



CITY of NOVI CITY COUNCIL

**Agenda Item 1
December 17, 2018**

SUBJECT: Consideration to approve Second Amendment to the previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive.

SUBMITTING DEPARTMENT:

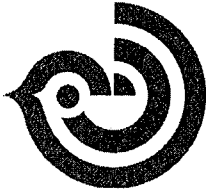
CITY MANAGER APPROVAL: PA

BACKGROUND INFORMATION:

City Council is being asked to amend the purchase agreement for the Anglin property (for the "Asian Village" project) in order to extend some due diligence dates. Attached is correspondence from Scott Aikens to City Manager Pete Auger, as well as a proposed Second Amendment to the Agreement. The request is to extend the inspection period from its current expiration (which was November 21, 2018) to January 21, 2019, a 2-month extension. The date to submit an application for PRO approval would be extended only one month, from January 21, 2019, to February 21, 2019. However, the proposal is to have the final PRO approval/closing date to remain the same.

RECOMMENDED ACTION: Approve Second Amendment to previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive, and to authorize the mayor and Clerk to sign the same, subject to final review and approval of the terms and conditions of the Purchase Agreement by the City Manager and City Attorney's office, including minor amendments thereto.

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Birmingham, MI 48009
(248) 283-1071 Phone (248) 283-1150 Fax
www.rbaikens.com



December 6, 2018

City of Novi
Attn: Peter Auger, City Manager
45175 Ten Mile Road
Novi, MI 48375

Dear Peter,

We had what I felt was a productive meeting on Thursday, November 15th with the team from the City of Novi including Charles Boulard, Barbara McBeth, Lindsay Bell, Lawrence Butler, Darcy Rechten, Rick Meader, and several others. Hopefully, your team took away a sense that we are making good strides on moving forward with the Sakura Way project.

We are confident that we can work through any issues that have arisen. As we discussed on the telephone, however, there are several topics that are causing me to request a shift on the time-line from now until the estimated closing on November 21st, 2019. These topics include:

1. The on-going process of finalize an agreement with Robertson Brothers to build the townhome apartment facilities at Sakura Way.
2. The discovery of significant wetlands on the two acre parcel on the eastern border of the site owned by the City of Novi that could render a large chunk of the residential site unbuildable. There was some positive talk with staff about using the swampy, lake area contiguous with the property for the purpose of mitigation.
3. The discovery that a previous owner poorly managed the soils on the two acre parcel owned by the City. In particular, there is fill surrounding the southern and north-eastern borders of the lake, with pockets of peat some 20' below. This confluence of conditions could easily create extraordinary expenses that make the cost of construction prohibitively expensive for the buildings on our site plan in those areas. Clearly, this needs to be addressed.

Based on these facts uncovered during due diligence, I am requesting that we extend our due diligence process until January 21st. We will compress our timing to prepare the

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application for the PRO Approval process to 1 month. The PRO Approval process shall begin on February 21st and run for 5 months, rather than 6 months, until July 21st. The remaining period of 4 months to meet closing conditions will remain the same. The estimated date for closing on November 21st, 2019 shall remain the same. I have asked my attorney, John Gaber, to draft an amendment to this effect, and work with Tom Schultz to make these requested adjustments legally binding.

Please don't hesitate to reach out with any questions or concerns. I am particularly interested to hear if there is any important feedback from your team as a result of the meeting on November 15th.

Best regards,

Scott Aikens

**SECOND AMENDMENT TO
CONDITIONAL AGREEMENT OF PURCHASE AND SALE
NORTH GRAND RIVER CITY PROPERTY**

THIS SECOND AMENDMENT TO CONDITIONAL AGREEMENT OF PURCHASE AND SALE ("**Amendment**") is made as of December ____, 2018 by and between the CITY OF NOVI, a Michigan municipal corporation ("**Seller**"), and SAKURA NOVI, LLC, a Michigan limited liability company ("**Purchaser**"), with regard to the following:

A. Seller and Purchaser entered into a certain Conditional Agreement of Purchase and Sale North Grand River City Property dated June 21, 2018 for the purchase and sale of the Anglin Parcel and the Town Center Parcel, as defined and described in the such agreement, as amended by that certain First Amendment dated November 2, 2018 (as amended, the "**Agreement**").

B. The parties desire to amend the Agreement to extend the Inspection Period and the time to submit the application for PRO approval, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties amend the Agreement as follows:

1. Section 1(g) of the Agreement is hereby amended to extend the expiration of the Inspection Period from November 21, 2018 to January 21, 2019.

2. The first paragraph of Section 7 of the Agreement is hereby amended to extend the deadline for Purchaser to submit its application for PRO approval from January 21, 2019 to February 21, 2019.

3. The fourth paragraph of Section 7 of the Agreement is hereby amended to provide that Purchaser may withdraw its PRO application and terminate this Agreement upon written notice to Seller if the PRO is not approved within five (5) months following the date of submission by Purchaser of a complete PRO application.

