

PROPERTY PURCHASE AND DEVELOPMENT AGREEMENT

This Property Purchase and Development Agreement is made as of _____, 2008 among the City of Lansing, a Michigan municipal corporation the principal business address of which is 124 W. Michigan Ave., Lansing, MI 48933-1694 (the "City"), the Lansing Board of Water and Light, an administrative board and agency of the City, the principal business address of which is 1232 Haco Drive, Lansing, MI 48912 (the "BWL"), and Christman Capital Development Company, a Michigan corporation, the principal business address of which is 408 Kalamazoo Plaza, Lansing, MI 48933 ("CCDC") on behalf of a Michigan limited liability company to be formed ("**Developer**").

RECITALS

- A. The City, through the BWL, owns the real property lying east of Grand Ave. at the easterly termini of Ottawa Street and Ionia Street as more completely described in the attached Exhibit A (the "**City Property**") which is a key site along the City's riverfront and on which stands a formerly occupied generating plant with historic character (the "**Power Station**").
- B. Much of the City Property was used for operations of the BWL and for other industrial uses by prior owners and occupants and will require measures to address environmental conditions on the City Property to make possible the uses of the City Property envisioned in this Agreement.
- C. The BWL currently has steam utility lines and facilities as described on the attached Exhibit B (the "**Steam Facilities**") and chilled water utility lines and facilities as described on the attached Exhibit C (the "**Chilled Water Facilities**") on and in portions of the City Property that will need to be removed from the City Property and relocated or replaced prior to occupancy of the City Property by another use.
- D. A City parking ramp that lies partially on the City Property and over Grand Ave., to other City owned property on the west side of Grand Ave. as described on the attached Exhibit D (the "**Current Ramp**") is also an impediment to redevelopment and reuse of the City Property requiring demolition and replacement (the "**New Ramp**") before the City Property can be used as envisioned in this Agreement.
- E. Developer has site control over adjacent property along Grand Ave. as also described on the attached Exhibit A (the "**Developer Property**").
- F. Developer has proposed acquiring all of the City Property from the City and redeveloping the City Property together with the Developer Property (the Developer Property and City Property are referred to together as the "**Site**") for the national corporate headquarters of the Accident Fund Insurance Company of America ("**AFICA**") and for retail and other commercial and office uses as more completely described and depicted on the attached Exhibit E (the "**Project**") if the Steam Facilities, the Chilled Water Facilities and the Current Ramp can be removed from the City Property and if other economic development incentives are provided to make the Project economically viable.

G. The City wishes to preserve public access to the riverfront property that is adjacent to the Site.

H. The City, in cooperation with other governmental agencies, has assembled economic development incentives in the form of the Public Support as more fully described and defined in Article V sufficient to make the Project economically viable.

I. Because coordinating the activities of demolishing, relocating and/or replacing the Steam Facilities, the Chilled Water Facilities and the Current Ramp with Developer's redevelopment of the Site will follow a critical timetable and involve significant coordination of efforts, Developer desires coordinating control over that demolition, relocation and replacement and the City and BWL are amenable to allowing Developer such control provided certain bidding and other processes are maintained.

J. The parties have agreed that, under the terms and conditions of this Agreement, the Project can be redeveloped to meet their respective goals as generally described above.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this Agreement, the parties agree:

Article I: Purchase and Sale of the City Property

1.1 Purchase and Sale. The City agrees to sell and convey or cause to be conveyed the City Property to Developer and Developer agrees to purchase the City Property from the City under the terms and conditions stated in this Article I.

1.2 Purchase Price. Developer shall pay to the City as the purchase price for the City Property, the sum of \$ 275,000 (the "Purchase Price"), which shall be remitted to the BWL.

(A) Developer shall pay the Purchase Price, less the Earnest Money (as defined in subsection (B) below) in full at the closing. The Purchase Price shall be allocated at the closing among the land and existing improvements as agreed upon by the City and Developer.

(B) Developer has made an earnest money deposit of \$50,000 (the "Earnest Money") with the Title Company (as defined below). Generally, if this Agreement is terminated through no fault of Developer or Developer is permitted to terminate this Agreement according to its terms, the Earnest Money shall be returned to Developer. However, if Developer fails to close this transaction without permissible cause according to the terms of this Agreement, the City and BWL shall retain the Earnest Money as liquidated damages.

1.3 Condition of Real Estate.

(A) The following definitions shall apply in this Agreement.

(1) "Environmental Laws" means all federal, state and local environmental laws, including, but not limited to, Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), the Resource Conservation & Recovery Act (42 U.S.C. §6901 *et seq.*), Safe Drinking Water Act (42 U.S.C. §300f-j-26), Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), Clean Air Act (42 U.S.C. §7401 *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*) ("CERCLA"), the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 *et seq.*, the Michigan Natural Resources and Environmental Protection Act (MCL §324.101 *et seq.*) the administrative rules and regulations promulgated under such statutes, or any other similar federal, state or local law or administrative rule or regulation of similar effect, each as amended and as in effect and as adopted as of the date of execution of this Agreement.

(2) "Hazardous Substances" means (i) any hazardous or regulated substance as defined by Environmental Laws (ii) any other pollutant, contaminant, hazardous substance, solid waste, hazardous material, radioactive substance, toxic substance, noxious substance, hazardous waste, particulate matter, airborne or otherwise, chemical waste, medical waste, crude oil or any fraction thereof, radioactive waste, petroleum or petroleum-derived substance or waste, asbestos, PCBs, radon gas, all forms of natural gas, or any hazardous or toxic constituent of any of the foregoing, whether such substance is in liquid, solid or gaseous form, or (iii) any such substance the release, discharge or spill of which requires activity to achieve compliance with applicable law.

(3) "Part 201" means Part 201 of Michigan's Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended, MCL §324.20101 *et seq.*, and the rules promulgated thereunder.

(B) Environmental condition.

(1) Developer acknowledges that the City Property constitutes a "facility" under Part 201 because its soils or groundwater contain Hazardous Substances exceeding applicable criteria under Part 201.

(2) Developer has obtained an "Environmental Due Diligence Study Report" dated April 4, 2007, prepared by NTH Consultants, Ltd. (Project No. 16-070161-00) on the City Property identifying a number of environmental conditions on or around the City Property, including by way of example and without limitation, the presence of lead based paint and asbestos within the Power Station building, Dense Non-Aqueous Phase Liquid in groundwater perhaps presenting a volatilization concern, materials related to coal storage, metals, and PCB's.

(3) Not later than May 31, 2008, Developer shall complete all additional sampling, analysis, inspection and other environmental reviews Developer wishes to make of the City Property. Developer may, not later than June 15, 2008, inform the City and the BWL in writing that Developer has determined, in

Developer's sole discretion, that it is not financially feasible for Developer to develop and use the City Property as provided in this Agreement. If Developer does so, the Earnest Money shall be returned to Developer and this Agreement shall terminate upon Developer's receipt of the Earnest Money.

(4) Developer shall have the right to have one or more BEAs and Due Care Plans for the City Property prepared in accordance with Part 201 and to submit them to the Michigan Department of Environmental Quality ("MDEQ") with a petition for determination of adequacy pursuant to Part 201. Until the MDEQ has approved "closure" (*i.e.*, the MDEQ no longer requires any remedial activities, monitoring, reporting or other ongoing or periodic activities related to the environmental condition of the City Property, though restrictive covenants and other limitations may remain in place) pursuant to the RAP, each party shall provide the other parties with copies of any documents submitted to, filed with, or received from the MDEQ that are related to the City Property. The BWL shall notify the other parties in writing when closure occurs. To the extent necessary under applicable law the City and the BWL, shall, at Developer's request and without expense to the City or the BWL, cooperate with Developer to submit any BEAs and Due Care Plans to the MDEQ.

