agreement with the Lender and Developer providing for the relative rights of the DDA and such Lender with respect to this Agreement and the Project, including, without limitation: (a) the notice and cure provisions set forth in this Section 8.3, (b) the rights and obligations described in Section 7.5 hereof, if applicable, (c) a restriction on amendment or modification of provisions of this Development Agreement which grant specific rights or remedies to the Lender by the joint action of the DDA and Developer without the prior consent in writing of the Lender, (d) the manner in which the proceeds from any insurance policies or arising from a condemnation are to be used by the parties, and (e) such other terms as are customarily contained in similar agreements governing similar transactions, all of which shall be subject to the reasonable approval of the DDA and Developer. Notwithstanding the foregoing, in no event shall the DDA be required to enter into a tri-party agreement which: (aa) modifies or alters the Project Site Plan, the nature and scope of the Project, the components of the Project and any of the obligations of the Developer under this Developer Agreement to acquire, finance and develop and construct the Project or (bb) materially and adversely limits or affects the rights and remedies available to the DDA hereunder, as solely determined by the DDA, in which case the DDA shall provide the Developer with its written objections to the tri-party agreement.

ARTICLE 9 **NOTICES**

All notices, consents, approvals, requests and other communications, herein collectively called “Notices,” required or permitted under this Development Agreement shall be given in writing, signed by an authorized representative of the DDA or Developer and mailed by certified

or registered mail, return receipt requested, personally delivered, sent by overnight courier or sent by facsimile transmission to a Party as follows:

To DDA: Executive Director
Royal Oak Downtown Development Authority
211 Williams Street
P.O. Box 64
Royal Oak, MI 48068
Tel: (248) 246-3280

With copies to: Brandy L. Mathie
Kerr, Russell and Weber, PLC
500 Woodward Ave., Suite 2500
Detroit, Michigan 48226
Tel: (313) 961-0200

and

City Attorney
City of Royal Oak
Williams Street, Box 64
Royal Oak, Michigan 48068
Tel: (248) 246-3240

To Developer: Singh Properties II LLC

Attn: Avi Grewal
Tel: _____

With copies to: Plunkett Cooney P.C.
38505 Woodward, Suite 2000
Bloomfield Hills, Michigan 48304
Attn: Chief Executive Officer
Tel: (248) 901-4002

All such notices, certificates or other communications shall be deemed served upon the date of personal delivery, the day after delivery to a recognized overnight courier or two days after mailing by registered or certified mail. Any Party may by notice given under this Development Agreement designate any further or different addresses or recipients to which subsequent notices, certificates or communications hereunder shall be sent.

ARTICLE 10
MISCELLANEOUS

10.1 Duration. This Development Agreement shall be effective upon the last date of execution by the DDA and Developer and shall continue in full force and effect with respect to

the Development Parcel until the Development Agreement is terminated by the DDA, except as follows: (a) upon the reversion of the Development Parcel to the DDA pursuant to Section 7.2.2.3 all of the Developer's rights and obligations under this Development Agreement shall terminate (except for any obligations which expressly survive termination and the obligation to make any payments or pay any amounts or sums due to the City or DDA under this Development Agreement), (b) from and after the date of the Project Completion Certificate for the Project, the Developer's obligations, agreements and covenants pertaining to the Project and the consent and approval rights of the DDA with respect to the Project shall terminate, (c) from and after the date of the Project Completion Certificate for the Project, the Developer's obligations, agreements and covenants pertaining to the Project and the consent and approval rights of the DDA with respect to the Project shall terminate, and (d) upon the reconveyance of the Project Site, and payment of all amounts and performance of all obligations of the Developer under Section 5.2, the Developer's obligations and the consent and approval rights of the DDA with respect to the Project shall terminate, and (e) the Developer's obligations to use the Development Parcel for the uses permitted under this Development Agreement and compliance with all Laws and City Ordinances shall continue until this Development Agreement is terminated by the DDA.

