

*Execution Copy*

# **DEVELOPMENT AGREEMENT**

**(Pontiac Renaissance Zone Project)**

**by and between**

**CITY OF PONTIAC**

**a Michigan municipal corporation**

**and**

**MOTOWN MOTION PICTURES, LLC**

**a Michigan limited liability company**

**May 4, 2009**

**DEVELOPMENT AGREEMENT**  
(Pontiac Renaissance Zone Project)

This Development Agreement (the "Agreement") is made as of May 4, 2009, by and between the CITY OF PONTIAC, a Michigan municipal corporation (the "City") and MOTOWN MOTION PICTURES, LLC, a Michigan limited liability company ("Developer").

**RECITALS**

- A. Pursuant to a written sales agreement (the "Sales Agreement") between the Developer and General Motors Corporation ("GM"), the Developer has the legal right to acquire from GM certain improved real property located in the City, commonly known as 1999 Centerpoint Parkway, Pontiac, Michigan and legally described on Exhibit A to this Agreement (the "Property").
- B. Under Section 8a(2) of the Michigan Renaissance Zone Act, Act 376 of the Public Acts of Michigan of 1996 (as amended, the "Act"), the Board of the Michigan Strategic Fund ("MSF Board") may designate a limited number of renaissance zones if, among other things, the affected city, township or village consents to the creation of a renaissance zone within its jurisdiction
- C. At the Developer's request, the City has agreed to submit to the Michigan Economic Development Corporation ("MEDC") for review an application (the "Application") requesting the designation of the Property by the MSF Board as a renaissance zone pursuant to the Act (the "Zone").
- D. If the Property is designated as the Zone, the Developer intends to complete its purchase of the Property and undertake a project (the "Project") generally consisting of the redevelopment of the vacant approximately 400,000 square foot building currently located on Property and the planned development and construction of an additional approximately 180,000 square feet of space at the Property and the installation of equipment, together intended for use as a motion picture studio with film production services, sound stages, education and training facility, animation studio and post-production facilities and other uses (the "Facility").
- E. The Developer and the City wish to set forth their respective undertakings and obligations with respect to submitting the Application and set forth the terms and conditions governing the development of the Project.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the Developer and the City hereby covenant and agree as follows:

## TERMS AND CONDITIONS

### ARTICLE 1

#### DEFINITIONS

The following words and phrases wherever they appear in this Agreement shall be defined as follows:

1.1 “Capital Investment Commitment” shall mean the direct capital expenditures to construct, equip and complete the Project in an amount not less than Forty Million and 00/100 Dollars (\$40,000,000.00).

1.2 “Capital Investment Commitment Date” shall mean January 1, 2012.

1.3 “Capital Investment Fee” shall mean, for the year in which the Capital Investment Commitment Date occurs and any year thereafter until the Capital Investment Commitment has been satisfied by the Developer, an amount equal to the product of the then-current taxable value of the real and personal property at the Property multiplied by only those millages that would otherwise be due the City in the absence of the Zone, but in no event to exceed an annual amount of One Hundred Twenty-Eight Thousand and 00/100 Dollars (\$128,000.00).

1.4 “City” shall have the meaning set forth in the Recitals above.

1.5 “City Income Tax” shall mean that income tax imposed by the City pursuant to its ordinance no. 1573, adopted pursuant to authority granted under Act 284 of 1964, MCL §§ 141.501 *et seq.* as either of the same have been or may be amended from time to time (but for purposes of this Agreement, shall be deemed to be not less than the rates as of the Effective Date).

1.6 “City Person” shall mean employee, elected official or appointed official of the City or the Pontiac TIFA together with any City agent or consultant disclosed to the Developer.

1.7 “City Service Fee” shall mean that annual fee payable under the City Service Fee Agreement in the amount of Ninety Thousand and 00/100 Dollars (\$90,000.00).

1.8 “City Service Fee Agreement” shall have the meaning set forth in Subsection 2.3.3 of this Agreement

1.9 “Claim” means any obligation, liability, lien, encumbrance, loss, damage, cost, expense or claim, including, without limitation, any claim for damage to property or injury to or death of any Person or Persons, arising hereunder or in relation to the Project or under this Agreement.

1.10 “Developer” shall mean, initially, Motown Motion Pictures, LLC, together with its successors-in-title to all or any portion of the Property.

1.11 "Development Period" shall mean the period of time commencing on the later of (i) date of approval of the Application by the MSF Board and designation of Property as the Zone or (ii) if the MSF Development Agreement contains conditions precedent to the establishment of the Zone, the date of satisfaction of all such conditions precedent, and in either case continuing so long as the Zone remains in full force and effect.

1.12 "Effective Date" shall mean the date the City and Developer have executed this Agreement.

1.13 "Emergency Financial Manager" or "EFM" shall mean any individual named in accordance with the requirements of MCL § 141.1218 (Act 72 of 1990) to manage and control the finances of the City. The EFM is currently Fred P. Leeb.

1.14 "Facility" shall have the meaning set forth in the Recitals.

1.15 "Infrastructure" has the meaning set forth in Subsection 2.2.2.

1.16 "Initial Permits" has the meaning set forth in Subsection 2.2.3.

1.17 "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 environment, health and safety, disabled or handicapped persons.

1.18 "MEDC" shall have the meaning set forth in the Recitals.

1.19 "MSF Board" shall have the meaning set forth in the Recitals.

1.20 "MSF Development Agreement" shall have the meaning set forth in Subsection 2.3.1 of this Agreement.

1.21 "Permit Fee" shall mean a payment in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) in lieu of all fees for Permits due the City after the Effective Date other than for the Water and Sewer Connection Charges.

1.22 "Permits" means all permits, licenses, approvals, entitlements, notifications, determinations and other governmental and quasi-governmental authorizations, including without limitation zoning and land use approvals and certificates of occupancy, 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.

1.23 "Person" means a natural person, corporation, partnership, trust, association, limited liability company or other entity.

