

## **First Addendum to Master Development Agreement**

**WHEREAS**, The City of East Lansing, the East Lansing Brownfield Redevelopment Authority, the East Lansing Downtown Development Authority and HB BM East Lansing LLC (collectively, the “Parties”) have entered into a Master Development Agreement dated October 31, 2017 (the “MDA”); and,

**WHEREAS**, The Parties desire to amend the MDA as set forth in this First Addendum to Master Development Agreement (this “First Addendum”); and,

**WHEREAS**, Section VIII (d) of the MDA provides for a procedure to amend the MDA; and,

**WHEREAS**, the Parties desire to modify and clarify certain provisions of the MDA; and,

**WHEREAS**, except as modified and clarified by this First Addendum, the provisions of the MDA remain in full force and effect; and,

**WHEREAS**, all capitalized terms that are not otherwise defined in this First Addendum shall have the definitions assigned to them in the MDA.

**NOW, THEREFORE**, by this First Addendum, the MDA is amended and clarified as follows:

**Section 1. Remedies for Failure to Build Building B3.** The parties agree that in the event the Developer fails to build Building B3 and obtain the certificate of occupancy within the specified time limits contained in the MDA, the City shall have, as one of its remedies for a breach of the MDA, cancellation of the Master Ground Lease pursuant to Section 12.1(iii) and Section 12.2 of the Master Ground Lease and thus forfeiture of Building B1 to the City. As such, the following sections are amended to read as follows (with the altered language capitalized):

Section I. b). 3. at page 5, lines 11-17, shall be amended to read: “At the conclusion of the Master Ground Lease, either after its initial 49 year term or at the conclusion of 98 years if the option to renew is exercised by the Developer or Developer’s assignee, or any successor thereto, **OR UPON TERMINATION OF THE MASTER GROUND LEASE IN ACCORDANCE WITH ITS TERMS**, the ownership of all condominium units including Buildings B1 and B3 shall revert to the City, in fee simple, without any further obligation on behalf of or by the City to Developer or any of Developer’s assignees or any successor thereto.”

Section I. b). 4. At page 6, lines 12-14, shall be amended to read: “Building B1 will be owned by the Developer, or its assignee, or any successor thereto, until the expiration of the Master

Ground Lease OR UPON TERMINATION OF THE MASTER GROUND LEASE IN ACCORDANCE WITH ITS TERMS, and the retail space will be leased by the Developer to retail tenants.

Section I. b). 6. At page 9, lines 4-7 shall be amended to read: “Until the expiration of the Master Ground Lease OR UPON TERMINATION OF THE MASTER GROUND LEASE IN ACCORDANCE WITH ITS TERMS, BUILDING B3 will be owned by the Developer, or its assignee, or any successor thereto, and the units in Building B3 shall be designed to be leased and shall be leased to residential tenants age 55 and older in accordance with the Federal Housing for Older Persons Act.”

**Section 2. Disbursement of Bond Proceeds.** The Bond Indenture shall require that all disbursements of bond proceeds to the Developer be approved by an authorized representative of the City in order to confirm the expenses are for the development of public Infrastructure Improvements and Building B2 as approved in Exhibit N to the MDA, specifically Brownfield Plan #24. As such, the following paragraph is added to Section I. b). 8. at page 13, following line 13 (with the new language capitalized):

“NO DISBURSEMENT OF THE BOND PROCEEDS MAY BE MADE WITHOUT THE APPROVAL OF THE CITY IN ACCORDANCE WITH PROCEDURES DESCRIBED IN THE BOND INDENTURE.”

