

**DEVELOPMENT AGREEMENT**

CITY OF PONTIAC, OAKLAND COUNTY, MICHIGAN  
CITY OF PONTIAC TAX INCREMENT FINANCING AUTHORITY  
ARCO CONSTRUCTION COMPANY  
FOR  
PONTIAC OAKLAND TECHNOLOGY CENTER  
AND  
PONTIAC WOODS RESIDENTIAL COMMUNITY

Dated: July 27, 2001

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 27th day of July, 2001, by and between the CITY OF PONTIAC, a Michigan municipal corporation (or a designated agency thereof, as determined by the City Council thereof), whose address is 47450 Woodward Avenue, Pontiac, Michigan, 48342 (hereinafter, the "City" or the "City of Pontiac"), CITY OF PONTIAC TAX INCREMENT FINANCING AUTHORITY, a public body corporate established pursuant to Act 450 of the Public Acts of Michigan of 1980, as amended ("TIFA Act"), whose address is 8 N. Saginaw Street, Pontiac, Michigan 48342 ("TIFA"), and ARCO CONSTRUCTION COMPANY, a Michigan corporation, whose address is 25200 Telegraph Road, Suite 410, Southfield, MI 48034 ("Developer").

### RECITALS:

1. As part of its plan to revitalize and promote economic growth in the City, the City of Pontiac has adopted the Tax Increment Financing and Development Plan (hereinafter described), pursuant to the requirements of the TIFA Act (the "TIFA Plan"). The TIFA Plan when completed and approved by all parties hereto, shall be incorporated herein by reference and made a part hereof.

2. The TIFA Plan provides for the mixed-use development, including a technology park and single family residential components, and related facilities, (collectively, the "Development" or "Project"), of a tract of land (the "Property"), comprising approximately 216 acres (excluding existing public rights-of-way) bounded on the south and east by Elizabeth Lake Road and N. Johnson Ave., respectively, on the north by the Grand Trunk Western Railroad ROW, and on the west by the shopping center premises situated at the northeast corner of the intersection of Elizabeth Lake Road and Telegraph Road, in the City of Pontiac, Oakland, Michigan, which Property is more particularly shown and described on Exhibit A, attached hereto.

3. The City has elected to implement the Development by acquiring the Property from the State of Michigan (the "State") and conveying the same to a designated private developer, the Developer herein, and the Developer has agreed and, by this Agreement, hereby agrees to acquire the Property from the City (by means of a separate Purchase Agreement relating thereto, hereinafter described) and develop the same in accordance with and subject to the terms of this Agreement, including complying with development scheme set forth in the TIFA Plan.

4. By means of a certain Letter of Intent, dated December 13, 2000 (the "Letter of Intent"), the City designated the Developer as the Developer for the Development, pursuant and subject to the execution of a Development Agreement to be agreed upon and entered into at a later date by and between the City of Pontiac, TIFA, and Developer.

5. Developer has significant background and experience in the development of high quality technology/office, single family residential projects.

6. Developer has proposed, and the City and Developer have agreed, that Developer shall acquire the Property from the City and shall be primarily and substantially responsible for the development of a technology park Technology Park (the "Technology Park") (to be known as "Pontiac Oakland Technology Center") on approximately forty percent (40%), but, in no event more than forty-five percent (45%), of the Property and of a single family residential development (the "Residential Development") (to be known as "Pontiac Woods") on the remaining land, consisting of approximately fifty-five/sixty percent (55/60%) of the Property, all consistent with the MUD Mixed Use District zoning classification of the Property and as depicted on the Site Plan (the "Site Plan") of the Development, attached hereto as Exhibit B and made a part hereof and approved by all parties hereto, it being understood and agreed that the Residential Development will be a first class above average housing community that will consist of certain for sale only (i) single family homes and (ii) attached and detached residential units (with an overall density of not more than five (5) residential dwelling units per gross acre, or fraction thereof, within the Residential Development), as more particularly described in Section 2.01 hereof, which components of the Residential Development shall be integrated and consistent in quality and design with each other and with the Residential Development as a whole.

7. Completion of the Technology Park and the Residential Development described in these Recitals in accordance with the terms of this Agreement and with any other agreement between Developer and the City, not inconsistent with the terms hereof, will satisfy Developer's commitment to include a high technology office and residential component in the Development.

8. In addition, Developer has agreed to be responsible (with the proceeds of the sale of bonds therefor provided by TIFA) for the construction and development of the public infrastructure of roads, utilities and other public improvements (collectively, hereinafter referred to as the "Infrastructure" or the "TIFA Infrastructure Work"), as described on Exhibit C, attached hereto and made a part hereof, required to service the Development. The City and TIFA have agreed to use their best efforts to promptly begin and diligently pursue all actions necessary and appropriate to carry out the terms of this Agreement; including, without limitation, initiating and completing the process for final City approval of all amendments hereto, if any, required in connection with the final Site Plan of the Project, final plans and specifications for the Development and final TIFA authorization and approval with respect to the Infrastructure costs at the Project (including the sale of requisite bonds relating thereto), all for the purpose of finalizing all matters necessary to be fulfilled prior to the Developer furnishing funds sufficient for the City to acquire the Property from the State and to simultaneously convey and transfer the same to the Developer (for development pursuant hereto) pursuant to a separate Purchase Agreement (the "Purchase Agreement") between the City, TIFA and the Developer relating thereto

(which is incorporated herein by reference and made a part hereof), with the Developer having agreed to diligently and in good faith cooperate and work with the City and TIFA in regard to the foregoing.

9. Based on the above Recitals, the parties have conducted extensive negotiations regarding the creation of an agreement with regard to the conveyance by the City to the Developer and the acquisition and development by the Developer of the Property, including the Technology Park and Residential Development components thereof, and now wish to embody in this Agreement their final understanding regarding the respective rights and obligations of the parties hereto with respect to the Development, including the Developer's acquisition of the Property from the City and the provision for TIFA bond funds to be made available to the Developer to cover the Developer's Infrastructure costs at the Development.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties hereto hereby acknowledge, agree to, approve and adopt the foregoing Recitals and incorporate the same herein as a part of this Agreement and, also, hereby agree as follows:

## ARTICLE I

### CONVEYANCE OF THE PROPERTY TO THE DEVELOPER

#### 1.01 Designation of Developer; Responsibility of Developer.

(a) Developer (which is hereby formally designated by the City as the Developer of the Development) shall have the rights hereinafter set forth, subject to performance of its obligations hereunder, to acquire the Property from the City (or an agency thereof) and to develop the Development thereon, to market, lease, sell and otherwise dispose of the various components of the Technology Park and the Residential Development and to construct, with financing in the form of TIFA Act funds provided by the sale by TIFA of bonds, the Infrastructure servicing both of said Developments. The method of financing, via bond sales, the Infrastructure by TIFA shall be in the sole discretion of TIFA and subject to TIFA's satisfaction of the terms and conditions of said financing; provided, however, that, in no event, shall the Developer be obligated to purchase the Property from the City (or an agency thereof), unless and until Developer has satisfied itself, in its sole discretion, as to the availability (as to quantity and terms) of sufficient TIFA Act funds, via the sale of bonds, to cover the Developer's anticipated costs relating to its contemplated Infrastructure portion of the Development on the Property.

(b) Satisfaction of Developer's obligations hereunder to acquire the Property and to construct the Technology Park and the Residential Development thereon shall be deemed to satisfy Developer's obligations hereunder.

1.02 Agreement to Convey Property to Developer; Purchase Price Thereof.

(a) Subject to the satisfaction of Developer's Conditions Precedent and the City's Conditions Precedent, respectively (as defined in Sections 1.05 and 1.06 hereof) and to the other terms and conditions hereinafter set forth, the City shall, by purchase, acquire from the State and, simultaneously therewith, sell to Developer, and Developer shall thereupon purchase from the City, the Property (including all land division rights, general intangibles and contract rights), together with (A) all rights, tenements, privileges and appurtenances (including mineral rights, if made available by the State, which the City hereby agrees to request from the State) belonging or in any way appertaining to the Property, including the Residential Development and the Technology Park; (B) all right, title and interest, if any, in and to any land lying within the bed of any road, street, avenue, alley or right-of-way, whether vacated or not, existing at the date of execution of this Agreement and included within the Technology Park or Residential Development; and (C) any beneficial easements, rights, privileges, franchises, permits and benefits appurtenant to or inuring to the benefit of the Technology Park or Residential Development, for the sum of \$10,200,000.00, or such other sum as shall be established by the State in its sale of the Property to the City and as shall be satisfactory to the Developer, in its sole discretion. Upon completion of the Infrastructure improvements at the Project by the Developer, the Developer shall dedicate the same for public uses and purposes, in a manner reasonably satisfactory to the City, with the City thereafter being obligated to maintain and repair the same, as necessary, except as may be otherwise specifically agreed to in writing between the City and the Developer and the individual condominium development comprising the Project.

(b) The City shall convey the Property to Developer on the Closing Date, by Quit Claim Deed (in the form thereof attached hereto as Exhibit D and made a part hereof), subject only to:

- (i) The Permitted Exceptions, as defined in Subsection 1.03(a);
- (ii) States of fact in addition to the Permitted Exceptions revealed by the Survey (as hereinafter defined), which shall be acceptable to Developer to the extent they do not prevent the construction and operation of the Technology Park and Residential Development and do not otherwise unreasonably interfere with the state of Developer's title to the Technology Park and Residential Development or any improvements to be located thereon.
- (iii) Applicable zoning and building and use restrictions.

(c) Subject to the terms of this Agreement, the closing of the conveyance of the Property by the City to the Developer shall occur as soon as practicable after the date hereof, consistent with the terms on a separate Agreement of Sale and Purchase between

said parties relating thereto, the terms of which are hereby incorporated herein by reference and made a part hereof.

(d) As aforesaid, subject to Section 1.02(a) hereof, the purchase price for the Property shall be the sum of \$10,200,000.00 or such lower amount as may be permitted by the State in its sale of the Property to the City immediately preceding the purchase thereof by the Developer from the City (the "Purchase Price").

(e) The Purchase Price shall be paid in full by Developer to the City of Pontiac or its designated agency, as directed by the City, on the Closing Date, by wire transfer of the applicable funds.

(f) Developer shall bear (subject to the sale by TIFA of bonds to pay for the eligible public Infrastructure/site preparation improvement costs at the Development) the costs of: (i) preparing and recording the deed and any other conveyance documents, this Agreement and any memorandum thereof for recording, and any easements or similar documents affecting the Property; (ii) all Inspections (as hereinafter defined in Section 1.04), and all preparation and application costs and fees arising in connection with applications for City approvals of Developer's designs and plans and building permits; (iii) property taxes, special assessments and utility charges, if any, arising after the closing of this transaction, in accordance with Subsection 1.02(g) hereof; and (iv) any site plans, engineering drawings, design plans, models, surveys and construction plans. The Developer shall also be responsible for the cost of Title Insurance, as hereinafter provided, and any transfer taxes due on account of the closing of the subject sale transaction. Copies of the foregoing shall be provided by the Developer to the City, at no cost to the City.

(g) The Developer shall be responsible for all real estate taxes and assessments imposed upon the Property from and after the closing of the City's purchase of the Property from the State. The City shall be responsible for all utility charges up to the Closing Date and Developer shall be responsible for all such charges after the Closing Date.

### 1.03 Evidence of Title and Objections Thereto: Survey.

(a) On or before sixty (60) days following the Effective Date (as defined in Section 6.13 hereof), the Developer shall obtain, at its expense, a commitment for an owner's policy of title insurance for the Property (the "Commitment") issued by Fidelity Title Company, or such other title insurance company as may be acceptable to the Developer in its reasonable discretion (the "Title Company"), and certified to a date later than the Effective Date, setting forth all exceptions of record, including, without limitation, easements, reservations, building restrictions and other matters of record, if any, affecting title to the Property, accompanied by true copies of the instruments, if any, evidencing such exceptions. The Commitment shall state that an ALTA Form B owner's title insurance policy shall be issued (the "Title Insurance") in an amount equal to the Purchase Price,

insuring title to the Property to be vested in Developer in good, marketable condition, free and clear of any liens and encumbrances, except for the exceptions shown on the Commitment to which Developer has not objected within the period set forth in Subsection 1.03(c), the Title Company's so called Standard Exceptions, any other exceptions to title which would not, in Developer's reasonable judgment, prevent the development and use of the Property (including the Technology Park and the Residential Development situated therein) contemplated by Developer in accordance with this Agreement and any other exceptions that Developer shall be deemed to have waived at closing pursuant to Subsection 1.03(b) hereof (collectively, the "Permitted Exceptions"). All Title Insurance described in this Subsection 1.03(a) shall be secured by the Developer, at its sole cost and expense, and shall be subject to the approval of the Developer, in all respects.