1.24 "Pontiac TIFA" shall mean the City of Pontiac Tax Increment Finance Authority.

1.25 "Pontiac TIFA Service Fee" shall mean that fee payable under the Pontiac TIFA Service Agreement in the annual amount of Thirty Eight Thousand and 00/100 Dollars (\$38,000.00).

1.26 "Pontiac TIFA Service Fee Agreement" has the meaning set forth in Subsection 2.3.2.

1.27 "Pontiac TIFA Obligations" shall mean the obligations of the Pontiac TIFA as of the Effective Date to make payments under those tax-exempt bonds and other obligations secured by the tax increment revenues from Pontiac TIFA Development Area No. 2, the TIFA development area in which the Property is located, as the same may be refinanced from time to time,

1.28 "Pre-Approval Period" shall mean the period of time from the Effective Date through the first to occur of (i) the commencement of the Development Period or (ii) the rejection of the Application by the MSF Board without leave to reapply and the exhaustion of all applicable appeals.

1.29 "Project" shall have the meaning set forth above in the Recitals.

1.30 "Project Budget" shall mean the overall budget for the cost of constructing, equipping and completing the Project and shall include capital expenditures in an amount not less than the Capital Investment Commitment and a general summary of the planned sources and uses of funds for the Project.

1.31 "Property" shall have the meaning set forth in the Recitals.

1.32 "Service Fee Agreements" shall mean, collectively the Pontiac TIFA Service Fee Agreement and the City Service Fee Agreement.

1.33 "Service Fees" shall mean, collectively the Pontiac TIFA Service Fee, City Service Fee and Capital Investment Fee.

1.34 "Term" shall mean the term of this Agreement, commencing on the Effective Date and expiring upon the first to occur of (i) the expiration or earlier termination of the Zone for any reason (ii) the termination of this Agreement pursuant to an express provision of this Agreement or (iii) the mutual written agreement of the parties to terminate the Agreement.

1.35 "Water and Sewer Connection Charges" shall mean those charges for connections, installations, tap-in, meter and other costs not based on use of water and sewer services at the Project that will not exceed the following amounts: (i) for the existing building at the Property, there shall be no charge so long as there are no major alterations or additions and (ii) for the two (2) new buildings contemplated under the Project, up to \$8,280 each for connection charges, up to \$2,000 each for installation charges and up to \$8,050 each for meter costs for a total not to exceed \$18,330 for each building (for a total of \$36,660 for both buildings).

## ARTICLE 2

### PRE-APPROVAL PERIOD

2.1 Covenants of the Developer. The Developer covenants and agrees to make commercially reasonable efforts to complete all of the following actions with respect to the Project during the Pre-Approval Period on or before the applicable deadline for same:

2.1.1 Entity Structure and Information. Not later than thirty (30) days after the Effective Date, the Developer will deliver to the City a manager's certificate for the Developer containing and certifying as true, correct and complete: (i) resolutions of the Developer authorizing the execution of this Agreement and/or participation in the Project, (ii) Certified Articles of Organization for the Developer from the Michigan Department of Energy, Labor & Economic Growth dated after the Effective Date and (iii) a Good Standing Certificate for the Developer from the State of Michigan Department of Energy, Labor & Economic Growth dated after the Effective Date.

2.1.2 Project Budget. Not later than thirty (30) days after the Effective Date, the Developer will deliver the preliminary Project Budget to the City for review. Not later than one hundred eighty (180) days after the Effective Date, the Developer will deliver the Project Budget to the City for review or such other Developer budget information that was submitted to any first lien mortgage lender providing funds for the Project. If the Project Budget or preliminary Project Budget contains confidential or proprietary Developer information, then the Project Budget shall be reviewed privately by City Persons at the offices of Developer or its counsel.

2.1.3 Renaissance Zone Application. The Developer will provide and/or approve all information reasonably necessary to complete the Application, including any supplementary financial information or Property control information required by the MEDC or the MSF Board. The Developer will provide copies to the City of any separate submissions or responses to questions provided to the MEDC or the MSF Board related to the Project.

2.1.4 Sales Agreement. Developer will take commercially reasonable steps to maintain the Sales Agreement (which it is understood may be modified) in full force and effect. Developer will advise the City in writing within ten (10) business days after any termination of the Sales Agreement or any Sales Agreement default that materially and adversely affects the viability of the Project.

2.2 Covenants of the City. The City covenants and agrees to make commercially reasonable efforts to complete all of the following actions with respect to the Project during the Pre-Approval Period on or before the applicable deadline for same:

2.2.1 Renaissance Zone Application. After the receipt of the Developer information required in Subsection 2.1.3 above, the City will promptly complete, execute and file the Application with the MEDC and MSF Board in accordance with law and MSF Board and MEDC requirements, all in the form and containing the information reasonably approved by the Developer and the City. The City will respond promptly to any requests for supplemental information from the MEDC or the MSF Board and keep the Developer apprised at all times of

the status of the Application; and the City will promptly consult with the Developer regarding any requests from MEDC or the MSF Board and include, as appropriate, the Developer's responses in the City's responses to those requests. The City will further take all commercially reasonable steps to secure the required signatures constituting the consent of Oakland County to the Application and the Zone as well as any required resolution from the Pontiac City Council. Notwithstanding the foregoing provisions of this Subsection 2.2.1, the City will, but only at the request of the Developer, share any draft or preliminary (unsigned) Application with MEDC staff, and the Developer may, at any time share any draft or preliminary Application with MEDC staff.

2.2.2 Infrastructure. The City agrees to provide its reasonable cooperation to the Developer to seek so-called federal or state stimulus funds and other assistance from the United States, Oakland County and the State of Michigan for the following infrastructure improvements for the Project ("Infrastructure"):

- (a) Site work, including sanitary sewers, storm sewers, storm water system, site earthwork and site concrete and bituminous paving at an estimated cost of \$3,236,685.00.
- (b) Extension of primary electrical service to the Project buildings at an estimated cost of \$335,900.00.
- (c) Electrical site lighting and feeds at an estimated cost of \$276,180.00.