4. The parties hereby confirm and ratify all provisions of the Agreement, which shall and do remain in full force and effect as amended hereby. This Amendment may be signed in counterparts, each of which will be deemed an original document, but all of which together will constitute one and the same document. Faxed and pdf scanned signatures shall be deemed original signatures for purposes of this Amendment. All capitalized, undefined terms in this Amendment shall have the same meaning as defined in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Conditional Agreement of Purchase and Sale North Grand River City Property on the date first above written.

PURCHASER:

SAKURA NOVI, LLC,
a Michigan limited liability company

By: _____
Geoffrey Scott Aikens, Trustee of
the Geoffrey Scott Aikens Trust
u/a/d December 10, 2011

SELLER:

CITY OF NOVI, MICHIGAN,
a Michigan municipal corporation

By: _____
Robert J. Gatt, Mayor

By: _____
Courtney Hanson, City Clerk

**CONDITIONAL AGREEMENT OF PURCHASE AND SALE
NORTH GRAND RIVER CITY PROPERTY**

THIS CONDITIONAL AGREEMENT OF PURCHASE AND SALE ("**Agreement**") is made as of the Effective Date (defined below), by and between the CITY OF NOVI, a Michigan municipal corporation ("**Seller**"), and SAKURA NOVI, LLC, a Michigan limited liability company ("**Purchaser**"). Seller and Purchaser are referred to individually as "**Party**" or collectively as the "**Parties**."

RECITALS:

A. Seller owns certain real property located in the City of Novi, commonly known as part of 42750 Grand River (Parcel No. 22-23-126-006, approximately 9.9 net acres) located on the north side of Grand River (the "**Anglin Parcel**"), currently improved with a house and outbuildings and a car wash building, which was purchased by Seller in 2016, and described and/or depicted on **Exhibit A** and attached hereto and incorporated herein by reference.

B. Seller is currently hoping to purchase certain real property located in the City of Novi, commonly known as vacant land (Parcel No. 22-23-126-014, approximately 1.0 net acres) located east of Town Center Drive and west of the Anglin Parcel ("**Town Center Parcel**") described and/or depicted on **Exhibit A** and attached hereto and incorporated herein by reference.

Together the Anglin Parcel and the Town Center Parcel are referred to in this Agreement as the "**Property**."

C. The Anglin Parcel is zoned OSC (Office Service Commercial District) and OS-1 (Office Service 1). The Town Center Parcel is zoned TC-1.

D. Purchaser desires to acquire the Property with the intent and purpose of undertaking certain commercial development, including an approximately 25,000 square foot food market, retail and restaurant uses, and possibly residential use, that both Parties believe may contribute to the redevelopment and economic revitalization of the Town Center area of Novi (the foregoing being referred to in this Agreement as the "**Intended Uses**").

E. This Agreement is intended by the Parties to result in a transfer of the Property to the Purchaser, contingent upon development approvals that will result in: (i) demolition by Purchaser of the house and outbuildings and car wash building located on the Property and redevelopment of that area with an approved commercial/retail (and possibly residential) uses; and (ii) environmental remediation by Purchaser of hazardous materials currently located on the Property. It is the Parties' intention that such redevelopment of the Property will be accomplished only through approval of a Planned Rezoning Overlay (PRO) and related PRO Agreement, the terms and conditions of which must be mutually agreed to by the Parties and become effective contemporaneous with the closing on the sale of the Property. With regard to the environmental remediation of the Property, it is expected that Purchaser will accomplish any such remediation through the implementation of a Brownfield Redevelopment Plan approved by the Brownfield Redevelopment Authority of Oakland County as provided by law, and that Seller

will not object to Purchaser's Brownfield Redevelopment Plan, provided that it does not contemplate or require any out-of-pocket expenses to be incurred by or on behalf of Seller.

F. Seller has agreed to sell and Purchaser has agreed to purchase the Property subject to and upon the terms and conditions of this Agreement.

AGREEMENT:

NOW, THEREFORE, for the consideration of the terms, covenants, and conditions set forth in this Agreement, Seller and Purchaser agree as follows:

1. Definitions. In addition to the words and phrases in quotations and as defined above and elsewhere in this Agreement, the following words and phrases are hereby defined for use in the provisions of this Agreement:

(a) **"Closing"**: The meeting of Purchaser and Seller at which the conveyance of the Property to Purchaser for the Purchase Price shall be consummated as provided in this Agreement.

(b) **"Closing Date"**: Four (4) months following the satisfaction or waiver of all Conditions to Closing as set forth in Paragraph 6 in Purchaser's sole and absolute discretion. In the event all Conditions to Closing as set forth in Paragraph 6 and the Development Approval Conditions set forth in Paragraph 7 are not satisfied or waived within eighteen (18) months following the Effective Date, then this Agreement shall automatically terminate, whereupon the Deposit shall be promptly returned to Purchaser and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated, unless the Seller and Purchaser stipulate in writing to extend the Closing to a date certain, in which case the date specified in that written stipulation shall be the Closing Date.

(c) **"Conditions to Closing"**: The conditions precedent to Purchaser's obligation to purchase the Property, which are all of the conditions set forth in Section 6 below.

(d) **"Deposit"**: An earnest money deposit by Purchaser in the amount of Twenty-Five Thousand Dollars and 00/100 (\$25,000.00).

(e) **"Effective Date"**: The date on which both Parties have signed this Agreement.

