

## AGREEMENT FOR DEVELOPMENT

THIS AGREEMENT FOR DEVELOPMENT (“Agreement”) is made and entered into by and between, **CITY OF MARQUETTE**, Michigan whose mailing address is 300 W. Baraga Ave., Marquette, Michigan (“City”) and **HRS FOUNDERS LANDING, LLC**, a Michigan limited liability company whose mailing address is 23370 Commerce Drive, Farmington Hills, Michigan 48335 (“HRS”) as of the later of the dates set forth after the parties’ signatures below (hereinafter referred to as the “Effective Date”).

### WITNESSETH:

WHEREAS, contemporaneously herewith, HRS has acquired from the City certain real property located in the City of Marquette, Michigan (the “Property”), which real property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference, pursuant to the terms of an Agreement for Purchase and Sale of Real Estate between HRS and the City dated July 29, 2019, as amended (“Purchase Agreement”) for the total purchase price of \$433,380.34;

WHEREAS, the City and HRS desire to enter into this Agreement for the purpose of rehabilitating and developing the Property to facilitate marketability, enhance tax revenue for the City and further the general business development within that portion of the City of Marquette where the Property is located;

WHEREAS, the development of the Property is referred to as the “Project”.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the foregoing recitals, which are hereby restated and incorporated herein by this reference, and other valuable consideration, the parties agree as follows:

### ARTICLE 1 – CONSTRUCTION OF PROJECT

1.1 Construction of Project. Subject to the terms and conditions of this Agreement, and provided that site conditions and engineers’ reports support such construction, HRS shall construct, or cause to be constructed, on the Property at HRS’ expense and in accordance with the plans to be submitted to the City upon the following terms and conditions:

- a. The Project shall be constructed as a fully taxable development.
- b. The plan for the Project must be approved by the City Planning Commission in compliance with all applicable city ordinances, and must provide for one of the following uses: hotel, restaurant, retail, office, residential, and/or parking purposes. HRS, or its approved assignee(s) shall prepare and submit final construction documents consistent with its plans for each respective improvement to be constructed on the Property and in compliance with all applicable laws and City ordinances.

c. Construction of the Project shall commence within three (3) years after the Effective Date of this Agreement and, subject to Section 1.1(d), be completed within five (5) years following the Effective Date of this Agreement.

d. A maximum of two (2) one-year extensions of HRS' obligation to commence construction of the Project shall be granted by the City upon written application and good cause shown by HRS.

e. HRS shall comply with all applicable state and local building codes, laws, statutes, rules, ordinances, regulations and procedures regarding development of the Project.

1.2 Infrastructure. HRS shall be entitled to install, at HRS' sole cost and expense, the curb cuts and sidewalks as depicted on the plan for the Project.

## ARTICLE 2 – CONDITIONS PRECEDENT

2.1 Conditions Precedent to HRS' Construction Obligations. The following shall be conditions precedent to HRS' obligations to perform hereunder:

a. The City and all applicable governing bodies having jurisdiction shall have approved and issued, in a timely manner, all requisite permits and approvals for construction of the Project, including but not limited to zoning and site plan approvals, approval of parking plans and building permits. Permitted uses of shall include office, restaurant, retail, residential, institutional and educational purposes.

b. HRS shall have procured financing for the Project on terms and conditions satisfactory to HRS.

c. Completion of the Project has not been rendered impossible or impractical because of unreasonable difficulty or expense to HRS.

d. In the event any of the foregoing conditions precedent are not satisfied within the time periods prescribed in this Agreement, then HRS may choose to terminate this agreement pursuant to Article 3.

2.2 Representations and Warranties of the City. The City hereby makes the following representations and warranties to HRS, which representations and warranties shall be true and correct as of the date hereof, and shall be deemed to have been renewed and restated as of the Effective Date of this Agreement:

a. The City has the authority to enter into this Agreement and to perform and carry out all obligations, covenants and provisions hereof. The City's authority is evidenced by resolutions duly passed by the City Commission at a meeting on \_\_\_\_\_.