(5) No later than March 31, 2008, the BWL shall, after consultation with and considering the comments of Developer and the City, complete and file with the MDEQ a remedial action plan for the City Property (the "RAP") and shall diligently respond to feedback from the MDEQ and otherwise diligently pursue approval of the RAP. The RAP shall be designed to address environmental issues (except such activities as Developer is undertaking pursuant to subsection 1.3(B)(7) of this Agreement) in such a manner as to allow the uses of the City Property as contemplated in this Agreement. The parties recognize the MDEQ has the ultimate authority over the design of any remedial actions for the City Property, so if any condition is imposed as part of the MDEQ's approval of the RAP that, in Developer's determination, makes the City Property unsuitable for the uses contemplated in this Agreement, Developer may terminate this Agreement and the Earnest Money shall be returned to Developer. This Agreement shall then terminate when Developer receives the Earnest Money. Until the MDEQ has approved "closure" pursuant to the RAP, the BWL shall provide Developer with copies of any documents that are to be submitted to, to be filed with, or are received from the MDEQ that are related to the City Property. The BWL shall allow Developer a reasonable time to comment upon such proposed submissions and filings prior to making them.

(6) The MDEQ's approval of the RAP shall be a condition of closing on the conveyance of the City Property to Developer. If such approval does not occur and the closing is not delayed as provided in this Agreement or the closing has been delayed and no other delay can occur consistent with the terms of this Agreement and any modification of deadlines as provided in this Agreement, then this Agreement shall terminate and the Earnest Money shall be returned to

Developer. The termination shall be effective when Developer receives the Earnest Money.

(7) Based on the information available to the parties as of the date of this Agreement, the parties anticipate that certain remedial activities will be necessary at the City Property for purposes of using the City Property as contemplated in this Agreement. The Developer has agreed: (a) to perform the remedial activities as set forth in Exhibit F, in compliance with Environmental Laws; and (b) to otherwise exercise due care responsibilities at the City Property in accordance with Environmental Laws and this Agreement (“**Developer’s Environmental Activities**”). All other remedial activities necessary at the City Property for closure under the RAP, shall be the responsibility of the BWL unless the parties otherwise agree in writing.

(8) No further information, reports or approval as to the environmental condition of the City Property, or the presence or absence of any Hazardous Substances on the City Property shall be a precondition to closing.

(C) Developer has commenced its inspection of the City Property including the structural conditions of all buildings and improvements on the City Property and the character or suitability of the soils on the City Property. Not later than May 31, 2008, Developer shall complete all additional inspection Developer wishes to make of the City Property including the structural conditions of all buildings and improvements on the City Property and the character or suitability of the soils on the City Property. Developer may, not later than June 15, 2008, inform the City and the BWL in writing that Developer has determined, in Developer’s sole discretion, that it is not financially feasible for Developer to develop and use the City Property as provided in this Agreement. If Developer does so, the Earnest Money shall be returned to Developer and this Agreement shall terminate upon Developer’s receipt of the Earnest Money.

(D) Developer is aware that portions of the Site lie within a floodplain. Not later than May 31, 2008, Developer shall complete all additional review of the impact the floodplain will have on the City Property and Developer’s ability to develop and use it as provided in this Agreement. Developer may, not later than June 15, 2008, inform the City and the BWL in writing that Developer has determined, in Developer’s sole discretion, that it is not financially feasible for Developer to develop and use the City Property as provided in this Agreement. If Developer does so, the Earnest Money shall be returned to Developer and this Agreement shall terminate upon Developer’s receipt of the Earnest Money.

(E) Except as otherwise expressly provided in this Agreement, the sale and conveyance of the City Property shall be “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” basis without any covenants, representations or warranties of any kind.

(1) The “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” basis without any covenants, representations or warranties of any kind includes, without limitation, all of the following:

- (a) The City Property's condition or any condition of any building, structure or other improvement on, under, in or above the City Property.
- (b) The suitability of the City Property for any purpose or use.

But it does not apply to the environmental condition of the Property which is addressed in subsection (2) immediately below.

(2) Regardless of any other provision of this Agreement, with respect to the environmental condition of the City Property at the time of closing, the parties specifically agree:

(a) Developer shall be responsible to perform only Developer's Environmental Activities. The BWL shall have the obligation to perform all activities required under the RAP and applicable Environmental Laws except to the extent they might duplicate Developer's Environmental Activities.

(b) Developer shall, without cost to the City or the BWL, undertake and complete all Developer's Environmental Activities even if the cost of doing so exceeds Developer's expectations.

(c) Developer shall hold the City, the BWL, and their respective officers and employees harmless from, defend them against and pay on their behalf any claims, demands, causes of action, fines, penalties, judgments, awards or other costs or losses incurred by the City or the BWL arising from the performance or failure to perform Developer's Environmental Activities. To the extent permitted by law, the BWL shall hold the City, Developer, and their respective officers and employees harmless from, defend them against and pay on their behalf any claims, demands, causes of action, fines, penalties, judgments, awards or other costs or losses incurred by Developer arising from the performance or failure to perform the BWL's obligations under the RAP and all applicable Environmental Laws. The City's, the BWL's and Developer's rights, duties and obligations under this subsection (c) shall survive the closing on the conveyance of the City Property to Developer.

(d) All parties shall remain liable for any of their acts or omissions constituting exacerbation of any environmental condition under Environmental Laws.

(d) Except as otherwise expressly provided in this Agreement, the parties otherwise retain all rights, duties and obligations they may have under Environmental Laws.

(F) Regardless of any other provision of this Agreement, the BWL shall retain an easement in the City Property, for the benefit of the BWL, the City, and any

governmental agency of competent jurisdiction, for purposes of fulfilling any obligations it has under the RAP. This shall be a Permitted Exception as defined in subsection 1.4(E) below. It shall be fully defined and agreed upon among the parties prior to closing on the conveyance of the City Property to Developer and may not thereafter be modified except after consultation among the parties and the MDEQ or other governmental agency of competent jurisdiction. If, due to its effect upon the intended uses of the City Property, Developer objects to the terms of this easement, Developer may elect to terminate this Agreement, in which case the Earnest Money shall be returned to Developer and this Agreement shall terminate upon Developer's receipt of the Earnest Money. In the event the MDEQ may require a revision to the easement in order for the BWL to fulfill any obligations it has under the RAP, any such revision shall require the consent of Developer, which consent shall not be unreasonably withheld, conditioned or delayed. If such an easement modification is required by the MDEQ and Developer does not accept that change, Developer may terminate this Agreement and the Earnest Money shall be returned to Developer, and this Agreement shall terminate when the Developer receives the Earnest Money.

1.4 Title Commitment.

(A) The Developer has obtained a commitment for an ALTA owner's policy of title insurance without standard exceptions with respect to the City Property in the amount of the Purchase Price, from First American Title Insurance Company (the "Title Company"), commitment number NCS-325144-MICH, dated October 16, 2007 (the "Title Commitment").

(B) Developer shall have 30 calendar days after the final execution of this Agreement to notify the City in writing of any objections it has to any defects or exceptions disclosed in the Title Commitment. If Developer fails to so notify the City prior to the end of that 30 day period for review, Developer shall be deemed to have waived all objections to any defects or exceptions disclosed in the Title Commitment.

(C) The City, at its sole option, shall have 30 calendar days after the notification from Developer to correct any defects or remove any exceptions to Developer's reasonable satisfaction.

(D) If the City cannot or otherwise does not do so within that 30 day period, Developer may, by written notice to the City within 10 calendar days thereafter, terminate this Agreement and the Earnest Money shall be returned to Developer as Developer's sole remedy. This Agreement shall terminate upon Developer's receipt of the Earnest Money.

(E) All defects or exceptions disclosed in the Title Commitment that (i) Developer does not raise or fails to object to pursuant to subsection (B), (ii) that are not corrected or caused to be corrected as provided in subsection (C) but Developer has not terminated this Agreement as provided in subsection (D), (iii) that are expressly provided for in this Agreement, or (iv) that Developer expressly accepts, shall be deemed to be accepted by Developer (the "Permitted Exceptions"). The parties agree that the City and BWL may

retain, in the deed to Developer or by a separate instrument to be executed at the closing, easements in the City Property for a Chilled Water Facilities line, a manhole and related appurtenances, serving chilled water to one or more downtown offices and a sanitary and storm sewer line, a box culvert at the north end of the City Property, a manhole, and related appurtenances in their existing locations or in such other locations as the parties may agree in writing prior to closing and such easements are Permitted Exceptions.

(F) At closing, the City shall pay the cost of a title insurance policy issued pursuant to the Title Commitment as it may be modified after the actions provided in subsection (C) above. A "marked up" title commitment shall be provided at closing that will provide "gap coverage" for the period between the completion of the closing and the issuance of the title insurance policy to be issued pursuant to the Title Commitment as marked up at closing.