(f) **"Eleven Mile Parcel"**: A parcel of land located east of the North Parcel on Eleven Mile Road, known as Tax Parcel No. 22-23-226-008, which is owned by Seller.

(g) **"Inspection Period"**: Five (5) months following the Effective Date unless extended in writing by the Parties.

(h) **"Permitted Exceptions"**: (i) The encumbrances or exceptions shown in the Title Commitment or Survey that are (1) not objected to by Purchaser as provided in Section 4, (2) objected to by Purchaser but cured by Seller as provided in Section 4, or (3) objected to by Purchaser, not cured by Seller, but then are waived by Purchaser as provided in Section 4; and (ii) the lien for property taxes not yet due and payable as of the Closing.

(i) **"Purchaser's Attorney":** Williams, Williams, Rattner & Plunkett PC, Attn: John D. Gaber, 380 N. Old Woodward Avenue, Suite 300, Birmingham, MI 48009-5322, (248) 642-0333, or such other attorney designated by Purchaser in writing to Seller.

(j) **"Purchase Price":** Three Million One Hundred Fifty Thousand Dollars and 00/100 (\$3,150,000.00).

(k) **"Seller's Attorney":** Johnson Rosati Schultz Joppich PC, Attn. Thomas R. Schultz, Esq., 27555 Executive Drive, Ste. 250, Farmington Hills, MI 48331, (248) 489-4100, or such other attorney designated by Seller in writing to Purchaser.

(l) **"Survey":** An ALTA survey of the Property complying with the "2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys" currently established and adopted by ALTA and NSPS and that is certified to Purchaser, Seller, and the Title Company, and dated after the Effective Date.

(m) **"Title Commitment":** A commitment for an ALTA owner's policy Form B-2006 of title insurance, without standard exceptions, issued by the Title Company in an amount not less than the Purchase Price bearing a date later than the Effective Date committing the Title Company to insure Purchaser as the fee simple owner of the Property by the issuance of the owner's policy ("**Title Policy**") at Closing.

(n) **"Title Company":** Amrock National Commercial (f/k/a Title Source National Commercial).

2. Sale and Conveyance. On and subject to the terms and conditions of this Agreement, Seller agrees to sell the Property, together with all buildings and improvements thereon, and any easements, rights, and interests appurtenant thereto, including any water or mineral rights, and all land division rights to Purchaser, but not including any rights or interests of any kind that Seller has or holds, or to which it is entitled, by virtue of its status as the municipal corporation of the City of Novi, and Purchaser agrees to purchase the Property from Seller for the Purchase Price.

3. Deposit. Within three (3) business days after the Effective Date, Purchaser shall deliver the Deposit to the Title Company. The Deposit shall be held by the Title Company in escrow in strict accordance with the terms of this Agreement. The Deposit shall be refundable as provided in this Agreement. The entire Deposit shall be applied to the Purchase Price at Closing.

(a) **Escrow Instructions.** Purchaser and Seller shall each promptly deposit a copy of this Agreement executed by such Party (or either of them shall deposit a copy executed by both Purchaser and Seller) with the Title Company, and, upon receipt of the Deposit from Purchaser, the Title Company shall immediately execute this Agreement where provided below. This Agreement, together with such further instructions, if any, as the Parties shall provide to the Title Company by written agreement, shall constitute the escrow instructions. If any requirements relating to the duties or obligations of the Title Company hereunder are not acceptable to the Title Company, or if the Title Company requires additional instructions, the Parties hereto agree to make such deletions, substitutions, and additions

hereto as counsel for Purchaser and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise agreed by the Parties.

4. Title and Survey Conditions.

(a) Title Commitment. As evidence of title to the Property, Seller shall furnish to Purchaser, at Seller's expense, within ten (10) days after the Effective Date, the Title Commitment. The Title Commitment shall be delivered to Purchaser together with copies of all recorded documents evidencing title exceptions raised in Schedule B of the Title Commitment. The Title Commitment shall be later-dated to cover the Closing and the recording of the Warranty Deed, and the Title Company shall deliver the Title Policy (or a "marked-up" Title Commitment) to Purchaser concurrently with the Closing, which Title Policy (or "marked-up" Title Commitment, as the case may be) shall evidence fee simple title to the Property in Purchaser, subject only to the Permitted Exceptions, and shall include the coverages and the endorsements required by Purchaser.

(b) Survey. Within forty-five (45) days after Purchaser's receipt of the Title Commitment, Purchaser shall have the right to complete, at its own expense, a Survey of the Anglin Parcel in accordance with Purchaser's survey requirements. Within thirty (30) days after satisfaction or waiver of the Condition to Closing in Section 6(d) below, Purchaser shall have the right to complete, at its own expense, a Survey of the Town Center Parcel in accordance with Purchaser's survey requirements.