(b) On the Closing Date, the City shall cause the Title Company to deliver to Developer a marked-up and down-dated Commitment for the Property then being acquired, updated to the Closing Date and in the amount of the Purchase Price, showing that no changes materially adverse to the state of title have occurred since the original date of the Commitment, with the so-called Standard Exceptions deleted therefrom and with the creditors' rights exclusion also deleted therefrom. If any such change or exception has occurred which cannot be promptly remedied or "insured over" by an appropriate endorsement or other agreement by the Title Company, Developer or the City shall have the right to delay the closing for not longer than ninety (90) days in order to correct the change or exception, or Developer may elect to proceed with the closing, in which case Developer shall be deemed to have waived and accepted such change or exception.

(c) Developer's review of the initial Commitment for the Property shall be completed and its objections, if any, made known to the City within thirty (30) days after the Commitment and copies of all recorded documents affecting title to the Property and the Survey of the Property have been delivered to or received by the Developer.

(d) Developer shall, at its sole cost and expense, subject to the payment of eligible Infrastructure costs by means of the sale by TIFA of bonds for such purpose, cause to be carried out on the Property and any portion thereof a boundary/state of facts survey or surveys ("Survey(s) ") thereof. In addition, Developer shall cause to be carried out on that portion of the Property which will be used for the Infrastructure thereon, a boundary/state of facts survey or surveys, the cost of which shall be paid by the Developer. For that purpose, the City shall provide access to the Property at the earliest possible date after written notice from Developer that it intends to commence survey work. Access to the Property by the Developer's surveyor shall be governed by the conditions relating to the Right of Entry set forth in Section 1.04 hereof. Should the Survey reveal a state of facts that does not conform to marketable title as heretofore defined or a state of facts which would be an impediment to the development of either the Technology Park or Residential Development component of the Property, as intended, Developer shall notify the City, in writing, within sixty (60) days after access for the Survey was provided. Any state of facts

as to the Property with respect to which Developer has not notified the City of its objection within such 60-day period, shall be deemed to conform to marketable title.

1.04 Right of Inspection: General Acknowledgments.

(a) Subject to the approval of the State (which the City agrees in good faith to attempt to secure for the benefit of the Developer), for a period of sixty (60) days following the later of the date on which access to the Property can legally be granted by the City to the Developer or the Effective Date (the "Inspection Period"), Developer shall have the right (providing Developer delivers to the City the Release of Liability, attached hereto as Exhibit E and made a part hereof) to conduct, at its sole cost and expense, inspections, investigations, analyses and studies (collectively, "Inspections") of the Property to determine:

- (i) If soil and engineering conditions are generally adequate and that the soil is suitable for the construction of the proposed buildings with conventional footings and foundations;
- (ii) If any hazardous or regulated substances contaminate or threaten to contaminate any part of the Property, it being understood that Developer may request an environmental consultant to conduct an environmental audit of the Property, at Developer's expense;
- (iii) If all governmental permits and approvals deemed necessary by Developer for purposes of developing the Mixed Use Development, as contemplated by the Developer, are or will be available to the Developer, including any State of Michigan, MDEQ, wetlands and other permits, as well as MUD Mixed Use District zoning for the Property (satisfactory to the Developer), required for the development of the Property by the Developer, as contemplated hereunder (hereinafter "Mixed Use District"); and
- (iv) If all utilities deemed necessary by Developer, including, without limitation, sanitary sewer and storm drainage, water, natural gas, electricity, telephone, cable television and fiber optic cables and similar telecommunication equipment (as contemplated by the Developer for both the Technology Park and the Residential Development) are or will be available to the Development, with adequate capacity to service the Development, in its entirety, at a cost satisfactory to Developer and the City, and if appropriate drainage for and road access to the Development also exists or can be created at a cost satisfactory to Developer and the City.

Prior to entering upon the Property, the Developer shall, at its sole cost and expense, obtain and maintain in full force and effect during the term of this agreement and such extensions and renewal periods as agreed upon by the parties, a comprehensive general

liability insurance policy ("Policy") including insurance against assumed or contractual liability under the agreement with respect to all of the Developer's agents, consultants, contractors, employees or representatives' activity in, on, or about the Property. The limits of such Policy with respect to personal liability and property damage shall be not less than one million (\$1,000,000.00) per occurrence. Certificates evidencing such policy or insurance shall be delivered to the City prior to the Developer's entry on the Property. The policy shall also provide that the insurer shall not cancel, materially change, or fail to renew the coverage provided by such policy without first giving the City sixty (60) days advance written notice to Risk Management Division, 47450 Woodward Avenue, Pontiac, Michigan 48342. All coverages shall be with insurance carriers licensed and admitted to do business in the State of Michigan. In the event a policy is not obtained, or is cancelled as provided herein, all rights of the Developer to enter upon or in any way access the Property shall immediately terminate without further notice by the City.

The following shall be additional insured's under such insurance: The City of Pontiac, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers.

This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage is primary, contributing or excess.

Upon the execution of this Agreement, to the fullest extent permitted by law, the Developer hereby agrees to defend, pay on behalf of, indemnify and hold harmless (except for the gross negligence or willful misconduct of any indemnitee(s) hereunder, which exception shall also apply to all other indemnifications of the Developer under this Agreement), the City of Pontiac, its elected and appointed officials, employees and volunteers and others working on behalf of the City, any of the City's boards, commissions, affiliated corporations or entities, subsidiary corporations or entities and successors of commissions, affiliated corporations or entities, subsidiary corporations or entities and successors of interest, their elected and appointed officials, board members, employees, and volunteers and others working on behalf of the City's boards, commissions, affiliated corporations or entities, subsidiary corporations or entities and successors of interest against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the city of Pontiac, any of the City's boards, commissions, affiliated corporations or entities, subsidiary corporations or entities and successors of interest, their elected and appointed officials, board members, employees and volunteers working on behalf of the City's boards, commissions, affiliated corporations or entities, subsidiary corporations or entities and successors of interest, by reason of personal injury, including bodily injury or death and/or property damage including loss of use thereof, which arises out of or is in any way

connected or associated with this agreement and any work performed on the Property by the Developer or its agents, employees or representatives.

THE CITY DOES NOT ASSUME ANY RISK, LIABILITY, OR RESPONSIBILITY OR DUTY OF CARE AS TO THE PROPERTY WHEN THE DEVELOPER IS ON THE PROPERTY. THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE DEVELOPER, ITS EMPLOYEES, AGENTS AND CONTRACTORS ARE NOT AT ANY TIME, AGENTS, CONTRACTORS, EMPLOYEES, OR REPRESENTATIVES OF THE CITY OF PONTIAC AND ARE NOT ACTING ON ITS BEHALF. THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE DEVELOPER ITS EMPLOYEES, AGENTS AND CONTRACTORS ARE EMPLOYED AND RETAINED BY THE DEVELOPER TO WORK SOLELY FOR THE BENEFIT OF THE DEVELOPER TO ENTER UPON THE PROPERTY TO CONDUCT INSPECTIONS FOR THE DEVELOPER AT THEIR OWN RISK.

(b) After conducting the Inspections, but no later than the last day of the Inspection Period, should Developer be dissatisfied as to any of the matters set forth in Subsections 1.04 (a) on the grounds that the matter in question would prevent construction and operation of the Technology Park or the Residential Development, as contemplated by this Agreement, or render such construction or operation materially uneconomical, Developer shall notify the City thereof, in writing, setting forth the basis of its dissatisfaction and including copies of any test or audit results and the like, at which time the City may elect to cure or remedy the problem at its expense within sixty (60) days, or propose a plan of re-mediation for any longer period necessary to cure the problem which shall be reasonably acceptable to Developer. If such cure or remedy, or acceptable plan is not forthcoming within the 60-day period, then Developer may either waive the problem and proceed to acquire the Property or have the right to terminate this Agreement pursuant to Section 5.05 hereof, after fifteen (15) days written notice to the City setting forth its basis for such decision. In the event of such termination, Developer shall deliver to the City all documents constituting records, reports, maps, studies or other such materials received or obtained by it relating to the matters set forth in Section 1.04(a), which shall become the property solely of the City, subject to any agreement which may be made with Developer to give Developer the benefit of any such materials. If no notice of objection is delivered within the Inspection Period, Developer shall be deemed satisfied as to its rights regarding the Inspections.

(c) From and after the date on which access has been legally made available by the State and the City to Developer to carry out the Inspections, the City shall permit and license Developer and its agents, employees and independent contractors to enter upon the Development in order to perform Inspections for which any of such persons are qualified and duly licensed. As a condition for such permission and license, Developer hereby covenants to: (i) use all reasonable efforts to minimize damage to the Property in connection with such entry; (ii) promptly repair any material damage caused by such entry or any Inspections; and (iii) keep confidential, and not disclose (orally or in writing) to any third parties (including governmental agencies, other than the State or the City or TIFA),

without written permission of the City, as to that which is to be disclosed, any results of any Inspections. Developer shall indemnify, defend and hold the State and the City harmless from and against any and all claims, liabilities, suits, costs, expense and damages whatsoever, including reasonable attorneys' fees and court and appeal costs, arising out of or resulting from any such entry upon the Property and any such Inspections, including, without limitation, any violation of Developer's covenant of confidentiality herein, by Developer or its agents, employees or contractors, together with all costs and expenses incurred by any indemnified party to repair any such damage. In the event the Developer does not, in fact, acquire the Property from the City, then the Developer, at its expense, shall restore the Property to substantially the same condition existing prior to the commencement of any surveying, soil testing, inspections and/or examinations of the Property conducted by the Developer and/or its agents.

(d) Developer agrees and acknowledges that the Property is being acquired by it from the City in an "as is" condition, without representation, warranty or any disclosure by the City as to the condition thereof, express or implied. To the best of the City's knowledge, without having made an independent evaluation, the City is not aware of any environmental defects at the Property that have not heretofore been disclosed in writing to the Developer. Developer agrees (i) that the Inspections shall provide Developer with an adequate basis for a full assessment of the condition of the Property for all purposes, and (ii) that it is relying solely on the Inspections and any other investigation or analysis it may elect to make and is not relying upon any warranty, representation, disclosure or statement by the City, or on the City's failure to make any warranty, representation, disclosure or statement, express or implied, for the purpose of deciding whether to acquire the Property. Developer agrees not to sue or make any claim against the City with respect to any alleged defect in the Property on the basis of any theory of breach of representation or warranty, express or implied, or of failure of disclosure, as to the condition of the Property.

(e) The City shall grant Developer authority to erect reasonable signage on the Development to market the office and residential components thereof, so long as all signage is approved by the City.

(f) The parties hereto hereby acknowledge and agree that, subject to the acquisition of the Property by the City from the State, the Property has been rezoned in a manner satisfactory to both the Developer and the City to a new MUD Mixed Use District zoning classification and, also, that the parties hereto have agreed to a conceptual site plan of the Development, previously attached to the Letter of Intent. Furthermore, as an integral part of this Agreement, the City and the Developer hereby agree, in good faith, to reasonably cooperate with each other, in general, in regard to all matters related to the Development and this Agreement, and the City, in particular, agrees, in good faith, to reasonably cooperate with the Developer in regard to delaying, to the extent reasonably possible, in concert with the State, the City's acquisition of the Property from the State, in order for the Developer to have sufficient time to satisfy itself that it has or will receive (a) site plan approval (satisfactory to the Developer) from the City with regard to the overall

Development and, in particular, to the Residential Development therein, (b) TIFA bond financing for the Developer's proposed eligible Infrastructure within the Development (in an amount and on terms satisfactory to the Developer) and (c) approval from Oakland County, Michigan (the "County") as to a boulevard easement (on terms satisfactory to the Developer) for vehicular and pedestrian access (including underground utilities) from the Technology Park portion of the Development out to Telegraph Road, and, in connection with the foregoing, the Developer also agrees, in good faith, to act diligently and expeditiously and to cooperate in all reasonable respects with the City in its effort to satisfy itself as regards such items.