1.5 Survey.

(A) Developer has obtained a survey of the Site (the "Survey") that is also certified to the City and the BWL without cost to the City or the BWL.

(B) Developer shall have until 30 calendar days after the final execution of this Agreement to notify the City in writing of any encroachments or other matters of concern to Developer disclosed by the Survey. If Developer fails to so notify the City prior to the end that 30 day period, Developer shall be deemed to have waived all objections to any conditions disclosed by the Survey.

(C) The City shall have 30 calendar days after notification from Developer to correct any such conditions disclosed by the survey to Developer's reasonable satisfaction.

(D) If the City cannot or otherwise does not do so, Developer may, within 10 calendar days thereafter, terminate this Agreement and the Earnest Money shall be returned to Developer as Developer's sole remedy. This Agreement shall terminate upon Developer's receipt of the Earnest Money.

(E) All conditions disclosed in the survey that (i) Developer does not raise or fails to object to pursuant to subsection (B), (ii) that are not corrected or caused to be corrected as provided in subsection (C) but Developer has not terminated this Agreement as provided in subsection (D), (iii) that are expressly provided for in this Agreement, or (iv) that Developer expressly accepts, shall be deemed to be accepted by Developer (the "Permitted Survey Conditions").

1.6 Access.

(A) Developer may, with notice and coordination with the BWL and the City, have continuing access to the City Property in order to conduct, at Developer's sole expense, surveys, inspections, soil borings, groundwater sampling, and other investigations of the City Property the Developer may wish to perform. However, Developer shall promptly provide the City a copy of any analyses and reports generated as a result of such

investigations. Developer shall not perform any intrusive or evasive tests or inspections, including environmental tests or inspections, without the written consent of the City and BWL, which consent shall not be unreasonably withheld, conditioned or delayed.

(B) Developer shall restore the City Property to the condition it was in prior to any inspections or investigations undertaken by or on behalf of Developer pursuant to this section.

(C) Developer shall hold the City and the BWL (including, for purposes of this provision, their respective officers and employees) harmless from, indemnify the City and the BWL for, and defend the City and the BWL (with attorneys reasonably acceptable to the City) against, any liability arising during such investigations or inspections performed by, for or on behalf of Developer. Developer's obligations under this subsection (C) shall survive the termination of this Agreement. At the request of either the City or the BWL, Developer shall provide the City and BWL with proof that Developer or the contractor or agent entering upon the City Property pursuant to this Section 1.6 has a commercial liability insurance in a minimum coverage amount of \$500,000 naming the City and the BWL (as well as their respective officers and employees) as named or additional insureds.

1.7 Conditions Precedent to Closing.

(A) Zoning approvals.

(1) In order to construct and occupy the Project on the Site Developer will need to obtain various zoning and other land use related approvals from the City.

(a) The City represents and warrants that the Site is currently zoned G-1 Business District which currently allows the following uses so it will not need to be re-zoned and no special use approval is needed for those uses, and, because it will be part of the overall Project, no special use approval is required for the New Ramp.

- (i) A comparison retail store;
- (ii) A private club, fraternal organization or lodge hall;
- (ii) A restaurant, bar or tavern;
- (iv) A enclosed theater, assembly hall or concert hall;
- (v) A hotel or motel;
- (vi) A public park and playground, except indoor and outdoor swimming pools and golf courses;
- (vii) Any principal use permitted in a D-1 Professional Office District;
- (viii) A convenience store
- (ix) A post office
- (x) A motor vehicle service station;
- (xii) An office of a civic, professional, religious or charitable organization;

- (xiii) An office of an accountant, architect, artist, attorney, doctor or dentist;
- (xiv) An insurance agency;
- (xv) A real estate office;
- (xvi) A trade association or union office, except those with auditoriums;
- (xvii) Any other use which, by the decision of the Planning Board, is similar to the principally permitted uses set forth in this section; and
- (xviii) An accessory structure which is customarily incidental to any of the uses listed above.

(b) Because of its use, its current zoning, anticipated changes to the Site and other factors, approval of an overall site plan for the Project and the Site (the “**Site Plan**”) is required.

(2) Not later than April 30, 2008, Developer shall file an application for approval of the Site Plan meeting the requirements of the City’s zoning ordinance. Developer shall use its reasonable best efforts to pursue approval of the Site Plan including addressing on a timely basis (*i.e.*, on or before agenda, notice and other deadlines set forth in the zoning ordinance, City policies or Planning Board bylaws, policies and procedures) all reasonable requests for additional information.

(a) If Developer has complied with the requirements of this paragraph (2) and has not obtained the needed Site Plan by August 15, 2008, Developer may, upon written notice to the City and the BWL, terminate this Agreement and the Earnest Money shall be returned to Developer. This Agreement shall terminate when Developer receives the Earnest Money.

(b) If Developer fails to comply with the requirements of this paragraph (2), either the City or the BWL may, upon written notice to Developer, terminate this Agreement and the Earnest Money shall be paid to the City and the BWL as liquidated damages. This Agreement shall terminate when the City and the BWL receive the Earnest Money.

(c) If Developer has complied with the requirements of this paragraph (2) and has not obtained the needed Site Plan by August 15, 2008, and Developer has not exercised its right to terminate this Agreement as provided in subsection (a) above, either the City or the BWL may, upon notice to the other parties, terminate this Agreement and the Earnest Money shall be returned to Developer. This Agreement shall terminate when Developer receives the Earnest Money.

(B) Floodplain approvals.

- (1) Because a portion of the Site lies within a floodplain, construction and occupancy of the Project might require special approvals from federal, state, or local authorities and special lender approval.
- (2) Developer shall apply for any needed approvals prior to May 1, 2008.
- (3) If Developer has complied with the requirements of paragraph (B)(2) and has not obtained all required formal written approvals to construct and occupy the portion of the Project that lies within the floodplain by August 15, 2008, any party to this Agreement may, upon written notice to the other parties, terminate this Agreement and the Earnest Money shall be returned to Developer and this Agreement shall terminate upon Developer's receipt of the Earnest Money. If Developer fails to comply with the requirements of paragraph (B)(2), the City or the BWL may, upon written notice to Developer, terminate this Agreement and the Earnest Money shall be paid to the City and the BWL as liquidated damages and this Agreement shall terminate when the City have the BWL receive the Earnest Money.

(C) Other governmental approvals.

- (1) Not later than May 1, 2008, Developer shall notify the City and the BWL in writing whether or not any other governmental approvals are legally required under then applicable laws, rules or regulations in order to construct and occupy the Project on the Site which notification shall also provide a list of the needed approvals, a list of the steps to be taken to obtain such approvals, and the timetable for obtaining such approvals.
- (2) To the extent any party wishes to make any of those approvals a condition required to be met before closing on Developer's acquisition of the City Property, that party shall notify the other parties in writing not later than May 15, 2008.
- (3) If any party gives notification pursuant to paragraph (C)(2), such approval shall be obtained prior to August 15, 2008. Developer shall then make timely application to obtain any such required approvals prior to closing on Developer's acquisition of the City Property. However, no such approval shall be a condition of closing if it legally cannot be obtained until after closing on the conveyance of the City Property to Developer.
- (4) If Developer does not provide the City and the BWL with the notification required by paragraph (C)(1) and there is such an additional governmental approval that is legally required, which is known by Developer and not disclosed as required under paragraph (C)(1), either the City or the BWL, at their sole option, may upon written notice to Developer, terminate this Agreement in which case the Earnest Money shall be paid to the City and the BWL as liquidated

damages and this Agreement shall terminate when the City have the BWL receive the Earnest Money.

(5) If Developer complies with paragraph (C)(1), but fails to make timely application for the required approvals, then either the City or the BWL may, at their sole option, upon written notice to the other parties, terminate this Agreement in which case the Earnest Money shall be paid to the City and the BWL and this Agreement shall terminate when the Earnest Money has been paid to the City and the BWL.

(6) If Developer has complied with this subsection (C) and made timely application but has been unable to obtain the required approvals within the deadline established in this Agreement for closing, the parties shall have the following options:

(a) The parties may waive that condition to closing and proceed to closing.

(b) The parties may extend the date for closing until such approvals can be obtained.

