

LAND TRANSFER AGREEMENT

THIS LAND TRANSFER AGREEMENT (the “Agreement”) is entered into as of September ___, 2018, by and between the CITY OF EAST LANSING, a Michigan municipal corporation, with its offices at City Hall, 410 Abbot Road, East Lansing, Michigan 48823 (the “City”), the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF EAST LANSING with offices located at 410 Abbot Road, East Lansing, Michigan 48823 (the “DDA”), and 100 GRAND RIVER LLC and 341 EVERGREEN LLC, Delaware limited liability companies, 540 West Madison, Suite 2500, Chicago, IL 60661 (collectively, the “Developer”).

THE PARTIES RECITE THAT:

WHEREAS, the City is a municipal corporation organized and existing under and pursuant to the Michigan Home Rules Cities Act, 1909 PA 279, as amended (codified at MCL 117.1 et seq.), and exercising all of the powers provided for therein and pursuant to East Lansing City Charter, adopted July 11, 1944, and as subsequently amended; and

WHEREAS, the DDA is organized and existing under and pursuant to the Downtown Development Authority Act, 1975 PA 197 as amended (codified at MCL 125.1651 et seq.), to foster economic development and correct and prevent the deterioration of downtown East Lansing by utilizing tax increment financing and related measures; and

WHEREAS, the Developer comprises two limited liability companies organized and existing in good standing under and pursuant to the Delaware Limited Liability Company Act, authorized to do business in Michigan under and pursuant to the Michigan Limited Liability Company Act, 1993 PA 23, as amended (codified at MCL 450.4101, et seq.), and exercising all of the powers provided for therein; and

WHEREAS, the Developer owns certain parcels of real property in downtown East Lansing, listed and legally described on Exhibit A (the “Developer Property”), on which the Developer wishes to develop a mixed-use project including a hotel licensed to serve alcohol to guests and special event invitees, retail and office uses, fine and casual dining restaurants (licensed to serve alcohol subject to additional approvals), multi-family residential, parking, and other uses (which, combined with the City improvements described in the Development Agreement, comprise and are referred to in this Agreement collectively as the “Project”). The City has determined that the Project will remove blighted, environmentally contaminated, and functionally obsolete properties and be transformational in scope by providing the introduction and expansion of desirable uses in the downtown; and

WHEREAS, the DDA owns certain real property in downtown East Lansing, legally described on Exhibit B (the “DDA Property”) commonly known as 303 Abbot Road, which it acquired for redevelopment, and which it wishes to be incorporated into the redevelopment to enhance the downtown by incorporating a mix of commercial and residential uses with improved infrastructure, roads and ways for motor vehicles, bicycles, and pedestrians and parking; and

WHEREAS, the City controls the right of way for streets and alleys and owns real property in the west end of downtown East Lansing, legally described on Exhibit C (the “City Property”), which it wishes to be redesigned and redeveloped to improve pedestrian, bicycle, and vehicle access, and traffic circulation and improve and enhance the west end of downtown East Lansing; and

WHEREAS, the parties have entered into a Development Agreement of even date herewith (the “Development Agreement”), to undertake a development project (the “Project”) to correct the inadequacies of municipal infrastructure and to develop the properties into a high-

quality mixed use project that will enhance the downtown by incorporating a mix of commercial and residential uses with adequate municipal services and parking; and

WHEREAS, to accomplish the Project, the parties agree in the Development Agreement to transfer certain property and interests, as set forth in the Development Agreement and this Agreement.

The terms used in this Agreement shall have the same meaning as in the Development Agreement, except as expressly modified in this Agreement. This Recital of Facts is not merely prefatory, but is expressly made a part of the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the City, the DDA, and the Developer agree as follows:

1. 303 Abbot Road, East Lansing, Michigan. The DDA agrees to convey good and marketable title to the property commonly known as 303 Abbot Road, East Lansing, described on Exhibit A, (the “303 Abbot Parcel”) as follows: The south approximately 2,249 square feet (the “South 303 Abbot Parcel”) shall be conveyed to 100 Grand River LLC and the remaining portion (the “North 303 Abbot Parcel”) shall be conveyed to the City, under the terms and conditions contained in this Agreement and subject only to the Permitted Exceptions.

2. Condition of Property. Each party is purchasing the 303 Abbot Parcel in its “AS IS” condition, except as otherwise expressly provided herein.

3. Title Work. The DDA shall provide, at its expense, an owner’s policy of title insurance in the amount of the purchase price of \$500,000 for the South 303 Abbot Parcel and \$10,000 for the North 303 Abbot Parcel. Upon the execution of this Agreement, the Developer shall order, on the DDA’s behalf, a commitment for an owner’s policy of title insurance for the South 303 Abbot Parcel and the North 303 Abbot Parcel. Upon receipt of said commitment, the

Developer and the City shall notify the DDA of any objections to the condition of the title, including any conditions reflected in the commitment which render title unmarketable, and, thereafter, the DDA shall have fourteen (14) days to cure same. If the Developer's or the City's objections to the condition of the title are not cured, the Developer or the City may either: (a) terminate this Land Transfer Agreement as to the South 303 Abbot Parcel or the North 303 Abbot Parcel, respectively; or (b) waive the objections (the "Permitted Exceptions") and close the transaction.