The City shall not be required to expend any out-of-pocket funds to provide its reasonable cooperation under this Section 2.2.2.

2.2.3 Permits. City shall expedite, to the extent legally permitted to do so, the issuance, of all Permits and City approvals for the Project, provided Developer has submitted the required application and information under the generally applicable standards for granting such Permits in the City. Promptly following Developer's completed Permit submissions, the City shall review same. So long as the Developer's completed Permit submissions meet the generally applicable standards for the grant of Permits in the City (including the posting of any required bond in an appropriate and reasonable amount under the circumstances), the City will, without payment of any permit fee or other charge (except to the extent Water and Sewer Connection charges are imposed), issue the following initial Permits ("Initial Permits"): soil erosion, site grading, utility and foundation permits. Any inspections related to the Initial Permits will be performed by the independent inspector pursuant to Subsection 3.1.5 of this Agreement.

2.2.4 Cooperation Regarding Other Assistance. The City shall support the Developer's reasonable requests for other incentives and assistance from U.S. agencies, Oakland County agencies and State of Michigan agencies and provide its reasonable cooperation with those agencies in connection with approvals, incentives and assistance for the Project and the City shall provide its reasonable cooperation with the Developer with respect to the foregoing. The City shall not be required to expend any out-of-pocket funds to provide its reasonable cooperation under this Subsection 2.2.4.

2.3 Joint Covenants of the City and the Developer. The City and Developer covenant and agree to make commercially reasonable efforts to negotiate and execute the following agreements during the Pre-Approval Period:

2.3.1 A development agreement among the MSF Board, the Developer and the City (the "MSF Development Agreement") with the following basic terms:

- (a) An effective date on the later to occur of (i) the date the MSF Board approves the Application or (ii) the date otherwise determined to be the effective date in the MSF Development Agreement.
- (b) The specific obligations of the Developer with respect to capital investment at the Property and job creation as required by the MSF Board.
- (c) Those default remedies required by the MSF Board.
- (d) A term co-extensive with the duration of the Zone.
- (e) Such other terms and conditions as may be legally required or otherwise agreed upon by the parties.

2.3.2 A service agreement with respect to the Pontiac TIFA Service Fee (the "Pontiac TIFA Service Fee Agreement") with the following basic terms:

- (a) An effective date of January 1, 2010 if the Zone is established; if no Zone is established, such Service Agreement shall not take effect.
- (b) An annual payment to the City by the Developer during the term of such Service Agreement in an amount equal to the Pontiac TIFA Service Fee (provided the Pontiac TIFA Obligations are then to be paid from tax increment revenues captured from the Property), payable in such installments as are reasonably required by the City. The payment of the Service Fee will be subject to a credit or setoff (partial or total, as applicable) during the final three (3) years of the Zone when the exemptions provided by the Zone and the Act are phased out. The setoff will apply only to the extent of any real property and personal property taxes actually paid by or on behalf of the Developer that are able to be captured by the Pontiac TIFA as tax increment revenues.
- (c) A provision exempting the Developer from payment of the Pontiac TIFA Service Fee if the Zone is terminated for any reason and the real property and personal property taxes on the Property that are paid by or on behalf of the Developer are able to be captured by the Pontiac TIFA as tax increment revenues.



- (d) Security for the foregoing payments in the form of a lien on the Property in favor of the City, to be filed immediately upon a Developer default in the payment of such Service Fee. The lien shall be subordinate in all respects to all financing liens for the Project encumbering the Property and the Developer shall have mutually acceptable cure period before the City can act to foreclose the lien.
- (e) A requirement that the City remit the full amount of the Pontiac TIFA Service Fee to the Pontiac TIFA for the purpose of making a portion of the required payments due in connection with the Pontiac TIFA Obligations. The Developer shall have no direct payment obligation to the Pontiac TIFA and the City shall hold the Developer harmless from and against any Claims made by the Pontiac TIFA against the Developer, the Property or the Project, for the failure of the City to remit the full amount of the Pontiac TIFA Service Fee to the Pontiac TIFA for any reason.
- (f) A term co-extensive with the duration of the Zone.
- (g) Such other terms and conditions as may be legally required or otherwise agreed upon by the parties.

2.3.3 A service agreement with respect to the City Service Fee (the "City Service Fee Agreement") with the following basic terms:

- (a) An effective date of January 1, 2010 if the Zone is established; if no Zone is established, such Service Agreement shall not take effect.
- (b) An annual payment to the City by the Developer in an amount equal to the City Service Fee, payable only in years six (6) through fifteen (15) of the Zone (2015 through 2024) in two installments on June 30 and December 31 of each year during the Term and subject to a credit or setoff (partial or total, as applicable) for the amounts of the City Income Tax withheld or paid to the City as follows:
  - (i) amounts withheld or paid by Developer or otherwise paid by the employees of Developer working at the Property;
  - (ii) amounts withheld or paid by Developer or otherwise paid by employees of the Developer working in the City, but outside the Property;
  - (iii) amount withheld or paid by companies or otherwise paid by their employees engaged in services at the Property, but only to the extent such companies and employees have filed returns or otherwise delivered reasonably satisfactory evidence permitting the City to determine the proportion of

such tax amounts derived from services performed at the Property; and

- (iv) amounts withheld or paid by Developer or companies controlled by the Developer or otherwise paid by the employees of such companies working in the City adjacent to the Property, but only to the extent such companies and employees have filed returns or otherwise delivered reasonably satisfactory evidence permitting the City to determine the proportion of such tax amounts derived from services performed in the City. For the purposes of this Section, "control" shall mean the ability to direct the management and operations of a company.

Both the City and the Developer shall reasonably cooperate in good faith to obtain and deliver the information necessary to calculate any credit or setoff. The specific methods and times for computing the set off amounts and the application to payments of the City Service Fee to be made by Developer and for refunds for the City Service Fee payments previously made by Developer shall be described in the City Service Fee Agreement.