10.2 Entire Agreement. This Development Agreement and the attached exhibits set forth all of the covenants, agreements, stipulations, promises, conditions and understandings between the Developer and the DDA concerning the Project. The DDA, nor any of its respective board and commission members, elected and appointed officials, employees and volunteers, attorneys, consultants, advisors, agents and representatives, and boards, commissions and authorities, have made any covenant, agreement, stipulation, promise, condition or understanding, warranty or representation, either oral or written, other than set forth herein. The Developer shall have no rights or remedies except as expressly set forth herein. The DDA shall have no rights or remedies except as expressly set forth herein or otherwise provided by City Ordinances and applicable Laws.

10.3 Opinion Letter. Contemporaneously with the Closing, the Developer shall deliver to the DDA an opinion letter by counsel for the Developer that the Developer has been properly formed and exists in accordance with law and that the obligations of the Developer under this Development Agreement are valid, binding and enforceable, which opinion letter shall be in form and substance reasonably satisfactory to counsel for the DDA. Contemporaneously with the Closing, the DDA shall deliver to the Developer an Opinion Letter by counsel for the DDA, that the DDA has been properly formed and exists in accordance with the law and the obligations of the DDA under this Development Agreement are valid, binding and enforceable, which Opinion Letter shall be in form and substance reasonably satisfactory to counsel for the Developer.

10.4 Amendment. This Development Agreement shall not be modified, altered or amended except by written agreement duly executed by the Developer and the DDA.

10.5 Third-Party Beneficiaries. Except for Construction Lender and Permanent Lender specifically set forth herein, no term or provision of this Development 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.

10.6 Invalidity of Particular Provision. The invalidity of any article, section, subsection, clause or provision of this Development Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof which shall remain valid and be enforced to the fullest extent permitted by law.

10.7 Captions. The captions in this Development Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Development Agreement nor in any way shall affect this Development Agreement or the construction of any provision hereof.

10.8 Waivers. A Party may not waive any default, condition, promise, obligation or requirement applicable to the other Party hereunder, unless such waiver is in writing signed by an authorized representative of such Party and expressly stated to constitute such waiver. Such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation or requirement in any past or future instance. No failure by the DDA or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Development Agreement or to the exercise any right or remedy in the event of default, shall constitute a waiver of any such default in such covenant, agreement, term or condition.

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

10.10 Recording. This Development Agreement shall be recorded with the Oakland County Register of Deeds.

10.11 Survival of Warranties and Indemnities. The financial representations in Section 4.2, the representations and warranties in Sections 5.10 and 5.11, and the indemnities in Section 6.13 shall survive any termination or expiration of this Development Agreement.

10.12 Cumulative Remedies. Except as set forth in Sections 7.2 and 7.3, the rights and remedies of the Parties set forth in this Development Agreement are not exclusive and are in addition to all other rights and remedies provided by law or in equity.

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

10.14 Governing Law. This Development Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Michigan. The Developer and the Guarantors executing the Completion Guaranty, agree, consent and submit to the personal jurisdiction of any competent court of jurisdiction in Oakland County, Michigan, for any action brought against it arising out of this Development Agreement. The Developer and Guarantor also agree that they will not commence any action against the DDA because of any matter whatsoever arising out of, or relating to, the validity, construction, interpretation and

enforcement of this Development Agreement, in any courts other than those in the County of Oakland, State of Michigan.

10.15 Successors and Assigns. The covenants, conditions and agreements in this Development Agreement shall be binding upon and inure to the benefit of the Developer and DDA, their respective legal representatives, successors and assigns. The Developer agrees that it shall not assign this Development Agreement except in accordance with the provisions of Section 8.1.

10.16 Estoppel Certificates. Within ten (10) days after written request from the Developer, the DDA shall execute, acknowledge and deliver to the Developer a statement (“DDA Estoppel Certificate”) in writing in such form and substance as reasonably requested by any Construction Lender or Permanent Lender. Within ten (10) days after written request from the DDA, the Developer shall execute, acknowledge and deliver to the DDA a statement (“Developer Estoppel Certificate”) in writing in such form and substance as reasonably requested by the DDA. It is understood that the DDA Estoppel Certificate may be relied upon by the Construction Lender or Permanent Lender and that the Developer Estoppel Certificate may be relied upon by the City, DDA, successor developer or Transferee of the Development Site.