4. Inspection.

a. Upon the execution of this Agreement, the Developer shall have the right to conduct such inspections of the 303 Abbot Parcel as the Developer desires, in its sole and absolute discretion, which may include, without limitation, the title, survey, and environmental condition of the 303 Abbot Parcel. The DDA shall cooperate with the Developer and shall grant to the Developer, its agents, employees, contractors, consultants and designees, the right to enter upon the 303 Abbot Parcel to inspect it and satisfy itself with its condition, to survey, perform environmental, physical and all other inspections as the Developer deems appropriate. Such physical inspection by the Developer may include a Phase I and Phase II environmental site assessment of the 303 Abbot Parcel. The DDA authorizes the Developer and the Developer's agent to contact governmental authorities and other third parties to obtain information about the 303 Abbot Parcel.

b. The Developer indemnifies and holds the DDA harmless from and against any and all losses, damages, claims, causes of action, judgment, costs and expenses that the DDA incurs as a result of (i) a breach of the Developer's agreements set forth in this

paragraph in connection with its inspection of the 303 Abbot Parcel; or (ii) physical damage to the 303 Abbot Parcel or bodily injury caused by any act of the Developer or its agents, employees or contractors in connection with the right of inspection under this section.

5. Real Property Taxes. Real property taxes shall be deemed to cover the calendar year in which the tax bills are issued. Tax bills issued in years prior to year of closing shall be paid by the DDA without proration. Tax bills issued, or to be issued, in the year of closing shall be prorated so that the DDA shall be charged with taxes from the first of the year to closing date, and the Developer or the City, respectively, shall be charged with taxes for the balance of the year, including the date of closing. If any bill for taxes proratable hereunder is not issued as of the closing date, the corresponding tax bill for the last previous year shall be substituted therefor and used in proration hereunder.

6. Special Assessment. The DDA shall pay all special assessments which have become a lien on the 303 Abbot Property prior to the date of closing, provided, however, that in the event a special assessment is payable in installments, the DDA shall only be responsible those installments covering the years prior to the year of closing, and the Developer or the City, respectively, shall be responsible for all installments covering all years after the year of closing. Installments of special assessments covering the year of closing shall be prorated using the same method set forth in Paragraph 4 above for the proration of real estate taxes.

7. Representations and Warranties. The DDA makes the following representations and warranties which shall survive closing:

a. Authorization. The DDA represents and warrants that it has sole title to the Property and that the execution of this Agreement is duly authorized and not in violation

of any agreement to which the DDA is a party or to which the Property is subject. The DDA represents and warrants that no litigation or proceedings, legal, equitable, administrative, through arbitration or otherwise are pending or threatened which might affect the Property or consummation of the purchase and sale described in this Agreement.

b. Environmental Condition. The DDA represents and warrants that it has not disposed, or caused to be disposed, any environmental contamination on the Property and to the best of its knowledge, after due inquiry, no environmental contamination has been placed, stored, or disposed of on the Property.

8. Closing and Possession. At the closing, the DDA shall convey marketable title to the Property to 100 Grand River LLC and to the City, respectively, subject only to the Permitted Exceptions, by good and sufficient warranty deeds in recordable form. The sale is to be closed within ten (10) days after all contingencies stated herein are satisfied or waived. Possession to the 303 Abbot Property to be given at closing, free of any leases or other rights of possession.

9. Closing Costs/Transfer Taxes/Recording Fees. The DDA shall pay all costs required and necessary to convey clear title. In addition, the DDA shall pay county and state transfer taxes associated with the conveyance. Buyer shall pay the cost of recording the deed.

10. Commissions. The Developer, the City, and DDA represent to one another that no commissions are payable to any broker in connection with this transaction.

11. 100 West Grand River Bike Lane and Setback. The Developer shall construct the Abbot Road curb set back five (5) feet to accommodate a bike lane on southbound Abbot Road and set Building A back a corresponding five (5) feet as shown on the approved site plan attached as Exhibit D.

12. Reconveyance. In the event Building A, for any reason whatsoever, is not constructed pursuant to the terms of the Development Agreement, Developer shall deed the South 303 Abbot Parcel to the DDA, in fee, free of any liens or encumbrances except those in existence at the time of transfer to the Developer or created to benefit the City or the public in accordance with the terms of this Agreement and the parties agree that the 100 Grand River parcel owned by the Developer may be used in accordance with any future site plan without reference to the curb or building setback shown on Exhibit D. The parties agree that the parties shall be entitled to specific performance of these contractual obligations and that this is a material provision of the agreement.

13. Assignment. Buyer shall not have the right to assign its rights to purchase the Property without the written consent of the DDA or to assign its right to the vacation of the described portion of Evergreen Avenue without the written consent of the City.

14. Binding Agreement. This Agreement shall be binding on the parties hereto, their representatives, heirs, successors and assigns.

15. Miscellaneous. This Agreement embodies the entire agreement and understanding of the parties, and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors or assigns.

16. Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

17. Headings. The headings in this Agreement are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

18. Electronic Communication. As an alternative to physical delivery, the parties agree that this Agreement, any amendment or modification of this Agreement and/or any written notice or communication in connection with this Agreement may be delivered via electronic mail or by facsimile. The parties agree that the electronic signatures shall be deemed to be valid and binding upon the parties as if the original signatures were present in the documents in the handwriting of each party.

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

CITY OF EAST LANSING

By _____
Mark S. Meadows, Mayor

By _____
Jennifer Shuster, City Clerk

DOWNTOWN DEVELOPMENT AUTHORITY

By _____
Peter G. Dewan, Chairperson

100 GRAND RIVER LLC

By: Convexity Management, LLC
Its: Manager

By _____
David B. Nelson
Its Vice President

341 EVERGREEN LLC

By: Convexity Management, LLC
Its: Manager

By _____
David B. Nelson
Its Vice President

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