- (c) A provision exempting the Developer from payment of the City Service Fee if (i) the Zone is terminated for any reason; (ii) the film production tax credits provided under MCL §208.1455 are eliminated or capped at an amount less than Five Hundred Million and 00/100 Dollars (\$500,000,000.00) in any calendar year before 2015 or thereafter capped at an amount less than Five Hundred Million and 00/100 Dollars (\$500,000,000.00) or the gross dollar amount of such credits issued in any one of the immediately preceding two (2) years, whichever is greater; or (iii) the gross dollar amount of film credits under MCL §208.1455 approved by the Michigan Film Office or Michigan Department of Treasury in any year during the Term is less by more than fifty percent (50%) from the gross dollar amount of film credits approved in the immediately prior year.
- (d) A provision requiring the annual payment by the Developer of the full amount of the Capital Investment Fee, payable in any year after the Capital Investment Commitment Date that Capital Investment Commitment is not made and in each calendar year thereafter until (i) the total Capital Investment Commitment is made or (ii) the year the Zone expires or is terminated.
- (e) Security for the foregoing payments in the form of a lien on the Property in favor of the City, to be filed immediately upon a Developer default in the payment of such Service Fees. The lien shall be subordinate in all respects to all financing liens for the

Project encumbering the Property and the Developer shall have mutually acceptable cure period before the City can act to foreclose the lien.

- (f) A term co-extensive with the duration of the Zone.
- (g) Such other terms and conditions as may be legally required or otherwise agreed upon by the parties.

#### 2.4 Pre-Approval Period Termination.

2.4.1 Developer. The Developer may terminate this Agreement at any time during the Pre-Approval Period upon written notice to the City.

2.4.2 City. The City may terminate this Agreement during the Pre-Approval Period only after and during the continuance of a Developer Event of Default.

2.4.3 MSF Board. This Agreement will terminate automatically upon any final rejection of the Application by the MEDC or the MSF Board and first to occur of (i) expiration of all rights to appeal any such rejection or (ii) December 31, 2010.

2.4.4 Effect of Termination. Upon any termination of the Agreement during the Pre-Approval Period under this Section 2.4, the City shall withdraw the Application and the parties shall have no further obligations or liabilities under this Agreement or the Service Fee Agreements.

### ARTICLE 3

#### DEVELOPMENT PERIOD

3.1 Development Period Covenants of Developer. The Developer covenants and agrees to undertake the following actions during the Development Period:

3.1.1 Project Construction. The Developer will commence construction of the Project and will proceed diligently to construct and develop the Project during the Development Period.

3.1.2 Capital Investment Commitment. Not later than the Capital Investment Commitment Date, the Developer shall fulfill or cause the Capital Investment Commitment to be fulfilled. Developer shall provide evidence reasonably acceptable to the City to document the fulfillment of the Capital Investment Commitment. The City may reasonably request that permission to review project books and records to confirm the Capital Investment Commitment. If the project books and records contain confidential or proprietary Developer information, the same shall be reviewed privately by City Persons at the offices of Developer or its counsel.

3.1.3 Permits and Approvals. Developer shall maintain, as required by law and the State of Michigan building code, all Permits that are necessary in order for the Developer to construct and complete the Project, whether required by City departments and/or agencies or

otherwise. The Developer shall maintain the Permits at its sole cost and expense, provided the Developer shall not be required to pay the City for any fees or other charges for the Permits except for (i) the Permit Fee described in Subsection 3.1.4 and (ii) any Water and Sewer Connection Charges. Other than normal fees and charges for water and sewer usage, the Water and Sewer Connection Charges shall be the only fees and charges due for connections, installations, tap-in, meter and other costs not based on use of water and sewer services.

3.1.4 Building Permit Payment. Before December 31, 2009 the Developer shall pay the Permit Fee to the City in lieu of fees due to the City or its coordinate agencies for all Permits related to the Project. The payment of the Permit Fee shall not obligate the City or its coordinate agencies to grant any Permit and the Developer shall be required to meet the generally applicable terms and conditions for the grant of a Permit, including City engineering design standards.

3.1.5 Project Inspections. In exchange for payment of the Permit Fee, the Developer shall be permitted to engage a qualified independent consultant to review the plans and specifications for the Project and conduct inspections of the Project to confirm compliance with applicable building codes. The consultant shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed. In accordance with commercial building industry custom for such independent consultants and as otherwise reasonably acceptable to the City, the independent consultant shall indemnify and hold the City and relevant City Persons harmless from any and all Claims by the Developer or any and all third parties resulting from (i) the failure of the independent consultant to inspect the Project as required or (ii) any failure of the Project to comply with applicable building codes. The City may reasonably require this indemnity to be backed by a policy of insurance or other proof of financial capacity reasonably acceptable to the City and as is customary in the commercial building industry.

3.1.6 Compliance with Other Agreements. Developer will comply with the terms and conditions of the MSF Development Agreement and the Service Agreements, including without limitation those terms requiring the payment of Service Fees.

3.1.7 Payment of Taxes. 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 assessed against the Property and the City Income Tax assessed against the Developer, except to the extent abated or exempted for businesses in the Zone during the Term.

3.1.8 City Income Tax Registration. Developer shall complete and file a Form P-SS-4, Employer's Withholding Registration with the City of Pontiac Income Tax Division. Developer shall also endeavor to inform its agents, contractors and subcontractors working on the Project that each may be required under City ordinance or regulation to complete and file a Form P-SS-4, Employer's Withholding Registration with the City of Pontiac Income Tax Division. Developer shall endeavor to provide its employees, agents, contractors and subcontractor working on the Project a copy of the City of Pontiac Tax Procedures handout set forth on Exhibit B to this Agreement. In addition, the Developer shall provide the City of Pontiac Income Tax Division with the name, address and taxpayer identification number of all tenants, contractors, subcontractors, vendors or other licensees for whom it wishes to receive a

set off under the City Service Fee Agreement for taxes paid on services performed outside the Property.