- b. This Agreement and the proposed Project complies with the requirements of the City's ordinances.
- c. The City will provide timely review, and approval, if appropriate, of the plans and documents of the Project, and all amendments and additional matters submitted by HRS or permitted assignee, and/or any of its successors and assigns, to achieve the purposes of this Agreement.
- d. The intended use of the Project is permissible under the City's zoning ordinances.
- e. Neither the execution nor delivery of this Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, the City's Charter, or any agreement to which the City is a party or by which it is bound.
- f. No representation or warranty by the City, or any statement or certificate furnished to HRS pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit any fact necessary to make the statements contained herein or therein not misleading.
- g. The City has no notice of and there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect the City or its principals from carrying out the covenants and promises made herein.

### ARTICLE 3 – TERMINATION

In the event HRS has not commenced construction of the Project within the required timeframes described in Article 1, the City shall have the option to terminate this Agreement without liability, by giving written notice to HRS prior to commencement of construction of the Project. In such event, HRS shall be required to re-convey the Property to the City free and clear of monetary liens and encumbrances, subject only to easements and other matters of record as of the date that HRS took title or that were otherwise approved by the City, and the City shall, upon re-conveyance of the Property to the City, pay to HRS ninety-five percent (95%) of the original purchase price when the City sold to HRS (the "Re-Purchase Price"). Re-conveyance shall occur thirty (30) days after delivery of written notice by the City that it has elected to terminate this Agreement pursuant to this Article 3. Re-conveyance shall be deemed complete upon recording of the deed and payment of the Re-Purchase Price and the City shall be entitled to possession of the Property on said date. HRS shall pay any real property transfer tax or documentary stamp tax due and payable in connection with recording of the deed as well as the cost of recording of the deed. Should the City elect to utilize a title company in connection with the transaction, HRS shall pay for the standard owner's title insurance coverage and the parties shall equally share the cost of any closing fees charged by the title company. Each party shall bear its own attorney's fees.

## ARTICLE 4 – MISCELLANEOUS

- 4.1 Assignability. HRS shall not assign its interest in this Agreement, in part or in whole, without the City's prior written consent which consent shall not be unreasonably withheld; provided, however, that HRS shall be entitled to assign this Agreement without the City's prior written consent if the assignment is to an entity solely owned by HRS or solely owned by HRS' members.
- 4.2 All notices or deliveries required under this Agreement shall be given in writing and directed as follows:

<p><b><i>HRS:</i></b> <b>HRS Founders Landing, LLC</b> Attn: Jeffrey Katzen 23370 Commerce Drive Farmington Hills, Michigan 48335 Tel: (248) 921-3996 Email: <a href="mailto:jeffkatzen@homerenewalrealty.com">jeffkatzen@homerenewalrealty.com</a></p> <p><b><i>With copy to:</i></b> Sheryl K. Silberstein, Esq. Maddin, Hauser, Roth &amp; Heller, P.C. 28400 Northwestern Highway, Second Floor Southfield, Michigan 48034 Tel: (248) 827-1887 Fax: (248) 359-6187 Email: <a href="mailto:ssilberstein@maddinhauser.com">ssilberstein@maddinhauser.com</a></p>	<p><b><i>City:</i></b> <b>City of Marquette</b> Attn: L. Michael Angeli, City Manager 300 W. Baraga Ave. Marquette, MI 49855</p> <p><b><i>With copy to:</i></b> Suzanne C. Larsen Kendricks, Bordeau, Keefe, Seavoy &amp; Larsen, P.C. 128 W. Spring Street Marquette, MI 49855</p>
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All notices so given shall be considered effective, if hand-delivered, when received; if delivered by facsimile, at the time and date of printed telephone confirmation of successful transmission; if delivered by email, as of the time and date of transmission as indicated by sender's computer; if delivered by nationally recognized overnight courier, one (1) business day after timely deposit with the courier service, charges prepaid; or if mailed, upon the date of deposit, first class postage prepaid certified mail, return receipt requested, with the United States Postal Service. Either party may change the address to which future notices shall be sent by notice given in accordance with this paragraph to the other party.

4.3 Time is of the essence in this Agreement. Any deadline falling on a Saturday, Sunday, or State of Michigan or United States legal holiday shall be extended to the next business day.