1.05 Conditions Precedent to Developer's Obligation to Acquire the Property.

Developer shall not be required to close on the acquisition of or pay for the Property, unless the following conditions precedent ("Developer's Conditions Precedent") have been satisfied or if they have been waived by Developer with respect to the Property:

(a) Developer is satisfied with the conditions in and results of the Inspections pursuant to Sections 1.04 (a) through (d);

(b) Developer is satisfied with the title and survey conditions, as set forth in Sections 1.02 and 1.03 and with the matter referred to in Section 2.03(b);

(c) The City or a designated agency thereof is in a position to deliver the Property to the Developer;

(d) Subject to Section 1.05(e) hereof, the public approval/permit process, outlined as follows, has been completed and resulted in all necessary permits and approvals of Developer's plans by the City of Pontiac, TIFA (including the availability of TIFA Act bond funds, in sufficient quantity and on terms acceptable to the Developer, to support and pay for the Developer's proposed eligible Infrastructure costs at the Development) and any other applicable agency of the City, or Oakland County, with respect to the contemplated development of the Development. The parties hereto hereby agree that:

- (i) Within ninety (90) days after the Effective Date, Developer shall cause to be prepared, and the parties shall review and approve within forty-five (45) days thereafter, any proposed changes or modifications to the Site Plan for the Development, including the Technology Park and the Residential Development therein (collectively with the Site Plan, the "Project Plan"), which Project Plan, as approved, shall also be attached hereto as an amendment to Exhibit B to this Agreement; and consistency with the Project Plan shall be a material element in the review and approval of any of Developer's subsequent plans for the Development, and Developer agrees that all submittals for public

approvals in connection with the Development shall be drafted and/or revised so as to be consistent, in all material respects, with the Project Plan;

- (ii) Within ninety (90) days after the Effective Date, Developer shall submit to the City any changes to its proposed conceptual design for the Development (if not previously submitted to and approved by the City in writing), including all applicable conceptual floor plans, elevations, landscaping plans, soil erosion plans, wetland treatment plans and preliminary engineering plans;
- (iii) Within forty-five (45) days after delivery of the proposed changes to the conceptual design, the City shall either review and approve, approve with conditions, or reject the conceptual design, together with written advice to Developer explaining the reasons for rejection. In the event of rejection or approval with conditions, Developer shall have thirty (30) days to resubmit a revised conceptual design in an attempt to meet the objections, and the City shall have forty-five (45) days thereafter to complete its subsequent review;
- (iv) Within forty-five (45) days after notification that the conceptual design is satisfactory, Developer shall deliver to the City its design development plans for the Development, if not previously delivered, which shall include a detailed site plan thereof, a tree survey and Tree Preservation Plan (unless waivers thereof are approved by the Pontiac City Council), detailed floor plans, elevations, landscaping plans, list of materials proposed and an architectural pattern book, as well as such other plans as would customarily be required by the Pontiac Planning Commission ("Planning Commission") to carry out a substantive and appropriate evaluation at that stage of plan development. The City Council may require the Developer to deposit a lump sum amount (to be determined by the City) into the City's tree fund account, as a condition of the granting by the City to the Developer of a waiver of the provisions of the City's Woodlands Ordinance, as regards the Development. The amount deposited will be kept in escrow and will be utilized to plant trees elsewhere within the City. The parties hereto agree that approval by the Pontiac City Council of this Development Agreement for the Development shall also constitute approval by the Pontiac City Council of a full waiver of the City's Woodlands Ordinance in regard to the Developer's development of the Development, as contemplated hereunder;
- (v) Within forty-five (45) days after delivery of any proposed changes to the design development plan, the City and Planning Commission shall

either review and approve, approve with conditions, or reject the design development plans, together with written advice to Developer explaining the reasons for rejection. In the event of rejection or approval with conditions, Developer shall have forty-five (45) days to resubmit revised schematics in an attempt to meet the objections, and the City shall have forty-five (45) days thereafter to complete and cause the Planning Commission to complete its subsequent review;

- (vi) Within sixty (60) days after notification that the proposed changes to the design development plan are satisfactory, Developer shall submit to the City of Pontiac, in administratively complete form and consistent with the approved design development plans, all construction plans and specifications, together with any other documents required by the City for the review and issuance of building permits, subject to confirmation of TIFA's ability to finance the Developer's Infrastructure costs of the Development, as required by this Agreement ;
- (vii) The parties agree that the approval process outlined herein shall be carried out as expeditiously as possible, and all parties shall make diligent efforts to that end notwithstanding the time limits set forth above, which are to be viewed as outer limits only. In particular, in the event Developer submits any plans forty-five (45) or more days in advance of a scheduled, properly noticed regular meeting of the Planning Commission or the City Council, and provided such plans are complete and in the required form, the City shall cause such plans to be placed on the agenda for approval or disapproval at the next meeting. Similarly, Developer shall in no event be required to purchase the Property, until Site Plan approval and, if appropriate, a building permit for the proposed Development have been obtained and issued; provided, that Developer shall make diligent, good faith efforts to obtain all necessary approvals and permits on a timely basis, which efforts shall include making reasonable plan or design changes necessary to secure the issuance of such permits, and the failure to obtain such approvals or permits due to lack of such diligent, good faith efforts shall be a default by Developer hereunder and not excuse Developer from its performance obligations;
- (viii) The approval process under this Subsection 1.05(d) may be carried out as a single process of application with respect to the entire Development or may be carried out in phases, based upon the Developer's proposed phase development of the Development.

(e) The City is not then in default under any provision of this Agreement, it has approved all relevant documents contemplated hereunder, and TIFA has authorized, in a

manner and on terms (including the amount thereof) satisfactory to the Developer, the issuance and sale of TIFA bonds for the purpose of paying or reimbursing the Developer for the cost of the eligible Infrastructure improvements at the Project, as contemplated by this Agreement. The parties hereto acknowledge and agree that, upon the issuance by TIFA of the aforesaid TIFA bond authorization and/or the actual issuance and sale of the TIFA bonds pursuant thereto, the parties hereto will enter into an amendment to this Development Agreement reciting the specific terms and conditions of such TIFA bond authorization in a manner mutually and reasonably satisfactory to all parties hereto.

1.06 Conditions Precedent to the City's Obligation to Convey the Property to Developer.

The City shall not be required to convey the Property to the Developer, unless the following conditions precedent ("The City's Conditions Precedent") have been satisfied or if they have been waived by the City with respect to each component of the Development:

(a) Developer has furnished satisfactory evidence of financing for construction of the applicable portions of the Office and Residential Developments, pursuant to Section 3.03 hereof. Satisfactory evidence shall include either: (i) a signed commitment for a loan from a third party lender, reasonably satisfactory to City and sufficient to finance the construction of the Development on the Property, or (ii) evidence that Developer has and will maintain its own cash reserves sufficient to cover the costs of completing construction of the Development to be built on the Property, on a self-financing basis, or has and will have continuing access to an established line-of-credit for such purpose; and (iii) a construction budget sufficiently detailed and complete, so as to allow the City to evaluate the above evidence of financing. It is understood that Developer intends to construct models and spec units of both attached and detached units on the Residential Development, and that it will build additional units as qualified buyers become available for particular units.

(b) Developer is not then in default under any provision of this Agreement.

(c) All of Developer's representations and warranties are true and correct, in all material respects, on and as of the Closing Date.

(d) Developer has furnished copies of insurance policies evidencing all insurance coverage required under Section 2.05 hereof.

(e) Developer has paid to the City the Purchase Price.

(f) Developer has confirmed, in writing, its satisfaction with the public approval/permit processes, outlined in Section 1.05(d) hereof, and its desire and ability to consummate its purchase of the Property from the City, as contemplated under this Agreement.

(g) The City and/or its designated agency can legally convey title to the Property to the Developer.

#### 1.07 Closing

On the scheduled Closing Date, within the time required under Subsection 1.02(c) for the purchase of the Property, the parties shall meet at mutually agreeable location, at which time, subject to satisfaction of the respective applicable party's Conditions Precedent:

(a) Developer shall tender the Purchase Price to the City.

(b) The City shall acquire (by means of a quit claim deed from the State in substantially the same form as attached Exhibit D) title to the Property from the State, by paying the Purchase Price therefor to the State, with the use of funds provided by the Developer for such purpose.

(c) The City shall (simultaneously with (a) and (b) above) tender to Developer the Quit Claim Deed to the Property, (in the form of attached Exhibit D) conveying title to the Property, as required pursuant to Section 1.02 hereof.

(d) The Developer, at its expense, shall cause to be issued to it Title Insurance or an updated Commitment therefor pursuant to Section 1.03 hereof.

(e) The parties shall execute a closing statement setting forth the terms of their financial settlement, including any adjustments to the Purchase Price, which adjustments shall also be settled and paid (or a method of future payment or reconciliation agreed) on the Closing Date.

(f) The City shall deliver possession of the Property to the Developer in the same condition as when the City acquired the same from the State. In connection with the foregoing, the Developer acknowledges that, at Closing, it will be deemed to have had a full opportunity to completely inspect and examine the Property and to have accepted the same, "as is", "where is".

#### 1.08 The City's Representations and Warranties.

The TIFA and the City of Pontiac each hereby represent and warrant to Developer, which representations and warranties shall be true and correct, in all material respects, on and as of the date hereof and shall be deemed to be renewed and restated as of the Closing Date:

(a) The TIFA and City of Pontiac each have all requisite authority to enter into this Agreement and to perform and carry out all obligations, covenants and provisions hereof.

(b) Neither the City of Pontiac nor the TIFA has entered into any other agreements of sale or conveyance of the Property or any part thereof, and, to the City's best knowledge, there are no contracts or agreements with third parties, and no lawsuits pending against the City of Pontiac or the TIFA with respect to the Property, which will materially adversely affect the transaction contemplated hereby or the right and ability of the City to convey the Property to the Developer hereunder or perform the terms of this Agreement.

(c) To the best of their respective knowledge, no representation or warranty by the City of Pontiac or the TIFA, or any statement or certificate furnished by either of them pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or will fail to state any fact necessary to make the statements contained herein or therein not misleading.

#### 1.09 Developer's Representations and Warranties.

Developer hereby represents. and warrants to the City of Pontiac and to TIFA, which representations and warranties shall be true and correct, in all material respects, on and as of the date hereof and shall be deemed to be renewed and restated as of the Closing Date:

(a) Developer is a duly organized and validly existing Michigan corporation, in good standing under the laws of the State of Michigan, having all requisite corporate power and authority to own and operate its assets and properties, to carry on its business as now being conducted and to enter into and perform the terms of this Agreement.

(b) This Agreement and the consummation and performance of the transactions contemplated hereby have been duly authorized by all necessary corporate action by Developer.

(c) To the best knowledge of Developer, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, or any contract or agreement to which Developer is a party or by which it is bound.

(d) No representation or warranty by Developer, or any statement or certificate furnished by it pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will fail to state any fact necessary to make the statements contained herein or therein not misleading.

(e) Developer has no notice of, and to its best knowledge there is no pending or threatened litigation, administrative action or examination, claim or demand before any court, or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would adversely affect or prevent Developer or its principals from carrying out the covenants and promises made herein and prevent Developer from acquiring the Property from the City or completing the Development.

(f) Developer is financially sound and able to purchase, lease, construct, develop, complete and operate the Technology Park and Residential Development, construct, develop and complete the same, and fulfill all other financial obligations imposed upon it hereunder or in connection therewith.

#### 1.10 Brokers.

Each party hereto represents and warrants to each other party that it has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other like payments in connection with this Agreement or the transactions contemplated hereby, and each party hereto agrees to defend, indemnify and hold each other party hereto harmless against and in respect of any such arrangement or understanding claimed to have been made by such party with any third party.

## ARTICLE II

### DEVELOPMENT OF THE RESIDENTIAL PARCELS

#### 2.01 Rights and Obligations of Developer to Construct the Residential Development on the Property.

Developer shall construct attached (i.e., the attached Residential Development) and detached (i.e., the detached Residential Development) single family for sale only residential homes and dwelling units on the Residential Development, with an overall density limitation of not more than five (5) residential dwellings per each gross acre, or fraction thereof, within the Residential Development, substantially in accordance with the following:

(a) The Residential Development shall be controlled by restrictions which presently exist or are to be recorded, so as to become restrictions of record on the land and the common areas included therein, and all owners thereof, including the Developer, shall be obligated to abide by the restrictions. The restrictions, and any modifications thereof, may also be included in the Master Deed, if any, and shall be consistent with the architectural theme and quality level of the Development, as a whole. Visitor parking to serve the Residential Development shall be provided in accordance with the approved Site Plan, attached hereto as Exhibit B;

(b) Developer shall comply in all material respects with all applicable federal, state and local building codes and regulations (including, without limitation, the City's Woodlands Preservation Ordinance and the requirements for a tree survey of the Property in connection therewith, unless a waiver of or variance to such Ordinance is granted by the City Council) and, also, shall provide to the City, through the required building permitting process, all necessary specification(s) for each dwelling unit or type of unit to be constructed on the Residential Development; and

(c) Developer shall have the right to sell developed dwelling units to purchasers thereof, for such price(s) and on such terms, as shall be determined solely by Developer, and, also, to other builders or contractors, for the purpose of such parties constructing dwelling units on such premises, in accordance with the terms of this Agreement.

