

# PUBLIC PARKING FACILITY DEVELOPMENT AGREEMENT

## VAULT MARQUETTE

This **PUBLIC PARKING FACILITY DEVELOPMENT AGREEMENT** is made as of July 1, 2023, (the “**Effective Date**”) by and between **MARQUETTE VAULT, LLC**, a Michigan limited liability company (the “**Developer**”), the **CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY**, a public body corporate created pursuant to 1996 PA 381, as amended (the “**MBRA**”) and the **CITY OF MARQUETTE**, a Michigan municipal corporation.

### RECITALS

- A. The Developer desires to design and construct a public parking facility (the “**Public Parking Facility**”) with a residential and commercial building above the Public Parking Facility (“**Vault Marquette**”), and together with the Public Parking Facility (the “**Project**”) at 101 S. Front Street and 119 S. Lakeshore Boulevard which consists of approximately 0.931 acres, legally described on the attached **Exhibit A** (the “**Property**”).
- B. The Developer intends to design and construct the Public Parking Facility and Vault Marquette in accordance with the plans and specifications required hereunder and in accordance with the renderings and detailed descriptions of each attached hereto as **Exhibit B** and **Exhibit C**, respectively. The Public Parking Facility will be located on a portion of the lower four (4) levels of Vault Marquette and will contain, when completed, at least 200 parking spaces that can accommodate passenger vehicles with a design clearance of seven feet six inches in height and at least 6 parking spaces that can accommodate ADA vans with a design clearance of eight feet six inches.
- C. A Brownfield Plan was prepared and approved by the City of Marquette Brownfield Redevelopment Authority on June 17, 2021 and the Marquette City Commission on July 12, 2021, and a Michigan Strategic Fund (“**MSF**”) Act 381 Work Plan was prepared and approved by the MBRA on June 17, 2021 and a Michigan Strategic Fund (MSF) Act 381 Work Plan for Non-Environmental Eligible Activities and a Michigan Department of Environment, Great Lakes and Energy (“**EGLE**”) Act 381 Work Plan for Environmental Eligible Activities are anticipated to be prepared and approved by the MBRA and MSF and EGLE respectively for State tax capture which provides for 100% of the tax increment revenues authorized by law to be captured from the levies imposed by taxing jurisdictions, including the State of Michigan, upon taxable property for the Eligible Property (as defined herein) described in the Brownfield Plan, which includes the Property, consistent with Act 381, as amended, the Brownfield Plan, and the Act 381 Work Plan (“**Brownfield Tax Increment Revenues**”).
- D. The City of Marquette, MBRA, and the Developer have entered into a Reimbursement Agreement dated October 21, 2021 (the “**Reimbursement Agreement**”) which provides for the reimbursement of costs associated with construction of the Public Parking Facility,

as well as other approved Eligible Activities (as defined herein), in accordance with the Brownfield Plan and the Act 381 Work Plans.

- E. Using the proceeds of the Bonds (as defined herein), the MBRA proposes to purchase the Public Parking Facility for an amount not to exceed the Actual Development Cost (as defined herein), subject to the Maximum Development Cost (as defined herein), upon completion of the Project by the Developer and satisfaction of certain conditions precedent specified herein. The Brownfield Tax Increment Revenues shall repay the Bonds and be further supported by a Special Assessment District (“SAD”) (as defined herein) covering the SAD Property (as defined herein) that shall be created to repay the Bonds in the event the Brownfield Tax Increment Revenues are insufficient to do so.
- F. The MBRA through an Operating Agreement with the City of Marquette Downtown Development Authority, at its sole cost and expense, shall operate and maintain the Public Parking Facility and the parking revenues shall be used by such operator as a source of funds for such operation and maintenance expenses.

In consideration of the premises and the mutual covenants contained in this Agreement, the Developer and MBRA hereby enter into this Agreement and covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1 Definitions.** The following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

- (a) “Act 381” means Act 381 of Michigan Public Acts of 1996, as amended.
- (b) “Act 381 Work Plan” means the Act 381 Work Plan for Vault Marquette approved by the MBRA and, for Environmental Eligible Activities by the Michigan Department of Environment, Great Lakes and Energy and, for Non-Environmental Eligible Activities the Michigan Strategic Fund.
- (c) “Actual Development Cost” means the total actual hard and soft costs of constructing the Public Parking Facility. The components and the calculation of the Actual Development Cost shall be confirmed by the MBRA, the City and the Developer in the Pre-Development Satisfaction Letter. Actual Development Costs may include the components outlined in Section 2.2(h), construction management fees, engineering fees, architecture fees, and accrued interest on the Construction Loan allocated to the Public Parking Facility (subject to an agreed upon cap) based upon the ratio of the hard costs for the Public Parking Facility compared to the hard costs for the Project.
- (d) “Agreement” means this Public Parking Facility Development Agreement entered into between the MBRA, the City and the Developer.
- (e) “Architect Cost Opinion” means the cost estimate of the Architect of record for the Project, including the Public Parking Facility, based on structural plans with assumed buildout and finishes.

(f) “Bonds” means the tax-exempt bonds, with a term to be determined, to be issued by the MBRA for the Public Parking Facility pursuant to the terms of this Agreement in a maximum principal amount that the MBRA determines can be issued, in its sole discretion, so that Brownfield Tax Increment Revenues will be capable of repaying the Bonds in full with appropriate debt service coverages taking into account Actual Development Cost (not to exceed the Maximum Development Cost), Issuance Costs, projected interest rates, the duration of any period in which interest is capitalized, the annual fees and expenses of the MBRA for the Project, and estimates of potential unpaid operating, maintenance and capital expenses with respect to the Public Parking Facility. The Bonds will only be issued if the same are backed by the full faith and credit of the City.

(g) “Brownfield Plan” means the Brownfield Plan, adopted by the MBRA and the City Commission in July 2021, and as amended pursuant to Act 381.

(h) “Brownfield Tax Increment Revenues” means the tax increment revenues, as defined by Act 381, from all taxable real and personal property located on the Eligible Property during the life of the Brownfield Plan, which are generated by property taxes levied against the Eligible Property, which amount results from the increase in taxable value of the Eligible Property multiplied by those millages the MBRA is legally permitted to capture for repayment of the Bonds and approved Eligible Activity costs.

(i) “City” means the City of Marquette.

(j) “City Commission” means the Marquette City Commission.

(k) “Closing” or “Closing Date” means a mutually acceptable date for the transfer of the Public Parking Facility from the Developer to the MBRA, to occur after the date on which the conditions set forth in Article 4 have been fully satisfied or waived with respect to the Project.

(l) “Construction Manager” means the qualified construction manager for the Project as is selected by the Developer with the prior written approval of the MBRA.

(m) “DDA” means the City of Marquette Downtown Development Authority.

(n) “Developer” means Marquette Vault, LLC.

(o) “Due Care Plan” shall mean a plan to meet the requirements of Section 7a Compliance Analysis for all remedial, removal, due care or other action necessary to monitor, clean up and remove all hazardous materials on or affecting the Property in accordance with Environmental Laws to the level required to meet due care obligations and for the use of the Property as the Project. The Due Care Plan shall be formulated by the Developer and its consultants and shall be subject to acceptance by MBRA pursuant to Act 381 of the Public Acts of 1996, as amended, and Part 201 of Act 451 of the Public Acts of 1994.

(p) “Eligible Activities” means the environmental and non-environmental activities identified in the Brownfield Plan which are eligible for reimbursement under Act 381, which includes the design and construction of the Public Parking Facility.

(q) “Eligible Property” means the parcels identified in the Brownfield Plan which qualify under Act 381 from which Brownfield Tax Increment Revenues will be captured to reimburse Eligible Activities.

(r) “Environmental Law” means any law, regulation or ordinance relating to environmental conditions, including without limitation the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Atomic Energy Act, the Michigan Natural Resources and Environmental Protection Act and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder.

(s) “Force Majeure” means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence, including, but not limited to, acts of God, acts of a public enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby and promptly notifies the other party in writing of such delay.

(t) “Guaranteed Maximum Price” shall mean the not to exceed construction cost of each phase of the Project (including an allocated amount to the Public Parking Facility component) provided by the Construction Manager no later than completion of design development (but for the first phase and structural design for the Project balance with the Architect Cost Opinion at least 60 days prior to the expiration of the Pre-Development Period) and shall include the components outlined in Section 2.2(h).

(u) “GMP Construction Contract” means the construction contract for the Project with a Guaranteed Maximum Price entered into by and between the Developer and the Construction Manager for each phase of the Project.

(v) “Hazardous Materials” means any substance, including without limitation perchloroethylene (“**PCE**”) or any substance containing PCE, deemed hazardous under any Environmental Law, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, medical waste, chemicals, pollutants, effluents, contaminants, emissions or related materials and items included in the definition of hazardous or toxic wastes, materials or substances under any Environmental Law.

(w) “Indemnified Persons” means the MBRA, the City and their respective members, officers, agents, employees and attorneys.

(x) “Issuance Costs” means items of expense incurred by the MBRA, the Developer and the City related to the authorization, sale and issuance of the Bonds, and authorization and execution of this Agreement, which items of expense shall include, but not be limited to, application fees and expenses, publication costs, printing costs, costs of reproducing documents,

filing and recording fees, bond counsel and counsel fees, financial consultant fees, underwriter fees and expenses, including the fees and expenses of counsel to the underwriter, rating agency fees and the costs of obtaining a policy of municipal bond insurance, if any, fees and charges for execution, transportation and safekeeping of the Bonds and related documents, counsel fees incurred by the MBRA to document this Agreement, and other costs, charges and fees in connection with the foregoing. Issuance Costs shall be deducted from the proceeds of the Bonds and shall reduce the proceeds available to the Developer for the purchase of the Public Parking Facility, as provided in this Agreement.

(y) “Laws” means all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements applicable to the Project, including, without limitation, those relating to the Environmental Laws, health and safety, disabled or handicapped persons.

(z) “Master Deed” shall mean any master deed prepared and recorded by the Developer on a portion of the Property in accordance with the requirements of the Michigan Condominium Act.

(aa) “MBRA” means the City of Marquette Brownfield Redevelopment Authority, established by the City Commission.

(bb) “Maximum Development Cost” means the maximum amount to be paid for the Public Parking Facility, as established by the MBRA based upon the MBRA’s analysis and underwriting of the Developer’s deliveries during the Pre-Development Period, including its analysis of the maximum amount of Brownfield Tax Increment Revenues that can be generated by the Project, subject to the terms of the Brownfield Plan. The Maximum Development Cost shall not exceed \$8,326,000.

(cc) “Permits” means all permits, licenses, approvals, entitlements, notifications, determinations and other governmental and quasi-governmental authorizations, including without limitation, zoning and land use approvals, required in connection with the ownership, planning, development, construction, use, operation or maintenance of the Project. As used herein, “quasi-governmental” shall include the providers of all utility services to the Project.

(dd) “Pre-Development Period” shall mean the period of time from the Effective Date through December 31, 2023, as such date may be extended in accordance with Section 2.5 below.

(ee) “Pre-Existing Contamination” means exceedances of Michigan Department of Environment, Great Lakes and Energy (EGLE) Generic Residential Cleanup Criteria on the Property for which the Developer on behalf of the MBRA has prepared and filed Baseline Environmental Assessments (BEAs) to provide an exemption from environmental liability, in accordance with Part 201, Act 451, P.A. 1994, as amended, Michigan’s Natural Resources and Environmental Protection Act.

(ff) “Project” shall have the meaning ascribed to it in the Recitals hereto.

(gg) “Project Completion” means (i) all work described in the approved Project Plans (as defined herein) has been substantially completed, lien-free and in good, workmanlike condition

and order, (ii) the Project and its components are each fully functional, operational, accessible (by stairwells, elevator, walkways and driveways described in the approved Project Plans) and capable of their intended use, (iii) all work on the Project requiring inspection or certification by any governmental agency has been substantially completed and all requisite certificates, approvals and other necessary authorizations have been obtained, (iv) the access drives approved on the Site Plan to be constructed by the Developer have been substantially completed to the satisfaction of all governmental agencies having jurisdiction over same and are otherwise fully operational and accessible, (v) off-site utilities and systems necessary for the access and operation of the Project have been substantially completed to the satisfaction of all governmental agencies having jurisdiction over same and are otherwise fully operational and functional, and (vi) such municipal approvals have in each instance been issued by the City or County, acting in accordance with its standard, generally applicable approval process, including all applicable certificates of occupancy or certificate of completion.

(hh) “Project Completion Date” shall mean forty (40) months after the full execution and delivery of the Pre-Development Satisfaction Letter, as such date may be extended in accordance with Section 4.2 below.

(ii) “Property” shall have the meaning ascribed to it in the Recitals hereto.

(jj) “Public Parking Facility” means space to provide parking as part of the Project containing at least 200 parking spaces.

(kk) “Special Assessment District” or “SAD” shall mean any special assessment district established by the City comprised of the SAD Property for the purposes of levying a special assessment against all taxable portions of such SAD Property while the Bonds are outstanding to pay the principal and interest payments due under the Bonds to the extent annual Brownfield Tax Increment Revenues are not available for those payments.

(ll) “SAD Property” means the Eligible Property as defined in the Brownfield Plan.