4.4 The time required under this Agreement for an obligation imposed upon HRS will be extended for any delays, or any obligations imposed upon HRS will be forgiven for any nonperformance of such obligation, due to reasons beyond HRS' control, including, but not limited to, delays caused by weather, unavailability of or delay in receiving labor or materials, labor shortages, strikes, work stoppages, acts of God, governmental regulations, delay in governmental approvals, failure to secure any necessary governmental approvals despite HRS' good faith diligent efforts, contractor's or subcontractor's breaches of contract, court orders, and fire or other casualty.

4.5 This Agreement shall be construed in accordance with the laws of the State of Michigan.

4.6 This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

4.7 This Agreement contains the entire understanding of the parties, and supersedes all negotiations, term sheets, and other discussions of the parties prior to execution of this Agreement. This Agreement may be modified only by a written instrument signed by both parties.

4.8 This Agreement may be executed in one or more counterparts, such agreements taken collectively shall be considered an original, valid and binding Agreement.

4.9 The parties agree that a facsimile or other non-alterable electronic copy (e.g. .pdf file) of this Agreement which contains the parties' signatures may be used as the original.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of later of the dates set forth after their signatures below.

**HRS Founders Landing, LLC,**  
a Michigan limited liability company

**City of Marquette, Michigan**

\_\_\_\_\_  
Jeffrey Katzen, Manager

\_\_\_\_\_  
Jennifer A. Smith, Mayor

Date: January \_\_\_\_, 2021

Date: January \_\_\_\_, 2021

\_\_\_\_\_  
Kyle Whitney, Clerk

Date: January \_\_\_\_, 2021

APPROVED AS TO CONTENT:

Date: January\_\_\_\_, 2021

\_\_\_\_\_  
L. Michael Angeli, City Manager

APPROVED AS TO FORM:

Date: January \_\_\_\_\_, 2021

\_\_\_\_\_  
Suzanne C. Larsen, City Attorney

## **EXHIBIT A**

### **Legal Description of the Property**

A PARCEL OF LAND LOCATED IN GOVERNMENT LOT 4, SECTION 23, TOWNSHIP 48 NORTH, RANGE 25 WEST, CITY OF MARQUETTE, MARQUETTE COUNTY, MICHIGAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE QUARTER CORNER BETWEEN SECTIONS 23 AND 26; THENCE N89°16'16"W ALONG THE SOUTH LINE OF SECTION 23, A DISTANCE OF 112.85 FEET TO THE EASTERLY RIGHT OF WAY LINE OF HIGHWAY US-41 AND M-28; THENCE NORTHEASTERLY ALONG SAID EASTERLY RIGHT OF WAY LINE AND A 3776.72 FOOT CURVE TO THE RIGHT AN ARC DISTANCE OF 301.29 FEET, HAVING A CHORD WHICH BEARS N15°02'06"E A DISTANCE OF 301.21 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE AND A 3776.72 FOOT RADIUS CURVE TO THE RIGHT AN ARC DISTANCE OF 300.08 FEET, HAVING A CHORD WHICH BEARS N19°35'47"E A DISTANCE OF 300.00 FEET; THENCE CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, N21°57'42"E A DISTANCE OF 139.41 FEET; THENCE S68°02'18"E A DISTANCE OF 83.57 FEET TO THE WESTERLY RIGHT OF WAY LINE OF LAKESHORE BOULEVARD; THENCE SOUTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE AND A 377.00 FOOT CURVE TO THE LEFT AN ARC DISTANCE OF 138.02 FEET, HAVING A CHORD WHICH BEARS S09°36'01"W A DISTANCE OF 137.25 FEET; THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE, S00°53'14"E A DISTANCE OF 417.85 FEET; THENCE S89°06'46"W A DISTANCE OF 98.00 FEET; THENCE N39°22'52"W A DISTANCE OF 38.02 FEET; THENCE N00°53'14"W A DISTANCE OF 59.00 FEET; THENCE S89°06'46"W A DISTANCE OF 29.00 FEET; THENCE N00°53'14"W A DISTANCE OF 67.00 FEET; THENCE N72°35'14"W A DISTANCE OF 63.70 FEET TO THE POINT OF BEGINNING. THE PARCEL CONTAINS 1.84 ACRES (80173 SQUARE FEET) AND IS SUBJECT TO ALL EASEMENTS, LICENSES, AND RESERVATIONS OF RECORD.