#### 2.02 Timing and Phasing: Completion Date: Final Completion.

Developer may develop (i.e., complete the site work and Infrastructure improvements therein, ready for residential dwelling construction thereon) the Residential Development at one time or in phases, as determined by the Developer. Said development of the Residential Development shall commence no later than one (1) year after conveyance of the Property to Developer. Said development of the improvements to the detached Residential Development shall likewise commence no later than one (1) year after the conveyance of the Property to the Developer. All such site and infrastructure improvements on the Residential Development shall be completed ("Final Completion") within a reasonable period of time (not to exceed three (3) years) after the commencement of construction thereof (the "Completion Date"), unless extended as the result of a delay in the receipt by the Developer of applicable TIFA Act bond funds for the eligible Infrastructure improvement costs at the Development or an otherwise permitted delay, as provided in Section 6.02 hereafter. Final Completion as to all or any such component of the Residential Development shall occur when the Residential Development and all site and infrastructure improvements thereon are free of all liens and encumbrances, other than the lien of Developer's lender(s), if any, and any liens of record and for current taxes or special assessments not yet delinquent.

#### 2.03 Responsibility for Development and Construction Costs.

(a) Developer or its assignee builders (as to any component(s) of the Mixed Use District) shall pay all costs of constructing the Technology Park and Residential Development, including, without limitation, all application and permit fees and costs with respect to plan review customarily paid by developers in Pontiac, except for costs expressly required by this Agreement to be borne by the City or, pursuant to this or any separate agreement, by others. The method of payment of eligible Infrastructure improvement costs by the City or TIFA, via the sale of bonds, shall be negotiated and agreed to by the City and TIFA with Developer, but not less than monthly. In addition to the buildings and other

structures constituting the Technology Park and Residential Development, Developer shall be responsible for (a) constructing all improvements and amenities inside the curb, including sidewalks, lighting, fire hydrants and landscaping along the streets and sidewalks, all of the above at least to City of Pontiac's specifications and standards; (b) all utility connections from the public right-of-way to any non-residential building or Residential unit; and (c) the entry way, streets and roadways connecting the Technology Park and Residential Development with the entry way and main thoroughfares of access. TIFA shall either pay initially or be responsible to reimburse Developer for the entirety of all eligible Infrastructure improvement costs, including, without limitation, (i) the cost of constructing the eligible Infrastructure improvements at the Development, as described on attached Exhibit C (and as otherwise agreed to by the Developer and the City/TIFA as regards Development costs incurred by the Developer that are eligible for reimbursement to the Developer under the TIFA Plan for the Development) and (ii) the cost of initially constructing the Community Center Building(s) at the Development, in the area depicted on the attached Site Plan, which construction work shall be subject to plans and specifications therefor to be submitted by the Developer to, and approved by, the City and TIFA. All such eligible Infrastructure and Community Center Buildings shall be dedicated as public improvements to and owned by the City or TIFA (as determined by the City), but maintained and operated by the Condominium Association (the "Condominium Association") to be established by the Developer for the Development, with Sub-Condominium Associations for the Technology Park and the components of the Residential Development, as determined by the Developer, in accordance with rules and regulations for the operation and use thereof to be submitted by the Developer to, and approved by, the City, with City/TIFA officials, at the election of the City, participating in the governance bodies of such Condominium Association(s). Regardless of the fact that the same are public improvements, residents/occupants of both the Residential Development and the Technology Park (except to the extent any owner/operator therein is unable or unwilling to pay such dues and to participate in such Condominium Association(s)) shall pay monthly dues to such Condominium Association(s) (or Sub-Condominium Association) to cover, in part, the normal operation and maintenance costs thereof. In addition to the foregoing, although the construction of the public alleyways behind the residential dwelling units to be constructed on the Residential Development, as depicted on the attached Site Plan, will be initially constructed with the use of TIFA Act bond funds made available to the Developer for such purpose, the ongoing maintenance and operation, sweeping, snow removal, etc. relating thereto shall be performed and paid for by said Condominium Association (or Sub-Condominium Association) for the Residential Development, out of monthly Condominium Association dues to be paid by the residents at the Residential Development for such purposes. All Condominium Association documents shall be subject to the reasonable approval of the City and/or TIFA, as determined by the City.

(b) The parties hereto acknowledge that roadway and utility access for the Technology Park out to Telegraph Road across Oakland County premises, as depicted on the attached Site Plan, will be provided by means of an exclusive Easement from Oakland County to the City (and, thereafter, by the City to the Developer), granted by Oakland

County for such purposes in a manner satisfactory to the City and the Developer, and, further, that the TIFA Plan will provide for the payment or reimbursement to the Developer of the eligible Infrastructure improvement costs associated with the construction of the roadways and utilities within such easement area for the benefit of the Technology Park portion of the Development.

#### 2.04 Construction Progress Reports.

At least quarterly during construction, Developer shall submit to the City a written construction progress report, in form and detail reasonably required by the City, depicting progress since Developer's last report.

#### 2.05 Indemnification of City and TIFA; Insurance.

(a) Developer shall, and hereby does indemnify and hold the City and TIFA, their respective officers, elected and/or appointed officials, members, volunteers and employees, harmless from and against all claims, liability, loss, damage, and costs (including reasonable attorney's fees and court costs) at any time arising or resulting from death, injury or damage to any person or property resulting from Developer's acts or omissions, or the acts or omissions of Developer's contractors, subcontractors, agents or employees in connection with: (i) the construction of the Technology Park and Residential Development; (ii) the condition of the Property and the Development, and all parts thereof, at any time after Developer acquires title thereto (including with respect to any environmental condition or damage or violation of any environmental protection law, regulation or ordinance caused by the Developer or its agents); (iii) the use and operation of the Technology Park and Residential Development, or (iv) construction of the Infrastructure at the Development. This indemnity shall also cover any and all harm or damage caused by any act or omission related to any off-site construction staging or material storage area, including the area or areas subject to use by Developer under Section 2.08 or any movement of any construction vehicles to, on or from the Technology Park or Residential Development, including, without limitation, within any construction access drive or easement across private or public land or to any public roadway, except ordinary wear and tear typical to such uses.

(b) During the construction period of the Technology Park and Residential Development, the Infrastructure, Developer shall furnish to TIFA and the City duplicate originals of appropriate policies of public liability, bodily injury and property damage insurance policies with not less than \$5,000,000.00 combined single limit coverage for bodily injury or death to any one or more persons and \$5,000,000.00 per single occurrence, and for property damage, during any period of construction (all such coverage to include subsequent claims based on events occurring during construction), all insurance hereunder to cover off-site as well as on-site areas, including any construction staging or material storage area, including the area or areas subject to license under Section 2.08, as well as contractual liability insurance adequate to cover all indemnities hereunder.

(c) Developer shall carry, and shall require all contractors and subcontractors to carry, adequate worker's compensation insurance, including employer's liability coverage, in amounts required by the State of Michigan, with a minimum of \$1,000,000.00 liability coverage for the general contractor and for all subcontractors. Developer shall obtain a similar covenant with respect to workers' compensation from any consultant, contractor or subcontractor retained by it to construct or otherwise work of a similar nature on any portions of the Development.

(d) During the construction period, Developer shall carry a builder's risk policy in the amount of the value of all improvements thereon from time to time made.

(e) With respect to all portions of the Technology Park or Residential Development at any time owned by the Developer, Developer shall carry fire insurance, with extended and broad form coverage on the Technology Park and Residential Development for the replacement value thereof, exclusive of foundations, footings and basement walls.

(f) Developer shall provide automobile liability insurance covering all owned, hired, and non-owned vehicles used with regard to the Technology Park and Residential Development, with personal protection insurance to comply with the provisions of the Michigan No-Fault insurance Act, including residual liability insurance, with minimum bodily injury limits of Five Million (\$5,000,000.00) Dollars each occurrence.

(g) All insurance policies provided by the Developer, Contractor and/or Subcontractor, shall be duly endorsed to name, as additional insureds, TIFA, the City, all elected and appointed officials, all employees and volunteers, all boards, commissions and authorities, and all board members, including employees and volunteers thereof. Certified copies of all policies and paid premium invoices shall be provided to TIFA to the attention of Walter Moore, Chairman, 8 N. Saginaw, Pontiac, MI 48342, and to the City of Pontiac to the attention of Leonard Briscoe, Department of Public Works, 55 Wessen Street, Pontiac, MI 48341. If any policies expire during the term of this contract, renewal certificates shall be delivered to TIFA and to the City of Pontiac at least ten (10) days prior to the expiration date. All policies shall be written by insurance companies licensed and admitted to do business in the State of Michigan.

(h) All insurance policies provided by the Developer, Contractor and/or Subcontractor, shall include an endorsement stating the following: "It is understood and agreed that thirty (30) days advance written notice of cancellation, non-renewal and/or material change shall be sent to TIFA to the attention of Walter Moore, Chairman, 8 N. Saginaw, Pontiac, MI 48342, and to the City of Pontiac to the attention of Leonard Briscoe, Department of Public Works, 55 Wessen Street, Pontiac, MI 48341.

2.06 Rights of Access of the City's Architect or Consultant.

For the purpose of assuring compliance with this Agreement during construction, the City shall have the right to engage, at the City's expense, an architect or other qualified consultant to monitor the compliance of the Technology Park and/or the Residential Development with the approved plans therefor and with first class standards of workmanship, to which Developer shall be committed under this Agreement. Developer shall afford such architect or consultant reasonable rights of access to the Property from time to time to inspect the construction work without hindrance, charges or fees. Developer shall cooperate with the City to facilitate such inspections.

2.07 Construction Traffic.

All construction traffic serving the Property and the Development shall be routed to enter and exit the Property by such routes as are reasonably acceptable to the City (and to the County and State, if applicable), and shall obey all posted speed limit, warning signs, and all traffic and safety laws, ordinances and regulations.

2.08 Protection of Neighboring Properties and Uses.

(a) Developer shall use its best efforts to construct the Development, in its entirety, and conduct its activities with minimal disruption to residents and owners of properties neighboring the Development and to traffic patterns in and around the area. Before commencing construction, Developer shall take reasonable internal measures to ensure adequate, continuous separation and temporary screening construction activities from such neighboring properties, and to prevent movement of wind-blown debris, dust and soil onto neighboring properties. Developer shall provide its own security protection during construction.

(b) Developer will comply with any ordinance of the City of Pontiac existing or to be adopted governing construction activity.

2.09 Guarantee of Completion.

Conditioned upon the satisfaction of Developer's Conditions Precedent and the ability of the City to convey the Property to the Developer, in accordance with the terms of this Agreement, Developer hereby unconditionally and irrevocably guarantees Final Completion (as defined in Section 2.02 hereof) of the Development on the Property (the "Guarantee"). The Guarantee shall become effective as of the date Developer first acquires the Property, but shall be limited to completion of any portion of the entire Office or Residential Developments, for which construction of a building or other improvement has been commenced by Developer. In the event Developer elects to develop the Development in phases, the Guarantee shall become effective as to the construction and completion of the applicable phase thereof. The Guarantee shall also cover all legal and other costs

incurred by the City in connection with this Agreement, including enforcing its rights under the Guarantee.

2.10 Security.

During construction, Developer shall keep all portions of the Office and Residential Developments, and all staging areas, if any, not on the Development, adequately secure, during both operating hours and hours of closure.

ARTICLE III

DISPOSITION OR ASSIGNMENT OF INTERESTS IN THE  
DEVELOPMENT: RIGHTS OF DEVELOPMENT LENDERS

3.01 Prohibition Against Assignment of Agreement: Restrictions on Transfer of Interests.

(a) In view of the significance of

- (1) the identity of Developer and its principals to the decision of the City to enter into this Agreement and assume the obligations herein, and
- (2) the continuing reliance of the City on the active involvement of Developer and its principals in the faithful performance by Developer under this Agreement,

for purposes of this Agreement, a "transfer or "assignment " of the Technology Park or the Residential Development (or any part thereof) or this Agreement shall be defined to mean and include the sale of the Developer or the transfer, assignment or encumbrance of the majority shares or controlling interest or right to control decisions held by Walter Cohen in Developer.

(b) Before Final Completion of the Development on the Property, or any part thereof, Developer shall not assign this Agreement, or, except for "Permitted Transfers" pursuant to Section 3.02, sell, transfer, convey, hypothecate, mortgage, assign or lease (collectively, "transfer") the Property, or any portion thereof, or any part of the Development, without the prior written approval of the City.