(c) Title and Survey Objections. Purchaser shall have sixty (60) days after the date on which Purchaser receives the Title Commitment within which to notify Seller ("**Notice of Title Objections**") of any objections it has to the Title Commitment or Survey for the Anglin Parcel (and thirty (30) days after satisfaction or waiver of the Condition to Closing in Section 6(d) below for the Town Center Parcel) ("**Title Objections**"). If Purchaser fails to timely deliver the Notice of Title Objections, Purchaser shall be deemed to have waived such right to object to any matters in the Title Commitment and Survey and all such matters shall constitute Permitted Exceptions as provided herein. Except as otherwise permitted herein, Seller shall have thirty (30) days from the date of such Notice of Title Objections to cure such Title Objections ("**Cure Period**"). Affirmative title insurance over a Title Objection shall be deemed a cure for such Title Objection. With respect to any Title Objections of which Seller is timely notified and which Seller does not cure and provide Purchaser with proof of such cure within the Cure Period, Purchaser thereafter may either (i) waive its uncured Title Objections to and accept title subject to such remaining Title Objections and proceed under this Agreement, or (ii) terminate this Agreement with a written notice delivered to Seller at any time prior to the expiration of the Inspection Period, whereupon the Deposit shall be promptly returned to Purchaser as its sole and exclusive remedy and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated.

5. Entry; Purchaser's Right of Inspection. During the Inspection Period, and subject to the limitations herein, Purchaser and its representatives, consultants, and contractors shall have the right and license to enter upon the Property to undertake such activities thereon as Purchaser deems reasonably necessary or appropriate, in Purchaser's sole discretion, to enable

Purchaser to investigate the condition of the Property and otherwise to satisfy itself with respect to the Conditions, including the feasibility of any of the Intended Uses. Without limiting the generality of the foregoing, Purchaser shall have the right to conduct physical inspections, geotechnical testing, soils investigation, and environmental assessments of the Property, including the procurement and analysis of samples of soil, groundwater, bottomlands, surface water or any other environmental medium and any other inspections and testing deemed necessary or appropriate by Purchaser, in its sole discretion. If Purchaser's inspections or assessments cause damage to the Property, and Purchaser fails to close, Purchaser shall, at its sole expense, restore the Property to substantially the same condition that existed prior to the entry onto the Property by Purchaser or its representatives. Purchaser shall give reasonable notice of any intended entry onto the Property. No entry into any building on the Property shall be permitted without 48 hours' notice to Seller. A representative of Seller must accompany Purchaser and/or its agents in any inspection of a building, and Seller agrees to make a representative available at the time of entry requested by Purchaser during normal business hours. No invasive or damaging activities may occur as part of any inspection of a building on the Property except with the express authorization of Seller's representative.

Purchaser shall indemnify and hold harmless Seller against any and all claims, damages, liabilities, and expenses, including but not limited to reasonable attorneys' fees, incurred by or asserted against the City which arise out of or are related to any of Purchaser's activities under this Section. The provisions of this Section shall survive Closing of this transaction.

In the event Purchaser desires to terminate this Agreement for any reason during the Inspection Period, then Purchaser may do so upon written notice to Seller delivered not later than the expiration of the Inspection Period, the Deposit shall be refunded to Purchaser and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated. In the event Purchaser fails to timely deliver such termination notice to Seller, then Purchaser waives its right to terminate this Agreement pursuant to this Section 5.

6. Conditions to Closing. Purchaser's obligation to close and purchase the Property is expressly conditioned upon Purchaser's satisfaction with the Conditions to Closing in its sole and absolute discretion. The Conditions to Closing are for the sole benefit of Purchaser and may be waived at any time by written notice from Purchaser to Seller. The waiver of any particular Condition to Closing shall not constitute the waiver of any other Condition to Closing. In the event any of the Conditions to Closing are not satisfied or waived by Purchaser for any reason whatsoever by the time period specified for each condition, or if no time period is specified then at any time prior to the Closing Date, Purchaser may elect in its sole and absolute discretion to terminate this Agreement with a written notice delivered to Seller at any time prior to the Closing Date, whereupon the Deposit shall be promptly returned to Purchaser as its sole and exclusive remedy and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated.

(a) Environmental. Seller has advised Purchaser and Purchaser acknowledges that parts of the Anglin Parcel contain hazardous materials in excess of the residential clean-up criteria and the Anglin Parcel is therefore a "facility" under applicable Environmental Protection Laws. Seller, in connection with its acquisition of the Anglin Parcel, had a Baseline Environmental Assessment ("**BEA**") undertaken at Seller's expense. A copy of the Seller's BEA has been provided to Purchaser, as have the related Phase I and Phase II

Environmental Site Assessments obtained by Seller for the Anglin Parcel. Seller makes no other representations with regard to the environmental condition of the Property, and expressly disclaims any warranties, covenants, or guarantees, whether express or implied, regarding the environmental condition of the Property. Purchaser's environmental inspection of the Town Center Parcel under Section 5 above might reveal that such parcel also contains hazardous materials in excess of the residential clean-up criteria and might therefore be a "facility" under applicable Environmental Protection Laws. Purchaser's obligation to purchase any or all of the Property is subject to and contingent upon (i) Purchaser's satisfaction that the Property can be feasibly and economically used for the intended uses with any environmental remediation deemed necessary by Purchaser, in its sole and absolute discretion, and (ii) Approval of Purchaser's submitted Brownfield Redevelopment Plan and Act 381 Plan (collectively, the "**Brownfield Plan**") by all applicable local and state agencies, with any modifications or conditions acceptable to Purchaser in its sole and absolute discretion.