10.17 Legal Fees. In the event any Party commences litigation or other action to enforce such Party’s rights or the other Party’s obligations under this Development Agreement the Prevailing Party shall be entitled to recover reasonable attorney’s fees, witness fees, expert fees, costs and expenses in connection therewith. Prevailing Party shall mean the Party who obtains an order of enforcement, similar remedy or a judgment or award against the other Party or in the event of a counterclaim or cross claim, a judgment which exceeds any claim, counterclaim, judgment or award of the other Party.

10.18 No Merger. None of the provisions of this Development Agreement shall be merged by reason of the execution and delivery of the covenant deed by the DDA to the Developer and neither such deed nor the conveyance shall be deemed to affect, alter or impair the provisions of this Development Agreement.

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

10.20 Counterparts. This Development Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same instrument.

Signatures on Following Pages

IN WITNESS WHEREOF, the DDA and the Developer by and through their duly authorized representatives, have executed this Development Agreement as of the day and year first above written.

In the Presence of:

Royal Oak Downtown Development Authority, a public body corporate

By: _____
Timothy E. Thwing
Its: Executive Director

Date: _____

Singh Properties II LLC
a Michigan limited liability company

By: _____
Its: _____
Date: _____

CONSENT OF GUARANTOR

The undersigned Guarantor joins in the execution of this Development Agreement for purposes of agreeing to perform the obligations under Section 6.7.

_____ SINGH MANAGEMENT CO., L.L.C.

By: _____

Its: _____

Date: _____

STATE OF MICHIGAN)
) §
COUNTY OF OAKLAND)

The foregoing Development Agreement was acknowledged before me this ____ day of _____, 2016, by _____.

Notary Public
_____ County, MI
My Commission Expires: _____

Drafted By and When Recorded Return To:
Brandy L. Mathie
Kerr, Russell and Weber, PLC
Woodward Avenue, Suite 2500
Detroit, Michigan 48226
313-961-0200

EXHIBIT 1.1

Legal Description of Development Parcel

EXHIBIT 2.31
Preliminary Site Plan

EXHIBIT 3.1
Drawing of Development Parcel

EXHIBIT 3.5
Target Project Schedule

EXHIBIT 5.2
Covenant Deed

EXHIBIT 6.7
Guaranty

EXHIBIT 6.14
Specifications for Streetscape Improvements

EXHIBIT 7.2.2.3
Power of Attorney

| Open.23386.40167.17289825-2

Deleted: Open.23386.40
167.17289825-
2Open.23386.40167.1728
9825-
2Open.23386.40167.1728
9825-1

UNCONDITIONAL GUARANTY OF COMPLETION

THIS UNCONDITIONAL GUARANTY OF COMPLETION is given by LUSHMAN GREWAL, an individual, and SINGH MANAGEMENT CO., L.L.C., a Michigan limited liability company (collectively, the “Guarantor”) this ____ day of September, 2016 for valuable consideration, the receipt and adequacy of which is hereby acknowledged and agreed to.

Deleted: (Insert name(s) of guarantor(s)) _____

Deleted: _____

RECITALS:

A. The Developer has agreed, pursuant to the Development Agreement, to acquire and develop the Development Parcel for the Project pursuant to and in accordance with the terms of the Development Agreement.

B. In order to induce the DDA to enter into the Development Agreement, the DDA to transfer the Development Parcel to the Developer, and in recognition of the substantial interest of the DDA and its residents insuring that the Project is fully completed in accordance with the terms of the Development Agreement, Guarantor has agreed, pursuant to Section 6.7 of the Development Agreement, to guarantee completion of the Project.

C. The DDA and Guarantor acknowledge and agree the transfer of the Development Parcel is subject to the reversionary interest of the DDA pursuant to Section 7.2 of the Development Agreement and that this Guaranty is necessary to the effective enforcement of such reversionary right.