(mm) “Survey” means an ALTA survey of the Project, certified to ALTA requirements and complying with such of the minimum standard details, 2011 revisions, as the MBRA reasonably requires, prepared at Developer’s expense by an engineer or surveyor who is licensed in the State of Michigan and acceptable to the Construction Lender, which survey shall: (i) include a proper legal description of the Project and Public Parking Facility (including a reference to lot(s) within the applicable recorded plat(s), if any), and a computation of the area comprising the Project and Public Parking Facility in both acre and gross square feet and net square feet (to the nearest one hundredth of said respective measurement); (ii) accurately show the location on the Project of all improvements (including the Public Parking Facility), building and set back lines, fences, evidence of abandoned fences, ponds, creeks, streams, rivers, officially designated 100 year flood plains and flood prone areas, canals, ditches, easements, roads, rights of way and encroachments; (iii) be certified at the time of the Closing to the Developer, the MBRA and the Title Company; (iv) legibly identify any and all recorded matters shown on the Title Commitment or on said survey by appropriate volume and page recording references; (v) show the location of all adjoining streets; and (vi) be satisfactory to the Title Company so as to permit it to amend the standard survey exception in the Title Policy to be issued to the MBRA in connection with the Closing.

(nn) “Title Commitment” means a current commitment of the Project issued by the Title Company to the MBRA showing insurable title to be in the Developer pursuant to the terms of which the Title Company shall commit to issue the Title Policy to the MBRA in accordance with the provisions of this Agreement, and initially reflecting all matters which would be listed as exceptions to coverage on the Title Policy.

(oo) “Title Company” shall mean the title company insuring the Public Parking Facility, as mutually approved by Developer, the Construction Lender and the MBRA.

(pp) “Title Policy” means an ALTA Policy of Title Insurance for the rights of the MBRA in the Public Parking Facility, issued by the Title Company and naming the MBRA as the insured party, together with the following endorsements: (i) comprehensive endorsement; (ii) access endorsement; (iii) survey endorsement; (iv) separate tax parcel endorsement; (v) zoning endorsement (with parking); and (vi) such other endorsements as are reasonably and customarily required by institutional purchasers of and lenders on real property similar to the Project. The face amount of the Title Policy will be the total amount of the Bonds. The Title Policy shall be issued at the Closing subject only to the exceptions accepted by the MBRA and with coverage over the standard printed exceptions.

(qq) “Vault Documents” means, collectively, the Brownfield Plan, Act 381 Work Plan, and Reimbursement Agreement, described herein, as each may be amended, modified or supplemented from time to time.

(rr) “Vault Marquette” shall have the meaning ascribed to it in the Recitals hereto.

**Section 1.2 Recitals.** The Recitals set forth above are hereby incorporated herein by reference as if the same were fully set forth herein.

**Section 1.3 Number and Gender.** The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun should include the corresponding masculine, feminine, and neuter forms.

## ARTICLE 2 CONDITIONS TO THE COMMENCEMENT OF CONSTRUCTION

**Section 2.1 Conditions Precedent to the Commencement of Construction and Obligation to Issue Bonds.** As a condition precedent to the MBRA’s obligation to issue Bonds or purchase the Public Parking Facility, or the Developer’s obligation to construct the Project, the Developer, MBRA and the City agree to perform their respective duties under Section 2.2, Section 2.3 and Section 2.4 of this Agreement.

**Section 2.2 Deliveries of the Developer During the Pre-Development Period.** The Developer covenants and agrees to make commercially reasonable efforts to complete all of the following actions with respect to the Project at least sixty (60) days prior to expiration of the Pre-Development Period unless a different timeframe is set forth herein. The Developer covenants and agrees to notify the MBRA in writing if and when it reasonably believes any of the following actions are unable to be completed or cannot be completed by the applicable deadline set forth in this Agreement. Except as expressly otherwise provided for herein, all of the deliveries required

by Developer under this Section 2.2 shall be subject to the written approval of the MBRA, which approval shall not be unreasonably withheld, delayed or conditioned, pursuant to the terms and conditions of Section 2.5(b). Developer shall:

(a) Title, Survey, Property Condition. Within thirty (30) days after the Effective Date, deliver to the MBRA a Title Commitment, soil reports and environmental reports for the Public Parking Facility and the Project, and, as soon as weather permits, provide the Survey for the Public Parking Facility and the Project.

(b) Organizational and Authority Documents. Prior to the Effective Date, deliver to the MBRA complete entity information with respect to itself, its members and each of their affiliates to be involved in the Project, including without limitation:

(i) An organizational chart showing the relationships among Developer, its members and each of their affiliates involved in the Project.

(ii) A manager's certificate for the Developer and each of its affiliates involved in the Project, containing and certifying as true, correct and complete with respect to itself and its affiliates involved in the Project: (A) resolutions authorizing the execution of this Agreement and/or participation in the Project and (B) a certified copy of the entity operating agreement (or bylaws).

(iii) Certified articles of organization (or incorporation) from the jurisdiction of its organization (or incorporation) for the Developer and its affiliates involved in the Project, which the MBRA may reasonably require be updated after the Pre-Development Period to a date no earlier than thirty (30) days before the Closing Date.

(iv) Good Standing Certificate from the State of Michigan Department of Licensing and Regulatory Affairs for the Developer and, if applicable, its affiliates involved in the Project, which the MBRA may reasonably require be updated after the Pre-Development Period to a date no earlier than thirty (30) days before the Closing Date.

(v) If applicable, a Certificate of Authority to transact business in Michigan from the State of Michigan Department of Licensing and Regulatory Affairs for the affiliates of the Developer involved in the Project, which the MBRA may reasonably require be updated after the Pre-Development Period to a date no earlier than thirty (30) days before the Closing Date.

(vi) A Statement of litigation history for the last five years.

(vii) Such other entity information or documentation with respect to the Developer involved in the Project as may be reasonably required by the MBRA.

Any change in the entity structure or the ownership and control of the Developer after the Effective Date of this Agreement shall be subject to written approval by the MBRA, which approval shall not be unreasonably withheld, delayed or conditioned.

(c) Financial Statements. Deliver to the MBRA updated financial information on the Developer and its affiliates involved in the Project showing the Developer's ability to invest the minimum equity requirement to construct the Project, subject to the confidentiality conditions set forth in Section 2.5(c) of this Agreement.

(d) Site Plan.

(i) As soon as possible during the Pre-Development Period, but in no event later than one hundred twenty (120) days prior to the expiration of the Pre-Development Period, prepare and submit the site plan for the Project (the "**Site Plan**") to the City for approval, with a copy to the MBRA. The Site Plan shall provide details for both the Project as a whole and for the Public Parking Facility. The Site Plan shall meet the requirements of this Agreement. With respect to the Public Parking Facility, the Site Plan shall reflect, at a minimum, the number of proposed parking spaces, the points of ingress and egress from public streets, a plan for traffic management during construction, estimate of traffic impacts on adjacent streets, the elevation of each floor of the Public Parking Facility along with the width and length of each floor, and the location of all elevators and stairwells providing access to the Public Parking Facility from both Vault Marquette and the public right of way. DDA involvement and design.

(ii) During the Pre-Development Period, to the extent the Developer wishes to have the City create separate tax parcels or record a Master Deed, provide a Site Plan or survey showing the separate tax parcels sought by the Developer to be created within the Project.

(iii) Be solely responsible for all costs and expenses of preparing and filing applications for any submissions pursuant to this subsection, including survey drawings, engineering plans and consultants' costs.

(e) Zoning, Permits and Approvals. Obtain all Permits that are necessary in order for the Developer to construct and operate the Project, whether required by other City departments and/or agencies or otherwise.

(f) Governmental Approvals. Promptly following completion of the final approved Site Plan, but in no event later than sixty (60) days prior to the expiration of the Pre-Development Period, submit evidence to the MBRA that the Developer has obtained all necessary governmental approvals to start construction of the Project.

(g) Construction Contract. Upon the approval of the GMP Construction Contract for each phase of the Project pursuant to the conditions provided in the subsection below, but in no event later than ten (10) days prior to the expiration of the Pre-Development Period, obtain and deliver to the MBRA an executed copy of the GMP Construction Contract. The Construction Manager under the GMP Construction Contract shall not be changed without the written approval of the MBRA.

(h) Construction Costs. No later than upon completion of the design development of the Project, but in no event later than sixty (60) days prior to the expiration of the Pre-Development Period, submit to the MBRA the cost estimates and draft GMP Construction Contract for the first

phase of the Project and cost estimates for the balance of the Project, based on the Architect Cost Opinion, which shall separately delineate the costs attributable to the Public Parking Facility and shall conform to the Project Plans, Project Budget and Project Schedule (as each is defined below). The MBRA's approval of the GMP Construction Contract shall be limited to its review of the total Guaranteed Maximum Price, the portion of the Guaranteed Maximum Price allocated to the Public Parking Facility, the Construction Manager, the execution of GMP Construction Contract, and the warranties provided by the Construction Manager within the GMP Construction Contract for each phase of the Project and the Architect Cost Opinion for the balance of the Project. The Guaranteed Maximum Price allocated to the Public Parking Facility shall be inclusive of the following items:

(i) Construction costs for the Public Parking Facility (excluding costs associated with structural elements necessary to support portions of the Project not required for the Public Parking Facility), which shall be based on the costs documented by a signed Schedule of Values (AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT or comparable schedule); and

(ii) Allocation of shared construction costs between the Public Parking Facility and the remainder of the Project (e.g. elevators and stairwells) based on the functional percentage of each component to each portion of the Project.

(iii) General conditions not to exceed 4% of the construction costs of the Public Parking Facility, construction management fees not to exceed 3.25% of the construction costs of the Public Parking Facility, and engineering fees not to exceed 5% of the construction costs of the Public Parking Facility;

(iv) Transaction costs as described in Section 5.1(b); and

(v) The estimated interest to be accrued on the Construction Loan during the estimated construction schedule. Interest shall not be allocated against the Maximum Development Cost.

To the extent not waived in writing by the MBRA pursuant to a written request by the Developer, the Construction Manager shall secure competitive bids for any element of the construction of the Public Parking Facility costing \$20,000 or more. All bids shall be provided to the MBRA for review. The Construction Manager shall award the bids for construction of the Public Parking Facility to the best bids meeting specifications, taking into consideration which bids are lowest. No bid will be awarded to any subcontractor that is in arrears to or in litigation with the MBRA or the City.

(i) Architect Agreement. Have obtained and delivered to the MBRA an executed architect agreement.

(j) Plans and Specifications.

(i) Deliver plans and specifications for the Public Parking Facility and Vault Marquette, which plans and specifications for Vault Marquette shall not include tenant or purchaser buildout (the "**Project Plans**"), at the Schematic Design, Design Development

and Construction Documents phases to the MBRA and DDA for their approval, such approval not to be unreasonably withheld, delayed or conditioned.

(ii) Design the Public Parking Facility with at least a fifty (50) year useful life as defined by a durability design software such as Life-365 to be submitted for review and approval by MBRA. Durability features shall comply, as a minimum, with the recommendations of ACI publication 362.1R Guide for the Design and Construction of Durable Concrete Parking Structures.

(k) Budgets.

(i) Deliver to the MBRA a budget and pro forma operating statement for the Project (“**Project Budget**”) that demonstrates (1) minimum investment thresholds sufficient to enable the MBRA to calculate the projected Brownfield Tax Increment Revenues to be generated by the completed Project, and (2) the planned sources and uses of all of the Developer funds, both equity and debt, necessary to fund the Developer’s obligations with respect to the Project.

(ii) Deliver a budget and pro forma operating statement for the Public Parking Facility (the “**Parking Structure Budget**”) comprised solely of the hard costs of construction for the Public Parking Facility expected to be paid to the Construction Manager, subcontractors and suppliers for items that qualify as capital expenditures under applicable federal Laws and such soft costs for the Public Parking Facility as are expected to be incurred by the Developer, provided that expenses (1) for the construction of improvements or infrastructure located outside the Public Parking Facility and (2) that are otherwise not permitted to be funded or reimbursed from the Bonds by applicable Laws, shall not be included as items in the Parking Structure Budget.

(iii) After receiving approval from the MBRA, the Developer shall not change the approved Project Budget or the approved Parking Structure Budget during the term of this Agreement without the approval of the MBRA, provided, however, that changes in the approved Project Budget line items (other than with respect to items in the approved Parking Structure Budget) may be made so long as such changes do not (1) decrease the overall Project Budget or (2) increase the overall approved Project Budget (exclusive of the approved Parking Structure Budget) by more than fifteen percent (15%), and the approved Project Budget continues to support the anticipated Brownfield Tax Increment Revenues after any such adjustment.

(l) Construction Schedule.

(i) Deliver to the MBRA a construction schedule for the Project that provides a plan for the phasing and staging of construction and development of the elements of the Project (the “**Project Schedule**”).

(ii) Not materially change the approved Project Schedule during the term of this Agreement without the written approval of the MBRA.

(m) Construction Financing.

(i) Deliver to the MBRA a commitment letter or similar undertaking from a licensed and regulated commercial financial institution (the “**Construction Lender**”) lawfully permitted to do business in the State of Michigan evidencing its firm commitment (the “**Construction Loan Commitment**”) to fund amounts necessary (the “**Construction Loan**”), together with Developer’s equity, to complete the Project.