**Section 3. Additional Method of Providing for a Performance Bond.** In order to provide additional security to the City for the construction of Building B2 (the “Parking Structure”) and Infrastructure Improvements, instead of the Bonds being issued as draw-down bonds, not less than the full amount of the construction costs in the amount of \$24,389,518 in net proceeds from the issuance of the Bonds may be deposited with the Trustee for the Bonds at the closing of the Bonds. As such, the following sections are amended to read as follows (with the altered language capitalized):

Section II. e). at page 18, line 7-16 shall be amended to read: “Prior to commencement of construction of the public Infrastructure Improvements or issuance of a building permit for any of the buildings, the Developer shall provide to the City a performance GUARANTEE CONSISTING OF: (i) a performance bond issued by an AM best rated company with a rating of at least A-VII, reasonably acceptable to the City in an amount not less than 125% of the costs of the public Infrastructure Improvements and construction of Building B2; OR, (ii) an irrevocable letter of credit in a form reasonably acceptable to the City in an amount not less than 125% of the costs of the public Infrastructure Improvements and construction of Building B2; OR, (iii) THE DEPOSIT 100% OF THE NET BOND PROCEEDS IN THE FULL AMOUNT OF THE CONSTRUCTION COSTS OF THE INFRASTRUCTURE IMPROVEMENTS AND BUILDING B2 EQUALING \$24,389,518.00 AT CLOSING FOR THE BONDS WITH THE TRUSTEE AND PROVIDING FOR THE CITY TO HAVE THE ABILITY, AFTER TIMELY NOTICE OF DEFAULT AND A 60-DAY PERIOD TO CURE SUCH DEFAULT, AS ESTABLISHED BY THIS AGREEMENT, TO DRAW UPON THE BOND PROCEEDS TO COMPLETE BUILDING B2 AND THE INFRASTRUCTURE IMPROVEMENTS to guarantee

their full completion by the Developer under this Agreement and pursuant to Exhibits C-3 and C-4 AND/OR RESTORE THE LEASEHOLD PROPERTIES TO THEIR FORMER STATE if Buildings A1 and A2 are not constructed IN ACCORDANCE WITH THE AGREEMENT, THE DECISION WHETHER TO COMPLETE THE INFRASTRUCTURE IMPROVEMENTS AND BUILDING B2 OR TO RESTORE THE LEASEHOLD PROPERTIES TO THEIR FORMER STATE BEING COMPLETELY WITHIN THE REASONABLE DISCRETION OF THE CITY, plus an additional GUARANTEE (the “Demolition and Site Restoration...

Section II. e). at page 19, lines 2-4 shall be amended to read: EXCEPT TO THE EXTENT BOND PROCEEDS ARE PROPERLY DRAWN, the applicable Performance GUARANTEE shall remain in full force and effect throughout the construction process to insure site restoration in the event of Developer’s failure to complete the Project, AND EXCEPT THAT THE DEMOLITION AND SITE RESTORATION GUARANTEE SHALL BE PERMITTED TO EXPIRE ON MAY 3, 2018, PROVIDED THAT THE CONSTRUCTION OF BUILDING B2 IS UNDERWAY. ADDITIONALLY THE SITE RESTORATION GUARANTEE SHALL EXPIRE AND BE RETURNED TO THE DEVELOPER PRIOR TO MAY 3, 2018 IF BOTH (I) THE \$24,389,518 IN BOND PROCEEDS HAVE BEEN DEPOSITED WITH THE BOND TRUSTEE, AND (II) CONSTRUCTION OF BUILDING B2 IS UNDERWAY.”

**Section 4. Developer Guarantee of \$350,00.00 in Parking Fees.** The parties agree that the Developer guarantees the payment of \$350,000.00 in parking fees by the construction workers, contractors and subcontractors pursuant to Section II (i) of the MDA and that to the extent that parking receipts provided by the Developer do not demonstrate the payment of \$350,000.00 or more into the City’s parking system during the construction period, the Developer shall be responsible to pay the difference. As such, the following section is amended to read as follows (with the altered language capitalized):

The following paragraph is added to the end of Section II. i) (which section starts on page 20 of the MDA): “TO THE EXTENT THAT PARKING RECEIPTS PROVIDED BY DEVELOPER, CONTRACTOR OR SUBCONTRACTORS DO NOT DEMONSTRATE THE PAYMENT OF \$350,000.00, OR MORE INTO THE CITY’S PARKING SYSTEM DURING THE CONSTRUCTION PERIOD, THE DEVELOPER SHALL BE RESPONSIBLE TO PAY OR CAUSE TO BE PAID THE DIFFERENCE.”

