

# AGENDA

## DOWNTOWN DEVELOPMENT AUTHORITY



### Board Members:

Mayor Rosalynn Bliss • Kayem Dunn • Jermale Eddie • Dr. Wendy Falb  
Jane Gietzen • Brian Harris • Diana Sieger • Jim Talen • Rick Winn

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Wednesday, August 9, 2017  
8:00 a.m. Meeting  
29 Pearl Street, NW Suite #1

- |   |           |                  |
|---|-----------|------------------|
| 1. Call to order  |           |                  |
| 2. Approve Meeting Minutes from June 14, 2017 (8:01)<br>(enclosure)                         |           | Harris           |
| 3. Authorize Funding for River Trail Design Guidelines (8:04)<br>(enclosure)                | Motion    | Kelly / DeClercq |
| 4. Approve DEG Historic Preservation Support for 144 S. Division Ave. (8:14)<br>(enclosure) | Motion    | Kelly            |
| 5. Approve Purchase of Pedestrian Counters (8:24)<br>(enclosure)                            | Motion    | Larson / Kelly   |
| 6. Approve Development Agreement for Studio C! (8:34)<br>(enclosure)                        | Motion    | Larson           |
| 7. President & CEO Report (8:59)  | Info Item | Larson           |
| 8. Public Comment (9:05)  |           |                  |
| 9. Board Member Discussion (9:08)   |           |                  |
| 10. Adjournment   |           |                  |

## UNAPPROVED MINUTES

### MEETING OF THE DOWNTOWN DEVELOPMENT AUTHORITY

June 14, 2017

1. Call to Order – The meeting was called to order at 8:03 am

2. Attendance

Present: Mayor Rosalynn Bliss, Kayem Dunn, Jermale Eddie, Dr. Wendy Falb, Jane Gietzen, Brian Harris, Diana Sieger, Jim Talen, Rick Winn

Absent:

Others Present: Kristopher Larson (Executive Director), Murphy Ackerman (DDA Executive Assistant), Jana Wallace (DDA Treasurer), Jennie Schumacher, Tim Kelly, Andy Guy, Kim Van Driel, Jono Klooster, Jourdon Eatman, Mark DeClerq, Melvin, Jim Harger, Jesse O'Brian, Lisa Gavranovic, Mike Corby

3. Approve Meeting Minutes from May 31, 2017

*Motion: Jane Gietzen, supported by Dr. Wendy Falb, moved approval of the minutes from the May 31, 2017 meeting as presented. Motion carried unanimously.*

4. Accept May 31, 2017 Financial Statements

Ms. Wallace gave an overview of the May 31<sup>st</sup> financials. Ms. Wallace explained that there is only one month prior to the end of fiscal year and reminded the Board that there would not be financial statements until the fiscal year is closed.

*Motion: Mayor Rosalynn Bliss, supported by Diana Sieger, moved to approve Statement D: Schedule of May 31, 2017 Expenditures as recommended. Motion carried unanimously.*

5. Adopt FY18 DDA Budgets and Priority Plans

Mr. Larson explained that this is the final step of the budget process. Mr. Larson said at the last meeting all three (3) budgets were approved for recommendation to the City Commission. City Commission has since approved the budgets and they have now come back to this Board for final adoption. Mr. Larson said if the Board should wish to modify this budget throughout the year, they can do so through the budget amendment process. Mr. Harris said while there is some flexibility within line items, the bottom line should remain consistent. Mr. Talen thanked Mr. Larson and staff for their continued forward thinking in regards to the budgeting process and how the Alliances have had the opportunity help build the budget. Dr. Falb thanked staff for their continued focus on GR Forward implementation and the delineated budget line items.