(c) Any party may, within 10 business days after Developer gives written notice of its inability to obtain the needed approvals, terminate this Agreement and the Earnest Money shall be returned to Developer. If any party fails to give such notice in that 10-day period, it waives its right to give such notice. This Agreement shall terminate upon the return of the Earnest Money to Developer.

(D) Major tenant.

(1) A primary motivation for the City and the BWL to enter into this Agreement is to induce AFICA to occupy the Site as its national headquarters. The City Council and the BWL shall be informed as to whether or not that commitment exists and the nature of the commitment. Not less than 10 days prior to closing on the conveyance of the City Property to Developer, Developer shall demonstrate to the satisfaction of the City's and the BWL's attorneys that AFICA is contractually committed to long-term occupancy of the Site as its corporate headquarters. Developer shall also represent and warrant that AFICA is contractually bound to lease the Site for at least 20 years after the date of the closing subject to any right AFICA may have to purchase the Site and this representation and warranty shall survive the closing.

(2) Any documents shared with the City's and the BWL's attorneys shall be solely for the purpose of providing them with information in order for them to advise their respective clients as to whether or not this condition has been met. Accordingly, except as may otherwise be required by law, such documents shall

be kept confidential and the financial terms of that commitment shall not be publicly disclosed.

(3) If Developer fails to enter into a sufficient long-term lease or other agreement with AFICA and, as a result, closing does not occur, this Agreement shall terminate and the Earnest Money shall be returned to Developer. This Agreement shall terminate upon Developer's receipt of the Earnest Money.

(E) Developer Financing.

(1) The parties want to assure, prior to closing, that Developer will have the financial resources needed to complete the Project. The City Council and the BWL shall be informed as to the nature and extent of Developer financial resources for the Project. To that end, not less than 10 days prior to closing, Developer shall demonstrate to the reasonable satisfaction of the City's and the BWL's attorneys that Developer has the financing needed to construct the Project in accordance with this Agreement and the Site Plan.

(2) Any documents shared with the City's and the BWL's attorneys shall be solely for the purpose of providing them with information in order for them to advise their respective clients as to whether or not this condition has been met. Accordingly, except as may otherwise be required by law, such documents shall be kept confidential and the financial terms of that commitment shall not be publicly disclosed.

(3) If Developer fails to obtain sufficient financing and, as a result, closing does not occur, this Agreement shall terminate and the Earnest Money shall be paid to the City and to the BWL as liquidated damages. This agreement shall terminate when the City and the BWL have received the Earnest Money.

(F) Public Support.

(1) The Project can be completed and occupied as provided in this Agreement only if the public sector economic development incentives and financing are provided as detailed in Article V of this Agreement (the "**Public Support**"). So, the parties want to reasonably assure, prior to closing, that the Public Support will be available when needed.

(2) The approvals and/or steps for the Public Support shall be completed within the times provided in Article V. Approval of the Public Support shall require compliance with certain processes, including without limitation, certain public hearings and others opportunities for public participation. Approval of the Public Support requires various public officials and bodies to make discretionary decisions, often using statutory or other criteria and considering a variety of information including information offered by the public. Nothing in this Agreement is intended to impair or limit any discretion of any public official or body.

(3) If the approvals have not be obtained and steps completed as required by paragraph (F)(2), the parties shall have the following options:

(a) The parties may waive that condition to closing and proceed to closing.

(b) The parties may extend the date for closing until such approvals can be obtained and/or steps completed.

(c) Any party may terminate this Agreement and the Earnest Money shall be returned to Developer and this Agreement shall terminate upon the Developer's receipt of the Earnest Money.

(G) Public facility relocation.

(1) As stated in the recitals, the removals, relocations and/or replacements of the Steam Facilities and the Chilled Water Facilities are essential to the Project. The parties wish to assure prior to closing that work can be accomplished in a time and a manner that is economically viable for all parties and consistent with this Agreement.

(2) The approvals and/or steps for the removals, relocations and/or replacements of the Steam Facilities and the Chilled Water Facilities shall be completed within the times provided in Articles III and IV. Those approvals and steps shall require compliance with certain processes, including without limitation, certain public hearings and others opportunities for public participation and will require various public officials and bodies to make discretionary decisions, often using statutory or other criteria and considering a variety of information including information offered by the public. Nothing in this Agreement is intended to impair or limit any discretion of any public official or body.

(3) If the approvals have not been obtained and steps completed as required by paragraph (G)(2) above at least 10 days prior to the deadline for closing established in this Agreement, the parties shall have the following options:

(a) The parties may waive that condition to closing and proceed to closing.

(b) The parties may extend the date for closing until such approvals can be obtained and/or steps completed.

(c) Any party may terminate this Agreement by written notice to the other parties and the Earnest Money shall be returned to Developer. This Agreement shall terminate upon Developer's receipt of the Earnest Money.

1.8 Deed. Title to the City Property shall be transferred to Developer by a warranty deed subject to the Permitted Exceptions, to the Permitted Survey Conditions, and to the terms of this Agreement.

(A) The following shall, in addition to others provided for in this Agreement, be Permitted Exceptions.

(1) The City shall retain the right to construct an extension of its riverwalk on the real property owned by the City along the river front ("Riverwalk Property"), cantilevered over the River in accordance with plans and specifications to be reviewed by and reasonably acceptable to Developer. However, the City's use of the Riverwalk Property shall be subject to reasonable restrictions placed on its use by written agreement between the City and Developer, which written agreement shall be agreed upon between the City and Developer prior to the closing on the conveyance of the City Property to Developer. The nature and extent of the restrictions shall be for the purpose of limiting the City's or any subsequent owner of the Riverwalk Property from engaging in any activity on the Riverwalk Property which may adversely affect or interfere with the intended and future use and enjoyment of the Project by its owner and/or occupants. The written agreement between the City and Developer shall be in recordable form and recorded with the Ingham County Register of Deeds after the closing occurs for the conveyance of the City Property to Developer.

(2) The City Property will be conveyed with the covenant that it cannot be occupied or used for "adult business" as that term is now defined in section 1296.01 of the City's zoning ordinance and Developer shall be required to impose such a covenant on the Developer Property immediately after Developer closes on the acquisition of the Developer Property which covenant shall be for the benefit of and enforceable by the City.

(3) The City reserves the right to impose restrictive covenants, in the form of institutional controls, engineering controls, deed restrictions, or Notices of Approved Corrective Action as provided for under Environmental Laws on the City Property that are reasonably related to the environmental condition of the City Property consistent with the RAP including, but not limited to, prohibiting the use of groundwater, requiring the containment, analysis and proper disposal of soils on the City Property, requiring notifications to transferees, lessees and other future occupants, requiring warning to excavators and underground utility workers, limiting allowable uses of the City Property, and providing for continuing access for the BWL and the MDEQ for monitoring and remedial activities (the "**Restrictive Covenants**"). The City or the BWL shall, upon the MDEQ's approval of the RAP, but in any case, not later than 60 days prior to closing, provide Developer all such Restrictive Covenants on the City Property for Developer's review and approval as to form. The parties recognize that, while the City and the BWL shall make all reasonable efforts so the Restrictive Covenants will allow all the Developer's intended uses of the City Property, the

MDEQ has the ultimate authority to determine the terms of such Restrictive Covenants prior to closing on the conveyance of the City Property to Developer. Developer shall be notified of and be invited to participate in all communications with the MDEQ regarding the Restrictive Covenants.

(B) Any party may require that the deed or other documentation recorded at closing reflects any requirements of this Agreement that expressly or impliedly survive the closing of the conveyance of the City Property to Developer as provided in this Article I.

1.9 Taxes, Assessments, Utilities. Developer shall pay any special assessments, property taxes and any invoices for utilities levied against or for services provided to the City Property after the date of the closing. The City Property is currently exempt from property taxation and there are no outstanding special assessments levied against the City Property. The absence of special assessments shall be included in the Title Commitment and in the title insurance policy to be issued by the Title Company pursuant to the Title Commitment.

1.10 Closing. The closing on the conveyance of the City Property to Developer shall occur at the City Hall or such other place as agreed upon by the parties, no later than September 30, 2008. The City shall pay the cost for recording the deed and the title insurance costs as provided in section 1.4 above. The transaction will be exempt from transfer taxes pursuant to MCL 207.505(h) and MCL 207.526(h)(i). Developer shall pay all other closing costs and recording fees. The parties shall each pay their own attorney or other consultant fees.