(c) Upon the completion of a dwelling unit in the Residential Development or an office building on the Technology Park, Developer may freely sell the same or, in the case of the Technology Park, also lease the same, and, subject to Permitted Transfers hereunder, after the Residential Development has been substantially completed up to ninety percent (90%) of the dwelling units thereon, the Developer may also freely transfer any or all of the remainder thereof, or the interest in the Developer referred to in the previous subsections, provided that any transferee shall acknowledge, in writing, its

assumption of all of the liabilities and obligations of the Developer hereunder with regard to the premises or interest so conveyed and transferred and, further, that the Developer shall, in any event, continue to be primarily liable for all continuing responsibilities, costs and liabilities with respect to or growing out of the inter-relationship of the Technology Park and Residential Development and the Development, as a whole, as well as any representation and warranty, indemnity or other obligation of the Developer hereunder, which shall survive this Agreement pursuant to Section 6.14, and any transferee shall be bound by all covenants regarding the continuing use of the Technology Park and Residential Technology Park, respectively, set forth in Article IV hereof, and any reciprocal agreement governing the Re-development Area.

### 3.02 Permitted Transfers.

"Permitted Transfers" are defined as follows and, notwithstanding Section 3.01, do not require the prior approval of the City or TIFA, other than as specifically stated below:

(a) Grants of mortgages or other security interests in the Development (or any portion thereof) to any Development Lender, pursuant to Section 3.03 hereof;

(b) Grants of easements, rights-of-way, or licenses not inconsistent with the terms of this Agreement to facilitate development and subsequent operation of the Development, in its entirety, and the inter-relationship between the Technology Park and Residential Development therein;

(b) Sales and leases of land and/or office buildings and suites therein and sales of individual residential units and condominium units pursuant to plats and condominium documents reasonably approved by all applicable governmental authorities;

(d) Transfers to a condominium association(s) of certain rights and obligations with respect to any such condominium, as provided by and contemplated under the Michigan Condominium Act; and

(e) Transfers of ownership interests in Developer, transfers for estate and family financial planning purposes, such as to a personal or family trust, or transfers to an affiliated corporation or other entity of Developer, provided that Walter Cohen shall effectively continue to be the controlling shareholder/member/owner in the Developer or the transferee corporation or other entity, as the case may be, and shall continue to have the right to exercise effective executive management control thereof and of the Development. Upon completion of any such Permitted Transfer(s) and the assumption by the transferee of all of the liabilities and obligations of the transferor under this Agreement, the transferor shall thereupon be relieved and released from any and all further liability and/or obligation under this Agreement.

The City shall have the right to review any relevant portions of Developer's corporate documents, including any amendments thereto, or, alternatively, to demand an affidavit or certification in form acceptable to the City, or an opinion of Developer's legal counsel in order to be assured of compliance with Sections 3.01 and 3.02.

### 3.03 Permitted Financing.

(a) Developer shall have the right, freely to enter into or obtain, at its option, financing from any Development Lender (hereinafter defined) complying with the requirements of Sections 3.04 and 3.05 hereof, for acquisition and construction of the Property and the Development or any portion thereof, provided that such right shall be conditioned on the requirement that the proceeds of any such loan(s), together with prior loans secured by such property and for such purposes, do not in total exceed the combined amounts necessary to acquire the Property, construct the Development thereon (including all hard and all soft costs of construction), and pay necessary and incidental loan costs and fees. In no event shall the Property, or any portion thereof, secure any loan whose proceeds are devoted to any development or purpose other than the Development itself. No such mortgage lender (or grantee or lessor under any other conveyance for financing) permitted hereunder (a "Development Lender") shall be bound by any amendment or modification of this Agreement subsequent to the loan closing date, without such Development Lender's prior written consent thereto.

(b) The City shall not be required to convey the Property to the Developer, until Developer has furnished evidence satisfactory to the City, in its sole discretion, that the Developer has secured sufficient equity capital and/or loan financing conforming to the terms of Section 1.06(a) and this Article III from a Development Lender and/or equity investor for the purchase of the Property from the City and the development thereof to Final Completion of the Development, in its entirety.

(c) Developer shall have the right freely to finance, refinance, or to convey for financing purposes any portion or all of the Development before or after Final Completion thereof. Any third party purchaser of a dwelling unit or an office building within the Development may freely finance such purchase.

### 3.04 Notice to Development Lender of Default Under this Agreement: Right to Cure: Other Rights and Obligations of Development Lenders.

(a) Each Development Lender shall (insofar as the rights of the City are concerned) have the right at its option (but with no obligation to do so) within thirty (30) calendar days after the date of being notified of any default of Developer hereunder, to cure, or commence to cure or remedy any such default and to add the cost thereof to the secured debt and lien, or to the equivalent obligations under any other financing and lien, or to the equivalent obligations under any other financing device. If such default shall be a default which can only be remedied or cured by such Development Lender's obtaining

possession, such Development Lender may, subject to the terms of its agreements with Developer, promptly seek possession through a receiver or otherwise and remedy or cure such default within thirty (30) calendar days after obtaining possession; however, in case of a default which cannot with diligence be remedied or cured, or commenced to be remedied or cured, within such 30-day period, such Development Lender shall have additional time reasonably necessary to remedy or cure such default. The City shall deliver to any Development Lender, upon written request therefor, estoppel letters in form reasonably satisfactory to such Development Lender.

(b) Nothing herein shall require a Development Lender to undertake or continue construction or completion of the Development; however, nothing herein shall permit or authorize any Development Lender (or any purchaser or transferee upon any foreclosure sale or transfer in lieu thereof) to devote the Development or any portion thereof to any uses or to construct any improvements thereon, other than the uses and improvements provided for by this Agreement. If a Development Lender elects to undertake to continue construction or completion of the portion of the Development on which it has a lien, it shall do so only in accordance with the terms of this Agreement, unless and until the Development Lender, the City and Developer, as applicable, have reached an alternative agreement by which the Development Lender will otherwise complete such portion of the Development then under construction covered by its lien or title.

### 3.05 The City's Rights Upon Failure of Development Lender to Complete Improvements.

If, within the sooner of six (6) months after obtaining possession of any uncompleted portion of the Development, or three (3) months following expiration of Developer's statutory redemption rights after a foreclosure (either of the above, the "Lender Period"), a Development Lender or its successors or assigns have not yet commenced or diligently continued construction, the City may either:

(a) purchase the mortgage, other security or financing interest, by paying to the Development Lender an amount equal to the sum of:

- (i) the amount of the unpaid debt at the time of such purchase, (less all appropriate credits, including, those resulting from collection and application to the debt of rentals and other income received during such period of possession), plus any accrued and unpaid interest;
- (ii) the cost of improvements, if any, made by the Development Lender provided such improvements were approved by the City;
- (iii) any prepayment penalty accrued against Developer; and

- (iv) Development Lender's net unreimbursed direct out-of-pocket expenses (exclusive of general overhead) of obtaining and maintaining possession;

(b) if the ownership of such portion of the Development, including improvements thereon, has vested in the Development Lender, purchase such interest from the Development Lender upon paying to the Development Lender an amount equal to the sum of:

- (i) the unpaid mortgage or other secured indebtedness at the time title became vested in the Development Lender (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings) ;
- (ii) the direct out-of-pocket expenses, if any (exclusive of general overhead), incurred by the Development Lender as a direct result of carrying out the foreclosure and undertaking the subsequent ownership or management of such property; and
- (iii) the cost of any improvements made by the Development Lender, provided such improvements were approved by the City;

(c) The City shall exercise its right to purchase a Development Lender's interest in the Development, or any part thereof, by delivery of written notice of such election to the Development Lender within sixty (60) days after the expiration of the Lender Period, and the closing of the sale and purchase of the Development Lender's interest shall occur within one hundred twenty (120) days after delivery of such notice of exercise to the Development Lender. If the City fails to provide the requisite notice within such sixty (60) day period, or thereafter the City fails to close as required herein, its rights to purchase the Development Lender's interest shall expire and be of no further force or effect. Developer agrees to provide to any lender involved in the Project at the request of Developer, written notice of the foregoing and of the City's rights under this Agreement and to obtain from any such Lender its agreement and consent thereto.

### 3.06 The City's Rights to Notice and to Cure Development Financing Defaults: Estoppel Letters.

(a) Any mortgage or other security instrument or financing device permitted under this Article III shall provide that in the event of a default or breach thereunder by Developer (or successor entity), the Development Lender shall provide to the City copies of any notice of default actually provided or required by the loan documents to be provided to Developer and a reasonable opportunity to cure the default or breach within the period(s) provided to Developer. In such event, the party curing the default shall be entitled to reimbursement from Developer (or other successor entity permitted to acquire title thereto)

- (iv) Development Lender's net unreimbursed direct out-of-pocket expenses (exclusive of general overhead) of obtaining and maintaining possession;

(b) if the ownership of such portion of the Development, including improvements thereon, has vested in the Development Lender, purchase such interest from the Development Lender upon paying to the Development Lender an amount equal to the sum of:

- (i) the unpaid mortgage or other secured indebtedness at the time title became vested in the Development Lender (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings) ;
- (ii) the direct out-of-pocket expenses, if any (exclusive of general overhead), incurred by the Development Lender as a direct result of carrying out the foreclosure and undertaking the subsequent ownership or management of such property; and
- (iii) the cost of any improvements made by the Development Lender, provided such improvements were approved by the City;

(c) The City shall exercise its right to purchase a Development Lender's interest in the Development, or any part thereof, by delivery of written notice of such election to the Development Lender within sixty (60) days after the expiration of the Lender Period, and the closing of the sale and purchase of the Development Lender's interest shall occur within one hundred twenty (120) days after delivery of such notice of exercise to the Development Lender. If the City fails to provide the requisite notice within such sixty (60) day period, or thereafter the City fails to close as required herein, its rights to purchase the Development Lender's interest shall expire and be of no further force or effect. Developer agrees to provide to any lender involved in the Project at the request of Developer, written notice of the foregoing and of the City's rights under this Agreement and to obtain from any such Lender its agreement and consent thereto.

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of all costs and expenses incurred in curing such default, to the extent Developer would have been obligated to pay such costs and expenses if advanced by the Development Lender.

(b) Any mortgage or other security instrument or financing device permitted under this Article III shall provide that Development Lender furnish to the City an estoppel letter reasonably requested from time to time by the City with respect to the status of any loan from such Development Lender with respect to any portion of the Development.

#### ARTICLE IV

#### CONSTRUCTION AND USE OF THE PROPERTY - COMPLIANCE WITH LAWS

##### 4.01 Conflict of Interest.

(a) Developer warrants that it has not employed and will not employ any person to solicit or secure this Agreement upon any agreement or arrangement for payment of a commission, percentage, brokerage or contingent fee, either directly or indirectly, and that if this warranty is breached, the City may, at its option, terminate this Agreement without penalty, liability or obligation, or may, at its election, deduct a reasonable penalty from any amounts owed to the Developer hereunder.

(b) No member of the City of Pontiac Council or the TIFA, and no other officer, employee or agent of the City of Pontiac or the TIFA who exercises any function or responsibility in connection with the carrying out of this Agreement shall have any personal interest, direct, or indirect, in this Agreement, except if such person shall disclose such personal interest and take no part in any proceeding or other action or decision relating to this Agreement, its implementation or enforcement.

(c) Except for approved eligible administrative and personnel costs, no employee, agent, consultant, officer, or elected official or appointed official of the TIFA or the City of Pontiac who exercise or have exercised any functions or responsibilities with respect to the Development, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business, during or after their tenure.

The foregoing restrictions shall apply to all activities that are part of the Development. In addition, the parties agree to comply with the "Code of Conduct" set forth in Section 7 of Attachment O to OMB Circular A-102. A violation of the foregoing provisions by either of the parties hereto or by any person referred to herein shall be deemed a material breach of this Agreement by such party.

(d) No member or delegate to the Congress of the United States and the State of Michigan, and no resident Council member shall be admitted to share in any part of this Agreement or in any benefit arising therefrom.

#### 4.02 Personnel.

(a) Developer represents that it has, or will secure, at its own expense, all agents, contractors, subcontractors, consultants and personnel required in performing its obligations under this Agreement. Such agents, contractors, subcontractors, consultants and personnel shall not be employees of the City or of TIFA.