*Motion: Kayem Dunn, supported by Jim Talen, moved to adopt the FY18 DDA Budget and Priority Plan. Motion carried unanimously.*

6. Authorize Funding for Lyon Square Design Development

Mr. Larson reminded the Board of the work that has been done up to this point to bring the project to this iteration of design. Mr. Larson said this project has presented interesting challenges as there are a lot of competing uses and priorities that need to be accommodated in terms of the design approach while also trying to ensure that the focus is on the river's edge as we look to the future of the river. Mr. Larson said there is a formal agreement with the City for DGRI to work on the conceptual design phase, but also realizing because it is a public right of way, they need to provide direct oversight for the project. Mr. DeClerq gave an overview of the next steps and explained that coordination with the Whitewater team as well as neighboring owners will be imperative as much of this work will need to be coordinated at the same time. Mr. DeClerq said any of the work that occurs in the water will need to have applications submitted to the DEQ. Mayor Bliss asked why the project is tied to the river restoration. Mayor Bliss noted that this appears to be a standalone project, and is curious why Whitewater would need to submit any permits. Mr. DeClerq said any work that needs to be done in the water has to be reviewed by the DEQ and if we were to submit permits on our own it would delay the project significantly. Because Whitewater has already been moving towards permit submittal it will be more time efficient to submit this work with their project to the DEQ. Mr. DeClerq said while it is possible to submit the permits independently it would slow the project progress. Mr. Talen asked if there are approvals needed for flood wall removal. Mr. DeClerq said there is approval needed from FEMA. Ms. Sieger asked if the dam needs to be removed prior to the pieces being built in the water. Mr. DeClerq said yes. Mr. Bishop said now that the schematic designs have been completed he is working closely with the City to create a management system for upkeep. Ms. Gietzen asked if there is a possibility that the plaza will not happen. Mr. Larson said because it is a public right of way, the City has control of that piece, but will need to work closely with both the hotel and convention center which primarily use the space. There are still practical uses that need to be considered and designed for. Mr. Harris asked when the Board will be informed of operational costs and management plans. Mr. DeClerq said after the design process is completed and materials are identified, there will be an operational and management budget presented. Mr. Harris asked if the DDA will be responsible for managing the upkeep of the square. Mr. Larson said it is considered a park, so it will be primarily managed by the City's Parks and Recreation department. Mr. Larson said there could be an exploration of other contributions, such as special assessments, in the future. Mr. Winn asked if the next phase will include both the dry and wet pieces, even though they might not be constructed concurrently. Mr. Bishop said, yes. Mayor Bliss asked if it is a reasonable hope to have construction begin next year. Mr. Bishop said it would be a tight timeline to stick to, but it is in fact possible. Mayor Bliss asked if the City has identified funds for the project to help assist with future phases. Mr. DeClerq said yes.

*Motion: Mayor Rosalynn Bliss, supported by Jane Gietzen, moved approval of the recommendation to authorize \$370,000 in funding to support design development work for Lyon Square. Motion carried unanimously.*

7. Consent to OPRE for 840 Ottawa Ave

Mr. Kelly introduced the project at 840 Ottawa. Mr. Kelly said this is a request for the relocation of Integrated Architecture's headquarters from the City of Kentwood to Downtown. Mr. Kelly gave an overview of the functions of the OPRE and explained that this building is located in the now expanded DDA boundaries. If the abatement is approved, it would include an exemption for ten (10) years. Mr. Kelly said this request will also go before the MNTIFA immediately following this meeting and then will go before City Commission for final approval. Mr. Harris asked if this will be a loss for the

MNTIFA. Mr. Kelly said, yes. Mr. Larson said the DDA approval is a formality because it will not have financial ramifications. The financial ramifications will be felt by the MNTIFA.

*Motion: Jane Gietzen, supported by Rick Winn, moved to consent to the granting of a 10-year tax Obsolete Property Rehabilitation Exemption for the for the property located at 840 Ottawa Avenue NW. Motion carried unanimously.*

8. Consent to Liquor License for 118 Fulton

Mr. Kelly introduced the liquor license request for 118 Fulton, the current location of Brian's Books. Lisa Gavranovic introduced the project and explained that it will be a casual fine dining Mexican restaurant. Ms. Gavranovic said the project anticipates 30 full-time jobs and 40 part-time jobs. Mr. Kelly said, if approved by this Board, the request will advance to City Commission for approval.