1.11 Possession, Removal Activities.

(A) The transfer of title to the City Property to Developer by the City shall be subject to the terms and conditions of this Section 1.11. The City shall deliver possession of the City Property to Developer at closing, subject to (i) Removal Activities (as defined below), (ii) the right of the City to continue the use of the Current Ramp until its demolition begins as provided in Article IV of this Agreement, (iii) subject to any continuing obligations of the City and/or the BWL under the RAP, and (iv) subject to rights provided the City, the BWL or others in the Permitted Exceptions. The provisions of this Section 1.11 shall survive the closing.

(B) Developer grants to the BWL an irrevocable license and right of entry (the "License") onto the City Property for the purpose of removing, relocating, demolishing, operating, maintaining, repairing, and/or disassembling the Steam Facilities and the Chilled Water Facilities for salvage, reuse, scrap or otherwise, all to the extent BWL, in its sole discretion, deems appropriate and as further described below (collectively, the "Removal Activities").

(1) The term of the License shall commence with the closing and conveyance of the City Property to Developer and shall expire 30 days after the later of the date on which both the New Steam Facilities and New Chilled Water Facilities are fully operational. During that term, BWL shall have the right to conduct the Removal Activities through its employees, agents and/or contractors at any time without obtaining any consents or authorizations and at no cost or expense to

BWL for such use. However, the BWL right of access shall be subject to compliance with all of Developer's and its contractor's standard procedures for access to the City Property during construction of the Project.

(2) Until the License expires, title to the Steam Facilities and the Chilled Water Facilities shall be held by the BWL, including, but not limited to, all personal property, fixtures, conduit, lines, leads, connections, facilities or any other like or similar devices or any improvements or replacements of the same of every nature and kind that comprise the Steam Facilities and the Chilled Water Facilities.

(3) Notwithstanding the foregoing, the BWL shall not be obligated or required to undertake or complete any Removal Activities except to the extent the BWL deems appropriate, in its sole discretion and the BWL shall not be obligated or required to make any repairs to the City Property. However, the BWL shall not cause any damage to any portion of the Power Station which may affect the ability of Developer to obtain the maximum available federal and state historic tax credits for the Project, as set forth in this Agreement. Further, from and after the expiration of said License, the BWL shall not be responsible or liable in any manner whatsoever for the Steam Facilities or the Chilled Water Facilities, except those facilities that remain within the easement provided pursuant to subsection 1.4(E) of this Agreement. From and after the expiration of the License, any remaining components of the Steam Facilities and Chilled Water Facilities shall become the property of Developer. To the extent the BWL's rights under this License are set forth in a document recorded with the Ingham County Register of Deeds, upon expiration of the License as set forth above, Developer shall have the right to prepare, execute and record with the Ingham County Register of Deeds the necessary document to terminate, of record, the License and, if requested by Developer, the BWL shall cooperate by co-signing that document.

(4) Developer shall hold the BWL, the City and their engineers, officers, employees, agents, contractors and subcontractors harmless from, defend them (with legal counsel reasonably acceptable to the City and BWL) against, and pay on their behalf any amount ordered to be paid as a result of any and all demands, claims, liabilities, obligations, damages, awards, judgments or administrative losses or expenses either of them may receive or incur as a result, arising from or in connection with the Removal Activities except those resulting from the negligence or willful misconduct of BWL, the City or either of their engineers, officers, employees, agents, contractors or subcontractors. The preceding sentence shall also not apply to any environmental condition on the City Property except to the extent of any release or exacerbation resulting from the negligence or other wrongful action of Developer or Developer's contractors, employees, agents or representatives. To the extent permitted by law, the BWL shall hold Developer, the City and their engineers, officers, employees, agents, contractors and subcontractors harmless from, defend them (with legal counsel reasonably acceptable to the City and Developer) against, and pay on their behalf any amount

ordered to be paid as a result of any and all demands, claims, liabilities, obligations, damages, awards, judgments or administrative losses or expenses either of them may receive or incur as a result, arising from or in connection with the Removal Activities except those resulting from the negligence or willful misconduct of Developer, the City or either of their engineers, officers, employees, agents, contractors or subcontractors. The provisions of this Section shall survive the expiration of the License, the closing on the conveyance of the City Property to Developer, and the expiration, cancellation or termination of this Agreement.

(5) During the term of the License, Developer shall obtain and maintain a general liability and owner's liability insurance policy, naming the City and the BWL and their engineers, officers and employees as insureds or additional insureds and certificate holders with coverage of at least \$1,000,000 per individual and \$1,000,000 per occurrence. Such insurance shall provide that it may not be canceled, modified or terminated without at least 30 days prior written notice to the City and the BWL. A copy of the certificate(s) and policy(ies) of insurance shall be provided to the City and BWL prior to the closing on the City Property with Developer.

(6) During the term of the License, the BWL shall obtain and maintain a general liability and owner's liability insurance policy, naming the City and Developer and their respective officers and employees as additional insured and certificate holders with coverage at least \$1,000,000 per individual and \$1,000,000 per occurrence, insuring all of the BWL's activities under the License. Such insurance shall provide that it may not be cancelled, modified or terminated without at least 30 days prior written notice to Developer. A copy of the certificates and policy(ies) of insurance shall be provided to Developer prior to the closing on the City Property with Developer.

(7) At Developer's expense, the BWL, its employees, agents and contractors, shall have the right to use electricity and other utilities at the City Property as needed for the Removal Activities.

Article II: Project Development

2.1 Purpose. A primary purpose for the conveyance of the City Property to Developer and for the Public Support is to assure the redevelopment, use and occupancy of the Site in accordance with this Agreement. Moreover, much of the funding available for the Public Support is dependent upon the tax revenues to be generated by the redevelopment, use and occupancy of the Site as envisioned in this Agreement.

2.2 Redevelopment Required. Developer shall redevelop the Site or cause it to be redeveloped as described and depicted on the attached Exhibit E, subject to only such changes as are required by City bodies and officials in the zoning approval process and in the review of the plans by the City's building inspector and subject to AFICA's reasonable review and consent. The AFICA shall occupy the Site as its corporate headquarters as provided in the lease to be

disclosed to the City's and the BWL's attorneys prior to closing as provided in subsection 1.7(D)(1) above.

2.3 Compliance and Approvals.

(A) Developer shall assure that the Project and its construction and use comply with all applicable laws, rules, regulations, permits, orders, decisions and directives of any governmental official, agency or entity of competent jurisdiction.

(B) Developer shall be solely responsible to obtain and maintain any needed licenses, permits, certifications or other reviews and approvals from any governmental officer, agency or entity of competent jurisdiction needed to construct or use the Project.

(C) Without limiting the generality of the preceding subsections, Developer shall seek approval under the City's zoning ordinance and applicable construction codes, obtaining whatever rezoning, special use approval, variances, site plan approvals, building and occupancy permits as may be required. Nothing in this Agreement shall in any way limit the discretion of those officials or bodies as they engage in the required reviews and decision making.

(D) The requirements in this Section shall survive closing.

2.4 Project Timetable. The planning, pre-construction, construction and completion of the Project shall comply with the following dates and, upon the written request of either the City or the BWL, Developer shall provide a written status report on the Project's development.

<u>Event</u>	<u>Deadline</u>
Submission of fully complete and approvable Site Plan to the City	April 30, 2008
Closing	September 30, 2008
Completion of and issuance of occupancy permit(s) for first phase of the Project	April 1, 2011
Completion of Project	April 1, 2011

2.5 Value. Developer represents that the Project will have a market value currently estimated to be approximately \$130,000,000 and will be completed by December 31, 2011. Developer understands and agrees that the City and the Brownfield Redevelopment Authority of the City of Lansing (the "LBRA") are relying on that estimate of value and investment to generate the tax increment revenues needed to pay for publicly funded work on the Site. Payments to Developer (or its assignee) from tax increment revenues will depend on sufficient increases in the taxable value of the Site to generate sufficient tax increment revenues to pay Developer (or its assignee) after other obligations have first been paid from those tax increment revenues.