(1) Disclaimer and Release. The Closing of the transaction contemplated by this Agreement shall constitute Purchaser's acceptance of the Property in its present environmental condition and physical condition on an "as is," "where is," and "with all faults and defects" basis, regardless of how such faults and defects were caused or created (by the negligence, actions, omissions, or fault of Seller or otherwise), and Purchaser acknowledges that without this acceptance, this sale by Seller would not be made, and the Seller shall not be under any obligation whatsoever to undertake any improvement, repair, modification, alteration, remediation, or other work of any kind regarding any of the Property.

Seller is expressly released by Purchaser and its successors and assigns from any and all responsibilities, liabilities, obligations, and claims of Purchaser known and unknown, whether based on negligence, strict liability, or otherwise, arising under Environmental Protection Laws, common law, or any other legal requirement, including any obligations to take the Property back or reduce the purchase price and any actions for contribution, indemnity, or to improve, repair, or otherwise modify the physical condition of the Property, that Purchaser or its successors or assigns may have against Seller, based in whole or in part on the presence of hazardous materials or other environmental contamination on, at, under, or emanating from the Property or arising from the Environmental Condition or physical condition of the Property, regardless of how caused or created (by the negligence, actions, omissions, or fault of Seller, pursuant to any statutory scheme of strict liability, or otherwise). Purchaser further acknowledges that the provisions of this disclaimer have been fully explained to Purchaser and that it fully understands and accepts the same as a condition to proceeding with this transaction. Purchaser acknowledges that Seller's employees, agents, or representatives have not made any statements or representations contrary to the provisions of this section. In entering into and performing this Agreement, Purchaser has relied, and will rely, solely on its independent investigation of and judgment regarding the Property and its value.

(2) Indemnification of Seller by Purchaser. From and after Closing, to the fullest extent permitted by law, Purchaser agrees to indemnify and hold harmless Seller and its elected and appointed officials, employees, and agents from and against any and all losses, liabilities, claims, strict liability claims, lawsuits, fines, penalties, judgments, expenses (including, but not limited to, reasonable attorney fees), environmental abatement, investigation, remediation and cleanup costs, and damages in connection with personal injuries, death, or damage to property or the environment relating or pertaining to any Environmental Condition in, on, or emanating from the Property, or any Environmental Claim, regardless of whether such

Environmental Condition or Environmental Claim arises or is asserted pre-closing or post-closing, and/or arising after Closing from Purchaser's possession, use, or operation of the Property, regardless of whether such injuries/death/damage are caused by or arise from a third party's negligence, actions, or omissions.

For purposes of this Agreement, the following terms shall be defined as follows:

(i) **"Environmental Condition"** means any condition or conditions affecting or relating to the air, soil, groundwater, or surface water at or about the Property and any failure to comply with governmental requirements, including Environmental Protection Laws, relating to such condition or conditions, which could or does require remediation, including abatement, investigation, containment, or removal and/or which could result in Environmental Claim(s).

(ii) **"Environmental Claim(s)"** means all claims, causes of action, liabilities, damages, losses, costs, or expenses (including reasonable attorney and environmental consultant fees) relating to the prevention, abatement, investigation, remediation, release, or elimination of pollution or contamination, the violation of Environmental Protection Laws, or the application of Environmental Protection Laws pertaining to the condition of the Property and the migration of existing pollution onto or under other property. Environmental Claim(s) includes claims arising from application of Environmental Protection Laws to the condition of the Property, as well as any and all claims by third parties and by governmental or quasigovernmental entities no matter how such claims arise.

(iii) **"Environmental Protection Laws"** mean any and all current or future laws, statutes, rules, regulations, and judicial interpretations of the United States, of any state or local government, or of any other governmental or quasigovernmental authority having jurisdiction that relate to the prevention, abatement, investigation, remediation, or elimination of pollution and/or protection of the environment, including but not limited to those federal statutes commonly known as the Solid Waste Disposal Act of 1970, as amended; the Resource Conservation and Recovery Act of 1976, as amended; the Clean Water Act, as amended; the Clean Air Act, as amended; the Safe Drinking Water Act, as amended; the Migratory Bird Treaty Act, as amended; the Toxic Substances Control Act, as amended; and the Hazardous Materials Transportation Act, as amended; together with any and all other applicable federal, state, and local statutes, laws, rules, and regulations serving any similar or related purpose.

(b) Anchor Tenant Lease. As soon as reasonably practical after PRO Approval is obtained, Purchaser shall have entered into a lease acceptable to Purchaser, at its sole and absolute discretion, with its projected anchor tenant market or affiliate ("**Anchor Tenant**") to lease certain land and associated improvements from Purchaser on the Property for a market, restaurant, retail use, or a combination of said uses.

(c) Financing. As soon as reasonably practical after PRO Approval is obtained, Purchaser shall have satisfied all lender requirements and shall have secured a binding commitment, acceptable to Purchaser in its sole and absolute discretion, for financing the acquisition and development of the Property.