*Motion: Rick Winn, supported by Kayem Dunn, moved to approve the resolution for the issuance of a development area liquor license for 118 Fulton Operating, LLC for the proposed restaurant at 118 Fulton Street. Motion carried unanimously.*

9. Presentation: Grand Rapids African American History Tour

Ms. Traylor introduced the new African American History Tour and explained that it is an extension of the Black History Month project. Ms. Traylor said that this project was produced in conjunction with GR Apps and is narrated by City Commissioner Joe Jones. Ms. Traylor said the tour will launch on the Juneteenth holiday and explained how to download and participate in the tour. Mr. Harris asked how people will know that this tour is available. Ms. Traylor said she has connected with other groups and entities such as Experience GR to make it available to those visiting the city. Ms. Traylor said DGRI will also be promoting it on its various social media channels. Mr. Larson thanked both Ms. Traylor and Mr. Guy for the work that they put into this project.

8. President & CEO Report

DDA 6/15/17

- Will consider adoption of FY18 Budget
- Will consider funding to support design development for Lyon Square
- Will consider liquor license for 118 Fulton

DID 5/15/17

- Approved and recommended FY18 Budget
- Received update on spring plantings
- Received a report and overview on pedestrian counter data

MNTIFA (6/15/17)

- Will consider OPRE for 840 Ottawa
- Will consider adoption of FY18 Budget

DGRI (4/18/17)

- Approved updated inter-organizational term sheet with City
- Receive presentation from VoiceGR Survey
- Reviewed DGRI Performance Indicator Methodology

- Approved Alliance 2.1 model

Alliances:

**Alliance 2.1 recruitment underway! Closes Friday, June 16.**

**INVESTMENT**

- Chair: Nikos Monoyios, Long Range Planner @ The Rapid
- Reorganizing into GR Forward Goal-Oriented Implementation Committees

**VIBRANCY**

- Chair – Brandy Moeller, City of Grand Rapids
- Reorganizing into GR Forward Goal-Oriented Implementation Committees

**LIVABILITY**

- Reorganizing into GR Forward Goal-Oriented Implementation Committees

**DGRI Staff Highlights**

- **Personnel – hired Project Specialist – will start July 10, 2017**

Events / Marketing / Communications / Engagement

- Relax at Rosa going strong!
- MITP – Series Launch this Friday, June 16!
- Rollin' Out Food Truck event May 21, 2017 @ Heartside Park – Awesome success

- Produced and Launched Grand Rapids African-American History Tour on GR Walks App
- State of the Downtown – Knickerbocker @ New Holland Brewery - July 13<sup>th</sup> at 5:30 PM!

Planning / Development

- Participating with City of Grand Rapids in 201 Market RFQ reviews
- Finalizing selection of River Trail Design Guidelines consulting team – to DDA in July
- Daniel Rose Fellowship:
  - Hosted Grand Rapids Study Visit Mar 20-23 for Daniel Rose Fellowship.
  - Project page available on the website. Follow-up engagement opportunity currently underway.
  - KL attended Anchorage Study Visit Apr 3-7
  - Fellowship Team presented a mid-year fellowship in Seattle Tuesday, May 2<sup>nd</sup>
  - Planning 2<sup>nd</sup> Study Visit to Grand Rapids to occur in August / September
- IDA Value of Downtowns – Planning to incorporate findings in State of Downtown program
- Area 4/5 – Amended Development Agreement delivered. Team has until July 15, 2017, to sign
- Transformational Brownfield (MIThrive)– Signed by the Governor on June 7<sup>th</sup>.