D. The Guarantor owns and controls the Developer and has a substantial and direct financial interest in the Development Agreement and in the furtherance of the Project and, as a result, Guarantor has agreed to guarantee the completion of the Project.

E. Section 6.7 of the Development Agreement requires Guarantor to execute and deliver to the DDA this Unconditional Guaranty of Completion prior to the Commencement of Construction of the Project.

NOW, THEREFORE, in consideration of the promises contained herein Guarantor, covenants and agrees with the DDA as follows:

1. Definitions. All capitalized terms, other than those listed below, used in this Guaranty shall have the meanings set forth in the Development Agreement.

1.1 “DDA” means The Royal Oak Downtown Development Authority, a public body corporate.

1.2 “Development Agreement” means the agreement, dated effective as of _____, 2016, with respect to development of the Development Parcel for the Project.

1.3 “Guarantor” means the Guarantors identified in the preamble of this Guaranty, whose obligations under this Guaranty shall be joint and several.

Deleted: (Insert name(s) of guarantor(s))_____.

1.4 “Guaranty” means this Unconditional Guaranty of Completion.

1.5 “Guaranty Amount” means (a) all amounts, costs, expenses and liabilities which may be incurred by the DDA in carrying out or causing to be carried out the matters guaranteed under Section 2 hereof, (b) all costs incurred by the DDA in connection with the reversion of the Development Parcel to the DDA pursuant to Section 7.2 of the Development Agreement, (c) all costs incurred by the DDA to exercise the DDA’s rights with respect to any Construction Lender pursuant to Section 7.5 of the Development Agreement, and (d) all reasonable attorneys fees, witness fees, expert fees, costs and expenses in connection therewith incurred by the DDA to exercise its rights pursuant to Sections 7.2 and 7.5 of the Development Agreement and the enforcement of this Guaranty..

1.6 “Developer” means Singh Properties II LLC, a limited liability company.

1.7 “Development Parcel” means the parcels of property described on attached Exhibit A.

1.8 “Project” shall have the meaning ascribed to such term in the Development Agreement.

2. Guaranty. Guarantor hereby unconditionally and irrevocably guarantees to the DDA and its respective successors and assigns, that:

2.1 The Development Parcel shall be acquired by the Developer, and the Project shall be constructed to final completion, at the Developer’s sole cost and expense in compliance with the terms and conditions of the Development Agreement, Laws, DDA Ordinances, and with such building permit or permits, and any other governmental approvals, permits, licenses, laws, ordinances and regulations as may be issued or applicable in connection with the construction of the Project.

2.2 The Developer has performed all of the covenants, obligations and liabilities of the Developer as required by and in accordance with the terms and conditions of this Development Agreement.

2.3 The Developer shall fully and punctually pay and discharge (a) any and all costs and expenses for the Completion of Construction of the Project, the Streetscape Improvements, taxes, insurance premiums and other costs and expenses required to be paid by the Developer pursuant to the Development Agreement, (b) all claims, demands and construction liens for labor and materials used in the construction of the Project and (c) any Permitted Mortgage.

3. Payment of Guaranty Amount. After the occurrence of a Developer Default under the Development Agreement and the failure of Developer to complete the Project in accordance with the terms of the Development Agreement, pursuant to the guaranty set forth in Section 2, Guarantor shall pay the Guaranty Amount immediately upon demand by the DDA.

4. Alteration of Plans and Specifications. Guarantor hereby acknowledges and agrees that the Plans for the Project, as currently approved, may be altered, extended, changed or modified by the Developer without in any manner affecting this Guaranty or releasing Guarantor therefrom, and without the consent of the Guarantor.