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

#### 4.03 Fair Employment Practices.

(a) In accordance with the United States Constitution and all applicable federal legislation and regulations governing fair employment practices and equal employment opportunity, and including, but not limited to, the Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 241), Executive Order 11246, as amended by 11375, and as supplemented by 41 CFR Part 60, and in accordance with the Michigan Constitution and all applicable state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Elliott-Larsen Civil Rights Act (P.A. 1976 No. 453) (MCL 37.2101, et seq.), and the Michigan Handicappers' Civil Rights Act (P.A. 1976 No. 220) (MCL 37.1101, et seq.), Developer agrees that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, conditions or privileges of employment because of his or her religion, race, color, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(b) Developer further agrees that it will notify any contractor or subcontractor of its obligations relative to non-discrimination under this Agreement when soliciting the same and will include the provisions of this Article in any contract or subcontract. Developer further agrees to take such action with respect to any contract, subcontract or procurement as the City may reasonably direct as a means of enforcing such provisions, including sanctions for non-compliance.

(c) Developer hereby agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) throughout the construction of the Development until the Final Completion of the Development.

#### 4.04 Anti-Kickback Rules.

(a) Salaries of architects, draftsmen, technical engineers and technicians performing work on the Developments under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except such payroll deductions as are mandatory by law or permitted by the applicable regulations pursuant to the "Anti-Kickback Act" (41 USC 51). Developer shall comply with all applicable "Anti Kickback" regulations with respect to construction of each Development, and shall insert appropriate provisions in all future contracts executed for construction of each Development pursuant to this Agreement to insure compliance by contractors with regulations. Developer shall be responsible for the submission of affidavits required by law from subcontractors thereunder, except as the Secretary of Labor may specifically provide for variations of, or exemptions from, the requirements thereof.

(b) Each contractor and subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, equipping, furnishing, completion or repair of any Development, to give up any part of the compensation to which such contractor or subcontractor is otherwise entitled.

#### 4.05 Contract Work Hours-Safety Standards Act.

All of Developer's contracts in excess of Two Thousand Dollars (\$2,000.00) for construction contracts or subcontracts for any part of the Development, which involve the employment of mechanics or laborers, shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act ( 40 USC 327-333) as supplemented by Department of Labor regulations (29 CFR, Pt. 5). Under Section 103 of said Act, each such contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight (8) hours and a standard work week of forty (40) hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate not less than one and one-half (1-1/2) times the basic rates of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in the work week. Section 107 of said Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her health and safety as determined under construction, safety and health promulgated by the Secretary of Labor. These regulations do not apply to the purchase of supplies or materials or articles ordinarily available on the open market or contracts for transportation or certain other contracts as specified in such regulations.

#### 4.06 Independent Contractor.

The relationship of Developer with the City of Pontiac and with the TIFA is and shall continue to be that of an independent contractor and no liability or benefits such as worker's

compensation, pension rights or liabilities, insurance rights or liabilities, or other provisions or liabilities arising out of or relating to a contract for hire or employer/employee relationship, shall arise or accrue to Developer or its respective agents or employees with respect to the City or to TIFA, as a result of the performance of this Agreement, unless expressly stated in this Agreement.

#### 4.07 Fair Housing Covenant.

Neither Developer nor its agents, employees, contractors, affiliates, transferees, heirs or assigns shall in any way in connection with the marketing, sale or leasing of the Residential Developments or any phase or portion thereof, discriminate against, refuse an agreement to sell or lease, or segregate' any person, or group of persons, on account of race, color, creed, religion, sex, marital status, age, handicap or physical infirmity, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Development, or any portion(s) thereof, except to the extent, if any, that age criteria may lawfully be used in marketing and leasing units in the Development, and shall comply and cause the compliance by all agents, with all applicable federal, state and local laws, regulations and ordinances, relating to non-discrimination in the area of housing opportunities, including, without limitation, so-called "fair housing" laws. Appropriate language fairly reflecting the non-discrimination policy of Developer will be included in the condominium documents for any part of the Residential Development.

#### 4.08 Other Laws.

(a) Developer shall comply with all standards, orders, or requirements issued under the Clean Air Act (42 USC 7401) the Clean Water Act (33 USC 1251), Executive Order 11738 and the Environmental Protection Agency regulations (40 CFR, Part 15).

(b) Developer shall comply with all standards and policies relating to energy efficiency which are contained in the State of Michigan Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

(c) Developer shall comply with all Federal requirements and regulations pertaining to patent rights.

(c) Developer shall comply with all applicable laws, regulations and ordinances of the State of Michigan, County of Oakland, and City of Pontiac.

## ARTICLE V

### DEFAULTS, REMEDIES AND TERMINATIONS

#### 5.01 Defaults - General.

(a) Any act prohibited by this Agreement or failure or delay by any party timely to perform any material provision of this Agreement (time being of the essence in this Agreement) shall constitute a default under this Agreement, subjecting the defaulting party, following the passage without curing the default of any grace or cure period expressly set forth herein, to the exercise by the non-defaulting party or parties of the remedies for default set forth in this Agreement.

(b) A non-defaulting party shall serve written notice of any default hereunder to the defaulting party (although failure or delay in serving notice pursuant to this Section 5.01(b) shall not waive any default, nor change the time of default). Unless a different cure period is expressly set forth in this Agreement, the defaulting party shall have sixty (60) days after the date of delivery of such notice within which to cure such default, or to have commenced to cure such default and be continuously and diligently proceeding to cure same, where, in the case of non-monetary defaults, a cure is not possible within such sixty (60)-day period.

(c) In addition to the specific rights to terminate this Agreement contained in Sections 5.05 and 5.06 hereof, either party may terminate this Agreement in the exercise of its reasonable good faith discretion, after a delay in performance by either party (other than as permitted under Section 6.02 hereof) that lasts for a continuous period of more than one (1) year.

(d) This Article V shall apply only to the City and the Developer.

#### 5.02 Binding Arbitration: Consent to Jurisdiction.

(a) Subject to applicable notice and cure provisions and except as otherwise expressly limited by this Agreement, the non-defaulting party shall submit the dispute to arbitration and, among other things, seek specific enforcement of the defaulting party's obligations. The successful party in any action shall recover from the unsuccessful party its reasonable attorneys' fees, expert witness fees, costs and expenses incurred.

(b) Any controversy or claim arising out of or related to this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator or arbitrators, who shall be attorneys licensed to practice in Michigan, shall be binding and final on all parties hereto, and judgment may be entered upon it in accordance with applicable law in any court described in this Subsection 5.02(b). If a party seeks

equitable relief and, as a matter of law, the arbitrators are prohibited from awarding equitable relief, the arbitrator(s) shall only make a finding of the facts based upon which the court may grant, deny or modify the equitable relief requested. The award and judgment shall include the obligation of the unsuccessful party to pay the reasonable attorneys' fees and costs incurred by the successful party in participating in the arbitration, causing judgment to be entered pursuant to the arbitration award and enforcing such judgment.

Notwithstanding the place where any party executed this Agreement, the state of incorporation or location of the principal office of any party, or the place where any portion of this Agreement is to be performed, all parties hereto consent to the jurisdiction and venue of the Oakland County Circuit Court (State of Michigan), United States District Court for the Eastern District of Michigan, Southern Division, and, if the amount in controversy is less than the minimum amount required for one of these courts to assume jurisdiction, the Judicial District Court for the State of Michigan which district includes the City of Pontiac or any portion thereof. Each party hereto hereby irrevocably waives any objection which they may now, or hereafter, have to the commencement of any suit, action or proceeding in the foregoing courts, or any claim that such suit, action or proceeding has been brought in an inconvenient forum. The foregoing is not intended to limit the matters which shall be submitted to arbitration or create any alternative to the parties' agreement to submit disputes to arbitration.

#### 5.03 Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other party.

#### 5.04 Impact of Default by Developer Upon Transferees.

After any transfer or conveyance by Developer of an interest in the Development to a third party transferee approved or permitted under this Agreement (provided that such transferee is not in default under this Agreement or any other agreements with the City), no default or breach by Developer under this Agreement shall impose liability upon such transferee.

#### 5.05 Termination by Developer.

(a) Subject to the applicable terms of this Agreement, Developer may, in its discretion and after expiration of any applicable notice and cure periods, terminate this Agreement prior to the closing of the Developer's purchase of the Property from the City, upon written notice thereof to TIFA and the City, if:

- (i) Developer's Conditions Precedent, as set forth in Section 1.05 hereof or elsewhere in this Agreement, are not satisfactory to Developer or are otherwise unsatisfied as to the Development, or the Property is not conveyed to the Developer, as required hereunder, on the Closing Date, or
- (ii) There exists any other material default by the City under this Agreement.

(b) Any of Developer's rights to terminate this Agreement which are triggered by events occurring prior to conveyance of the Property to the Developer shall apply to termination with respect to the entire Development.

(c) In the event of termination of this Agreement by Developer pursuant to this Section 5.05 prior to conveyance of the Property by the City to the Developer, then the Agreement shall thereafter be void and of no further force or effect between the parties, subject, however, to Section 6.14 hereof. If all of the City's Conditions Precedent have been satisfied and Developer is in compliance with all terms of this Agreement, and the City fails to convey the Property to the Developer, Developer shall also have the right of specific performance with regard to conveyance of the Property by the City.

#### 5.06 Termination by the City.

(a) Subject to the applicable terms of this Agreement, the City may, in its discretion and after expiration of the applicable notice and cure periods, terminate this Agreement, upon sixty (60) days prior written notice to Developer, if:

- (i) Developer assigns or contracts to assign this Agreement (or any rights herein) or sells, transfers, conveys, assigns or leases all or any part of the Development, in material violation of the provisions of Article III;
- (ii) Developer fails, in any material respects, to act in good faith and/or make the required submissions and/or plan modifications in material conformity with this Agreement or applicable zoning and land use requirements, resulting in the Developer not obtaining approval of any required plans or submittals or any requisite zoning or other required approvals at the Development, or not obtaining the necessary building permit for any portion of the Development;
- (iii) Developer fails to purchase the Property from the City for the Purchase Price thereof, by the time provided for and as contemplated in this Agreement, or otherwise fails to obtain sufficient financing (TIFA funds and otherwise) for the Development, in accordance with the requirements of this Agreement;

- (iv) The City's Conditions Precedent, as set forth in Section 1.06, are unsatisfied, in material respects, as to any portion of the Development, or the Developer fails to pay for, or accept delivery of, the deed for the Property on the Closing Date;
- (v) Developer ceases to conduct business in the normal course by reason of insolvency, voluntary or involuntary filing or adjudication of bankruptcy under any present or future bankruptcy or other applicable law, or a receiver is appointed for Developer, and any bankruptcy petition or filing, or receivership is not dismissed within ninety (90) days, or Developer admits in writing that it is unable to pay its debts generally as they become due;
- (vi) Developer (A) fails to commence construction or to materially complete construction of any portion of the Development within the required time period hereunder, subject to Section 6.02 hereof; (B) interrupts and fails to continue construction for a continuous period of more than one (1) year, except by reason of events referred to in Section 6.02 hereof; or (C) constructs any portion of the Development, including the Infrastructure, not in material compliance with approved plans or in a manner materially inconsistent with this Agreement;
- (vii) Developer is in material default, after the expiration of any applicable grace or cure period, under any other material agreement relating to the Development with the City or under any material loan document or agreement evidencing or securing any loan from a Development Lender with respect to the Development or any portion thereof; or
- (viii) There continues to exist any material default by Developer under this Agreement, beyond any cure periods permitted hereunder.

(b) Any of the City's rights to terminate this Agreement which are triggered by events relating to matters to occur prior to conveyance of the Property to the Developer shall apply to the entire Development; and, thereafter, only to termination with respect to that portion of the Development that is the subject matter of the default, and, in such case, this Agreement shall continue to apply with respect to the development of the remainder of the Development.

(c) In the event of termination of this Agreement by the City pursuant to this Section 5.06 prior to conveyance of the Property to the Developer, then the Agreement shall thereafter be void and of no further force or effect between the parties, subject, however, to Section 6.14 hereof.