9. Public Comment  
None

10. Board Member Discussion

None

11. Adjournment  
The meeting adjourned at 9:31am



# CITY OF GRAND RAPIDS AGENDA ACTION REQUEST

**DATE:** August 9, 2017

**TO:** Kristopher Larson, AICP  
Downtown Development Authority  
Executive Director

**FROM:** Mark DeClercq, City Engineer  
Engineering Department

*MAD*

**SUBJECT: Grand River Corridor Implementation Plan and River Trail Design Guidelines**

City planning processes have, for decades, recognized the value of the Grand River as an important natural asset. The Grand River and its corridor riverbank edges have been envisioned in several community plans, including the City's master plan in as early as 1923, the Grand River Edges Plan and Central Area River Land Policy recommendations in the 1980s, the 2002 City of Grand Rapids Master Plan and the 2011 Green Grand Rapids Plan (an amendment to the 2002 Master Plan) which ultimately expanded upon these ideas. Embedded in the Green Grand Rapids Plan was a recommendation to "pursue river and stream restoration" and "capitalize on the Grand River as an asset for economic development and quality of life." More recently, the GR Forward Downtown and Grand River Plan of Action (completed in 2015) listed "restore the river as the draw and create an equitable and connected river corridor" as one of its main goals. GR Forward also identified twenty-seven (27) "opportunity sites" – spaces for the development of parks and trails –along the river. The new and approved Parks and Recreation Strategic Master Plan also envisions new park spaces along the river and emphasizes opportunities for new and enhanced river recreation. Following the completion of Green Grand Rapids in 2011, the Grand Rapids Whitewater (GRWW) organization emerged as a grassroots effort to restore and revitalize the Grand River. GRWW has championed this initiative and developed plans for removing dams and restoring the City's namesake rapids. Their efforts and plans have been incorporated into GR Forward and the Parks and Recreation Strategic Master Plan.

Through these years of citywide, citizen-driven planning initiatives, the community has developed a broadly supported vision for the future of the Grand River as a river corridor. Transforming the Grand River from a dramatically underutilized asset and reactivating the potential recreational value of the river corridor into a distinct civic amenity is a game-changing initiative that will deliver far-reaching regional economic, environmental, and social benefits. The forward- thinking strategy for the Grand River Corridor will make the waterway safer, protect vulnerable homes and businesses from flooding, leverage substantial private investment in new development, and transform the river corridor from a divider of east and west into a central gathering place for the entire community to enjoy. It is now time to develop unifying design guidelines and an

implementation plan for the Grand River Corridor and its river edges.

This next phase of project effort is to develop design guideline documents for approximately seven and a half (7.5) miles along the east and west banks of the river. Design guidelines will create an identity for the river corridor, develop character themes for different segments of river trail, and identify consistent elements along the pathway. The design guidelines will also develop the river's edge and its interfaces between the "wet and dry". Key factors include creating as much public access to the river as possible, developing an urban river edge and a natural edge, features that can withstand a naturally harsh river environment, and modifications to maintain or increase the current level of flood protection. This project will also provide schematic designs and construction cost estimates for six (6) of the twenty-seven (27) opportunity sites along both sides of the river. Similar to the recent opening of the Coldbrook demonstration site, this anticipates designs for public open park space, river access and circulation for a multitude of recreational enthusiasts. The six (6) opportunity sites under consideration are:

1. Public Access immediately south of the Southbound US131/Market Avenue Ramp (a portion of land on which the Public Service Group resides);
2. Public properties immediately north of I-196;
3. Canal Street Park boat ramp and the former Coldbrook pumping station site;
4. Leonard Street to Ann Street river edge trail;
5. North Monroe Water Department Storage Yard; and;
6. Grand Rapids Public Museum (GRPM)

These sites were carefully selected to efficiently align with construction use for river access, staging of equipment, and material stockpiling during the river restoration work. As the river contractor demobilizes from these river access sites, the City can subsequently restore these sites by constructing park space improvements for Grand River public recreational access and circulation.

The project will have a substantial public engagement process to solicit feedback on potential materials and products that will be incorporated into the design guidelines and schematic designs. Potential materials and products will be showcased at the GRPM and at other visual river edge locations for the public to "touch and feel".