(ii) The Construction Loan Commitment may be subject only to (1) reasonable conditions with respect to the MBRA’s commitments under this Agreement and (2) usual and customary lender conditions, which conditions shall not include the required disbursement or commitment of any bond funds by the MBRA on terms other than as set forth in this Agreement. Notwithstanding the foregoing, either the MBRA or the Construction Lender may request that a tri-party agreement be entered into by and among the Developer, the MBRA and the Construction Lender governing each party’s rights and obligations with respect to the Project, which agreement shall allow for a collateral assignment of Developer’s rights to the Brownfield Tax Increment Revenues to the Construction Lender in accordance with the Vault Documents, for payment of the Construction Loan if the Bonds are not issued.

(iii) Not later than ten (10) days prior to the expiration of the Pre-Development Period deliver to the MBRA copies of the final fully executed construction loan documents reasonably satisfactory to the MBRA.

(n) Master Deed. Deliver to the MBRA, the Master Deed Developer intends to record including the necessary provisions to protect the MBRA’s interest in the Public Parking Facility, establish required insurance terms, and provide for transient public parking spaces pursuant to the terms of this Agreement. Once the Master Deed has been approved by the MBRA, it shall not be modified, changed or amended without the prior written consent of the MBRA.

(o) Insurance. Deliver to the MBRA evidence of the following insurance coverages for the Developer and any contractor(s) and subcontractor(s):

(i) Commercial general liability insurance for the Developer issued by an insurer authorized to do business in the State of Michigan, in a form reasonably acceptable to the MBRA and through insuring companies rated by the A.M. Best Insurance Guide as at least A:VII or better, naming the Developer as insured and the MBRA and the City as additional insureds, against any and all claims customarily covered by such insurance, including but not limited to personal injury, death, and property damage, relating to the Project, such insurance to be written with limits of not less than (1) \$3,000,000 in respect of personal injury to or death of all persons arising out of any one occurrence, and (2) \$3,000,000 per occurrence in respect of any instance of property damage.

(ii) Commercial General Liability Insurance on an “Occurrence Basis” for any contractor(s) and subcontractor(s) with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit. Coverage shall include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C)

Independent Contractors Coverage; (D) Broad Form General Liability Endorsement or Equivalent.

(iii) Worker's Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.

(iv) Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

(v) Contractor's Pollution Liability Insurance provided by Contractors, sub-contractors and site work contractors engaging in environmental response activities, covering any sudden and non-sudden pollution or environmental impairment, including cleanup costs and defense, with limits of liability of not less than \$1,000,000 per occurrence (with first party and third-party coverage).

(vi) Builder's risk insurance carried (or arranged to be carried as of the start of construction) by the Developer or its contractor and issued by an insurer authorized to do business in the State of Michigan, in a form reasonably acceptable to the MBRA and through insuring companies rated by the A.M. Best Insurance Guide as at least A:VII or better, in an amount equal to 100% of the full replacement value of the Project.

(vii) Certificates of insurance evidencing such coverage shall be submitted to the MBRA in advance of the expiration of the Pre-Development Period, and at least thirty (30) days prior to the expiration dates of expiring policies. Any such insurance shall also contain a commitment from the insurer to (1) provide notice to the MBRA not less than ten (10) days in advance for any cancellation due to nonpayment of premium by the Developer and (2) endeavor to provide notice of any cancellation thirty (30) days in advance of any termination for reasons other than nonpayment. Developer shall notify MBRA in writing if the insurance coverage amounts carried by Developer are reduced below the coverage amounts set forth above or if it receives any notice of termination of such coverages.

(p) Notice of Commencement. Provide MBRA evidence that the Developer or its contractor(s) has complied with the requirement of the Michigan Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, by recording with the Marquette County Register of Deeds and posting upon the Property a Notice of Commencement, together with at least ten (10) readily detachable Notices of Furnishing.

(q) Performance Bonds. If required by the Construction Lender, Developer shall cause the Construction Manager to obtain performance bonds from a surety or bonding company securing the Construction Manager's obligations to complete the Project, and evidence of any such bonds shall be provided to the MBRA.

(r) Capital Expense Report. Ensure that the MBRA has received from the Construction Manager and approved an initial estimate of the long term capital expenses for the Public Parking Facility based on industry maintenance standards (the "CapEx Report").

(s) Additional Items. Provide MBRA with such additional documents, agreements, consents, information, drawings and financial information as reasonably required by the MBRA in order for the MBRA to complete its analysis of all aspects of the Project, including, but not limited to, the Public Parking Facility, the Bonds and the Brownfield Tax Increment Revenues, and for the MBRA to satisfy its obligations relating to the Project.

(t) Updates to Deliveries. To the extent that some Developer deliveries required under Article 2 of this Agreement have been delivered to the MBRA prior to all required Developer deliveries, the MBRA shall have the right to request updates to or recertification of such previously delivered information as a result of a potential change in the factual circumstances created by the intervening time period so that the MBRA may perform a full and complete analysis of the Public Parking Structure, the Project and the Brownfield Tax Increment Revenues.

**Section 2.3 Covenants of the MBRA During the Pre-Development Period.** The MBRA covenants and agrees to make commercially reasonable efforts to complete all of the following actions with respect to the Project during the Pre-Development Period subject to receipt of such items by the Developer within the applicable timeframe provided for in this Agreement. The MBRA covenants and agrees to notify the Developer in writing if and when it reasonably believes any of the following actions are unable to be completed or cannot be completed by the expiration of the Pre-Development Period.

(a) Review of Developer Deliveries. The MBRA covenants and agrees to proceed diligently to review, approve or otherwise provide a response with respect to any Developer deliveries required under Article 2 of this Agreement pursuant to the terms and conditions of Section 2.5(b). The MBRA will promptly review the Site Plan, Project Plans, Project Budget and Project Schedule and either provide its approval or provide comments to such within forty-five (45) days of receipt from Developer. Developer shall review any comments provided by the MBRA and promptly resubmit such item to the MBRA for approval. Notwithstanding anything herein to the contrary:

(i) The MBRA may reasonably withhold approval of any Project Plans for the Public Parking Facility that (1) result in a Parking Structure Budget that exceeds the underwritten Brownfield Tax Increment Revenues to be generated by the taxable improvements in the Project sufficient to retire both the Bonds without adequate assurance from the Developer of a source of additional funds to complete the Project, or (2) otherwise does not meet the parking needs of the Project as stated in this Agreement.

(ii) The MBRA may reasonably withhold approval of any Project Budget that does not result in taxable improvements that are projected to generate Brownfield Tax Increment Revenues sufficient to cover a debt service coverage ratio of 1.20:1.00 for the repayment amount of the Bonds, or such other amount as reasonably determined by the MBRA in consultation with its underwriter.

(iii) The MBRA may reasonably withhold approval of any Project Schedule that does not result in the completion of the Project elements in a manner that generates, in a timely manner, sufficient Brownfield Tax Increment Revenues to commence retirement of both the Bonds.

(b) Brownfield Tax Increment Revenue Analysis. Based upon all of the required Developer deliveries required under Section 2.2 above, the MBRA shall determine whether the Project will create Brownfield Tax Increment Revenues capable of repaying the Bonds in full with appropriate debt service coverages taking into account Actual Development Costs (not to exceed the Maximum Development Cost), Issuance Costs, projected interest rates, the duration of any period in which interest is capitalized, the annual fees and expenses of the MBRA, estimates of potential unpaid operating, maintenance and capital expenses with respect to Public Parking Facility.

(c) Cash Deposit/Letter of Credit. The MBRA may require the Developer to provide to the MBRA, as a condition to the issuance of the Bonds, a cash deposit from Developer, or a letter of credit in favor of the MBRA from a financial institution acceptable to the MBRA, in an amount equal to one-half of the annual principal and interest payments due under the Bonds to cover the delays in the City's ability to promptly exercise its rights under the SAD as a result of the Developer's, or its permitted successor's, nonpayment of taxes, if the Brownfield Tax Increment Revenues are projected to be insufficient to cover the funding of the deposit under Section 6.1(g) for payment of the shortfall; provided, however, if the Developer or City funds such a deposit due to an anticipated Brownfield Tax Increment Revenue shortfall then the Developer shall be reimbursed the amount of the deposit from successive Brownfield Tax Increment Revenue in the priority position as shown in Section 2.2(a)(ii)3, which otherwise calls for such Revenue to fund a Bond reserve.

(d) Maximum Development Cost. The MBRA shall establish the Maximum Development Cost of the Public Parking Facility.

(e) Bond Amount. Following receipt and review of all of the required Developer deliveries required under Section 2.2 above, the MBRA shall underwrite the Bonds based on all available information, including its analysis of the Brownfield Tax Increment Revenues generated by the Project, Issuance Costs, current interest rates and the Project Schedule, and provide the Developer with the proposed maximum dollar amount of the Bond issuance with respect to the Public Parking Facility.

**Section 2.4 Joint Covenants of the Developer and MBRA During the Pre-Development Period.** The Developer and the MBRA shall make commercially reasonable efforts to complete all of the following actions with respect to the Project prior to the expiration of the Pre-Development Period.

(a) Special Assessment District. The MBRA and the Developer shall cooperate with the City to undertake the establishment of the Special Assessment District. The SAD shall be apportioned among the SAD Property in proportion to the taxable value of such property as determined by the City assessor. The SAD assessments shall be limited to that amount needed to pay the principal and interest payments due under the Bonds to the extent the annual Brownfield Tax Increment Revenues are insufficient to cover those payments, and the SAD shall terminate when the Brownfield Tax Increment Revenues for a calendar year reach the amount required to meet the maximum annual bond payment amount plus fifteen percent (15%).

(b) City Approval Coordination. While neither the MBRA nor the Developer can control the actions of the City, the MBRA and the Developer shall use their good faith efforts to cause the City to review, and if applicable, issue the relevant approvals required by the City or departments thereof with respect to the Project. The Developer acknowledges and agrees that the MBRA shall have no liability for any actions or omissions by the City in connection with any requested approvals or permits by the Developer in connection with the Project.

(c) City Resolution. The MBRA and the Developer shall use their good faith efforts to obtain from the City resolutions (collectively, the “City Resolution”) that the City will pledge its full faith and credit to the Bonds prior to the issuance thereof by the MBRA.

(d) Act 381 Work Plan. The MBRA and the Developer shall work collaboratively to obtain Act 381 Work Plan approval for Non-Environmental Eligible Activities from the Michigan Strategic Fund (MSF).

**Section 2.5 General Conditions**. The following general conditions shall apply during the Pre-Development Period:

(a) Costs. Each party will bear its own costs during the Pre-Development Period, except to the extent a party incurs liability under a specific indemnification obligation set forth in this Agreement. If the Bonds are never issued, the MBRA and Developer shall have the right to recoup the legal fees and other costs it incurred in connection with the negotiation and documentation of this Agreement from any available Brownfield Tax Increment Revenues. Notwithstanding the foregoing, any and all Eligible Expenses of the Developer under this Agreement shall be subject to reimbursement from the Brownfield Tax Increment Revenues to the extent allowed by and in the priority provided by the Vault Documents, as amended by this Agreement.

(b) Approvals. Except as otherwise provided for herein, all consents or approvals requested by the Developer from the MBRA shall not be unreasonably withheld, delayed or conditioned by the MBRA if such consent or approval relates to third-party deliveries, provided, however, the MBRA’s consent or approval with respect to the MBRA’s analysis and underwriting of the Brownfield Tax Increment Revenues and the Bonds shall be in its sole and exclusive discretion. In no event shall any delay by the MBRA in responding to a request by the Developer for an approval of any delivery contemplated under Article 2 be deemed an approval of such delivery by the MBRA. Neither the MBRA nor the City shall be under any obligation to change its standard, generally applicable approval process for development projects in connection with any Developer submissions regarding the Project. The execution of this Agreement in no way constitutes the MBRA’s approval of the Project or obligates the MBRA to support or approve the Project except as expressly set forth in this Agreement. The approval of an item required to be submitted by the Developer herein shall not be deemed to waive the rights of the MBRA or the City with respect to issuing building permits, compliance with fire, safety and other building codes, or other standard, generally applicable development and construction approvals necessary for the Project. In no event shall the MBRA be liable to the Developer or any other party for any items that the City fails to approve or that the City fails to timely approve.

(c) Confidentiality. To the extent that Developer desires to keep any information or documents that it is required to submit to the MBRA pursuant to this Agreement confidential, Developer and the MBRA agree that Developer and its counsel may submit such information to counsel for the MBRA provided that the Developer clearly labels such information as confidential. Developer acknowledges that counsel for the MBRA may share such confidential information with the MBRA provided that counsel for the MBRA first receives approval from counsel for the Developer, counsel for the MBRA retains all copies of such materials in its possession, and such information is labeled as confidential. Notwithstanding the foregoing, Developer acknowledges that any confidential information received by the MBRA may be subject to disclosure pursuant to all applicable Laws, including the Freedom of Information Act, except to the extent of any applicable exceptions or exclusions thereto, but the parties shall seek to handle such information in a manner that does not make it subject to disclosure under the Freedom of Information Act.

(d) Extension of Pre-Development Period.

(i) Mutual. The parties may, by mutual written consent, agree to extend the Pre-Development Period if the Pre-Development Period conditions have not been satisfied or waived by the parties prior to the expiration of the Pre-Development Period. In the event the Pre-Development Period conditions have not been satisfied solely as a result of the MBRA's delay in approving the Developer's submissions, except to the extent caused by the Developer's failure to timely provide all required items within the applicable timeframes provided for in this Agreement, the MBRA shall reasonably agree to provide the Developer with an extension of the Pre-Development Period for a period of time equivalent to the period of the MBRA's delay in approving the Developer's submissions.