5.07 Additional Rights of the City with Respect to Developer's Default After Conveyance of the Property.

If Developer has acquired the Property, but fails to commence construction of the infrastructure improvements and related site work thereon (as depicted on the Site Plan, attached hereto as Exhibit B) in a timely manner, or interrupts construction thereon for a period longer than one (1) year, except by reason of events referred to in Section 6.02 hereof, unless a longer interruption is expressly permitted under this Agreement, the City shall have the rights and remedies set forth in Subsections (a), (b) and (c) below, which rights and remedies, together with all other remedies under this Article V, unless otherwise stated, shall be cumulative and not exclusive:

(a) To cause Developer to reconvey the Property (or the remaining undeveloped and unsold portion(s) thereof, as the case may be) to the City in accordance with the following terms and conditions:

- (i) Reconveyance hereunder shall be by quit claim deed and bill of sale, free and clear of any liens or encumbrances, other than the Permitted Exceptions, provided, however, that this right of reconveyance shall not defeat or render invalid any lien securing indebtedness to a Development Lender. In the event the City pays or causes to be paid the lien or indebtedness to the Development Lender, then Developer shall be released from any further liability to the City, as it relates to that lien to the Development Lender;
- (ii) Developer shall, at its sole cost and expense, furnish to the City title insurance equivalent to that initially received by it from the City (but subject to any Development liens permitted hereunder), evidencing and insuring good, marketable title equivalent to the Title Insurance which was required under Section 1.03 hereof;
- (iii) Developer shall convey to the City, without additional charge, all studies, reports, test and audit results, engineering work, surveys, design and construction plans and working drawings, and all other materials pertaining to development of the Development in its possession or owned by it;
- (iv) Upon the closing of such reconveyance, which shall occur no later than sixty (60) days after written demand therefor is made by the City to Developer, the City shall pay to Developer the Purchase Price (prorated appropriately for any previously developed, sold or leased premises) previously paid by Developer to the City for the Property (plus all third-party costs of all improvements on that portion(s) of the Development to be reconveyed to the City), in cash, by cashiers

check or wire transfer as directed by Developer (the "Reconveyance Price" ). The Reconveyance Price shall be offset by the amount of any existing lien securing a Development Loan, if not previously repaid by Developer, any unpaid property taxes or special assessments with respect to the Property which were a lien on the Property, any unpaid utility charges for the period up to the date of reconveyance and which Developer would otherwise have been required to pay under this Agreement, as well as any other charges owing to the City pursuant to this Agreement or any law or ordinance. If Developer has paid property taxes covering any applicable period after the date of reconveyance, the amounts paid with respect to the period after the date of reconveyance shall be added to the Reconveyance Price. The Reconveyance Price shall be the sole amount the City is obligated to pay for reconveyance of the Property hereunder, and the Reconveyance Price shall not include any reimbursement of any general overhead or in house fees, costs or charges incurred by Developer in connection with the purchase of the Property or the development of the Development.

(b) Without reacquiring the Property and subject to the provisions of Section 5.02 hereof, as provided in (a) above, the City may go into court and request the appointment of a receiver, and, if the same is permitted hereunder, the Developer hereby consents to such appointment (and agrees to cause its Development Lender(s) not to unreasonably withhold its/their consent to such appointment), to commence and/or complete construction of the Development in place of Developer. Such action shall not make the City a mortgagee in possession, and the City shall have no obligation to creditors of Developer or any other party by virtue of obligations incurred by Developer with regard to the Development or construction of the Technology Park or Residential Development.

(c) Concurrently with exercising its rights under Subsections 5.07 (a) or (b), or in the event of, and notwithstanding Developer's continued ownership and/or possession of the Property or any part thereof, the City may demand payment under the Guarantee, as and to the extent provided in Section 2.09 hereof, in order to cause the commencement and/or continuation of construction up to and including Final Completion of the Residential Development, or to remove any construction liens encumbering the Residential Development which are not properly and adequately bonded over and diligently and timely contested. To the extent the City expends funds in addition to any amounts paid under the Guarantee or from any available insurance proceeds, and Developer continues to hold title to the Property, such unpaid amounts shall be payable on demand by the City with interest thereon from the date incurred at ten percent (10%) simple interest per annum, and shall constitute a lien on the Property in favor of the City.

(d) The City's rights and remedies under Sections 5.06 and 5.07 are entirely optional and shall be exercised by the City only in its sole discretion, and the City shall have no obligation to Developer to exercise such rights and remedies.

(e) Nothing herein shall permit or authorize Developer (or any purchaser or transferee thereof) to devote the Property or any portion thereof to any uses or to construct any improvements thereon, other than the uses and improvements provided for by this Agreement.

5.08 Non-Liability of City Officials and Employees.

No City of Pontiac or TIFA official (elected or appointed), officer, employee or board member shall be personally liable to Developer for any default or breach by the TIFA or the City of any obligations under the terms of, or growing out of this Agreement or the Development.

ARTICLE VI

GENERAL PROVISIONS

6.01 Notices, Demands and Communications.

All notices, consents, approvals, requests and other communications required or permitted under this Agreement shall be given in writing, signed by an authorized representative of the City of Pontiac, TIFA and the Developer, as applicable, and mailed by certified or registered mail, return receipt requested, and addressed as follows :

To TIFA:

Walter Moore, Chairman  
Pontiac Tax Increment Financing Authority  
8 N. Saginaw Street  
Pontiac, MI 48342

To the City of Pontiac:

Hon. Walter Moore, Mayor  
City of Pontiac  
450 Wide Track Drive East  
Pontiac, MI 48342

With copies to:

Hon. Charlie J. Harrison III, President  
Pontiac City Council  
450 Wide Track Drive East  
Pontiac, MI 48342

and

Sanford H. Passer, Esq.  
Strobl Cunningham Caretti & Sharp, P.C.  
300 East Long Lake Road, Ste. 200  
Bloomfield Hills, MI 48304

and

John C. Claya, Esq.  
Acting City Attorney  
City of Pontiac  
450 Wide Track Drive East  
Pontiac, MI 48342

To Developer:

Mr. Walter Cohen, President  
Arco Construction Company  
25200 Telegraph Road, Suite 410  
Southfield, MI 48034

With copies to:

Gregory J. DeMars, Esq.  
Honigman Miller Schwartz and Cohn  
2290 First National Building  
Detroit, MI 48226

6.02 Permitted Delay: Extension of Times of Performance.

(a) In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays of performance are due to war, insurrection, strike, lock-out, riot, flood, earthquake, fire, casualty, act of God, act of the public enemy, epidemic, quarantine restriction, freight embargo, lack of transportation, governmental restriction or priority (other than with respect to matters for which Developer is obligated to obtain governmental approvals or permits), severe weather,

a determination by Developer (in the exercise of its reasonable and good faith discretion) that general economic and market conditions affecting the Development (including, without limitation, in regard to the sale of any residential dwelling units on the Residential Development therein and/or the high tech office improvements on the Technology Park therein) justify and warrant a delay in the development of the Development and in the performance of Developer's (and/or its builders' as to any component of the Development) obligations under this Agreement, a delay by any contractor, subcontractor or supplier where the cause of such delay is not in Developer's direct or indirect control or occasioned by a dispute between such person and Developer, or act of the other party which is impermissible hereunder.

(b) An extension of time for any cause set forth in Section 6.02(a) shall only be for the period of a permitted delay, which period shall commence to run from the time of the commencement of the cause.

#### 6.03 Amendments.

The parties agree to consider in good faith reasonable requests for amendments to this Agreement (including, without limitation, in regard to introducing the TIFA Plan into this Agreement) which may be made by any of the parties hereto, by lending institutions, bond counsel, financial consultants to the City or federal or state agencies and to look favorably upon any such request provided it is consistent with this Agreement and would not substantially alter the basic terms and intentions hereof or substantially impair the rights or increase the obligations or costs of any Party hereto. No amendment or modification hereof shall be effective or binding upon the parties hereto, unless and until the same is evidenced by a written document approved and executed by all parties hereto.

#### 6.04 Computation of Time.

In computing a time period prescribed or allowed under this Agreement, the day of the act, event or default from which the designated time period begins to run shall not be included. A business day is a day other than a Saturday, Sunday or legal holiday, and the term "day" alone refers to a calendar day. "Legal holiday" herein means a legal holiday other than Saturday or Sunday recognized by the City as a day on which the City's offices are closed for business.

#### 6.05 Integration Clause: Execution of Agreement.

(a) This Agreement constitutes the entire agreement of the parties and integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(b) This Agreement is executed in eight (8) duplicates each of which is an original.

6.06 No Third Party Beneficiary.

The provisions of this Agreement shall bind and inure exclusively to the benefit of the City and Developer and their respective successors and assigns. Such provisions are not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person, except for provisions expressly for the benefit of any lender providing financing for construction of the Residential Development or its successors and assigns. Anything herein to the contrary notwithstanding, the United States, the State of Michigan, the City of Pontiac, and any other relevant public body shall be beneficiaries of those provisions of Article IV pertaining to legal rights of or obligations to such entities, and shall have the right directly to enforce those provisions as relevant in accordance with applicable law.

6.07 Governing Law.

This Agreement will be interpreted and enforced under the laws of the State of Michigan, and, as applicable, the laws of the United States.

6.08 Captions.

Captions and section headings herein are for reference only and are not part of the provisions of this Agreement, and, whether or not expressly designated, section numbers refer to sections or subsections of this Agreement.

6.09 Waivers.

A party may waive any default, condition, promise, obligation or requirement applicable to any other party hereunder, provided that any such waiver shall apply only to the extent expressly given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation or requirement in any past or future instance. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the waiving party, and all amendments hereto must be in writing and signed by the appropriate officers of all of the parties.

6.10 No Merger.

None of the provisions of this Agreement are intended to, or shall be, merged by reason of the execution and delivery of any deed transferring title to a portion of any Residential Parcel or any other real estate interest from any party to another, and no such deed shall be deemed to affect, alter or impair the provisions of this Agreement.

6.11 Reasonableness: Materiality.

Whenever the consent or approval of the City, TIFA or Developer is expressly or by implication required by any provision of this Agreement or any agreement, instrument or document executed pursuant to the terms hereof, such consent or approval shall not be unreasonably withheld or delayed, unless sole discretion is expressly specified. Whenever a provision of this Agreement requires strict compliance or prohibits any deviation from the terms hereof or the provisions of any other documents, instruments or, agreements executed pursuant hereto, such provisions shall be interpreted to require "material compliance" and prohibit "material deviations" from the terms thereof.

6.12 Recording.

A Memorandum referring to this Agreement, which the parties hereby agree to execute, shall be recorded with respect to the Property and the Development in the Office of the Oakland County Register of Deeds and shall constitute a Permitted Exception hereunder.

6.13 Term.

The term of this Agreement shall begin upon the date of execution of this Agreement by the last party to do so (the "Effective Date") and shall expire on the date on which Final Completion shall have been achieved on both the Technology Park and the Residential Development, unless earlier terminated hereunder.

6.14 Survival.

Article IV, the representations and warranties set forth in Sections 1.08 and 1.09, and the indemnities set forth in Section 2.05 shall survive any termination, or expiration of the term of this Agreement.

6.15 Effect of Covenants.

This Agreement and any additional covenants, restrictions and obligations required hereunder and subsequently adopted, shall inure to the benefit of the City of Pontiac without regard to whether the City of Pontiac has been an owner of any interest in the Technology Park or the Residential Development. The parties hereto understand and agree that this Agreement has been authorized by all applicable State and Federal laws and Constitutions and City Charter/Ordinances, and all parties hereto agree that they shall be estopped from asserting a contrary provision in the future, and, furthermore, all parties hereto shall be entitled to injunctive relief in regard to any actions by any of the other parties hereto that are inconsistent with the foregoing and with the terms of this Agreement, the foregoing right to be deemed not to be limited by the provisions of Section 5.02 hereof.

#### 6.16 Invalidity of Terms.

If any provision of this Agreement, or the application thereof to any part hereto or circumstance related hereto shall, to any extent, be declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, if the remaining terms hereof reasonably carry out the basic intent of this Agreement, and each and every provision of this Agreement shall be valid and enforceable, on an individual basis, to the fullest extent permitted by law.

#### 6.17 Minority Contractors.

Developer hereby agrees to use good faith efforts to reasonably ensure the inclusion of Pontiac based and/or minority and women owned businesses, as suppliers of goods and services to it for the Project and, towards such end, to consult with the City of Pontiac's Contract Compliance Officer to obtain the names of minority and women owned businesses that might be eligible to reasonably participate as contractors and suppliers of goods and services to the Developer in the completion of the Project.

#### 6.18 City Income Tax.

Developer agrees to contact the City of Pontiac Income Tax Division, Audit and Compliance Section, 47450 Woodward Avenue, Pontiac, Michigan 48342, telephone: (248) 857-7643, to establish reporting and withholding obligations under the City of Pontiac Income Tax Ordinance. Developer will require the same of all general contractors and subcontractors employing labor in connection with the Development.

(a) Normally, the Developer will be required to withhold City of Pontiac Income Tax if either of the following applies: (1) Performance under this Agreement (together with any other contracts in the City during the calendar year) will last thirteen (13) weeks or more, or (2) Developer employs one or more Pontiac residents for the performance of work under this Agreement.

(b) Developer agrees to pay, or require its builders as regards any components of the Project, to pay any personal property taxes required by the City Assessor in regard to the Development.