3.1.9 Project Employment and Education Opportunities. The Developer shall comply in material respects with the requirements set forth in this Subsection 3.1.9 as to nondiscrimination and local employment practices and shall contractually require that any and all general contractors, major subcontractors and major suppliers employed or retained by Developer for the Project comply in material respects with the requirements set forth in this Subsection 3.1.9, as applicable.

(a) The Developer shall not, and shall include in contracts with its general contractor, major subcontractors and major suppliers a statement that they shall not, discriminate on the grounds of race, color, creed, religion, national origin, sex, age, handicap, marital status, height, weight or sexual preference in the retention of contractors and subcontractors, the hiring of employees, or the purchase of materials and supplies for the Project, and shall promote the full realization of equal employment opportunity, including providing for affirmative action programs.

(b) The Developer covenants and agrees that not less than eighty percent (80%) of the laborers employed by or on behalf of Developer during (i) the construction of the Project or (ii) any film production operations at the Project will be union members.

(c) The Developer shall, and the Developer shall inform its general contractors, major subcontractors and major suppliers, that they shall, to the full extent permitted by law, where possible, first provide an opportunity for qualified City residents and qualified City based businesses in the retention of contractors and subcontractors, and the hiring of employees, or the purchase of materials and supplies for the construction and/or operation of the Project before making any final hiring and contracting decisions with respect to services at the Property for the Project. City based businesses means, with respect to this Agreement, businesses whose principal place of business is located, or who have a substantial business office located within the corporate limits of the City, or businesses any of whose principals reside within the City. The Developer and each of its contractors, subcontractors and suppliers shall be deemed to be in compliance with this paragraph (c) if such Person has notified JobLink and the Pontiac Growth Group of the opportunities to be retained or hired and has reasonably included within the considerations for retention or employment the qualified companies and qualified individuals timely provided by JobLink or the Pontiac Growth Group.

(d) When opportunities for contracting/subcontracting and employment arise in connection with the construction and development of the Project, Developer or its contractors will notify the Executive Director of the Commercial and Industrial Development Department (Pontiac Growth Group) and the Oakland Intermediate School District JobLink Service Center Michigan Works ("JobLink") in writing to insure that qualified City based businesses and qualified City residents are provided opportunities for contracts/sub-contracts and employment. It is expected that the Pontiac Growth Group and JobLink will forward to Developer and others qualified City based businesses and qualified individuals for retention and employment. The addressees follow below.

Charles M. Tucker, Jr.  
Executive Director  
Pontiac Growth Group  
8 N. Saginaw  
Pontiac, MI 48342

Roland Hill  
Director  
Michigan Works JobLink Service Center  
1847 North Perry, St.  
Pontiac, MI 48340

(e) In order to effect the foregoing provisions, not later than thirty (30) days in advance of the commencement of construction on the Project, the Developer and, if necessary, its contractor will coordinate and meet with representatives of the City and Job Link to seek to determine the final scope and procedures governing the required notices and opportunities to respond as outlined in this Subsection 3.1.9.

(f) So long as this Agreement remains in full force and effect, Developer will provide the City with an annual employment report reflecting the actual number of jobs created and retained within each reporting period. The City shall provide Developer with a form the Developer may, but shall not be required to, use for the annual report.

(g) The Developer shall include in its contract with its general contractor or operating entities retained for the construction or operation of the Project that each should provide annual reports as required to be provided by the Developer with respect to jobs. Developer, its general contractor or such operating entities shall permit reasonable access to representatives of City upon request to non-confidential information in their books and records necessary to confirm the annual reports required herein to be delivered to the City.

(h) The relevant provisions of this Subsection 3.1.9 shall be included or referenced in any and all contracts by the Developer with its general contractor, major contractors and major suppliers for the Project.

3.1.10 Maintain Existence in Good Standing. Developer shall maintain its existence in good standing in the State of Michigan.

3.2 Development Period Covenants of City. The City covenants and agrees to undertake the following actions during the Development Period:

3.2.1 Permits. City shall expedite, to the extent legally permitted to do so, the issuance of all Permits and City approvals necessary for the Project, provided Developer has submitted the required application and information under the generally applicable standards for granting such Permits in the City. Promptly following Developer's completed Permit submissions, the City shall review same. So long as the Developer's completed Permit submissions meet the generally applicable standards for the grant of Permits in the City (including the posting of any required bond in an appropriate and reasonable amount under the circumstances), the City will, without payment of any permit fee or other charge except for (i) the Permit Fee described in Subsection 3.1.4 and (ii) the Water and Sewer Connection Charges. To the extent not issued during the Pre-Approval Period, then promptly following Developer's requests that comply with the foregoing requirements, the City shall issue the Initial Permits without the payment of any permit or other fee.

3.2.2 Water and Sewer Ordinance. The City agrees to use its best efforts to amend its ordinances governing the imposition of fees for connections, installations, tap-in, meter and other costs not based on use of water and sewer services in order to provide for a category that covers television and film production, education, training and office facilities and imposes any such fees at the rates applicable to warehouse and storage facilities.

3.2.3 Infrastructure Funding. The City agrees to continue to provide its reasonable cooperation to the Developer to seek and obtain so-called federal or state stimulus funds and other assistance from the United States, Oakland County and the State of Michigan for the Infrastructure. The City shall not be required to expend any out-of-pocket funds in connection with the foregoing obligation to provide reasonable cooperation.

3.2.4 Cooperation Regarding Other Assistance. The City shall support the Developer's reasonable requests for other incentives and assistance from U.S. agencies, Oakland County agencies and State of Michigan agencies and will provide its reasonable cooperation with those agencies in connection with approvals, incentives and assistance for the Project and the City shall provide its reasonable cooperation with the Developer with respect to the foregoing. The City shall not be required to expend any out-of-pocket funds in connection with the foregoing obligation to provide reasonable cooperation.

3.2.5 Compliance with Other Agreements. City will comply with the terms and conditions of the MSF Development Agreement and the Service Agreements.