(ii) By Developer. If the Developer has not completed a requirement or condition of the Pre-Development Period prior to the applicable timeframe provided for during the Pre-Development Period, it may extend the Pre-Development Period for a period of six (6) months by giving written notice to the MBRA on or before sixty (60) days prior to the expiration of the Pre-Development Period. The Developer may make up to three (3) such six month extensions if it finds it necessary to meet all of the Pre-Development Period conditions, and, after the third extension, the Developer may request a fourth (4<sup>th</sup>) extension, if necessary, provided that such fourth (4<sup>th</sup>) extension shall be subject to the approval of the board of the MBRA. If the Developer exercises its right to extend the Pre-Development Period, the MBRA shall have the right to request any additional information or updates to previously delivered information as a result of a potential change in the factual circumstances created by the intervening time period, and the MBRA shall have the right to re-perform its analysis of the Public Parking Structure, the Project and the Brownfield Tax Increment Revenues.

(iii) By MBRA. The MBRA shall have the right to extend the Pre-Development Period by up to sixty (60) days to accommodate the scheduling of meetings required to obtain the City Resolution and to complete any required review and underwriting of the Developer's deliveries hereunder.

(e) Termination Rights. If any of the items required to be delivered by the Developer or performed by the MBRA have not been completed or waived by the other party on or before

the expiration date of the Pre-Development Period, as the same may have been extended in accordance with Section 2.5(d) above, such other party, as their sole remedy, shall give the non-fulfilling party written notice of the non-fulfilling party's failure. The non-fulfilling party may subsequently cure such failure within a sixty (60) day period or extend this Agreement under Section 2.5(d) above, and if neither is elected, the Agreement shall automatically terminate without any required action by either party. The MBRA shall have the right to terminate this Agreement, in its sole discretion upon thirty (30) days written notice to Developer if (i) the MBRA determines that the Brownfield Tax Increment Revenues from the Project are not sufficient to repay the Bonds in full, or (ii) the City Resolution is not issued; provided that upon such notice from the MBRA, the Developer may exercise its right to extend the Pre-Development Period under Section 2.5(d), for up to a cumulative number of three (3) extensions under this Section and Section 2.5(d), to extend the time to seek satisfactory performance of items (i) and (ii) above. Upon any termination of this Agreement pursuant to the provisions herein, the parties shall have no further obligations or liabilities under this Agreement, except to the extent any liability has accrued under the specific indemnification obligations set forth in this Agreement for a default hereunder.

**Section 2.6 Confirmation of Satisfaction of Pre-Development Period Conditions.** Within thirty (30) days after the expiration of the Pre-Development Period (as may be extended), the MBRA and the Developer shall confirm in a written acknowledgement in a form substantially similar to the form attached hereto as Exhibit D (the “**Pre-Development Satisfaction Letter**”) between the parties (a) that all of conditions set forth in Article 2 have been either satisfied or waived, (b) that there are no defaults by either party under this Agreement, and (c) the irrevocable commitment of the parties to proceed pursuant to the terms and conditions of this Agreement, including the additional pre-Closing conditions set forth herein, or such other terms and conditions as may mutually be agreed upon by the MBRA and the Developer. The Pre-Development Satisfaction Letter shall set forth the parties agreement on the (i) Maximum Development Cost, (ii) maximum dollar amount of the Bond issuance, (iii) the components and calculation of the Actual Development Cost, (iv) the GMP Construction Contract for the first phase and Architect Cost Opinion for the balance of the Project, (v) the Project Plans, (vi) the Project Budget and Parking Structure Budget, (vii) the Project Schedule, (viii) the SAD threshold, (ix) minimum amount to be expended by Developer for the construction of the Project, (x) the minimum true cash value the appraisals for the Project are expected to show when the Project is completed, (xi) requirement of a letter of credit or cash deposit, (xii) the per annum interest rate for the Bonds that would cause a Market Event (as defined in Section 6.2), (xiii) the aggregate required amount of and the terms of the CapEx Reserve, and (xiv) all other items to be reviewed and/or approved by the MBRA during Pre-Development Period. If a Pre-Development Satisfaction Letter is not executed by both parties within thirty (30) days after the expiration of the Pre-Development Period (as may be extended), this Agreement shall automatically terminate without any required action by any party and the parties shall have no further obligations or liabilities under this Agreement, except to the extent any liability has accrued under the specific indemnification obligations set forth in this Agreement for a default hereunder.

**Section 2.7 Bond Issuance.** If the maximum dollar amount of the Bond issuance proposed by the MBRA during the Pre-Development Period is approved by the Developer in the Pre-Development Satisfaction Letter, simultaneously with the execution of the Pre-Development Satisfaction Letter by the MBRA, the MBRA shall adopt a resolution (the “**MBRA Resolution**”)

to issue the Bonds up to such approved maximum dollar amount upon the satisfaction of the conditions precedent specified in this Agreement.

### ARTICLE 3 CONSTRUCTION OF THE PROJECT

**Section 3.1 Developer's Construction Obligations for the Project.** Following receipt of the fully executed Pre-Development Satisfaction Letter, the Developer shall do the following on or prior to the Project Completion Date:

(a) Project. Construct the Public Parking Facility and Vault Marquette in accordance with the approved Project Plans and applicable construction drawings and Permits and in accordance with the approved Project Schedule and Project Budget.

(b) Value of the Project. The Developer represents and covenants that not less than the amount set forth in the Pre-Development Satisfaction Letter will be paid for the construction of the Project. The Developer further represents that the appraisals for the Project when completed are expected to show a true cash value of not less than the amount set forth in the Pre-Development Letter. The Developer acknowledges that the MBRA will be dependent upon Brownfield Tax Increment Revenues to repay the Bonds in full and the generation of Brownfield Tax Increment Revenues depends upon the taxable value of the Project and the Property. Accordingly, to the extent permitted by law, as long as the Bonds remain outstanding, the Developer shall not contend, in any appeal of the taxable value of the Project and the Property, that the true cash value of the Project and the Property is less than the greater of the amounts previously stated pursuant to this subsection. This subsection does not preclude an appeal of the taxable value of the Project and the Property to the extent it is based on a true cash value exceeding the amounts provided herein.

(c) Environmental Liability and Responsibility. A Baseline Environmental Assessment shall be prepared and filed by the Developer on behalf of the MBRA for the issuance of the Bonds and acceptance of the Public Parking Facility so as to provide an exemption to the MBRA from environmental liability for pre-existing contamination at the sole cost of the Developer. The Developer shall prepare and implement a Due Care Plan on behalf of the Developer and MBRA to prevent exposure to or exacerbation of any pre-existing contamination. The MBRA shall not be responsible for the performance of any obligations or costs required under the Due Care Plan except to the extent the MBRA is required to provide reimbursement to the Developer for Eligible Activities from Brownfield Tax Increment Revenues pursuant to the Reimbursement Agreement, the Brownfield Plan and the Act 381 Work Plan, as may be modified, amended or supplemented from time to time.

(d) Due Care Activities. Notify the MBRA at reasonable intervals on the status of the Due Care Plan actions taken and completed by it. The Developer shall, promptly upon the MBRA's request, provide the MBRA with copies of the results of all such action and all related documents and information.

(e) Changes in the Project. Not materially change the approved Site Plan or Project Plans during the term of this Agreement without the further approval of the MBRA, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that

Developer may make minor changes to the Site Plan or Project Plans that require no approval from the City or may be approved administratively by the City or pursuant to standard, generally applicable City procedures governing minor changes to approved plans. After Project Completion, no structural alterations or capital repairs shall be made to the Public Parking Facility by Developer without prior written approval of the MBRA and/or their consultant, not to be unreasonably withheld, delayed or conditioned.

(f) Safety Standards. Assure that the Construction Manager and its subcontractor(s) shall be solely responsible for construction site safety. At a minimum, during the period of any construction on any portion of the Project, the Developer shall erect or cause to be erected a fence or other suitable construction barrier in accordance with the requirements of the applicable governmental agency and take, and cause all contractors, subcontractors, suppliers, laborers and all other parties engaged in the construction of the Project to take, safety measures reasonably designed to prevent injury to such parties and from the public, particularly children and pedestrians.

(g) Disruptions. Pursue the construction of the Project in a manner that will (i) reasonably minimize disruption to adjacent areas of the Project, (ii) be consistent with sound contracting practices, reasonably reducing disruption to residents and of vehicular and pedestrian traffic immediately around the Project site, and (iii) maintain a reasonably neat worksite.

(h) Sidewalks and Streetscape. In the event that any of the Developer's activities on the Property damage the surrounding sidewalks or streetscapes, the Developer shall, at its own cost, restore or replace such sidewalks and streetscapes according to the City's zoning ordinance, unless sidewalk or streetscape construction is anticipated within the Project or anticipated adjacent public improvements.

(i) Cost and Expenses. Except as otherwise provided in this Agreement, all costs and expenses relating to the design and construction of the Project shall be paid by the Developer.

(j) Project Construction. Commence construction of the components of the Project in accordance with the requirements of the approved Project Schedule and will proceed diligently to construct and develop the Project through Project Completion in accordance with the approved Site Plan for the Project and the approved Project Plans on or before the Project Completion Date, subject to Force Majeure and change orders, provided that such change orders which relate to the Public Parking Facility or decrease the value of the Project shall require the prior written approval of the MBRA, not to be unreasonably withheld, delayed or conditioned. The following terms and conditions shall also apply to the construction of the Project:

(i) Project Schedule. The Developer covenants and agrees to adhere to the approved Project Schedule, or any other schedule for the completion of construction of the Project as may be required by the Construction Lender, subject to Force Majeure and change orders, provided that such change orders which relate to the Public Parking Facility or decrease the value of the Project shall require the prior written approval of the MBRA, not to be unreasonably withheld, delayed or conditioned.

(ii) Labor. All of the obligations required to be performed under this Agreement by Developer will be performed by Developer or under its supervision, and all agents, contractors, subcontractors, consultants and personnel engaged in the work shall be fully qualified and, where so required, shall be authorized or permitted under State and local law to perform such services.

(iii) Construction and Materials Standards. All improvements to be constructed by the Developer pursuant to this Agreement will be performed with good workmanship and quality specified materials in accordance with the approved Project Plans.

(iv) Further Assurances. Developer covenants and agrees to provide notice to the MBRA of the occurrence or non-occurrence of any event having a material adverse effect on Developer's ability to complete the Project in a timely fashion or to fulfill its obligations under this Agreement.

(k) Inspections. Developer will allow the MBRA and its agents at reasonable times during construction hours to inspect all or any portion of the Public Parking Facility and the construction status of the Project during the course of construction and the right to examine or audit the books and records of the Developer. The MBRA is under no duty to supervise or inspect the construction but may do so solely for the purpose of protecting its security and preserving its rights under this Agreement. No default of Developer will be waived by any inspection by the MBRA, nor shall any such inspection impose upon the MBRA any obligation that the work has been or will be in compliance with the approved Project Plans and this Agreement or that the construction is free from defective materials or workmanship.

(l) Maintain Existence in Good Standing. Developer shall maintain its existence in good standing in the State of Michigan and its qualification and good standing in every other jurisdiction wherein the failure to do so would affect the validity or enforceability of this Agreement or would have a material adverse impact on the financial condition, business or operations of Developer.

(m) Payment of Taxes and Assessments. Developer shall pay and discharge prior to the date when a penalty would apply, as often as the same may become due and payable, all taxes of whatever nature that may be levied or assessed against it or any of its properties.

(n) Payment for Labor and Materials. Developer will promptly pay and discharge or bond over all claims and liens for labor, materials and services furnished in connection with the construction of the Project.

(o) No Liens or Encumbrances. Except for any liens in connection with the Construction Loan, the Developer shall keep the Project free from all liens, provided, however, to the extent acceptable by the Construction Lender, the Developer may contest any such liens so long as it provides adequate security therefor and Developer diligently proceeds with its contest of such lien. Developer shall fulfill the applicable requirements of construction lien law, including the filing of a Notice of Commencement and such other documents as may be reasonably required by the MBRA, the Construction Lender or the Title Company.

(p) Construction Liens. Prior to or concurrently with the Developer's commencement of construction of the Project, the Developer will submit to the MBRA evidence that it has complied with the requirements of the Michigan Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, by recording with the Marquette County Register of Deeds and posting upon the Project site a Notice of Commencement, together with at least ten (10) readily detachable Notices of Furnishing.

(q) Progress Reports. Developer shall provide a monthly written report to the MBRA of its progress in the development of the Project until Project Completion or as otherwise agreed upon between Developer and the MBRA, including marketing reports and materials. Developer shall immediately provide written notice to the MBRA if the Construction Lender at any time elects to cease to provide funding or advances from the Construction Loan or delivers a default notice to the Developer with respect to the Construction Loan.

(r) Permits and Approvals. Developer shall maintain, at its sole cost and expense, all Permits that are necessary in order for the Developer to continue performance of the Developer's obligations with respect to the Project.

(s) Compliance with Laws. Developer shall comply with all Laws, including without limitation, all nondiscrimination and civil rights Laws applicable to the MBRA or to the use of any public funds.