5. Continuing Guaranty. Until the Project is fully erected, equipped and completed as provided in the Development Agreement and pursuant to this Guaranty, and until each and all of the terms, covenants and conditions thereof are fully performed, Guarantor shall not be released from its personal obligations hereunder by (a) any act or thing which might but for this provision of this Guaranty be deemed a legal or equitable discharge of a surety, or (b) reason of any failure or waiver, extension, modification, forbearance or delay of the DDA or its successors or assigns to proceed promptly or otherwise to exercise any right or remedy available to the DDA pursuant to this Guaranty, the Development Agreement, any other document, at law or in equity. Guarantor hereby expressly waives and surrenders any defense to their liability hereunder based upon any of the foregoing acts, things, agreements or waivers or any of them. Nothing shall discharge or satisfy the liability of Guarantor hereunder except the full payment of amounts owed by Guarantor hereunder or the final completion of the Project by the Developer or Guarantor.

6. Waivers. Guarantor hereby waives: all suretyship defenses and notices; notices of acceptance hereof; notice of the creation or existence from time to time of any Guaranty Amount hereby guaranteed or of the amount of the Guaranty Amount from time to time (subject, however, to Guarantor's right to make inquiry of the DDA to ascertain the Guaranty Amount at any reasonable time); notice of any change in the Developer's financial condition or of any other fact which might increase Guarantor's risk; notice of presentment for payment, demand, protest and notice thereof as to any instrument; notice of default; and all other notices and demands to which Guarantor might otherwise be entitled. Guarantor further waives all rights by statute or otherwise to require the DDA to institute suit against the Developer or to exhaust its rights and remedies against the Developer, Guarantor being bound to the DDA as provided herein as fully as if Guarantor was directly obligated to the DDA to perform the obligations guaranteed hereby. Guarantor also waives any defense arising by reason of any disability or other defense of the Developer or by reason of the cessation from any cause whatsoever of the liability of the Developer. Until all of the Guaranty Amount as provided herein shall have been paid in full, the Project is fully erected, equipped and completed as provided in the Development Agreement and all other obligations of the Developer under the Development Agreement are satisfied, Guarantor shall not have any right of subrogation, reimbursement or indemnity whatsoever and no right of recourse to or with respect to any assets or property of the Developer or to any collateral granted by the Developer.

7. Set-Off. Guarantor hereby grants to the DDA a lien upon and right of set-off against any and all deposits, sums, credits and any and all other property of Guarantor, now or at

any time whatsoever with, or in the possession of the DDA or in transit to the DDA as security for any and all obligations of Guarantors to the DDA under this Guaranty.

8. Settlement/Release/Compromise. Guarantor consents and agrees that, without notice to Guarantor and without affecting or impairing the obligations of Guarantor hereunder, the DDA may compromise, settle or extend the time for the payment or other performance of any obligation of the Developer or release the Developer or any other guarantor from its liability for any such obligation; release all or any part of any security given by the Developer to the DDA ; or refuse or fail to enforce its rights under the Development Agreement and any agreement or instrument other than this Guaranty evidencing or securing the Developer's obligations to the DDA under the Development Agreement or any other documents or agreement.

9. Anti-Marshaling/Preferential Payments. Guarantor consents and agrees that the DDA shall be under no obligation to marshal any assets in favor of Guarantor, or against or in payment of any or all of the Guaranty Amount. Guarantor agrees to pay all expenses incurred by the DDA in connection with enforcement of its rights under this Guaranty, as well as court costs, collection charges and attorneys' fees and disbursements. Guarantor further agrees that to the extent the Developer makes a payment or payments to the DDA , which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required, for any of the foregoing reasons or for any other reason, to be repaid or paid over to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or rules of equity, then to the extent of such payment or repayment, any amount intended to be satisfied thereby shall be revived and continue in full force and effect as if said payment had not been made, and Guarantor shall remain liable for such obligation. Guarantor agrees to indemnify, defend and hold the DDA harmless from and against any and all costs, fees and expenses, including, without limitation, reasonable attorneys fees, expert witness fees, witness fees, paralegal fees and litigation expenses, in connection with the DDA defending any preference or fraudulent conveyance claim or similar actions brought in any bankruptcy or other proceeding concerning the Developer or Guarantor.