Article III: Utility Relocations

3.1 Steam Facilities Relocation.

(A) Replacements for the Steam Facilities shall be constructed in an underground vault (the “**Steam Vault**”) to be constructed in or near Wentworth Park which is adjacent to the City Property (the “**Steam Vault Location**”). That relocation shall provide for a vent approximately 36 inches in diameter to extend from underground to a height of 9 feet above the ground and shall provide for access to the underground facilities. The design and configuration of the vent shall be subject to Developer’s reasonable review and approval which shall not require any changes adversely affecting the use, efficacy or cost of maintaining the vent. A more particular, but nevertheless general description for the replacement to the Steam Facilities are as described in the attached Exhibit B (the “**New Steam Facilities**”).

(B) The BWL shall, at BWL’s expense, cause plans and specifications for the New Steam Facilities to be prepared consistent with the general description in Exhibit B, and such plans and specifications shall be submitted to the City and the BWL for their respective reviews and approvals not later than **September 20, 2008**. The BWL will be responsible for all costs it incurs for BWL staff time needed to develop the plans and specifications. The City’s review and approval shall be limited to assuring the design, construction, operation, use, maintenance, and repair of the New Steam Facilities do not unreasonably interfere with the use of Wentworth Park and that they are consistent with the aesthetic and environmental vision for the riverfront as otherwise approved by the City and in accordance with the conditions and requirements of any federal or state grants or other sources of funding for Wentworth Park and the riverfront. The BWL shall review the plans and specifications to ensure the New Steam Facilities will meet BWL’s operational requirements and standards. The costs incurred by Developer to prepare the plans and specifications and obtain any needed approvals of the plans and specifications shall be included in the cost of construction of the New Steam Facilities and paid (or reimbursed) from the same funds as are used to pay for the construction and installation of the New Steam Facilities.

(C) Developer shall, at its own expense to be reimbursed from tax increment revenues pursuant to subsection 5.2(B) below, cause the New Steam Facilities to be constructed in accordance with the plans and specifications approved pursuant to subsection (B). The parties agree that, in order to assure the New Steam Facilities construction and installation is coordinated with Developer’s activities on the Site, The Christman Company (“**Christman**”) shall be the general contractor for the construction and installation of the New Steam Facilities. Such construction shall begin not later than April 1, 2009 and be completed not later than September 30, 2009.

(D) The City hereby gives permission to the BWL to use the Steam Vault Location for the construction, installation, use, operation, maintenance, repair, replacement and improvement of the New Steam Facilities in accordance with a License Agreement to be executed by the City and the BWL prior to closing.

(E) To the extent it wishes to salvage any of the Steam Facilities, the BWL shall have right to enter the City Property after the closing occurs on the City Property as set forth in the License.

(F) The requirements of this Section shall survive closing on the conveyance of the City Property to Developer.

3.2 Chilled Water Facilities Relocation.

(A) Replacements for the Chilled Water Facilities shall be constructed on a site to be designated and secured by the BWL (the "New Chiller Location") not later than March 30, 2008. A more particular, but nevertheless general, description for the replacement to the Chilled Water Facilities is in the attached Exhibit C (the "New Chilled Water Facilities").

(B) Developer shall, at Developer's expense to be reimbursed along with the New Chilled Water Facilities construction costs as provided below, cause plans and specifications for the New Chilled Water Facilities to be prepared by a design professional reasonably acceptable to the BWL, consistent with the general description in Exhibit C, and such plans and specifications shall be submitted to the BWL for its review and approval not later than June 30, 2008. The BWL will be responsible for all costs it incurs for BWL staff time needed to develop the plans and specifications.

(C) Developer shall cause the New Chilled Water Facilities to be constructed at the New Chiller Location in accordance with the plans and specifications approved pursuant to subsection (B). The parties agree that, in order to assure the New Chilled Water Facilities construction and installation is coordinated with Developer's activities on the Site, Christman shall be the general contractor for the construction and installation of the New Chilled Water Facilities.

(1) Developer shall order the components of the New Chilled Water Facilities as needed for timely delivery to complete their construction and installation as required by paragraph (2) below.

(2) Such construction and installation shall begin not later than September 30, 2008 and be completed not later than September 30, 2009.

(3) Progress payments will be made to Developer from funds available to the BWL as provided in subsection 5.2(A) of this Agreement following the BWL's standard construction draw procedures. The BWL shall provide funds from another source to provide for any costs of the New Chilled Water Facilities and New Steam Facilities that exceed \$20 million. Until Developer makes the infrastructure payment funds available as provided in subsection 5.2(b) of this Agreement, neither the City nor the BWL shall have any obligations for payment for the New Chilled Water Facilities.

(D) The requirements of this Section shall survive closing on the conveyance of the City Property to Developer.

3.3 Other Contract Requirements. The work provided on the New Steam Facilities and the New Chilled Water Facilities shall comply with the following contract requirements.

(A) The construction contract with Christman shall be in a form acceptable to and approved by the BWL consistent with the BWL's standard procedures for construction and installation contracts.

(1) That contract shall provide for performance and payment bonds in the amount of 100% of the contract price and shall note that it is work performed on public property for a public entity such that no contractor's or material supplier liens can be placed on the utility relocation project or the Site.

(2) The contract shall provide for completion and acceptance of the work in accordance with standards customarily used by the BWL and shall provide operations manuals and warranties in accordance with common standards for such equipment and in accordance with the BWL's usual practices for such equipment.

(B) The BWL shall have the right, but not the obligation, to inspect and test all construction, installation, and components of all equipment and the BWL shall be contacted before any portions of the work is covered. However, the BWL will not, simply by making such inspection(s) or testing(s), or by failing to raise any objections, relieve the Developer or Christman from any obligations they may have, or waive any warranties or guaranties covering the construction.

(C) Developer shall ensure that Christman obtains sealed bids for all subcontracted work and major components and supplies, in a manner generally in accordance with the BWL's purchasing policies, and shall open those bids in the presence of the BWL's designee. Developer shall ensure that Christman provides the bid tabulation and, if requested by the BWL's designee, the bids, to the BWL for review and comment prior to any bid award by Christman.

(D) Upon completion of the construction and installation, Developer shall provide the City and the BWL with "as built" drawings showing the exact location of the work and any deviations from the approved plans and specifications. Such drawings shall be provided to the BWL before the BWL accepts the completed New Steam Facilities or New Chilled Water Facilities.

(E) Developer shall hold the BWL, the City, the LBRA, and their engineers, officers and employees harmless from, indemnify them for, and defend them (with legal counsel reasonably acceptable to the City) against any and all demands, claims, liabilities, obligations, damages, awards, judgments, administrative fines, or other losses or expenses any of them may receive or incur as a result of the construction of the work to be performed or provided by Developer under this Article and any defects in that work. During construction and installation and until construction and installation is completed,

the premises is restored and the BWL has accepted the work, Developer shall ensure that Christman obtains and maintains a general liability and owners' liability insurance policy naming the City, the BWL, the LBRA and their engineers, officers and employees as insureds or additional insureds and certificate holders with coverage of at least \$5,000,000 per individual and \$5,000,000 per occurrence. Such insurance shall provide that it may not be canceled, modified or terminated without at least 30 days prior written notice to the City. A copy of the certificate(s) and policy(ies) of insurance shall be provided to the BWL prior to the commencement of construction. In addition, Developer shall assure that all necessary or required workers' disability compensation, unemployment compensation and other insurance has been obtained by Christman and its contractors.

Article IV: Parking Ramp

4.1 New Ramp Location and Concept.

(A) The New Ramp shall be located on a portion of the Site located to the north of the Power Station and south of Shiawassee Street which may be part of the City Property and/or all or a portion of the Developer Property as the parties may reasonably agree is necessary for the construction and operation of the New Ramp in a manner that is compatible with the development of the remainder of the Site which will be surveyed and described in detail prior to the closing (the "New Ramp Site").