GRPM is enthused that this opportunity is timed well with the museum's strategic master plan. Students with the GRPM and Grand Rapids Public Schools partnership are already engaged with concept ideas for hands-on learning and programming that will be considered for schematic designs of the museum's riverfront.

A Qualification Based Selection Process (QBS) with written qualification statements and oral interviews allowed an evaluation team to negotiate scope and fee with the most qualified firm. Arising as the most qualified respondent from the QBS process was Wenk Associates, Inc. (Wenk) from Denver, CO. Wenk is nationally known for their project experience and clientele with activating riverfronts and design guidelines for river edges/trails. They have formed a solid team of local expertise and technical partners with FEMA and GRWW coordination. Wenk has responded to a request for a proposal



that consists of their detailed work tasks, schedule and anticipated compensation for the project. The schedule begins with an assessment of existing conditions, an intense public engagement process and design guidelines development effort. Wenk will eventually shift energy to develop schematic designs and construction cost estimates for the six opportunity sites. Wenk has also engaged a national firm to incorporate asset management to assist with a better understanding of operations and maintenance costs associated with sustaining the level of service necessary for public use and a river climate. The schedule is anticipated to conclude in early 2018. This provides opportunity to secure various external sources of funding to support future construction and efficient coordination with river restoration construction.

This project is being financed by the following: City Transformation Fund (\$180,000), City Capital Improvement Fund (\$200,000), Downtown Development Authority (\$130,000), North Monroe TIFA (\$50,000), Grand Rapids Public Museum (\$50,000), and Kent County Drain Commission Chapter 20 Drain Floodwalls and Embankment Bonds Series 2016 (\$30,000).

It is recommended that the DDA approve its share of costs in the amount of \$130,000. At its meeting on July 11, 2017 (City Commission Proceeding No. 86898), the City approved the Professional Services agreement and authorized their share of costs, contingent upon the DDA approving their share of costs.

cc:	Kris Larson, DGRI	Tim Kelly, DGRI
	David Marquardt	Laura Cleypool
	Dale Robertson, GRPM	Stephanie Ogren, GRPM
	Jana Wallace	Jeff Dood
	Molly Eastman	Keith Heyboer
	Scott Saindon	Ruth Lueders
	Tricia Chapman	Jay Steffen

#17013

## SUMMARY OF ESTIMATED COSTS

for

### Grand River Corridor Implementation Plan and River Trail Design Guidelines

#### Project Funding Source(s)

	<u>Currently Approved</u>	<u>Budget Request(s)</u>	<u>Revised Project Estimate</u>
City of GR Transformation Fund	\$180,000	\$0	\$180,000
City of GR Capital Improvement Fund	200,000	0	200,000
Downtown Development Authority	130,000	0	130,000
North Monroe Tax Increment Finance Authority	50,000	0	50,000
Capital Improvement Fund (Museum Share)	0	50,000	50,000
Kent County Drain Commission Chapter 20 Drain Floodwalls and Embankment Bonds	30,000	0	30,000
Total Project Sources	<u>\$640,000</u>	<u>\$0</u>	<u>\$640,000</u>

#### Breakdown of Project Uses

Professional Services Agreement (Wenk Associates, Inc.)	<u>\$600,000</u>
Sub-Total	\$600,000
Contingencies	<u>40,000</u>
Total Project Uses	<u>\$640,000</u>

# Grand River Corridor Plan

[illegible]

# MEMORANDUM

DOWNTOWN  
DEVELOPMENT  
AUTHORITY



DATE: August 7, 2017

TO: Downtown Development Authority

FROM: Tim Kelly, AICP  
Vice President of Planning and Development

**Agenda Item #04**  
**August 9, 2017**  
**DDA Meeting**

**SUBJECT: Downtown Enhancement Grant Request – 144 Division Avenue S (Degage Ministries)**

Degage Ministries (Owner) is requesting approval of a Downtown Enhancement Grant for their building at 144 Division Ave S. The Owner is undertaking a façade restoration for the existing building to improve the building's safety and to preserve and enhance the historic structure.