10. Subordination. Any and all present and future debts and obligations of the Developer to Guarantor not assigned to others prior to the date hereof are hereby postponed in favor of, and subordinated to the full payment of the Guaranty Amount by the Developer to the DDA. As additional security for this Guaranty, Guarantor hereby assigns to the DDA, subject to any currently existing prior assignments, all claims of any nature which Guarantor may now or hereafter have against the Developer.

11. Representations and Warranties. Guarantor represents, warrants and covenants to the DDA as an inducement to the DDA to convey the Development Parcel to the Developer which is subject to the DDA's reversionary interest, that, as of the date of this Guaranty: the fair saleable value of Guarantor's assets exceeds its liabilities; Guarantor is meeting current liabilities as they mature; Guarantors will furnish to the DDA within one hundred twenty (120) days following the end of each fiscal year of the Developer, and at such other times as the DDA may reasonably require, but not more often than semi-annually, financial statements of Guarantor in form and substance satisfactory to the DDA, and certified by Guarantor as being true, accurate and complete; the financial statements of Guarantor furnished to the DDA are true and correct

and include in the footnotes thereto all contingent liabilities of Guarantors since the date of said financial statements there has been no material adverse change in the financial condition of Guarantor; there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor and no federal or state tax liens have been filed or threatened against Guarantor nor is Guarantor in default or claimed default under any agreement for borrowed money; Guarantor shall immediately give the DDA written notice of any material adverse change in its financial condition, including, but not limited to, litigation commenced or threatened, tax liens filed, defaults claimed under their indebtedness for borrowed money or bankruptcy proceedings commenced with respect to Guarantors by Guarantors or any third party; Guarantor shall at all such reasonable times as the DDA requests permit the DDA or its representatives to inspect Guarantor's financial records and properties in order to evaluate the financial condition of Guarantor; the Developer has all requisite power and authority, and has been duly authorized to acquire the Development Parcel and to develop the Project, and to execute, deliver and perform its obligations under the Development Agreement; if applicable, Guarantor which is a corporation or limited liability company has all requisite power and authority, and has been duly authorized to execute and deliver this Guaranty and perform its obligations under this Guaranty; this Guaranty is not in violation or in conflict with any contract, agreement, decree, mortgage, or other undertaking, instrument or order by which Guarantors or the Developer or any of them are bound.

12. Guaranty of Payment and Performance. This Guaranty is a primary and original obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and performance and shall remain in full force and effect without respect to future changes in conditions, including changes in law or any invalidity or irregularity with respect to the issuance of any obligations of the Developer to the DDA or with respect to the execution and delivery of any agreement between the Developer and the DDA. This Guaranty is immediate and is not contingent upon the exercise or enforcement by the DDA of any remedies it may have against the Developer under the Development Agreement or against others, or the enforcement of any lien or realization upon any security that the DDA may at any time possess.

13. Election of Recourse. The DDA shall have the right to seek recourse against Guarantor to the full extent provided for herein and in any other document or instrument evidencing obligations of Guarantor to the DDA, and against the Developer to the full extent provided for in the Development Agreement and any agreement between the DDA and the Developer. No election to proceed in one form of action or proceeding, or against any party, or on any obligation, shall constitute a waiver of the DDA's right to proceed in any other form of action or proceeding, or against other parties unless the DDA has expressly waived such right in writing. Specifically, but without limiting the generality of the foregoing, no action or proceeding by the DDA against the Developer under the Development Agreement and any document or instrument evidencing or securing the Guaranty Amount to the DDA shall serve to diminish the liability of Guarantor except to the extent the DDA fully and unconditionally realize payment by such action or proceeding, notwithstanding the effect of any such action or proceeding upon such Guarantor's right of subrogation against the Developer.

14. Independent Investigation. Guarantor is fully aware of the financial condition of the Developer. Guarantor has executed and is delivering this Guaranty based solely upon its own



FIRST FLOOR PLAN



SECOND FLOOR PLAN



THIRD, FOURTH, & FIFTH FLOOR PLANS



PRECEDENTS - TRADITIONAL IMAGE STUDY



PRECEDENTS - PROGRESSIVE IMAGE STUDY