(t) Fair Employment. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, and including, but not limited to, the Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 252) and in accordance with the Michigan Constitution and all state Laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicapped Civil Rights Act (P.A. 1976 No. 220), Developer agrees and will insert in the GMP Construction Contract and any subcontract, a covenant that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, condition, or privileges of employment because of his or her religion, race, color, or national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(u) Required Notices. As soon as it has knowledge thereof, Developer will promptly notify MBRA of any of the following:

(i) Any occurrence which constitutes a default under this Agreement or the loan from the Construction Lender, or which materially and adversely affects the Project, the Developer's financial condition or the Developer's ability to comply with its obligations under this Agreement.

(ii) After Developer receives any notice of the commencement of (a) any proceeding or investigation by a federal or state environmental agency against it regarding its compliance with any Law, Environmental Law, rule or regulation, or (b) any other judicial or administrative proceeding or litigation by or against it.

**ARTICLE 4**  
**CONDITIONS PRECEDENT TO CLOSING**

**Section 4.1 Conditions of the MBRA's Obligation to Purchase the Public Parking Facility.**

The obligation of the MBRA under this Agreement to purchase the Public Parking Facility for the Project is subject to the following conditions precedent.

(a) The Bonds shall have been issued and the MBRA shall have received the proceeds of the sale of the Bonds, provided that the MBRA shall not be obligated to initiate the Bond issuance for the Public Parking Facility until after one hundred percent (100%) of the Public Parking Facility and one-hundred percent (100%) of Vault Marquette have been completed by Developer, excluding tenant and new owner improvements, and the conditions set forth in Article 6 have been satisfied.

(b) Project Completion of the entire Project shall have occurred in accordance with the approved Project Plans, Project Budget and Project Schedule as determined by a certification of completion by the architect of record and certificate of completion by the County of Marquette.

(c) A certificate of occupancy for Vault Marquette and the Public Parking Facility shall have been issued by the County of Marquette.

(d) The conveyance for the Public Parking Facility shall be ready to be recorded.

(e) The title insurance to the Public Parking Facility in favor of the MBRA shall be ready to be issued under the Title Policy to be issued to the MBRA.

(f) Motor vehicle and pedestrian access to the Public Parking Facility pursuant to the approved Project Plans contained in the Pre-Development Satisfaction Letter shall have been achieved.

(g) The MBRA shall have received from the Construction Manager, no later than sixty (60) days prior to the Closing Date, confirmation of or updates to the amount of the long term capital expenses for the Public Parking Facility set forth in the CapEx Report, and if the expenses are increased, acceptable to the MBRA.

(h) The Developer shall have provided lien waivers or evidence of payment from all contractors and subcontractors involved in the construction of the Project to date.

(i) The Developer shall have completed the applicable due care activities under the Due Care Plan, and if the Due Care Plan calls for ongoing monitoring or remediation activities, the Developer shall have completed construction of the remediation apparatus in accordance with such restrictions and shall have provided any information necessary to demonstrate how the Due Care Plan will be conducted on an ongoing basis.

(j) The Master Deed shall have been recorded, subject to the terms and conditions specified in this Agreement.

(k) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the MBRA or the City is a party, or threatened against the Developer, the MBRA or the City contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan, nor shall there be any current or threatened claims made by any party against the Developer or judgments entered against the Developer, which in either instance could result in:

(i) A material adverse effect upon the ability of the MBRA to collect and use Brownfield Tax Increment Revenues to repay the Bonds; or

(ii) A material adverse effect on the Developer's, the MBRA's or the City's ability to comply with the obligations and terms of this Agreement, the Vault Documents, Act 381, the Bonds.

(l) The Developer shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement, and there shall be no default by the Developer, and no action or inaction by the Developer, which eventually with the passage of time could become a default under this Agreement.

(m) All of the representations and warranties of the Developer set forth in this Agreement shall be true and correct in all material respects.

(n) Upon Closing, the Developer shall confirm in writing that the MBRA's and the City's obligations under the Reimbursement Agreement with respect to the Public Parking Facility have been fully satisfied.

(o) The following documents shall be duly executed by authorized persons and delivered to the MBRA in form and substance acceptable to MBRA:

(i) Certificate of Developer with respect to its authority to affect the Closing, including all of the items required by Section 2.2(b).

(ii) Certificate executed by Developer, certifying to Developer's knowledge the (1) the non-existence of pending litigation against the Developer, (2) compliance by Developer with applicable Laws, and (3) non-existence of any defaults which could have a material adverse impact on the Developer's ability to comply with its obligations under this Agreement.

(iii) Certificate executed by Developer, certifying that all of the representations and warranties contained in this Agreement remain true and correct in all material respects.

(iv) As-built Survey and plans and specifications of the Public Parking Facility, certified to the MBRA and the Title Company.

(v) Title Policy in the form required by this Agreement.

(vi) Such other documents, certificates, instruments and information that may be reasonably requested by the MBRA.

**Section 4.2 Extension Rights.** The Developer shall have the right to extend the Project Completion Date event until the earlier of ninety (90) days after the original Project Completion Date by giving prior written notice to the MBRA. The Developer shall have a right to an additional ninety (90) day extension with approval of MBRA and another additional ninety (90) day extension with approval of MBRA and City Commission. If the Developer exercises its right to extend the Project Completion Date, the MBRA shall have the right to request any additional information or updates to previously delivered information as a result of a potential change in the factual circumstances created by the intervening time period.

## **ARTICLE 5 TRANSFER OF PUBLIC PARKING FACILITY**

### **Section 5.1 Transfer of Public Parking Facility.**

(a) Within forty-five (45) days after the date on which the conditions set forth in Section 4.1 have been fully satisfied or waived, the MBRA agrees to buy, and the Developer agrees to convey, the Public Parking Facility to the MBRA pursuant to the terms and conditions specified in this Agreement. The purchase price of the Public Parking Facility shall be equal to the lesser of the Actual Development Cost and the Maximum Development Cost, but in no event shall the purchase price of the Public Parking Facility be greater than the net available proceeds from the Bond issuance after deducting all Issuance Costs and capitalized interest.

(b) The conveyance of the Public Parking Facility shall be subject to all matters of record approved by the MBRA during the Pre-Development Period and shall be insured by the Title Policy issued by the Title Company upon the Closing Date. The Public Parking Facility shall not be subject to any liens, assessments or charges which may arise under the terms of the Master Deed, nor any construction mortgage with respect to the Project. The MBRA shall pay all fees to record the title to the Public Parking Facility, any title insurance costs and any and all transfer taxes imposed upon the conveyance of the Public Parking Facility to the MBRA, and any apportionment or proration of costs, fees or expenses with respect to the Public Parking Facility on the Closing Date.

(c) The condominium Master Deed shall specify that the Public Parking Facility shall not be subject to regular or special condominium association dues but instead shall be subject to certain fees and costs directly related to the Public Parking Facility, as defined in the Operating Agreement between the MBRA, City, DDA and the Developer.

(d) The MBRA, City, DDA, and the Developer intend to enter into an Operating Agreement for the DDA to operate the Public Parking Facility, with all parking revenues from the Public Parking Facility to cover operating and maintenance costs.

(e) Ownership of the Public Parking Facility shall be transferred to the City of Marquette upon fulfillment of the Bond Obligation.

**ARTICLE 6**  
**BOND FINANCING**

**Section 6.1 Bond Financing.** The initiation of the marketing and sale of the tax-exempt Bonds by the MBRA (with a full faith and credit pledge by the City) for the Public Parking Facility shall occur within fifteen (15) days of confirmation that the Developer has completed one hundred percent (100%) of the Public Parking Facility and at least ninety five percent (95%) of Vault Marquette, as determined by a certification of completion by the architect of record. The MBRA shall have no obligation to commence the marketing and sale of the tax-exempt Bonds after the expiration of the Project Completion Date (as may be extended in accordance with Section 4.2 above). The obligation of the MBRA under this Agreement to issue the Bonds is subject to the following conditions precedent:

(a) The Developer shall have delivered a certificate executed by the Developer certifying the date of Project Completion of the entire Project in accordance with the approved Project Plans and Project Budget.

(b) Determination by the MBRA based on the City Assessor's opinion of value that the Brownfield Tax Increment Revenue generated by the Project is sufficient to repay the Bonds, and the other obligations of the Developer hereunder in full with appropriate debt service coverages.

(c) Both the MBRA Resolution and the City Resolution shall have been passed by their respective members.

(d) The Developer shall have provided lien waivers or evidence of payment from all contractors and subcontractors involved in the construction of the Project to date.

(e) To the extent required pursuant to the Pre-Development Satisfaction Letter, Developer shall post a cash deposit with, or provide a letter of credit in favor of the MBRA from a financial institution acceptable to the MBRA, in an amount equal to one year of principal and interest payments due under the Bonds to cover the delays in the MBRA's ability to promptly exercise its rights under the SAD as a result of the Developer's, or its permitted successor's, nonpayment of taxes.

(f) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the MBRA or the City is a party, or threatened against the Developer, the MBRA or the City contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan, nor shall there be any current or threatened claims made by any party against the Developer or judgments entered against the Developer, which in either instance could result in:

(i) A material adverse effect upon the ability of the MBRA to collect and use Brownfield Tax Increment Revenues to repay the Bonds;

(ii) A material adverse effect on the ability of the MBRA to market, issue or sell the Bonds; or

(iii) A material adverse effect on the Developer's, the MBRA's or the City's ability to comply with the obligations and terms of this Agreement, the Vault Documents, Act 381, the Bonds.

(g) The Developer shall have delivered a certificate executed by the Developer certifying its actual hard and soft costs of the design and construction of the Public Parking Facility along with Developer's calculation of the Actual Development Cost in accordance with the calculation confirmed in the Pre-Development Satisfaction Letter.

(h) The Developer shall have delivered a certificate executed by the Developer certifying that the Developer has performed all of the terms and conditions to be performed by it pursuant to this Agreement, there are no defaults by the Developer, and there has been no action or inaction by the Developer, which eventually with the passage of time could become a default under this Agreement.

(i) The Developer shall have delivered a certificate executed by the Developer certifying that all of the representations and warranties of the Developer set forth in this Agreement are true and correct in all material respects.

When the conditions set forth in Section 6.1 above have been satisfied, the MBRA shall finalize the amount of the Bonds to be issued by the MBRA, not to exceed the maximum amount previously established by the MBRA and the Developer in the Pre-Development Satisfaction Letter. The Developer shall be responsible for any shortfall between Maximum Development Cost and the total costs of the Public Parking Facility.

**Section 6.2 Market Events.** The Developer acknowledges and agrees that the MBRA does not have the power to guarantee that the Bonds will be purchased or to mandate an acceptable interest rate for the sale of the Bonds. Notwithstanding the foregoing, neither the MBRA nor the City shall have any liability to the Developer or any other party for a failure of the MBRA to sell the Bonds, or for a reduction in available bond proceeds if such failure or reduction is attributable to a Market Event. A "**Market Event**" means any of the following:

(a) The marketability of the Bonds or the contemplated offering price of such bonds, in the reasonable opinion of the MBRA's underwriter for such bonds (the "**Underwriter**"), has been materially adversely affected by an amendment to the Constitution of either the United States of America or the State of Michigan, or by any federal or Michigan legislation, or by any decision of any federal or Michigan court or by any announcement, order, ruling, or regulation (final temporary or proposed) of the Treasury Department of the United States of America, the Internal Revenue Service or other federal or Michigan authority or regulatory body, affecting the status of the Underwriter or the MBRA, their property, income, or securities (including the Bonds).

(b) Legislation has been enacted by the Congress of the United States of America, or a decision by a court of the United States of America has been rendered, to the effect that obligations of the general character of the Bonds are not exempt from registration or qualification under, or other similar requirements of, the federal securities laws.

(c) A stop order, ruling regulation or official statement by, or on behalf of, any governmental agency having jurisdiction shall have been issued or made to the effect that the

issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds as contemplated by this Agreement and by the Official Statement, as defined below, is in violation or would be in violation of any provisions of federal or Michigan securities laws.

(d) An order, ruling, regulation or decision by any governmental agency or court having jurisdiction shall have been issued or made which calls into question the legality, validity or enforceability of the Bonds.

(e) Additional material restrictions not in force as of the date of this Agreement shall have been imposed upon the trading in securities generally by any governmental authority or by any national securities exchanges.

(f) Any event shall have occurred, or information become known, which in the reasonable opinion of the Underwriter makes untrue in any material respect any statement or information contained in the Official Statement with respect to such bonds (the “**Official Statement**”) as originally circulated, or has the effect that the Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(g) Any of the following events shall have occurred:

(i) The engagement by the United States of America in hostilities which have resulted in a declaration of war or national emergency, or the occurrence of any other outbreak of hostilities or national or international calamity or crisis, financial or otherwise, the effect of such outbreak, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Underwriter, would adversely affect the ability of the Underwriter to market the Bonds at offering prices that do not differ significantly from the intended offering prices (it being agreed by the Underwriter that there is no outbreak, calamity or crisis of such a character as of the date of hereof);

(ii) A general suspension of trading on the New York Stock Exchange or the American Stock Exchange or other national securities exchanges;

(iii) The establishment of limited or minimum prices on such exchanges;

(iv) The declaration of a banking moratorium by federal or Michigan authorities;

(v) The New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of the Underwriter; or

(vi) An event which, in the reasonable opinion of the Underwriter, requires an amendment or supplement to the Official Statement, and in the reasonable opinion of the

Underwriter, adversely affects the marketability of the Bonds, or the contemplated offering price of such bonds; or

- (h) Any rating or ratings with respect to the Bonds have been revoked or downgraded.
- (i) Any event or circumstance shall arise negatively affecting the full faith and credit of the City.
- (j) The per annum interest rate applicable to the Bonds exceeds the applicable interest rate set forth in the Pre-Development Satisfaction Letter.