(d) Town Center Parcel. The Parties acknowledge that Seller presently has no contractual right to purchase and/or sell the Town Center Parcel to Purchaser but will continue

its efforts to purchase the Parcel on terms and conditions acceptable to it. Seller's acquisition of title to the Parcel is a condition of this Agreement. If within ninety (90) days following the Effective Date Seller has not entered into a binding contract to purchase the Town Center Parcel from Novi Town Center Investors LLC, a Delaware limited liability company, its fee simple record title holder ("**Town Center Parcel PA**"), in form and substance acceptable to both Seller and Purchaser, each in its sole discretion, including the status of title to the Town Center Parcel, then within thirty (30) days thereafter, Purchaser shall have the option to (i) terminate this Agreement and receive its Deposit back, or (ii) give notice to Seller that it waives the condition and intends to proceed with the purchase of the Anglin Property, which shall thereafter be treated as the Property for purposes of this Agreement.

7. Development Approval Conditions. Provided that Purchaser has not terminated this Agreement under Sections 4 , 5, or 6, then no later than two (2) months following the expiration of the Inspection Period, Purchaser agrees, at its sole cost and expense, to submit a complete application for approval of a Planned Rezoning Overlay ("**PRO**") pursuant to Section 7.13 of the City's Zoning Ordinance ("**Zoning Ordinance**") on the Property that complies with the Zoning Ordinance requirements for a PRO and that contains all plans, maps, elevations, details, and information required by the Zoning Ordinance and other applicable ordinances of the City. Such application for PRO approval ("**PRO Approval**") shall include a market of approximately 25,000 square feet as an "anchor" use for the Property, restaurants, retail buildings and possibly residential units. The PRO application shall seek rezoning of the Property to the TC District, and shall include the redevelopment of the Property, including the relation of the proposed plans and improvements to adjacent properties and the existing and future or planned road rights-of-way.

Following submittal of such application, to the extent Purchaser can reasonably and feasibly do so, Purchaser shall supplement its application materials as necessary to address issues, if any, raised by the City of Novi Planning Commission and City Council upon review, or to address market conditions or tenant/occupant issues identified by Purchaser. Purchaser shall diligently pursue PRO Approval.

Seller agrees to process and review Purchaser's submittals on a timely basis under applicable laws and ordinances.

In the event the Parties comply in good faith with this provision, but the PRO is not approved within a six (6)-month period following the date of submission by Purchaser of a complete PRO application, then at any time thereafter Purchaser may withdraw its PRO application and terminate this Agreement upon written notice to Seller and the Agreement shall be without further force and effect and Purchaser shall receive a full reimbursement of the Deposit as its sole and exclusive remedy. Seller makes no representation in this Agreement that the PRO and PRO Agreement will be approved. Notwithstanding anything else in this Agreement, Seller retains all its right and discretion under applicable law and ordinances to approve, reject, or approve with conditions any proposed PRO and PRO Agreement, and this Agreement does not limit or waive its zoning or police power authority in any way, including the relation of the proposed plans and improvements to adjacent properties and the existing and future or planned road rights-of-way. Seller's failure to approve the PRO Plan or the PRO Agreement shall not constitute a default or breach for the purposes of this Agreement.

For purposes of the foregoing, PRO Approval shall occur when the City Council approves the PRO Plan and a PRO Agreement that is mutually satisfactory to Purchaser and Seller. The PRO Agreement shall provide that the Property shall be developed in accordance with its provisions and the PRO Plan and Agreement, that the PRO Approval and PRO Agreement are binding on Purchaser and its successors and assigns, and that the PRO Agreement shall be recorded at the Oakland County Register of Deeds and run with the land.

Ecco Tool, Inc. or its owners or affiliates are the owners of two parcels of land in the area (Parcel No. 22-23-126-008 and 22-23-126-011) to the east of the Property ("**Ecco Parcels**"). Seller is also the owner of the Eleven Mile Parcel to the east of the Property. Purchaser may include any or all of these additional parcels as part of its PRO application for future development purposes in the event Purchaser secures title or control to such parcels. If Purchaser determines to acquire less than all of these additional Ecco Tool parcel, then any resultant remaining portion of such parcel(s) must meet all Zoning Ordinance requirements and requirements of the City's Code of Ordinances without necessity of variance relief, or shall be appropriately included in the PRO Plan in order to ensure that all resulting properties comply with ordinance requirements.

8. Closing. The Closing on the Property shall occur on the Closing Date, unless this Agreement is terminated on an earlier date pursuant to its terms.

(a) At the Closing, Seller shall execute and deliver to Purchaser (i) a warranty deed ("**Warranty Deed**") conveying the Property to Purchaser or Purchaser's assignee or designee free and clear of all liens, claims, and encumbrances except for the Permitted Exceptions and the PRO Agreement and shall convey the right to make all future divisions of the Property under Section 108 of the Michigan Land Division Act, being Act No. 288 of the Public Acts of 1967, as amended; and (ii) an owner's affidavit executed by Seller and in form and substance acceptable to the Title Company to remove the standard exceptions from title.

(b) At the Closing, Purchaser shall pay the Purchase Price, less the Deposit, to Seller, via federal wire transfer of funds or title company check, as adjusted by the adjustments provided below. Purchaser shall direct the Title Company to deliver the Deposit to Seller.