3.2.6 MSF Development Agreement. The City shall not request the MSF Board or the MEDC to exercise any remedies for a default by Developer under the MSF Development Agreement, but may consent to the exercise of such remedies if asked. The foregoing applies solely to the MSF Development Agreement and does not restrict the actions of the City as to its remedies under this Agreement after and during the continuance of a Developer Event of Default.

### 3.3 Development Period Termination.

3.3.1 Event of Default. The City may terminate this Agreement during the Development Period only after and during the continuance of a Developer Event of Default. The Developer may terminate this Agreement during the Development Period only after and during the continuance of a City Event of Default.

3.3.2 MSF Board. If the MSF Board terminates the Zone pursuant to an exercise of remedies under the MSF Development Agreement or if the Act is repealed or amended and the Zone terminates, this Agreement and the Services Agreements will terminate automatically and have no further force or effect.

3.3.3 Effect of Termination. Upon any termination under this Section 3.2., the parties shall have no further obligations under this Agreement and no liabilities, except to the extent any liability has then accrued under this Agreement or any separate agreement.

## ARTICLE 4

### CONFLICT OF INTEREST

4.1 No Conflict Representation of Developer. Developer represents and warrants that, to its actual knowledge and except as disclosed to the City, none of the EFM, the Mayor, any member of the City Council or any other City Person who exercises any discretionary function or responsibility in connection with the approval of any actions required under this Agreement has any personal financial interest in the Developer or the Project.

4.2 No Conflict Covenant of Developer.

4.2.1 Developer covenants and agrees that, except as known to the City, no City Person who shall exercise any discretionary functions or responsibilities with respect to approvals for any actions under this Agreement or for 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, to the extent the Developer has the authority to prevent, (i) obtain a personal financial interest in the Developer or the Project (ii) hold or have an interest in any contract, subcontract, or agreement for payment with respect to the construction and development of the Project or its proceeds, either for themselves or those with whom they have a direct family or business relationship during their tenure as a City Person.

4.2.2 The foregoing restriction shall apply to the construction and development of the Project, but Developer shall not be deemed to have breached this Section 4.2 if Developer had no actual knowledge of the position, relationship, interest and/or benefit of the City Person or if Developer had no actual influence over its agents or contractors who may employ such a Person.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

5.1 Developer Representations and Warranties. In order to induce the City to enter into this Agreement, the Developer hereby represents and warrants:

5.1.1 Organization and Authority. The Developer is a duly organized limited liability corporation, validly existing and in good standing under the laws of the State of Michigan and has all power and authority to enter into this Agreement and perform its covenants and obligations as set forth hereunder.

5.1.2 No Litigation. The Developer has not received any notice of, nor is it aware of, any pending action that would (i) take all or any portion of the Property or (ii) materially and adversely impair its ability to perform its covenants and obligations under this Agreement.



5.1.3 No Breach. The transactions contemplated by this Agreement will not result in a breach of, or constitute a default or permit acceleration and maturity under, any agreement or order to which the Developer is bound.

5.1.4 Sales Agreement. To the Developer's actual knowledge, there are no defaults under the Sales Agreement.

5.2 City Representations and Warranties. The City represents and warrants that, as of the date of this Agreement:

5.2.1 Organization and Authority. It is a Michigan public body corporate, validly existing under the laws of the State of Michigan and has the authority to enter into this Agreement and perform its covenants and obligations as set forth hereunder.

5.2.2 No Litigation. The City has not received any notice of, nor is it aware of, any pending action (i) to take all or any portion of the Property or (ii) that would materially and adversely impair its ability to perform its covenants and obligations under this Agreement.

5.2.3 No Breach. The transactions contemplated by this Agreement will not result in a breach of, or constitute a default or permit acceleration and maturity under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which the City is subject or by which the City is bound.

## ARTICLE 6

### DEFAULTS AND REMEDIES

6.1 Default by Developer. The occurrence of any of the following events shall be an event of default by Developer under this Agreement (a "Developer Event of Default"):

6.1.1 Payment and Performance Default. Developer fails, after receiving any required notice, to perform any covenant, agreement, obligation, term or condition under this Agreement within any applicable grace or cure period, or if no due date or grace period is set forth and is not expressly prohibited, then within sixty (60) days for a monetary default following written demand and ninety (90) days for a non-monetary default following written demand (specifying the nature of the default), and for a non-monetary default during the Development Period Developer shall not be in default if the nature of the default is such that Developer may need more time to cure, in which case the period to cure shall be extended for so long as may be reasonably required to cure such default provided Developer commences the cure during that 90-day period and proceeds with reasonable diligence thereafter to cure such default.

6.1.2 Other Agreements. Developer is in default under Service Agreements past applicable grace or cure periods.

6.1.3 Breach of Representations and Warranties. Any representation or warranty made in this Agreement or in connection with any delivery, application or commitment for the Project by Developer is false or misleading in any material respect at the time made.

#### 6.1.4 Bankruptcy.

(a) Developer is adjudicated insolvent, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer, and the appointment of same adversely affects the Project and the City.

(b) A petition is filed or any case, proceeding or other action is commenced against any Developer seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction whether now or hereafter in effect or a court of competent jurisdiction enters an order for relief against Developer that is not dismissed within one hundred twenty (120) days after being commenced.

6.1.5 Dissolution of Developer. Any dissolution, termination, or partial or complete liquidation of Developer prior to completion of the Project.

6.2 Remedies of the City. After and during the continuance of a Developer Event of Default, the rights and remedies of the City shall be limited to:

6.2.1 Damages and Injunction. The City may maintain an action to recover any Service Fees due and owing (including reasonable fees and expenses of counsel, consultants and expert witnesses incurred in connection therewith) resulting from the Developer Event of Default. Notwithstanding the foregoing, in no event will the Developer be liable for any punitive, speculative or consequential damages alleged by the City. The City may also seek injunctive relief.

6.2.2 Termination. The City may terminate this Agreement in accordance with the specific termination rights set forth in this Agreement.