(B) The City and Developer have yet to work out the exact structure of the ownership of the New Ramp. It will either (i) be constructed and owned by Developer and leased to the City with an option to purchase it for a stated value pursuant to a lease purchase agreement between Developer and the City to be entered into prior to closing on the conveyance of the City Property to Developer, or (ii) the City or the Building Authority of the City of Lansing (the "**Building Authority**") will issue bonds soon after the closing on the conveyance of the City Property to Developer and use the proceeds from the issuance of those bonds to pay the cost of constructing the New Ramp which, together with the New Ramp Site will be conveyed to the City as provided in a New Ramp purchase agreement between Developer and the City to be entered into prior to the closing on the conveyance of the City Property to Developer. Entry into either agreement shall be condition of closing on the conveyance of the City Property to Developer. That agreement shall, among other terms the parties may desire, address the following issues:

- (1) Whether any portion of the New Ramp structure will be constructed for commercial or residential uses and the terms of any such uses;
- (2) Any needed easements in the New Ramp or adjacent property needed to provide access to the New Ramp or any adjacent property;
- (3) The lease and/or purchase terms for the New Ramp, including any extensions or renewals;

- (4) Parking rights and payments for AFICA, for Developer, for the general public, and for any other parties;
 - (5) The design requirements, plans and specifications for the New Ramp;
 - (6) Requirements for any construction contracts for the New Ramp, including any payment and performance bond or other requirements;
 - (7) Any rights to inspect the New Ramp's construction, to require "as built" drawings, to warranties, etc.;
 - (8) What, if any, portion of the New Ramp will be located in or excluded from the renaissance zone to be created under Section 5.6 of this Agreement; and
 - (9) Any operational or use requirements or limitation.
- (C) The Current Ramp may not be demolished prior to the time permitted under the agreement to be entered pursuant to this Section.

Article V: Economic Development

5.1 Purpose.

(A) When completed, the Project will vastly alter the appearance of the vicinity with the elimination of the "tunnel" that the Current Ramp gives, the demolition of the building on the Developer Property, the re-occupancy of the long vacant Power Station, the addition of retail shops, the continuation and linkage of the riverwalk, and the general beautification of the area. Finally, it will enable the City to retain 623 jobs and a major corporate headquarters and to enable the creation of up to an estimated additional 500 jobs in its downtown. The parties anticipate the estimated \$130 million project will eventually add over an estimated \$50 million to the City's tax base.

(B) However, the parties estimate addressing the environmental issues on the City Property, removing the existing Chilled Water Facilities and constructing new Chilled Water Facilities, relocating the Steam Facilities, and demolishing the Current Ramp will cost as much as \$25 million, constructing the New Ramp will cost about \$20 million and improving and enhancing the riverfront along the Site will cost upwards of \$3.0 million. Therefore, to obtain the economic, aesthetic and other benefits of the Project, it is necessary to make the Project financially viable by addressing the many challenges inherent in the Site and in retaining jobs in the City.

(C) Accordingly, City officials have aligned an array of Public Support for the Project. Each is interdependent on the other and each requires attention to various requirements to assure its benefits are available on a timely basis.

5.2 Brownfield Financing and Infrastructure Payments.

(A) Infrastructure payment.

(1) Developer shall, at or before the closing, make available to the BWL, pursuant to a written agreement among all the parties which shall, at a minimum, require the signature of a BWL official prior to the release of such funds, the amount of \$20 million to be used by the BWL to pay costs incurred to construct and install the New Chilled Water Facilities and the New Steam Facilities.

(2) The BWL shall from its own funds pay any amounts incurred in excess of \$20 million to construct and install the New Chilled Water Facilities and the New Steam Facilities.

(3) Disbursements from the funds to be provided under subsections (1) and (2) above shall be made as provided in Section 3.2 of this Agreement.

(B) Reimbursements from tax increments.

(1) It is intended that available tax increment revenues captured pursuant to the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended ("Act 381") be used to reimburse Developer for reimbursable costs incurred by Developer for relocating the Steam Facilities, constructing the new Chilled Water Facilities, removing the existing Chilled Water Facilities, and demolishing the Current Ramp which shall be the subject of a separately negotiated brownfield plan and reimbursement agreement.

(2) Such funds can be captured only in accordance with all of the following:

(a) A brownfield plan for the Site approved by the LBRA and the City Council which is a condition of closing under Article I.

(i) The City, the BWL and Developer shall jointly prepare the brownfield plan for the Site for consideration by the LBRA not later than March 1, 2008.

(ii) Provided it is approved by the LBRA by the date provided in paragraph (i) above, the brownfield plan shall be submitted to the City Council for a public hearing and approval not later than April 15, 2008.

(b) In order to capture tax increment revenues generated from state educational and local school operating tax millages, a brownfield work plan must also be approved by the Michigan Economic Growth Authority ("MEGA") which is a condition of closing under Article I. The City, the BWL and the Developer shall jointly prepare the brownfield work plan. Provided it is first approved by the LBRA, the work plan shall be submitted to the MEGA for consideration by and approval of the MEGA not later than May 15, 2008.

(c) Capture of these tax increment revenues will require the City Council and the LBRA to adopt resolutions. Nothing in this Agreement shall prevent the City Council and the LBRA Board from exercising their discretion in the adoption of the needed resolutions or other actions to be taken.

(d) A reimbursement agreement among the City, the LBRA, the BWL, and Developer, that provides for disbursement of the tax increment revenues pursuant to this Agreement is a condition of closing under Article I.

(3) To the extent AFICA occupies the Site at the time they are available for distribution, Developer shall have the right to assign to AFICA all of Developer's rights to receive the tax increment revenues captured by the LBRA as set forth above and as provided in the reimbursement agreement to be entered into pursuant to subsection 5.2(B)(2)(d) above. Such assignment shall not take effect until the City, the LBRA, and the BWL are notified in writing of the assignment.

5.3 Brownfield Tax Credits. Act 381 also provides for state business tax credits with the approval of a brownfield plan by the LBRA and the City Council and with the approval of the amount of the tax credits by the MEGA. The brownfield plan shall be submitted to and approved by the City Council as provided in paragraph 5.2(A)(2)(a) above. Developer shall submit the appropriate application to the MEGA for its consideration and approval not later than May 15, 2008. Approval of the tax credits in the amount of at least \$9.9 million is a condition of closing under Article I.

5.4 CMI Grant Funds. The parties agree that enhancement of the riverfront along the Site is essential to the success of the Project. The City has received a preliminary grant commitment from the MDEQ for a Clean Michigan Initiative ("CMI") grant of \$3.2 million that are available to use for enhancement of the riverfront with public infrastructure improvements. After providing Developer an opportunity for review and comment, the City will, not later than May 1, 2008, submit an amended waterfront development plan to the MDEQ showing, at a minimum, proposed public infrastructure enhancements to the riverfront contiguous to the Site. Final approval of this CMI grant is a condition to closing under Article I.

5.5 EPA Grant Funds. The City has obtained a \$600,000 grant from the United States Environmental Protection Agency ("EPA") for use for environmental remediation in connection with the Project. The City will, not later than August 30, 2008, obtain any additional needed approvals from state officials to use the funds for such purposes. This is a condition to closing under Article I.

5.6 Renaissance Zone. Property located in a "renaissance zone" created under the Michigan Renaissance Zone Act, 1996 PA 386, as amended ("Act 386") is exempt from various taxes as are those who occupy such property. The parties agree that approval of the Site as a renaissance zone is critical to the Project's viability. The parties have yet to determine what, if any, portion of the New Ramp should be within a renaissance zone and will address that as part of the agreement for the New Ramp under subsection 4.1(B) of this Agreement. Enactment of a

resolution by the City Council in support of the renaissance zone prior to September 15, 2008 shall be a condition to closing under Article I. Developer may elect the date upon which such renaissance zone application is submitted to the State, which is currently estimated to be January 1, 2009.

5.7 Historic Tax Credits.

(A) The City and the BWL shall cooperate with Developer as Developer seeks creation by the City of a historic district encompassing the Power Station. Approval of the historic district is a condition for closing under Article I. Approval of tax credits related to that designation is not a condition to closing and is solely Developer's responsibility. To the extent reasonably necessary prior to closing on the conveyance of the City Property to Developer, the City and the BWL shall execute as the owner of the City Property such documents as may be needed to obtain such tax credits.

(B) If Developer does not apply for such designation by February 1, 2008 or does not waive the approval of the historic district as a condition of closing by February 1, 2008 and, as a result, closing does not occur, either the City or the BWL may elect to terminate this Agreement. If either does so, the Earnest Money shall be paid to the City and the BWL as liquidated damages and this Agreement shall terminate upon the City's and BWL's receipt of the Earnest Money.

5.8 Failure to Obtain or Give Public Support Approvals.

(A) Approval of the Public Support requires various public officials and bodies to make discretionary decisions, often using statutory or other criteria and considering a variety of information including information offered by the public. Nothing in this Agreement is intended to impair or limit any discretion of any public official or body.