(c) At the Closing, Seller and Purchaser shall mutually execute and deliver to one another a closing statement setting forth the following adjustments and prorations: (i) all accrued general real estate and ad valorem taxes for the current year applicable to the Property, if any, shall be prorated on a "due date" basis in accordance with local custom as though paid in advance. Prior to or at Closing, Seller shall pay or have paid all tax bills that are due and payable prior to or on the Closing Date and shall furnish evidence of such payment to Purchaser and the Title Company. All general and special assessments shall be paid in full by Seller prior to or on the Closing Date. (ii) The Deposit shall be applied as a credit against the Purchase Price. (iii) All recording fees and all state and county transfer taxes (if any) shall be paid by Seller. (iv) Seller shall pay all title insurance premiums of the Title Company. (v) Purchaser shall pay any standard closing fees and costs charged by the Title Company. (vi) Each Party shall pay their respective attorney fees.

(d) At the Closing, Seller shall cause the Title Company to issue the Title Policy or hand mark the Title Commitment as an effective title insurance policy insuring marketable title to the Property in Purchaser in the full amount of the Purchase Price as of the date and time of

Closing, subject only to the Permitted Exceptions and with those endorsements required by Purchaser and its lender.

(e) At the Closing, Seller shall deliver exclusive possession of the Property to Purchaser, free and clear of any tenancy or right of occupancy.

(f) At the Closing, the Parties shall deliver any and all documentation reasonably required by Purchaser, Seller, their attorneys (if any), and/or the Title Company to consummate the transaction described herein in accordance with the terms and conditions of this Agreement.

9. **Default.**

(a) **Default by Seller.** In the event that Seller should default or otherwise fail to consummate the transactions contemplated by this Agreement for any reason except for (i) Purchaser's default, which is not cured within ten (10) days after written notice from Purchaser, or (ii) failure on the part of the City of Novi to approve the PRO application and PRO plan, then Purchaser may either (a) terminate this Agreement by giving prompt written notice thereof to Seller, upon which the Deposit shall be refunded to Purchaser in full and the Parties shall have no further obligations under this Agreement, or (b) specifically enforce this Agreement; provided, however, that in the event that such failure of Seller was beyond Seller's reasonable control, Purchaser's sole remedy shall be to so terminate this Agreement; provided, further, in the event Purchaser elects to specifically enforce this Agreement it must institute such action within thirty (30) days following Seller's default, failing which Purchaser shall be deemed to have waived the right to pursue specific performance.

(b) **Default by Purchaser.** In the event Purchaser should default or otherwise fail to consummate the transaction contemplated herein for any reason except for Seller's default or the failure of any of the Conditions to Closing to be satisfied or waived, which is not cured within ten (10) days after written notice from Seller, then Seller may retain the entire Deposit and terminate this Agreement by giving prompt written notice thereof to Purchaser, as its sole and exclusive remedy and the Parties shall have no further obligations under this Agreement.

10. Demolition of Buildings. Unless the PRO Agreement provides otherwise, the Purchaser shall within six (6) months of the Closing Date demolish the existing buildings on the Anglin Parcel. Purchaser shall secure all required permits and approvals from the City of Novi and other governmental entities and shall comply with all rules, regulations, ordinances, and laws regarding same. If Purchaser fails to demolish the buildings as required, Seller may (but is not obligated to) enter upon the Property and demolish the buildings. Purchaser shall be responsible for the cost of such demolition. If Purchaser fails to pay the amount expended within thirty (30) days of invoice, such amount shall become a lien upon the Property collectible by the City in the same manner as delinquent taxes.

11. Miscellaneous. This Agreement cannot be modified except by a written instrument signed by both of the Parties hereto. Section headings set forth herein are for convenience of reference only and shall not be construed to interpret, limit or otherwise define the terms and conditions of this Agreement. This Agreement sets forth fully and completely the agreement of the Parties with respect to the subject matter described herein and this Agreement shall be deemed to supersede any and all prior written or oral agreements relating to the subject matter described herein. This Agreement shall be binding upon and shall inure to the benefit of Seller,

Purchaser and their heirs, representatives, successors, successors-in-interest and assigns. Seller and Purchaser have participated equally in the preparation of this Agreement and, therefore, in construing this Agreement there shall be no presumption in favor of one Party over the other as the result of one Party actually drafting this Agreement. The absence from this Agreement of provisions appearing in drafts hereof shall not be used in construing the intent of the Parties hereto. To the extent any date, time frame or Closing Date provided in this Agreement shall be set to expire or occur on a Saturday, Sunday or day on which banking institutions in the State of Michigan are authorized by law to close, then such time frame shall expire or Closing Date shall occur on the next day which is not a Saturday, Sunday or day on which banking institutions in the State of Michigan are authorized by law to close

12. Waiver. Purchaser reserves the right, at its sole option, at any time, to waive any of the Conditions. Any such waiver shall only be in writing and duly executed by a representative of Purchaser, unless otherwise indicated in this Agreement.