6.3 Default by the City. The occurrence of any of the following events shall be an event of default by the City under this Agreement (a "City Event of Default").

6.3.1 Payment or Performance Default. City fails, after receiving any required notice, to perform any covenant, agreement, obligation, term or condition under this Agreement, within any applicable grace period, or if no due date or grace or cure period is set forth, then within thirty (30) days following written demand specifying the nature of the default.

6.3.2 Other Agreements. City is in default under the MSF Development Agreement or the Service Fee Agreements past applicable grace and cure periods.

6.3.3 Breach of Representations and Warranties. Any representation or warranty made in this Agreement or in connection with any delivery, application or commitment relating to the Project by the City is false or misleading in any material respect at the time made.

6.4 Remedies of Developer. After and during the continuance of a City Event of Default, the rights and remedies of the Developer shall be limited to:

6.4.1 Damages and Injunction. The Developer may maintain an action to recover any losses, damages, costs and expenses (including reasonable fees and expenses of counsel, consultants and expert witnesses incurred in connection therewith) resulting from the City Event of Default. Notwithstanding the foregoing, in no event will the City be liable for any punitive, speculative or consequential damages alleged by the Developer. The Developer may also seek injunctive relief.

6.4.2 Termination. The Developer may terminate this Agreement in accordance with the specific termination rights set forth in this Agreement.

## ARTICLE 7

### MISCELLANEOUS

7.1 Effect of Agreement. The City shall be obligated to perform only those undertakings expressly set forth in this Agreement and its obligations and duties pursuant to applicable laws, ordinance and charter. Execution of this Agreement in no way constitutes City approval of the Project or obligates the City to support or approve the Project except as expressly set forth herein.

7.2 Compliance with Laws. The Developer and the City shall each comply with all applicable Laws at all times during the Term, but either may contest the same.

7.3 Renaissance Zone Expansion. The City will support the expansion of the Zone during the Pre-Approval Period and through the first twenty-four (24) months of the effectiveness of the Zone to include real property adjacent to the Property to the extent such expansion is or becomes legally permissible. This commitment does not and cannot legally obligate the EFM, Mayor or City Council to provide a future resolution or consent for such expansion and the City shall have no obligation to expend any out-of-pocket funds to provide its reasonable cooperation.

7.4 City Consent. Where the consent of the City is required or requested under this Agreement after the Effective Date, such consent may be provided by the EFM so long as he remains in office; and when the EFM is no longer in office, then such consent may be provided by the Mayor of the City unless the approval of the City Council for such consent is expressly required by City ordinance or resolution.

7.5 Costs. Except as specifically set forth in this Agreement, each of the parties will bear their own costs and fees with respect to actions taken as required by this Agreement or in support of such obligations. The City and the Developer shall have no liability for any Claims of any nature except as expressly set forth in this Agreement.

7.6 Assignment of this Agreement. The obligations of the Developer under this Agreement shall survive any assignment, unless the assignee (or a guarantor of assignee) has a net worth at least equal to the net worth of the assignor at the time of the assignment and the

assignee assumes in writing all of the obligations of the Developer under this Agreement yet to be performed or yet to be performed to the standards required under this Agreement, including the obligation to cure any then-existing Developer defaults.

7.7 Notices. All notices, certificates or communications required by this Agreement to be given shall be sufficiently given and shall be deemed delivered when personally served or when mailed by express courier or registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses listed below:

If to the City, to:

City of Pontiac  
47450 Woodward Ave  
Pontiac, Michigan 48342  
Attention: Mayor or EFM  
Fax No. 248-758-3166

With copies to:

City of Pontiac  
47450 Woodward Ave  
Pontiac, Michigan 48342  
Attention: City Attorney  
Fax No. 248-758-3195

City of Pontiac Tax Increment Finance Authority  
8 North Saginaw Street, Third Floor  
Pontiac, Michigan 48342  
Attention: Executive Director  
Fax No. 248-857-5713

Miller, Canfield, Paddock and Stone, PLC  
101 N. Main Street, 7<sup>th</sup> Floor  
Ann Arbor, Michigan 48104  
Attention: James W. Govert, Esq.  
Fax No. (734) 747-7147

If to the Developer to:

Motown Motion Pictures, LLC  
2100 E Maple Road, Suite 200  
Birmingham, MI 48009  
Attn: Linden D. Nelson  
Fax No. (248) 816-5600

With a copy to:

Honigman Miller Schwarz and Cohn, LLP  
3001 W. Big Beaver Road, Suite 600  
Troy MI 48084  
Attention: Richard J. Burstein, Esq.  
Fax No. (248) 566-8431

7.8 Amendment. 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 the parties hereto after the consent of the City as required by any Laws to such amendment or modification has been obtained.

7.9 Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

7.10 Survival and Prevailing Party in Litigation. The terms, conditions and provisions of this Agreement which are expressly provided to survive shall survive its termination. In any litigation arising out of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and expenses and reasonable fees and expenses of consultants and expert witnesses, and costs at trial and for appeals; and the provisions of this sentence shall survive the termination of this Agreement.

7.11 Severability. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Agreement.

7.12 Time of the Essence. Time shall be of the essence of this Agreement.

7.13 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.

7.14 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.

7.15 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 and all applicable federal laws of the United States.

7.16 No Brokers. The City warrants to the Developer that the City has not taken any action in connection with this transaction which would result in any real estate broker's fee, finder's fee, or other fee being due or payable by the Developer. The Developer warrants to the City that the Developer has not taken any action in connection with this transaction which would result in any real estate broker's fee, finder's fee, or other fee being due or payable by the City. The City and the Developer respectively agree to indemnify, defend and hold harmless the other from and against any and all claims, fees, commissions and suits of any real estate broker or agent or other Person with respect to services claimed to have been rendered for or on behalf of

such party in connection with the execution of this Agreement or the transaction contemplated herein. Notwithstanding anything contained in this Agreement to the contrary, the terms of this Section 7.16 shall survive the termination of this Agreement.