Total project costs are estimated at \$351,975, and to assist in the renovation the Owner is requesting reimbursement in an amount not to exceed \$50,000. The project will result in the repair and replacement of the entire façade, including repairs to the decorative cornice. Work on the façade is currently underway and is expected to be complete by November 2017.

The façade work is part of a larger restoration project that includes interior renovations as well as relocation of the dining room and main entrance to Sheldon Avenue. Work is expected to begin on these additional elements in 2019. The entire project, including the façade restoration is being funded through a \$3.9 million capital fundraising campaign.

If approved, funding for the façade enhancement will come from the Downtown Development Authority's non-tax fund, and will be issued as reimbursement once the project is complete.

## **Recommendation:**

**Approve the Downtown Enhancement Grant request in an amount not to exceed \$50,000 for 144 Division Avenue S.**



144 Division Ave S



2017

# MEMORANDUM

DOWNTOWN  
DEVELOPMENT  
AUTHORITY



DATE: August 7, 2017

TO: Downtown Development Authority

FROM: Tim Kelly, AICP  
Vice President of Planning and Development

Agenda Item #5  
August 9, 2017  
DDA Meeting

**SUBJECT: Expansion of Existing Pedestrian Count Program**

On May 6, 2016, the Downtown Development Authority (DDA) Board authorized the purchase of six pedestrian counters from Eco-Counter for installation in Downtown (attached).

The counters were purchased to measure pedestrian activity, which is one of the performance metrics adopted by the DGRI Board of Advisors. Since being installed, the counters have provided insights into pedestrian usage of key Downtown public rights-of-way (attached). Further, Goal 3 of GR Forward prioritizes pedestrian safety enhancements at key intersections, pedestrian connectivity improvements, and amenities to enhance and improve walkability Downtown. Accurate pedestrian counts provide critical data to inform and accomplish this goal.