13. Notices. All notices, deliveries or tenders given or made in connection herewith shall be in writing and shall be deemed effective only (i) upon deposit with the US Postal Service if mailed by certified mail, postage prepaid, return receipt requested, (ii) upon personal delivery or (iii) upon deposit with a nationally recognized overnight courier service for next day delivery at the street addresses set forth beneath the signature blocks below. Addresses may be changed during the term of this Agreement by notices among the Parties in accordance with this Section. To be effective, all notices to Purchaser shall also be provided to Seller's Attorney and Purchaser's Attorney.

14. Broker. Each Party represents and warrants to the other that it has not dealt with any real estate broker, agent or salesperson in connection with the purchase and sale contemplated by this Agreement. Each Party agrees that should any claim be made for brokerage commissions or finder's fees by any broker or finder by, through or on account of any acts of said Party or its representatives, said Party will indemnify, defend, and hold the other Party free and harmless from and against any and all loss, liability, cost, damage, and expense in connection therewith. The obligations pursuant to this Section 14 shall survive the Closing or any earlier termination of this Agreement.

15. Execution. This Agreement has been executed by Purchaser prior to execution by Seller and, therefore, shall constitute an offer open for acceptance by Seller, such acceptance to be evidenced by execution by Seller and delivery to Purchaser of at least one original, fully executed copy of this Agreement. This Agreement may be executed in any number of counterpart originals or by scanned pdf, which, when taken together, shall be deemed to be one and the same instrument.

16. Time is of the Essence. At all times under this Agreement where certain time constraints are set forth, the Parties have agreed that TIME IS OF THE ESSENCE and that no extensions of said time limits are expected or agreed to unless specifically agreed to in writing by both Parties.

17. Governmental Immunity; Non-waiver. Nothing in this Agreement shall be construed as a waiver of any governmental immunity, as provided by statute or court decision, for Seller or its council, boards, commissions, officials, employees, or agents.

18. Governing Law & Jurisdiction. The Parties signing below agree that this Agreement has been entered into in the City of Novi, Oakland County, Michigan and this Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. The Parties signing below stipulate that any and all suits for any and every breach of this Agreement may be instituted and maintained only in a court of competent jurisdiction in the State of Michigan.

19. Authority to Sign. The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals and the authority to bind each Party to this Agreement according to its terms. Further, each of the Parties represents that the execution of this Agreement has been duly authorized and is binding on such Parties.

20. Option to Purchase Eleven Mile Parcel. At Closing the Parties will enter into an option agreement for Purchaser to purchase the Eleven Mile Parcel ("**Option Agreement**"), net of all existing right-of-way. The Option Agreement will be for a term not to exceed three (3) years ("**Option Term**"), for the purchase price of \$10,000.00 ("**Option Purchase Price**"), with nonrefundable option payments in the amount of \$1,000.00 for such Eleven Mile Parcel ("**Option Payment**"), payable within three (3) business days after the exercise of the Option Agreement, and semi-annually thereafter. In the event Purchaser fails to make any Option Payment when due, then the Option Agreement shall automatically terminate, Seller shall retain the Option Payments previously made, and the Parties shall have no further obligations under the Option Agreement. At any time during the Option Term, Purchaser may exercise the option for the purchase of the Eleven Mile Parcel by written notice to Seller delivered prior to the expiration of the Option Term. In the event Purchaser exercises its option to purchase the Eleven Mile Parcel, then such purchase shall be for the Option Purchase Price. The Option Agreement shall provide for closing documents to be delivered and for the allocation of closing costs and prorations as provided in Section 8 of this Agreement, and shall provide Purchaser with a ninety (90) day inspection period to physically inspect the Eleven Mile Parcel and obtain a title commitment and a survey and to object in the same manner as provided in Sections 4 and 5 of this Agreement.

If Purchaser's environmental testing of the Eleven Mile Parcel and/or the Ecco Parcel(s) reveals that the Eleven Mile Parcel and/or the Ecco Parcel(s) is/are a "facility" under applicable Environmental Protection Laws, then Purchaser shall have the right to seek to amend its Brownfield Plan to include the Eleven Mile Parcel and/or the Ecco Parcel(s). Purchaser shall also have one hundred twenty (120) days from exercise of the option to obtain PRO Plan approval, site plan approval, and any other municipal and governmental approvals required for its intended use of the Eleven Mile Parcel. Subject to the terms and conditions of the PRO and the PRO Agreement if they apply to the Eleven Mile Parcel and/or the Ecco Parcel(s) as applicable, Seller retains all its rights and discretion under applicable law and ordinances to approve, reject, or approve with conditions any proposed development; this Agreement does not limit or waive its zoning or police power authority, and the failure by Seller to approve any proposed development shall not be a default or breach of the Option Agreement.

Closing shall occur within thirty (30) days following the later of the expiration of such inspection period or Purchaser obtaining all site plan and other applicable municipal and governmental approvals required for its intended use. Purchaser may terminate the Option

Agreement at any time prior to closing on the purchase of the Eleven Mile Parcel, and the Parties shall have no further obligations under the Option Agreement. All Option Payments shall be applicable to the Purchase Price at the closing on the purchase of the Eleven Mile Parcel. During the Option Term, Seller covenants and agrees not to enter into any contract, option, right of first refusal, right of first offer or other right to purchase, lease or license the Eleven Mile Parcel, (ii) enter into any other agreement with respect to the Eleven Mile Parcel.

[signatures on following pages]