If a Market Event may be cured or eliminated by action that is within the control of the MBRA or the Developer, the MBRA or Developer, respectively, shall exert commercially reasonable efforts to take such action, provided, however, the MBRA shall have no obligation to incur any cost or expense in connection with any such action. The MBRA shall promptly notify the Developer if the MBRA obtains actual knowledge of any Market Event.

**Section 6.3 Defense of Municipal Action.** If any person commences litigation or other proceeding (whether a civil proceeding, an administrative proceeding or otherwise) to contest the issuance of the Bonds (or the City's full faith and credit pledge with respect thereto), the MBRA agrees to:

- (a) defend such litigation or proceeding vigorously and in good faith with counsel competent in such matters, seeking to uphold the applicable municipal action being contested;
- (b) provide the Developer with prompt notice of any such actual or threatened litigation or proceedings; and
- (c) stipulate that the Developer may, at the Developer's sole cost and expense, intervene in any such litigation or proceeding.

The Developer shall pay one-half of the MBRA's cost of defense as long as the Developer has reasonably approved the selection of counsel representing the MBRA, in which event the Developer shall have the right to coordinate the activities of the respective counsel representing the MBRA and the Developer. All such costs of the MBRA and Developer shall be subject to reimbursement as Eligible Activities from the Brownfield Tax Increment Revenues to the extent allowed by the Vault Documents and Act 381.

## **ARTICLE 7 DEVELOPER'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Developer hereby makes the following representations, warranties, and covenants to the MBRA:

**Section 7.1 Existence and Power.** The Developer:

- (a) is duly organized and validly existing as a limited liability company under the laws of the State of Michigan, with the power and authority to carry on its business as now being conducted;
- (b) has the power and authority to own the Property and the construct Project; and
- (c) has the power and authority to execute, deliver and perform this Agreement and any other documents required or contemplated by this Agreement.

**Section 7.2 Authorization and Approvals.** The execution, delivery and performance of this Agreement:

- (a) has been duly authorized by all requisite company action of the Developer;
- (b) does not require registration with or consent or approval of, or other action by, any federal, state or other governmental authority or regulatory body;
- (c) will not, to the Developer's knowledge, materially violate any provision of Law, any order of any court or other agency of government;
- (d) will not violate the Articles of Organization or Operating Agreement of the Developer, or any provision of any indenture, note, agreement or other instrument to which Developer is a party, or by which any of its properties or assets are bound; and
- (e) will not be in conflict with, result in a breach of or constitute (with or without notice of passage of time) a default under any such indenture, note, agreement or other instrument, wherein such conflict, breach or default would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement.

**Section 7.3 Valid and Binding Agreement.** Upon its execution and delivery by the MBRA and Developer, this Agreement shall constitute a valid and binding obligation upon the Developer, in accordance with its terms except to the extent enforceability thereof may be limited under applicable bankruptcy, moratorium, insolvency or similar laws and by equitable principles relating to enforceability, good faith and fair dealing.

**Section 7.4 Litigation.** As of the date of this Agreement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to Developer's knowledge, is any such litigation or proceeding presently threatened, against the Developer or any of its property, that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement.

**Section 7.5 Evidence of Insurance.** The Developer shall obtain, prior to construction, and maintain at its expense during construction, the insurance described in this Agreement. The Developer shall provide evidence of such insurance to the MBRA.

**Section 7.6 Real Estate Ownership.** Developer warrants that it has ownership in fee simple title of the Property, and the current right to construct, operate and convey the Public Parking Facility.

**Section 7.7 Hazardous Materials.** The following provisions shall apply to the Property:

(a) The Developer shall not use the Property for the purpose of storing Hazardous Materials, nor directly or indirectly use the Property in a manner which will cause or increase the likelihood of causing the release of Hazardous Materials onto the Property, other than those Hazardous Materials which are necessary and commercially reasonable for the development of the Property or to conduct the Developer's business operated on the Property and which Hazardous Materials shall be, handled and disposed of in compliance with all Environmental Laws and industry standards and in a commercially reasonable manner by the Developer.

(b) The Developer shall promptly notify the MBRA if it becomes aware of any claims or litigation or if it receives any communication from any person (including any governmental authority) concerning the presence or possible presence of Hazardous Materials at the Property or concerning any violation or alleged violation of Environmental Laws respecting the Property during the term of this Agreement and shall promptly furnish the MBRA with a copy of any such communication received by Developer.

(c) During the term of this Agreement, the Developer shall notify the MBRA promptly and in reasonable detail in the event that the Developer becomes aware of the presence of Hazardous Materials or a violation of Environmental Laws at the Property, other than Hazardous Materials or violations that the MBRA already knows with respect to the Property or any part thereof as a result of the Baseline Environmental Assessment or Due Care Plan.

(d) During the term of this Agreement, the Developer shall take appropriate measures to ensure that the Developer complies and continues to comply in all respects with Environmental Laws.

(e) During the term of this Agreement, if the Property is used or maintained so as to subject the Developer or the MBRA to a claim by appropriate regulatory authorities of a violation of Environmental Laws (unless contested in good faith by appropriate proceedings), the Developer shall immediately cease the activities causing violation and shall, as required by law, remedy and fully cure any conditions arising therefrom at its own cost and expense.

(f) The Developer shall comply with Environmental Laws resulting from the Developer's use, possession, or development of the Property, at its sole cost and expense.

(g) Developer shall keep the Property free of any lien imposed pursuant to Environmental Laws resulting directly or indirectly out of the Developer's use, possession, or development of the Property, at its sole cost and expense.

**Section 7.8 Indemnities; Survival.** Except as provided above, all of the representations, warranties and covenants contained in this Article shall survive the delivery of this Agreement and the purchase of the Public Parking Facility pursuant to this Agreement and shall remain in full force and effect for so long as the Bonds are outstanding or the MBRA holds a legal possessory

right to the Public Parking Facility. The Developer shall indemnify and hold the MBRA and the City harmless from and against and shall be obligated to pay and reimburse the MBRA and the City for, any and all loss and damage (including reasonable attorneys' fees, whether of inside or outside counsel), which the MBRA or City may sustain or incur as a result of any misrepresentation or breach of any covenant contained herein on the part of the Developer. The indemnities contained in this Agreement shall survive the termination of this Agreement but shall not be transferred to or binding upon any condominium unit owner or transferee that is not an affiliate of the Developer or that is not under common control of any person who controls, directly or indirectly, the Developer, but specifically excluding the Construction Lender.

**Section 7.9 Breach of Representations, Warranties and Covenants.** In the event that the Developer fails to comply with the requirements of this Agreement after notice to the Developer and the expiration of any applicable cure period hereunder, or such earlier time for which the MBRA reasonably determines that life, person or property is in jeopardy, the MBRA may, but shall not be obligated to, exercise its rights to do one or more of the following:

- (a) declare that such failure constitutes a default under this Agreement; or
- (b) take any and all actions, at the Developer's expense, that the MBRA reasonably deems necessary or desirable to cure said failure of compliance.

## **ARTICLE 8**

### **MBRA'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

The MBRA makes the following representations and warranties to the Developer:

**Section 8.1 Authorization and Approvals.** The execution, delivery and performance of this Agreement have been duly authorized by all requisite action of the MBRA. Further, the MBRA has the power to make, deliver and perform as required under this Agreement and has taken all necessary action to authorize the foregoing.

**Section 8.2 Valid and Binding Agreement.** Upon its execution and delivery by the MBRA and the Developer, this Agreement shall constitute a valid and binding obligation upon the MBRA in accordance with its terms, except to the extent enforceability thereof may be limited under applicable bankruptcy, moratorium, insolvency or similar laws and by equitable principles relating to enforceability, good faith and fair dealing.

**Section 8.3 Lack of Legal Impediments.** To the best of the MBRA's knowledge, the execution, delivery and performance of this Agreement will not violate any provision of any existing Law, regulation, order or decree of any court or governmental entity, and will not violate any provisions of, or constitute a default under, any agreement or contract to which the MBRA is a party.

**Section 8.4 Litigation.** As of the date of this Agreement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against either the MBRA's participation in the Project or that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Agreement.

**Section 8.5 Survival.** All of the representations and warranties contained in this Article shall survive the delivery of the Agreement and shall remain in full force and effect until the MBRA purchases the Public Parking Facility.

## **ARTICLE 9 LENDER PROTECTIONS**

**Section 9.1 Lender Protections.** The MBRA acknowledges that the Developer will have one or more Construction Lenders for the Project. If requested by Developer and such Construction Lender, the MBRA agrees to the following:

(a) Notice of Default Under Agreement. Upon a default by the Developer under this Agreement, the MBRA shall give written notice thereof to the Construction Lender, provided that Developer or the Construction Lender has provided the MBRA with prior written notice of the notice address to be used for sending notices to the Construction Lender.

(b) Lender's Right to Cure Defaults Under Agreement. The MBRA agrees that, upon a default by the Developer hereunder, then, in each and every case, the Construction Lender may (but shall not be obligated to) exercise any and all of the rights of the Developer under this Agreement in the name and on behalf of the Developer within thirty (30) days after receipt of written notice from the MBRA.

(c) Lender to be Recognized as Successor to Developer. In the event the Construction Lender shall become the owner of the rights and interest of the Public Parking Facility or any part thereof by reason of judicial foreclosure, or other judicial action brought by the Construction Lender to enforce its rights under its mortgage, or through any other means or manner in connection with its mortgage (including a transfer or assignment in lieu thereof), the MBRA agrees that the Construction Lender shall be deemed to be the Developer's successor and assignee under this Agreement (notwithstanding anything in this Agreement prohibiting or restricting assignment by the Developer or establishing conditions under which an assignment by the Developer would be permitted) provided that the Construction Lender assumes Developer's obligations hereunder and agrees to perform such obligations. In such instance, the Construction Lender shall then be entitled to all rights, benefits and privileges of the Developer under this Agreement, and the MBRA and the Construction Lender shall be bound to one another under all of the terms, covenants and conditions of this Agreement, all without the need to execute any further instruments on the part of the MBRA, the Developer or the Construction Lender to make such succession and assignment effective.

(d) Assignment to Lender. The MBRA agrees that this Agreement may be assigned to the Construction Lender, and that the Developer may grant a security interest in this Agreement to the Construction Lender, and such action is not default of this Agreement. If required by the MBRA or the Construction Lender, the MBRA and the Developer agree to enter into a Tri-Party Agreement and the Construction Lender to ratify and confirm the foregoing provisions of this Section and such other provisions as the Construction Lender may reasonably request, although in no event shall the MBRA be obligated to agree upon a term that materially affects its rights under this Agreement.

(e) Assignment of Brownfield Tax Increment Revenues. In the event that Bonds are not issued pursuant to this Agreement, the Developer's rights to the Brownfield Tax Increment Revenues shall be collaterally assigned to the Construction Lender in payment of Eligible Activities incurred by the Developer for the construction of Public Parking Facility in accordance with the Vault Documents until the Construction Loan is paid in full.

**Section 9.2 MBRA Protections.** The Developer agrees to cause the Construction Lender to provide written notice to the MBRA upon a default by the Developer under the Construction Loan. The Construction Loan documents shall provide that the MBRA may (but shall not be obligated to) exercise, within a reasonable period of time after receipt of written notice of such default by the Developer, any and all of the rights of the Developer under the Construction Loan documents in the name and on behalf of the Developer, if the Developer has failed to cure the default thereunder within the applicable cure period, if any.

## **ARTICLE 10 RESTRICTION ON THE PROPERTY**

### **Section 10.1 Covenant Regarding the Transfers of the Property.**

(a) Transfer to Tax-Exempt Entities. The Developer acknowledges that the MBRA has taken into consideration the anticipated Brownfield Tax Increment Revenues from the Eligible Property, and the MBRA's debt and obligations in entering into this Agreement. To ensure that the MBRA's expectations with regard to Brownfield Tax Increment Revenues are not defeated while the Bonds are outstanding, the Developer hereby covenants that neither the Developer, nor its successor and assigns and every successor in interest to the Property or any part thereof, including any successor condominium association or condominium unit owners, shall sell, gift, transfer, or otherwise convey the Property or any part thereof to a property tax-exempt entity (whether under State or Federal law) without first providing for a method to provide the funds to cover the existing Bond obligations, which method of coverage shall be approved by the MBRA, which approval shall not be unreasonably withheld, conditioned, denied or delayed.

(b) Transfers Generally. Except as provided in Section 10.1(c), unless the MBRA has provided its prior written consent to any transfer which may not be unreasonably withheld, the Developer shall not transfer, sell, gift or convey any interest in the Property or the Project while the Bonds are outstanding.