(B) Except where another or additional remedy is expressly provided by this Agreement, if any approval that is required under this Article to be given prior to closing or any deadline under this Article is required to be met before closing is not given or met prior to the closing:

- (1) The parties may waive that condition to closing and proceed to closing.
- (2) The parties may, without amending this Agreement but with resolution approved by the City Council and the BWL, extend the date for closing until such approvals can be obtained and/or steps completed.
- (3) Any party may terminate this Agreement and the Earnest Money shall be returned to Developer. This Agreement shall terminate when the Earnest Money is returned to Developer.

Article VI: Miscellaneous

6.1 Fair Employment Practices. Developer agrees that in the construction of the Project and all other work Developer is to perform under this Agreement, Developer and its contractors, agents and representatives shall comply with all applicable laws, ordinances, rules, regulations and other legal requirements, whether now in effect or hereinafter taking effect with respect to equal opportunity, affirmative action, payment of prevailing wages and fringe benefits. Furthermore, Developer agrees to enter into a Project Labor Agreement in a form approved by BWL with Developer's contractors and subcontractors for the New Steam Facilities and the New Chilled Water Facilities. Finally, Developer intends to negotiate a Project Labor Agreement for any other work on the Project. Developer shall ensure that Christman and its subcontractors also comply with the provisions of the Project Labor Agreement entered into by Developer.

6.2 Remedies.

(A) Where return or retention of the Earnest Money is provided, it shall be the sole remedy available to the party. Where payment of the Earnest Money to or the retention of the Earnest Money by the City and the BWL is provided, it shall be divided and dispersed as they mutually direct in writing. If the City and the BWL do not agree on the division and dispersal of the Earnest Money between them, the Earnest Money shall be allocated between them based on invoiced and paid costs each has incurred according to the following: first to pay for the costs of obtaining the return of the Earnest Money, then to pay for the costs of preparing this Agreement, then for the costs of preparing plans and obtaining approvals as required by this Agreement, and, finally, by dividing the remainder. Otherwise, any remedies provided in this Agreement shall be cumulative of all remedies available under applicable law or in equity.

(B) Where this Agreement calls for the payment of attorneys fees and transactional costs, the party required to pay such amounts may review the invoices therefore to the extent the information in those invoices is not privileged. If the parties do not agree on the amounts to be paid, they shall seek the opinion of an attorney from another Michigan based law firm who has experience with transactions of such a nature and complexity as this transaction regarding the reasonableness of such fees and costs. If the parties can agree on an attorney to review those invoices, the opinion of that attorney shall be binding on the parties. If they cannot agree, the party seeking the fees shall select an attorney, the party to pay the fees shall select an attorney and the two selected attorneys shall select a third attorney and the majority decision of the three attorneys so selected shall be binding on the parties. No selected attorney or that attorney's law firm shall have provided services for any party within the last 5 years.

(C) Remedies may be exercised together or separately and the exercise of one or more remedies shall not preclude the subsequent exercise of other remedies.

(D) The parties agree that some legal remedies may be inadequate and that equitable remedies are more appropriate. The parties agree that any breach of this Agreement causes irreparable harm to non-breaching parties.

(E) To the extent permitted by law, the parties agree that the jurisdiction and venue for any action brought pursuant to, arising from or to enforce any provision of this Agreement shall be solely in the state courts in Ingham County, Michigan.

(F) To the extent permitted by law, the parties agree that in any action brought pursuant to, arising from or to enforce any provision of this Agreement the prevailing party shall, in addition to any other remedy, be entitled to recover its costs, including, without limitation, actual, reasonable filing fees, legal fees, expert fees, discovery expenses and other costs incurred to investigate, bring, maintain or defend any such action for its first accrual or first notice thereof through all appellate and collection proceedings.

(G) Time is of the essence in this Agreement. The failure of any party to comply with a deadline imposed by this Agreement is a substantial breach of this Agreement. However, the parties may, by written agreement by the Mayor and the General Manager of the BWL agree to a one-time extension of a deadline of up to 60 days and after approval by the City Council and the BWL, extend any deadline in this Agreement to whatever date is then agreed upon, without formally amending this Agreement. It is further provided, that if it is unable to meet any required deadline under Section 1.7 of this Agreement, Developer may, at its discretion extend the closing date by up to 180 days if it reasonably believes that, in doing so, it can meet the deadline. If any deadline is so extended, all subsequent deadlines in this Agreement that are established in reference or in harmony to the missed deadline shall be similarly extended.

(H) If the BWL fails to perform any covenant or condition of this Agreement with regard to any of its obligations under any applicable Environmental Law and such failure continues for thirty (30) days after written notice from Developer to the BWL, Developer may pay or perform on behalf of the BWL the defaulted obligation of the BWL, in which case the BWL shall reimburse Developer on demand for all costs incurred by Developer in so doing, including, without limitation, reasonable attorney fees, together with interest at the statutory rate for a civil judgment from the date of Developer's payment or performance until paid. Notwithstanding the foregoing: (1) if any such failure cannot reasonably be cured within thirty (30) days, the BWL shall not be in default if the BWL begins to cure during such 30-day period and diligently attempts to cure thereafter; and (2) if the BWL's breach materially interferes with Developer's construction schedule for the improvements to be made to the Project, Developer may pay or perform the BWL's default obligation after three (3) days written notice.

6.3 Entire Agreement. This is the entire agreement among the parties or any of them with respect to its subject matter. It supersedes and replaces any prior or contemporaneous agreements whether written or verbal, express or implied. It may not be amended except by a writing signed by all the parties after approval by their respective governing bodies.

6.4 Interpretation. All parties had input into the drafting of this Agreement and all had the advice of legal counsel before entering into this Agreement. Therefore, this Agreement shall be construed as if mutually drafted. The captions are only for reference and shall not affect the

interpretation of this Agreement. However, the recitals are an integral part of this Agreement. Several copies of this Agreement may be signed, but they shall all constitute only one agreement. A copy of this Agreement and all exhibits may be used as an original in any action or proceeding involving this Agreement. The exhibits are an integral part of this Agreement and are incorporated into this Agreement. Whenever an officer is mentioned by title in this Agreement, it shall be construed as meaning that officer or his/her designee or, if the office is abolished or duties transferred to another officer, to the officer to whom such duties are assigned.

6.5 Notices. Notices shall be complete when delivered by personal delivery, by courier or delivery service (such as UPS, FedEx or other service) or by certified mail, return receipt requested to the addresses first written above. If any party refuses to accept delivery when presented, delivery shall be deemed to have occurred at the time of such refusal.

6.6 Assignment and Benefit. No party may assign this Agreement or any rights, duties or obligations under this Agreement without the express, prior written authorization of all the other parties following action by their respective governing bodies. Such authorization shall not be unreasonably withheld, delayed or conditioned. This Agreement shall be binding on the parties and their permitted successors and assigns. However, no other parties are intended to benefit from or be beneficiaries of this Agreement.

6.7 Further Documents. Should further documentation reasonably be needed to effectuate the provisions and intent of this Agreement, each party agrees to execute such further documents as are reasonably needed without undue delay or conditions.

6.8 Recording. A memorandum of this Agreement may be recorded with the Ingham County Register of Deeds by and at the expense of any party wishing to do so. If requested by any party, the other parties shall cooperate in preparing and executing such a memorandum for recording in a form reasonably acceptable to all parties.

The parties have signed this Agreement as of the date first written above.

CITY OF LANSING

approval as to form:

By: _____
Virg Bernero, Mayor

Brigham C. Smith, City Attorney

By: _____
Chris Swope, Clerk

Clark Hill PLC
Scott C. Smith
Paul F. Novak

Miller, Canfield, Paddock & Stone PLC
William J. Danhof
Michael J. Hodge

BOARD OF WATER AND LIGHT OF THE
CITY OF LANSING

approval as to form:

By: _____
J. Peter Lark, General Manager

Honigman, Miller, Schwartz & Cohn LLP
Eric J. Eggan

By: _____
Semone James, Chair

By: _____
Rhonda Jones, Corporate Secretary

CHRISTMAN CAPITAL DEVELOPMENT
COMPANY

By: _____
Steven F. Roznowski, President

By: _____
Matthew T. Chappelle,
Secretary/Treasurer

LANSING ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Robert L. Trezise, Jr., President and CEO

By: _____
Karl Dorshimer, Vice President

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