**Section 5. Costs and Attorney Fees.** The parties agree that one of the remedies available to the City if it needs to bring suit pursuant to Section VI b is the City’s ability to seek costs and attorney fees. As such, the following section is amended to read as follows, with the new language capitalized:

Section VI. b). page 28, lines 2-4 shall be amended to read: “...retain, and disburse all tax increment revenues necessary to complete the cost of the public Infrastructure Improvements, and seek any other legal or equitable remedy available to the City, INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS, but not including any damages of any kind including consequential...

**In addition to the changes to the MDA provided for in the above sections of this First Addendum, the following sections of this First Addendum shall be considered part of the MDA without additional reference to the body of the MDA:**

**Section 6.** In order to provide additional security to the City for the construction of Building B2 and Infrastructure Improvements, instead of the Bonds being issued as draw-down bonds, not less than the full amount of the construction costs in the amount of \$24,389,518 in net proceeds from the issuance of the Bonds will be deposited with the Trustee for the Bonds at the closing of the Bonds.

**Section 7. City's Right to Use Money Held by the Trustee to Complete Construction of the Parking Structure and Infrastructure Improvements.** The Indenture for the Bonds will provide that, in the event of the failure of the Developer to timely complete construction of Building B2 and the Infrastructure Improvements as required by the MDA, and following a 60 day cure period after notice by the City to the Developer of such failure, the City will have the right to utilize Bond proceeds held by the Trustee for the Bonds to complete construction of Building B2 and the public Infrastructure Improvements.

**Section 8. Assignment of Construction Contract for the Parking Structure and the Infrastructure Improvements.** In order to allow the City to complete construction in the event the Developer does not complete construction of Building B2 and Infrastructure Improvements, the Developer will provide the City with an assignment of the general contract for the construction of Building B2 and the Infrastructure Improvements that will become effective after the expiration of the 60 day cure period. Said assignment shall be consented to by the Contractor, Christman Construction Company, who in addition to the Developer shall sign the assignment.

**Section 9. Additional Bond Indenture Provisions.** Additionally, the Bond Indenture will provide that the City will be allowed to draw on the Bond proceeds held by the Trustee in the event that (i) under Section II(a) of the MDA the City has incurred costs to repair a storm or sewer line and the City has not been able to recover the cost of repair from a performance bond, (ii) under Section II(b) of the MDA the City has incurred costs to repair a water line and the City has not been able to recover the cost of repair from a performance bond, and (iii) under Section II(d) of the MDA the City has incurred costs to repair utility service and the City has not been able to recover the cost of restoration of such utility service from a performance bond. The forgoing provisions shall further satisfy the requirements in Section II(e) of the MDA for the Demolition and Site Restoration Guarantee.

**Section 10. Completion of Certain Infrastructure.** The parties agree that the requirement for a 10 month completion of the infrastructure on Page 23 of the MDA, Section IV (a) (6), requires that the sewers be installed and the west bound lanes of Albert Avenue be reopened within that time period. It does not require the completion of the final course of asphalt or the landscaping. Those are governed by the 24 month provisions on Page 9, Section I (b) (7)

**Section 11. Execution in Counterparts.** This First Addendum may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument.

**IN WITNESS WHEREOF**, this First Addendum has been executed and delivered by the duly authorized officers of the Parties.

**CITY OF EAST LANSING**

By \_\_\_\_\_

Mark Meadows, Mayor

**EAST LANSING BROWNFIELD  
REDEVELOPMENT AUTHORITY**

By \_\_\_\_\_

Peter Dewan, Chairperson

**EAST LANSING DOWNTOWN  
DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

Peter Dewan, Chairperson

**HB BM EAST LANSING LLC**

By \_\_\_\_\_

Mark Bell, its Manager