(c) Condominium. Notwithstanding the foregoing, the Developer may transfer and subject the entire Project to condominium ownership pursuant to a Master Deed and, after the Public Parking Facility has been purchased by the MBRA, the Developer may convey units in such condominium provided that the Master Deed shall:

- (i) conform to this Agreement;
- (ii) shall not be amended so as to impair the rights of the MBRA under this Agreement, without the prior written consent of the MBRA;
- (iii) provide that the Developer (and later the condominium association) may amend the Master Deed to reconfigure condominium units or in all other respects permitted

under the Michigan Condominium Act, Act 59 of the Public Acts of 1978, as amended (the “**Condominium Act**”), although no such amendment shall:

1. have a material adverse effect on the Public Parking Facility or on any other material rights of the MBRA contained herein; or
  2. substantially change the initial configuration of the Public Parking Facility without the prior written consent of the MBRA.
- (iv) require the owner of each condominium unit to maintain such insurance coverages as are determined by the Developer to be reasonable in light of the nature of the use of the condominium unit;
- (v) contain typical casualty insurance and rebuilding requirements for mixed use, mixed ownership properties such as the Project, including party wall, common support and similar arrangements relative to the maintenance, repair and replacement of elements of the Project with percentages of value assigned in a manner consistent with the Condominium Act;
- (vi) contain waivers and covenants on the part of residents not to sue relative to nuisance claims based on the design or general operation of the Public Parking Facility; and
- (vii) the Developer agrees to put notice of this Agreement in any Master Deed for the Project.

**Section 10.2 Covenants; Binding Upon Successors in Interest.** The Developer agrees that the covenants set forth in this Agreement, including, but not limited to the prohibited uses, the transfer restrictions, the indemnity by Developer and the release of liability, shall apply to the period after the establishment of the condominium and shall be referenced in the Master Deed, so that any deeds, land contracts, subleases, or other instruments conveying an interest in any property within the Project, or any of the condominium units that comprise the Project, shall be subject to the agreement and covenants provided in this Agreement and shall, in any event, be binding on the Developer, its successors, successors in interest and assigns, to the fullest extent permitted by law and equity, for the benefit, in favor of, and enforceable by the MBRA and the City, and their successors in interest and assigns.

## ARTICLE 11 NON-LIABILITY

**Section 11.1 Non-Liability of the MBRA and City.** Neither the MBRA nor the City shall be responsible or liable to the Developer, and the Developer hereby releases the MBRA and the City, from any liability for personal injury or property damage that may be occasioned by or through the acts, or omissions or persons occupying any part of the Property, unless the event is caused by the negligence or willful misconduct of the MBRA or the City.

**Section 11.2 Satisfaction.** The performance by the MBRA and the City under this Agreement shall constitute the complete satisfaction by the MBRA and the City of their obligations to

Developer with respect to the Public Parking Facility under the (i) Brownfield Plan, (ii) Act 381 Work Plan, and (iii) Reimbursement Agreement.

**Section 11.3 Survival.** The provision of this Article shall survive the termination of this Agreement.

## **ARTICLE 12 ADMINISTRATION**

### **Section 12.1 MBRA – Developer Relationship.**

(a) The Developer shall not be considered an agent or employee of the MBRA. No agent or employee of the Developer shall be considered an agent or employee of the MBRA. The Developer shall remain responsible for any claims arising out its own, or its employees, officers, directors, agents or contractors, acts or omissions during the performance of this Agreement. Additionally, the Developer and the MBRA shall not be considered engaged in a joint venture or partnership.

(b) Developer represents and warrants that, to its actual knowledge after due inquiry, neither the Chair nor any member of the MBRA and no other officer, employee or agent of the MBRA who exercises any function or responsibility in connection with the carrying out of this Agreement has any personal interest, direct, or indirect in the Developer or the Project. Developer agrees it will not knowingly engage any member of the MBRA or any other officer, employee or agent of the MBRA who exercises any function or responsibility in connection with the carrying out of this Agreement and the Project who has any personal interest, direct, or indirect in the Project except if such person shall disclose such personal interest and take no part in any proceeding or other action or decision relating to this Agreement, its implementation or enforcement or the Project.

(c) Developer covenants and agrees that no employee, agent, consultant, officer, or elected official or appointed official of the MBRA who exercises or has exercised any functions or responsibilities with respect to this Agreement or the Project, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or, until the Project Completion Date, without full disclosure to the MBRA, have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business, during or after their tenure. The foregoing restrictions shall apply to all activities that are part of the Project.

### **Section 12.2 Indemnification of Indemnified Persons.**

(a) The Developer shall indemnify and hold the Indemnified Persons harmless from any loss, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property, or other actions including but not limited to disputes with governmental regulatory agencies, condominium owners, and others as a result of the ownership, operation, use or maintenance of the Project from and after the date hereof. If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the

Developer and the Developer shall defend such Indemnified Person with counsel selected by the Developer, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Developer and the Developer shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Developer may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its prior written consent. The Developer shall not be liable for payment or settlement of any such claim or proceeding made without its prior written consent.

(b) The Developer shall not be obligated to indemnify any Indemnified Person under subsection (a) if the liability arises out of the Indemnified Person's negligence, willful misconduct or material breach of this Agreement or the negligence or willful misconduct of any person or entity acting by, through or under any Indemnified Person.

(c) The Developer also shall indemnify the Indemnified Persons for all reasonable costs and expenses the Indemnified Person incurs, including reasonable counsel fees, incurred in successfully enforcing any obligation of the Developer under this Agreement or any related agreement.

(d) The Developer shall use its reasonable best efforts to assure that to the extent an environmental consultant is successively hired to provide services for activities at the Property, the environment consultant shall provide to the MBRA and the City the indemnity provisions set forth in this Agreement.

## **ARTICLE 13 GENERAL PROVISIONS**

**Section 13.1 Priority of Documents.** With regard to the subject matter of this Agreement, in the event and to the extent that there is any conflict between the terms and conditions of this Agreement and the terms and conditions of the Vault Documents, the provisions of this Agreement shall prevail.

**Section 13.2 Brokerage Fees.** The Developer and MBRA represent and warrant to the other that no real estate broker or finder has been engaged in connection with this Agreement. The Developer shall indemnify and hold the MBRA harmless from and against any and all liability (including reasonable attorneys' fees and costs) for real estate brokerage commissions or finders' fees in connection with this Agreement to the extent such liability or claim is based on any arrangement or agreement made or claimed to have been made by or on behalf of the Developer.

**Section 13.3 Compliance with Law.** The parties agree to comply with all federal, and state statutes and regulations, and local ordinances, now in effect or hereinafter enacted, provided, however, that each party reserves the right to challenge any of the foregoing.

**Section 13.4 Applicable Law.** This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the Laws of the State of Michigan.

**Section 13.5 Amendment and Waiver.** The parties may mutually agree to execute such documents and amendments to this Agreement or to any other related contract or agreement as

might reasonably be required to carry out the purposes of this Agreement or as might reasonably be required by any federal, state, or local law, rule, regulation or authority. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

**Section 13.6 Notices.** All notices, certificates, deliveries or communications required by this Agreement to be given shall be in writing and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail (postage prepaid, return receipt requested) or by reputable overnight delivery service, addressed to the respective parties as follows:

If to the Developer:

Marquette Vault, LLC  
47711 Gundlach Road  
Houghton, Michigan 49931  
Attn: Jon Julien

If to the MBRA:

Marquette Brownfield Redevelopment Authority  
1100 Wright Street  
Marquette, Michigan 49855  
Attn: Sheri Davie, Executive Director

If to the City:

City of Marquette  
300 W. Baraga Avenue  
Marquette, Michigan 49855  
Attn: Karen Kovacs, City Manager

or to such other address as such party may specify by written notice to the other party as provided for herein.

**Section 13.7 Entire Agreement.** This Agreement and the Vault Documents contain all the agreements relating to the Project between the parties. To the extent of any conflict between this Agreement and the Vault Documents, this Agreement shall control. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is expressly made thereto in this Agreement.

**Section 13.8 Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

**Section 13.9 Captions.** The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

**Section 13.10 Mutual Cooperation.** Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement and with any individual entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Project, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the construction or operation thereof.

**Section 13.11 No Third Party Beneficiary.** The provisions of this Agreement shall bind and inure exclusively to the benefit of the MBRA and the Developer, and their permitted successors and assigns, and Developer's lenders and their successors and assigns. Such provisions are not for the benefit of any other person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person.

**Section 13.12 Time of Performance; Force Majeure.** Each of the parties shall perform the obligations to be performed by it set forth in this Agreement by the times specified in this Agreement, as applicable, except to the extent that Force Majeure causes a delay in performance, and in such event, the time for performance shall be extended by the period of Force Majeure.

**Section 13.13 Reservation of Municipal Rights and Powers.** Nothing in this Agreement will be deemed to constitute a waiver of the right and power of the City to enforce its Laws and ordinances with respect to the Project, including without limitation its zoning ordinance and applicable building, safety, fire and health codes and ordinances, it being recognized that the Developer will be responsible for causing the Project to comply with the same or to obtain variances there from in accordance with applicable requirements and procedures; provided, the City shall not enforce its Laws or ordinances in a manner that selectively discriminates against the Project or the Developer so that they are treated differently under such Laws or ordinances than other properties or persons. Wherever in this Agreement there is a requirement that the Developer or the Project comply with local Laws such requirements shall not be deemed to apply to any ordinance, ruling, administrative order, or other action by the City that is specific to the Project or that imposes on the Project requirements or restrictions that do not apply to other properties within the City.

**Section 13.14 Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective permitted successors and assigns.

The MBRA, the City and Developer have caused this Agreement to be duly executed and delivered as of the date first written above.

**DEVELOPER:**

**MARQUETTE VAULT, LLC**, a Michigan limited liability company

\_\_\_\_\_  
By: Jon Julien  
Its: Managing Member

STATE OF MICHIGAN                    )  
COUNTY OF \_\_\_\_\_            )

Acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, 2023, by Jon Julien, Manager of Marquette Vault, LLC, on behalf of the corporation.

\_\_\_\_\_

\_\_\_\_\_,  
Notary Public  
State of Michigan, County of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**MBRA:**

**CITY OF MARQUETTE  
BROWNFIELD REDEVELOPMENT  
AUTHORITY**, a public body corporate  
created pursuant to 1996 PA 381, as  
amended

\_\_\_\_\_  
By: Gerald L. Irby  
Its: Chair

\_\_\_\_\_  
By: J. Matthew Tuccini  
Its: Secretary

STATE OF MICHIGAN                    )  
COUNTY OF MARQUETTE            )

Acknowledged before me in Marquette County, Michigan, on \_\_\_\_\_, 2023, by  
Gerald L. Irby, Chair, and J. Matthew Tuccini, Secretary, of the City of Marquette Brownfield  
Redevelopment Authority, a Michigan public body corporate

\_\_\_\_\_  
\_\_\_\_\_,  
Notary Public  
State of Michigan, County of Marquette  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Marquette

Approved as to substance:

\_\_\_\_\_  
Sheri Davie, Executive Director

**CITY:**

**CITY OF MARQUETTE**, a Michigan  
Municipal Corporation

\_\_\_\_\_  
By: Cody O. Mayer  
Its: Mayor

\_\_\_\_\_  
By: Kyle Whitney  
Its: Clerk

STATE OF MICHIGAN                    )  
COUNTY OF MARQUETTE            )

Acknowledged before me in Marquette County, Michigan, on \_\_\_\_\_, 2023, by Cody O. Mayer, Mayor, and Kyle Whitney, Clerk of the City of Marquette, a Michigan municipal corporation.

\_\_\_\_\_  
\_\_\_\_\_,  
Notary Public  
State of Michigan, County of Marquette  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Marquette

Approved as to substance:

\_\_\_\_\_  
Karen M. Kovacs, City Manager

Approved as to form:

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

**LIST OF EXHIBITS**

**EXHIBIT A:** 101 S. FRONT STREET AND 119 S. LAKESHORE BOULEVARD  
LEGAL DESCRIPTION

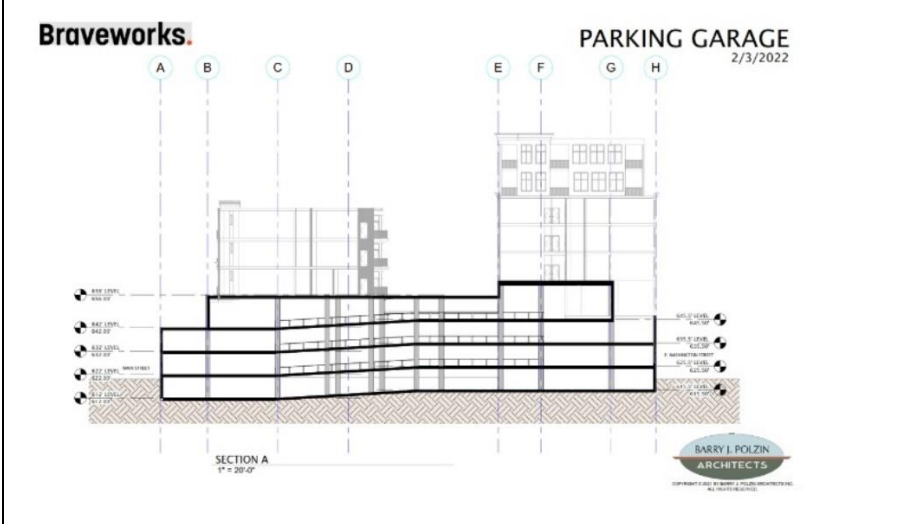
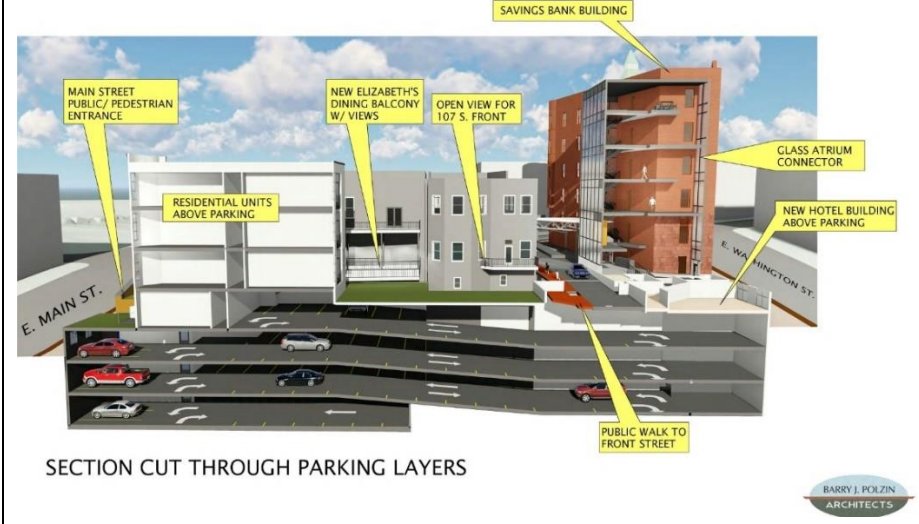
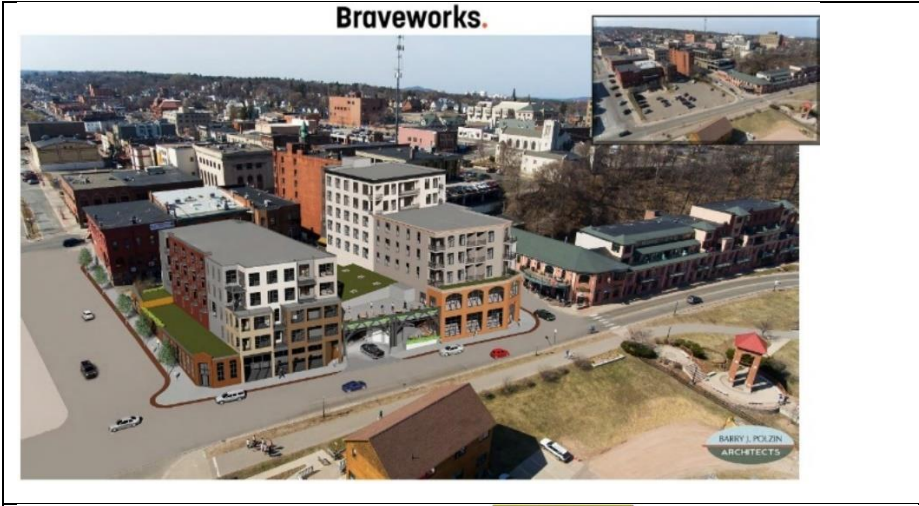
**EXHIBIT B:** RENDERING OF PUBLIC PARKING FACILITY AND PROJECT

**EXHIBIT C:** DESCRIPTION OF PUBLIC PARKING FACILITY AND PROJECT

**EXHIBIT D:** FORM OF PRE-DEVELOPMENT SATISFACTION LETTER



**EXHIBIT B**  
**RENDERING OF PUBLIC PARKING FACILITY AND PROJECT**



## EXHIBIT C

### DESCRIPTION OF PUBLIC PARKING FACILITY AND PROJECT

**PROJECT:** Marquette Vault, LLC, a wholly owned subsidiary of Braveworks, Inc., a Michigan corporation engaged in development based on Houghton, has acquired the former State Savings Bank building at 101 Front Street and associated property at 119 S. Lakeshore Boulevard. A \$21 million project is proposed that will include a boutique hotel in the historic building and construction of new buildings that total an estimated 70,000 square feet with additional hotel rooms, commercial space and up to 40 residential units. As part of the development, Marquette Vault, LLC is proposing a collaborative arrangement for a 200 plus space public parking facility within the development that will help meet the need for downtown parking during the day and providing hotel parking overnight. The synergy of daytime community parking needs and overnight hotel parking needs provides an effective utilization of fixed parking spaces.

**BROWNFIELD FINANCING STRUCTURE:** Act 381, PA 1996 as amended, Michigan's Brownfield Redevelopment Financing Act, provides for the capture of increase incremental taxes generated by additional private investment on Brownfield Eligible Property to reimburse certain Brownfield Environmental and Non-Environmental Eligible Activities with approvals at the local and State level. Integrated parking facilities are a Brownfield Eligible Activity. A Brownfield Plan has been approved by the City of Marquette Brownfield Redevelopment Authority and the Marquette City Commission for capture of local taxes. An Act 381 Work Plan has been prepared for anticipated approval by the Michigan Economic Development Corporation and Michigan Strategic Fund for capture of State taxes. This collaborative arrangement will result in the ability to finance a 200 plus space parking deck in downtown Marquette with increased incremental taxes generated by the Vault project, almost half of which will be State revenues and without City General Funds.

In addition, the MBRA has secured a Michigan Department of Environment, Great Lakes and Energy (EGLE) Brownfield Grant of \$495,000 and Brownfield Loan of up to \$1 million for environmental response activities, asbestos abatement, and selective and site demolition.

**PRIMARY ROLES AND RESPONSIBILITIES:** There are four primary parties involved in the development and operation of the Vault Marquette Public Parking Facility.

***City of Marquette Brownfield Redevelopment Authority (MBRA):*** The MBRA is leading the process for arrangements, agreements, design review, and financing, with the assistance of WGI, the MBRA Parking Consultant. The MBRA will issue bonds for the purchase of the Public Parking Facility, capture Brownfield revenues, and make the bond payments.

***City of Marquette:*** The City Commission will approve all agreements and provide full faith and credit for the MBRA Public Parking Facility Bonds.

***City of Marquette Downtown Development Authority (DDA):*** The DDA will operate the Public Parking Facility, including collecting parking fees and providing operational maintenance services.

***Braveworks, LLC/Marquette Vault, LLC:*** Marquette Vault, LLC is the project developer and will finance and construct the new hotel and residential units with the integrated Public Parking Facility, as well as renovate the former State Savings Bank. At an agreed upon time, the MBRA will purchase the Public Parking Facility from Marquette Vault, LLC.

**DESIGN, FINANCING AND DEVELOPMENT:** Marquette Vault, LLC will have primary responsibility for design, financing and development of the Public Parking Facility, with review and oversight by the MBRA and DDA and their consultants.

The following are key components:

- **Design:** The Marquette Vault, LLC team will lead the design process for both the overall development and the integrated public parking facility. The MBRA Parking consultant will work closely with the Braveworks team to provide input and represent the interests of the public entities, with the on-going input of the DDA Parking Committee. The MBRA Parking Consultant will sign off on the final design.
- **Financing:** Beginning with the design process, the MBRA will coordinate with City staff, City bond counsel and financial consultant to initiate the financing process, which will include financial review, stipulations necessary for the Development Agreement, Resolution of Intent and other financing consideration that may inform design and development.
- **Operations:** During the design process, the Marquette Parking Consultant will work with the Marquette Vault team, in conjunction with the DDA Parking Committee, on the operational considerations of the public parking facility that will also inform the terms and conditions of the Operating Agreement with the DDA.
- **Development:** Once the design has been completed and approved by the Marquette Parking Consultant, Marquette Vault team will prepare all construction contract documents for review and approval by the Marquette Parking Consultant. Marquette Vault will oversee and manage construction of the overall development and the public parking facility. The Marquette Parking Consultant will provide periodic on-site review and review of construction and inspection reports and provide periodic reports to the DDA Parking Committee, MBRA and City.

**EXHIBIT D**

**FORM OF PRE-DEVELOPMENT SATISFACTION LETTER**

**PRE-DEVELOPMENT SATISFACTION LETTER**

THIS **PRE-DEVELOPMENT SATISFACTION LETTER** is made between **Marquette Vault, LLC**, a Michigan limited liability company (“Developer”), and the **City of Marquette Brownfield Redevelopment Authority**, a public body corporate (“MBRA”), pursuant to and in accordance with the terms of that certain Public Parking Facility Development Agreement entered into by and between Developer and MBRA dated July 1, 2023 (the “Agreement”). All capitalized terms used herein shall have the meanings prescribed them in the Agreement. By execution below, Developer and MBRA confirm to one another as follows:

1. All of the conditions set forth in Article 2 of the Agreement which must be satisfied and/or waived as a condition of the parties’ election to proceed beyond the Pre-Development Period have either been satisfied or waived.

2. There are no defaults by either party under the Agreement known to the other or which would constitute a default following notice and the expiration of any applicable cure period.

3. Each party irrevocably commits to proceed pursuant to the terms and conditions of the Agreement beyond the Pre-Development Period as modified by the terms and conditions of this Pre-Development Satisfaction Letter. Specifically, the parties, by execution below, evidence their agreement to the following (Developer represents and warrants to MBRA that all attachments hereto are true, correct and complete copies of what they purport to represent and have not been modified, supplemented or amended in any manner except as attached hereto):

(a) That the Maximum Development Cost, based upon the MBRA’s analysis and underwriting of the Developer’s deliveries and including the analysis of the maximum amount of Brownfield Tax Increment Revenues that can be generated by the Project, is \$\_\_\_\_\_.

(b) The maximum dollar amount of the Bonds to be issued by the MBRA shall be \$\_\_\_\_\_, the proceeds of which shall be applied in accordance with the provisions of the Agreement.

(c) The components and calculation of the Actual Development Cost shall be as reflected on the attached Exhibit \_\_\_\_.

(d) The interest rate for the Bonds is estimated for purposes of underwriting to be \_\_\_\_\_ percent (\_\_\_%) per annum. To the extent that the interest rate actually charged on the Bonds exceeds the estimated interest rate, then same shall be a Market Event and, if MBRA nonetheless agrees to issue the Bonds, the face amount for the Bonds shall be proportionately reduced as determined by the MBRA.

(e) The MBRA has approved the GMP Construction Contract, the Project Plans, the Project Budget, the Parking Structure Budget, and the Project Schedule, all of which are attached hereto as Exhibits \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_ and \_\_\_\_ respectively.

(f) The SAD shall be levied against the property described on the attached Exhibit \_\_\_\_ and shall require a minimum payment of taxes sufficient to pay the principal and interest due on the Bonds in any one year equal to \$\_\_\_\_\_.

(g) The Act 381 Work Plan for Non-Environmental Eligible Activities has been approved by the Michigan Strategic Fund.

(h) Developer commits to expend no less than \$\_\_\_\_\_ for the construction of the Project and represents, warrants and covenants that the minimum true cash value for the Project when the Project is completed shall not be less than \$\_\_\_\_\_.

(i) The appraised true cash value has been provided, reviewed and approved by the City Assessor, and a calculation of Brownfield TIF revenues has been conducted demonstrating adequate revenues to meet annual Bond payments.

(j) The MBRA has [waived/not waived] its requirement for letters of credit or cash deposits as provided under Section 2.3(c) of the Agreement.

(k) The policy of title insurance insuring the Public Parking Facility to be issued at the time of closing of the purchase of same shall be in the standard form.

(l) The form of Master Deed which the Developer intends to record and which has been approved by the MBRA is attached hereto as Exhibit \_\_\_\_.

(m) The terms and conditions under which the City of Marquette has agreed to extend its full faith and credit in support of the Bonds has been reviewed and approved by the parties.

(n) The MBRA has approved the Construction Lender and the sources and uses submitted by the Developer.

(o) The Construction Loan Commitment is attached hereto as Exhibit \_\_\_\_.

(p) The CapEx Report is attached hereto as Exhibit \_\_\_\_.

(q) The fully executed Amended Reimbursement Agreement is attached hereto as Exhibit \_\_\_\_.

(r) The aggregate required amount of the CapEx Reserve is \$\_\_\_\_\_.

Upon the execution and exchange by the MBRA and the Developer of the terms and conditions of this Pre-Development Satisfaction Letter, Developer agrees to undertake in good faith the performance of its obligations under the Agreement relating to the construction of the Project and the MBRA agrees, subject to the terms of the Agreement, to issue the Bonds in accordance with the terms of the Agreement and to use the proceeds to purchase the Public Parking Facility on completion of the Project, all as set forth in, and subject to the terms and conditions of, the Agreement. In the event of a conflict between the terms and conditions of this Pre-Development Satisfaction Letter (together with all exhibits attached hereto) and the Agreement, the terms of this Pre-Development Satisfaction Letter shall govern and control.

IN WITNESS WHEREOF, the undersigned have caused their signatures to be placed on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**DEVELOPER:**

**MARQUETTE VAULT, LLC**, a Michigan limited liability company

\_\_\_\_\_  
By: Jon Julien  
Its: Managing Member

**MBRA:**

**CITY OF MARQUETTE  
BROWNFIELD REDEVELOPMENT  
AUTHORITY**, a public body corporate created pursuant to 1996 PA 381, as amended

\_\_\_\_\_  
By: Gerald L. Irby  
Its: Chair

\_\_\_\_\_  
By: J. Matthew Tuccini  
Its: Secretary