7.17 Force Majeure. No party hereto shall be liable for the failure to perform its obligations hereunder if such failure is due to unforeseeable events beyond, the party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of the public enemy, acts of any government (except with respect to the City obligations under this Agreement, the acts of the City are excluded from this sentence), acts of the other party, fires, flood, epidemics, quarantine restriction, strikes and embargoes, shortages of materials and delays of contractors due to such causes. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; provided, however, that the party seeking relief from its obligations under this Section 7.17 shall endeavor to notify the other party in writing, setting forth the event giving rise to such failure to perform, within 30 business days following knowledge of the occurrence of such event.

7.18 Entire Agreement. The Agreement, including all exhibits attached hereto, together with the MSF Development Agreement and the Service Agreements, when the same are executed, contain all agreements between the parties regarding the Project. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement, the MSF Development Agreement and Service Agreements when the same are executed.

*[signatures on the following pages]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**DEVELOPER**

MOTOWN MOTION PICTURES, LLC,  
a Michigan limited liability company

By: \_\_\_\_\_

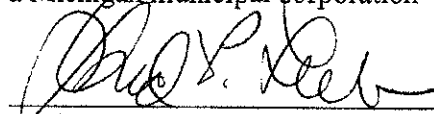
Name: Linden D. Nelson

Title: CEO

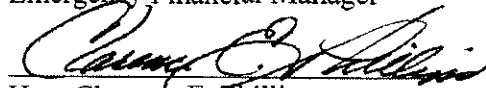
[signatures continue on the following page]

**CITY**

**CITY OF PONTIAC**  
a Michigan municipal corporation



Fred P. Leeb  
Emergency Financial Manager



Hon. Clarence E. Phillips  
Mayor



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(subject to being confirmed by final survey and final title company policy of title insurance)

LEGAL DESCRIPTION

(Per Title Source Inc. Title Insurance and Settlement Services, Title No. 11-03100244 Rev. 2, Effective Jan. 20, 2009)

Land situated in the City of Pontiac, in the County of Oakland, State of Michigan is described as follows:

PARCEL B:

Part of Section 3, Town 2 North, Range 10 East, City of Pontiac, Oakland County, Michigan, also being part of Lots 5, 6 and 7 and part of Beltline Railroad excepted, as platted a part of ASSESSOR'S PLAT No. 110, as recorded in the Liber 52, Page 26 of Plats, Oakland County Records, being more particularly described as follows: Beginning at a point distant  $S89^{\circ}46'13''E$  along the North line of Section 3, 71.08 feet and  $S02^{\circ}36'47''W$  along the extension of the Easterly line of Centerpoint Parkway (120 feet wide), 57.78 feet from the North 1/4 corner of said Section 3, Township 2 North, Range 10 East, said Point of Beginning being on the South line of South Boulevard (120 feet wide) and Easterly line of said Centerpoint Parkway; thence Due East along Southerly line of said South Boulevard, 1227.53 feet; thence Due South, 155.48 feet; thence  $S44^{\circ}50'04''E$ , 20.45 feet; thence Due East, 453.06 feet; thence  $N74^{\circ}26'44''E$ , 16.09 feet to a point on the West line of North Connector Road (66 feet wide); thence Due South along the West line of said North Connector Road, 336.65 feet to a point on the North line of Campus Drive (width varies); thence the following five (5) courses along the Northerly line of said Campus Drive: (1)  $N89^{\circ}22'30''W$ , 856.31 feet; and (2) 356.03 feet along a curve to the left (radius 443.00 feet, central angle  $46^{\circ}02'49''$ , chord bearing and distance  $S67^{\circ}36'06''W$ , 346.52 feet); and (3)  $S44^{\circ}34'41''W$ , 56.80 feet; and (4) 296.83 feet along a curve to the right (radius 350.00 feet, central angle  $48^{\circ}33'32''$ , chord bearing and distance  $S69^{\circ}52'06''W$ , 287.83 feet); and (5)  $N87^{\circ}23'13''W$ , 260.00 feet to a point on the Easterly line of Centerpoint Parkway (120 feet wide); thence Northerly along Easterly line of said Centerpoint Parkway  $N02^{\circ}36'47''E$ , 783.39 feet to the Point of Beginning. Containing 22.057 acres of land, more or less.

Commonly known as: 1999 Centerpoint Pkwy, Pontiac, MI 48341

Exhibit B

Pontiac Income Tax Registration Information

**CITY OF PONTIAC INCOME TAX PROCEDURES**

Pontiac adopted the Michigan Uniform City Income Tax Ordinance, effective January 1, 1968. City of Pontiac income tax on all their compensation subject to tax are as follows:

**Residents of the City:** At a rate of 1% of all compensation paid to the employee who is a resident of the City of Pontiac.

**Non-residents:** At a rate equal to ½% of the compensation paid to the employee for work done or services performed in the City of Pontiac.

**Regulations and requirement for withholding are as follows:**

***Who should withhold:*** Every employer is required to withhold who has a location in the city, or who is doing business in the city even if the employer has no location in the city. An employer is defined as any "individual, partnership, association, corporation, non-profit organization, governmental body or unit or agency, or any other entity that employs one or more persons on a salary, bonus, wage, commissions.

***Who must register:*** Every employer in Pontiac and every employer outside of Pontiac who has employees living or working in Pontiac are required to register as an employer. New employers should immediately register with the City by letter, telephone, or by filing form (P-SS-4) Employer's Registration Form. When submitting a letter or registration form to the City; please include the Federal Employer Identification Number and the number of employees.

***Payments [of interest] not subject to withholding:*** Fees paid professional men, brokers, and any other independent contractors who are not employees of the payer.

Payment to a nonresident employee for work or services performed in Pontiac if his predominant place of employment is not Pontiac.

While individuals with income described above are not subject to withholding, such individuals nevertheless are required to file an annual return and report their income.

The City of Pontiac Income Tax Division is requesting that the contractor supply a list to the Income Tax Division of the names and addresses of all subcontractors furnishing labor and services within Pontiac.