#### 6.19 Waiver of Environmental Claims.

(a) The Developer agrees to take no administrative, judicial, or other legal action against the City because of the existence or discovery of any toxic, hazardous, or injurious substances at the Property, including, without limitation any action for contribution, cost recovery, third party actions, injunctive relief to compel the City to investigate or take remedial action, declaratory relief, damages, or any other action associated with or arising from any obligation the Developer may have under federal, state, or local law in conjunction

with the investigation, removal, or abatement of any toxic, hazardous, or injurious substance, including, but not limited to, asbestos or asbestos-containing materials. The foregoing is expressly intended to, and shall, bar the Developer from asserting any claim, legal or equitable, against the State of Michigan, and all of its departments and employees, for money damages, injunctive relief, declaratory judgment, or any other legal or equitable relief, based on or arising from the existing environmental condition of the Property, or in conjunction with the investigation, removal, or abatement of any toxic, hazardous, or injurious substance, including, but not limited to, asbestos or asbestos-containing materials.

(b) Regulatory Laws Affecting the Property.

When title to the Property passes from the City to the Developer at Closing, the Property will or may become subject to certain regulatory laws to which the Property was not theretofore subject, because it was owned by the State. The Developer hereby acknowledges that, upon its closing of the purchase of the Property from the City, it will be deemed to have approved and accepted all of such regulatory laws and to have had a full opportunity to make a complete inspection of the Property, with the City thereafter being under no obligation to the Developer to take any action to bring the Property into compliance with such laws. The Developer further acknowledges that it is the Developer's responsibility to consult with all regulatory agencies that have jurisdiction over the Property, and to comply with all applicable regulatory laws after it acquires title to the Property.

6.20 Indemnification and General Insurance Requirements.

To the fullest extent permitted by law, Developer agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Pontiac, its affiliated and/or related entities, including, but not limited to, its authorities, boards and commissions, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Pontiac, against any and all claims, demands, suits or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Pontiac, its affiliated and/or related entities, including, but not limited to, its authorities, boards and commissions, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Pontiac, by reason of personal injury, including bodily injury and death, and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement, the Property and/or the Development.

Developer shall purchase and maintain in a company or companies licensed to do business in the State of Michigan, such insurance as will protect it from claims set forth below which may arise out of or result from Developer's operations under this Agreement, whether such operations be by it or any general contractor or subcontractor or by anyone directly or indirectly employed by it, or by its tenants or their customers, guests, vendors or visitors or by anyone whose acts are associated with this Agreement, the Property and/or the Development.

(a) Worker's Compensation Insurance: Developer, its general contractor and all subcontractors shall procure and maintain during the life of this Agreement, Worker's Compensation Insurance, including Employer's Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

(b) Commercial General Liability Insurance: Developer and its general contractor shall procure and maintain during the life of this Agreement, Commercial Liability Insurance on an "Occurrence Basis" with the limits of liability not less than \$1,000,000.00 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (1) Contractual Liability; (2) Products and Completed Operations; (3) Independent Contractor's Coverage; (4) Broad Form General Liability Extensions or equivalent; and (5) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

(c) Motor Vehicle Liability: Developer and the general contractor shall procure and maintain during the life of this Agreement, Motor Vehicle Liability Insurance, including Michigan No Fault coverage, with limits of not less than \$1,000,000.00 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

(d) Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insured". The City of Pontiac, its affiliated and/or related entities including but no limited to its authorities, boards and commissions including all elected and appointed officials, all employees and volunteers, board members, employees and volunteers. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing or excess.

(e) Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Insurance as described above, shall include an endorsement stating the following: "IT IS UNDERSTOOD AND AGREED THAT SIXTY (60) DAYS ADVANCE WRITTEN NOTICE OF CANCELLATION, NON-RENEWAL, REDUCTION IN COVERAGE AND/OR MATERIAL CHANGE SHALL BE SENT TO: CITY OF PONTIAC, RISK MANAGEMENT DIVISION, 47450 WOODWARD AVENUE, PONTIAC, MICHIGAN 48342."

(f) Contractor's Protective Liability: Developer shall itself, and shall require its general contractor(s) to, procure and maintain, during the life of this Agreement, separate Protective Liability Insurance coverage of not less than \$2,000,000.00 per occurrence and/or aggregate, combined single limit, Personal Liability, Bodily Injury, and Property

Damage. The City of Pontiac shall be "Named Insured" on said coverage. Sixty (60) days Notice of Cancellation, non-renewal, reduction in coverage and or material change shall apply to this policy.

Neither Developer nor any general contractor shall commence work at the Project until it has obtained the insurance required hereunder, nor shall the Developer permit any subcontractor to commence work on its subcontract until the insurance required of the subcontractor hereunder has been obtained.

Certificates of Insurance, along with copies of original policies where applicable, acceptable to the City, shall be filed with the City of Pontiac, Risk Management Division, ten (10) days prior to commencement of any work under this Agreement. Developer shall provide two (2) copies of Certificate of Insurance for Workers Compensation; two copies of Certificate of Insurance for Commercial General Liability; two copies of Certificate of Insurance for Vehicle Liability; Original Policy or binder pending issuance of policy, for Contractors Protective Liability Insurance; and if requested, Certified Copies of all policies will be furnished by the Developer and/or its general contractors and/or subcontractors.

The Developer agrees to cooperate with the City in obtaining for the City the benefits of any insurance or other proceeds lawfully or equitably payable to the City in connection with this Agreement and the collection of any insured indebtedness or obligation of the Developer to the City incurred hereunder (including the payment by the Developer of the expense of an independent appraisal on behalf of the City in case of a fire or other casualty affecting any portion of the Property).

#### 6.21 City Fencing Ordinance.

Developer hereby agrees to comply, in all respects, with, or to obtain appropriate waivers of, all requirements of the City's Fencing Ordinance in regard to the Development.

### ARTICLE VII

#### ACCEPTANCE OF AGREEMENT BY TIFA AND THE CITY

This Agreement, when executed by Developer and delivered to TIFA and the City of Pontiac, must be executed and delivered by TIFA and the City of Pontiac within thirty (30) business days after the date of delivery by the Developer or this Agreement shall be void, except to the extent that Developer shall consent, in writing, to further extensions of time for the authorization, execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Development Agreement, as of the day and year first above set forth.

ARCO CONSTRUCTION COMPANY

By: 

Walter Cohen, President

"Developer"

CITY OF PONTIAC, a Michigan municipal corporation

By: 

Walter Moore, Mayor

AND

By: 

Vivian Spann, C.M.C., Clerk

"City"

CITY OF PONTIAC TAX INCREMENT FINANCING AUTHORITY

By: 

Walter Moore, Chairman

AND


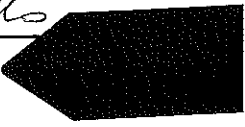
By: 

Eric Walker, Secretary

"TIFA"



STATE OF MICHIGAN     )  
                                  )ss.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 27th day of July, 2001, by Walter Moore, Chairman, and Eric Walker, Secretary, of the City of Pontiac Tax Increment Financing Authority, a Michigan body public and corporate, on behalf of the Authority.

  
\_\_\_\_\_  
Notary Public, Oakland County, MI  
My commission expires: 

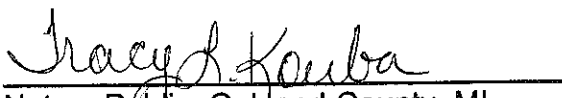
STATE OF MICHIGAN     )  
                                  )ss.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 27th day of July, 2001, by Walter Moore, Mayor of the City of Pontiac, and Vivian Spann, Clerk of the City of Pontiac, a Michigan Municipal corporation, on behalf of the City of Pontiac.

  
\_\_\_\_\_  
Notary Public, Oakland County, MI  
My commission expires: 

STATE OF MICHIGAN     )  
                                  )ss.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 27th day of July, 2001, by Walter Cohen, President of ARCO Construction Company, a Michigan corporation, on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public, Oakland County, MI  
My commission expires:

Drafted by:  
Sanford H. Passer, Esq.  
Strobl Cunningham Caretti & Sharp, P.C.  
300 East Long Lake Rd., Suite 200  
Bloomfield Hills, MI 48304  
PH: (248) 540-2300  
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TRACY KOUBA  
Notary Public, Wayne County, Michigan  
My Commission Expires November 20, 2003

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H

## **DEVELOPMENT LEGAL DESCRIPTION**

Premises situated in the City of Pontiac, Oakland County, Michigan, more particularly described as:

(TO BE DETERMINED BY THE SURVEYOR AFTER LAND EXCHANGE WITH OAKLAND COUNTY HAS BEEN COMPLETED)

**EXHIBIT A**

## **SITE PLAN OF DEVELOPMENT**

Site Plan/Landscape Plan of the Development, Prepared by Arcadis Giffels & Design Team, Dated July 18, 2001, as Approved, with Conditions, by the City of Pontiac Planning Commission on July 24, 2001.

**EXHIBIT B**

## TIFA INFRASTRUCTURE WORK

The following is a preliminary list and estimated costs of the Improvements at the Development which are eligible "Public Facilities" under the Act:

1. Site Preparation
  - Clearing
  - Undercutting and Removal of Unsuitable Soils
  - Mass Grading
  - Retaining Walls
  - Abnormal Foundation Depth
  - Abandoned Sewer Removal/Grout
2. Public Utilities (Water Mains, Sanitary and Storm Sewers, Electric and Gas)
  - Water Mains, Gate Valves and Accessories
  - Sanitary and Storm Sewers, Manholes and Appurtenances
  - Electrical Service conduit, Cable, Switch Cabinets and Accessories
  - Gas Servicing Piping, Valves
  - Infrastructure Reimbursements (Pro-rata)
3. Roads and Pavements
4. ADA, Barrier Free and Applicable Life Safety Provisions Access Facilities
5. Security Systems
  - Closed Circuit TV Surveillance of Site Parking and Certain Interiors
6. Parking Lot Lighting
7. Architect, Engineers, Consultants, Legal and Accounting

- Architect
  - Structural Engineer
  - Civil Engineer
  - Mechanical, Electrical, Plumbing Engineers
8. Interest Carry on Allowable Expenditures
  9. Community Structure(s)

## EXHIBIT C

**QUIT CLAIM DEED**

(FORM OF QUIT CLAIM DEED TO BE IDENTICAL TO THE FORM OF QUIT CLAIM  
DEED FROM THE STATE TO THE CITY WITH RESPECT TO THE PROPERTY)

EXHIBIT D

## RELEASE OF LIABILITY

**Issued by Authority  
1998 Public Act of 492**

**Mailing Address:  
Department of  
Management & Budget  
Real Estate Division  
P.O. Box 30026  
Lansing, MI 48909**

**Delivery Address:  
Department of  
Management & Budget  
Real Estate Division  
530 W. Allegan  
Mason Bldg., 1<sup>st</sup> Floor  
Lansing, MI 48933**

**The undersigned hereby releases the City of Pontiac and the State of Michigan, including all departments, agencies, boards, employees, and/or any tenant(s) thereof, from liability for any injury (if any) resulting from the undersigned's inspection of said Premises, under the present or prior jurisdiction of the Department of Community Health, described as:**

### **PARCEL B (MAIN CAMPUS)**

A parcel of land in the S ½ of Section 19 and the N ½ of section 30, T3N, R10E, Pontiac Township, City of Pontiac, Oakland County, Michigan and more particularly described as commencing at the southwest corner of said section 19; thence S89°16'27"E 1453.02 feet, to the point of beginning of this description; thence S00°14'18"E 2451.56 feet, to the northerly right of way line of Elizabeth Lake Road; thence N79°13'51"E 292.11 feet, on said right of way; thence N81°53'56"E 154.00 feet, on said right of way; thence N88°18'35"E 124.23 feet, on said right of way; thence N00°16'27"W 663.61 feet; thence S89°13'34"E 640.00 feet; thence S00°41'10"W 637.22 feet, to the northerly right of way line of Elizabeth Lake Road; thence N88°40'24"E 860.28 feet, on said right of way; thence N88°43'25"E 1005.26 feet, on said right of way; thence N55°09'17"W 382.73 feet; thence N47°52'22"E 838.00 feet; thence S33°16'28"E 152.21 feet; thence S50°09'33"E 78.39 feet; thence N85°54'52"E 185.89 feet; thence S71°20'38"E 100.49 feet, to the northwesterly right of way line of North Johnson Avenue; thence N47°53'16"E 549.37 feet, on said right of way of North Johnson Avenue to the southwesterly right of way of the Grand Trunk Western Railroad; thence N43°47'05"W 3700.00 feet, on said railroad right of way; thence S47°53'49"W 1488.46 feet; thence S00°02'55"E 318.35 feet, thence N89°16'27"W 552.49 feet, to the point of beginning, containing 216.02 acres.

On behalf of the Developer:

Signature:  /Date: July 27, 2001

Printed: Walter Cohen

Its: President

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EXHIBIT E