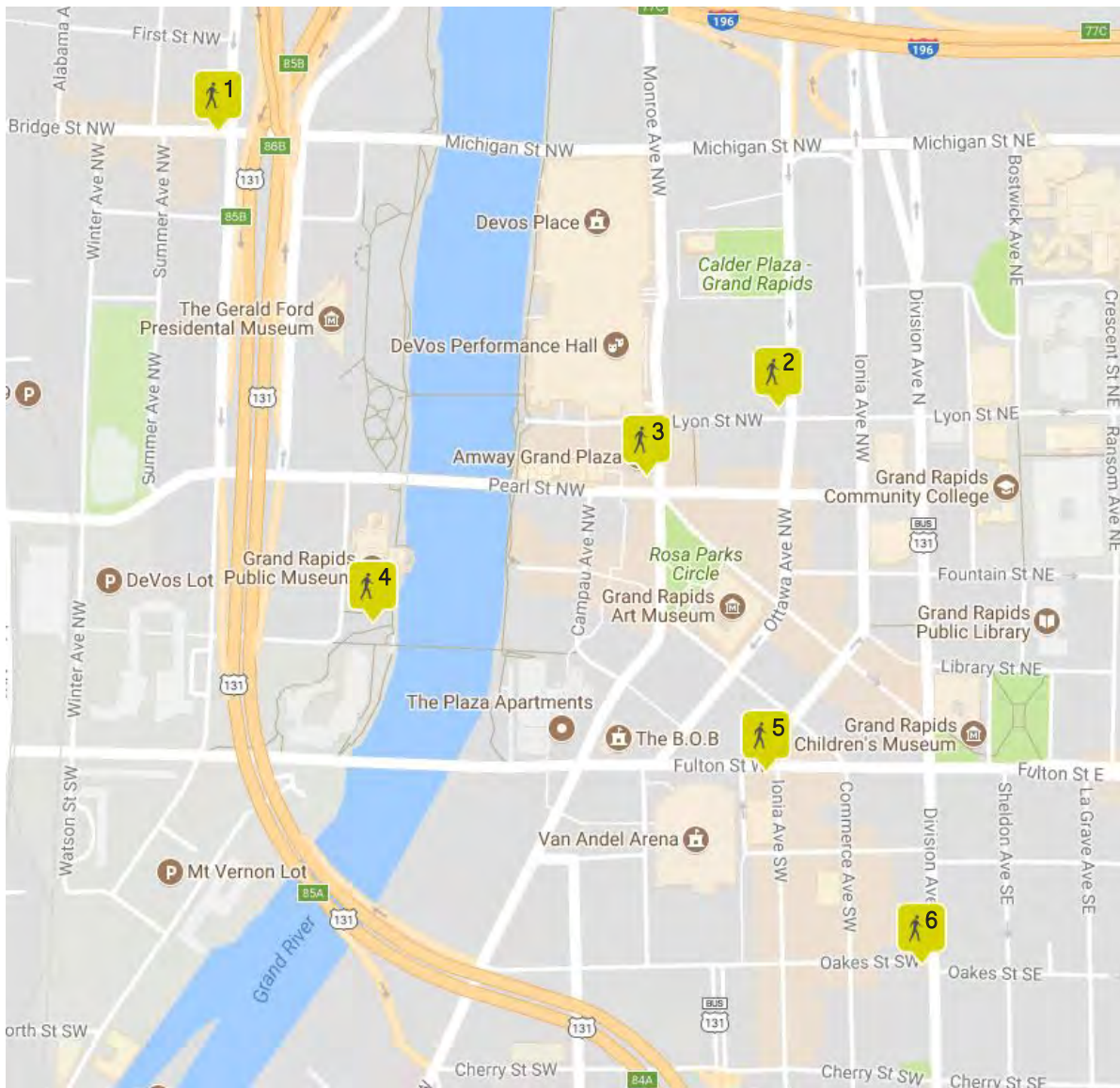
In an effort to expand the program to capture data from additional Downtown locations, staff is seeking approval to purchase six additional counters from Eco-Counter, for an amount not-to exceed \$30,000. Funding for the purchase is provided in the FY18 budget via the Streetscape Improvements line item. If approved, staff will identify locations and have them installed prior to Art Prize 2017.

**Recommendation:**

Approve funding for the purchase of six pedestrian counters from Eco-Counter in an amount not to exceed \$30,000.







1. Bridge St / Mt Vernon Ave
2. Ottawa Ave / Lyon St
3. Pearl St / Monroe Ave
4. Blue Bridge
5. Fulton St / Ionia Ave
6. Division Ave / Oaks St

# Pedestrian Counter Locations

**eco counter** Downtown Grand Rapids Inc. Dashboard

Analyze Selection (6)

Search *By name, serial number, cellular number or comment* Sort By **Name**

Select All | Uncheck All

**User Type**

☒ Pedestrians (6)

**Type**

☐ Automatic Transmission (6)

**Tags**

Location	Remaining battery	Average	Setup Date	Last Data
<input checked="" type="checkbox"/> <b>Blue Bridge SW</b> (2) YPH16070239	13 month(s)	Daily: 1,727	08/30/2016	05/14/2017
<input checked="" type="checkbox"/> <b>Bridge/Mt. Vernon SW</b> (2) YPH16070241	13 month(s)	Daily: 460	08/24/2016	05/14/2017
<input checked="" type="checkbox"/> <b>Division/Oakes SW</b> (2) YPH16070238	13 month(s)	Daily: 888	08/31/2016	05/14/2017
<input checked="" type="checkbox"/> <b>Fulton/Ionia SW</b> (2) YPH16070240	13 month(s)	Daily: 2,831	08/31/2016	05/14/2017
<input checked="" type="checkbox"/> <b>Ottawa/Lyon NW</b> (2) YPH16070242	13 month(s)	Daily: 606	08/23/2016	05/14/2017
<input checked="" type="checkbox"/> <b>Pearl/Monroe NW</b> (2) YPH16070237	13 month(s)	Daily: 2,563		

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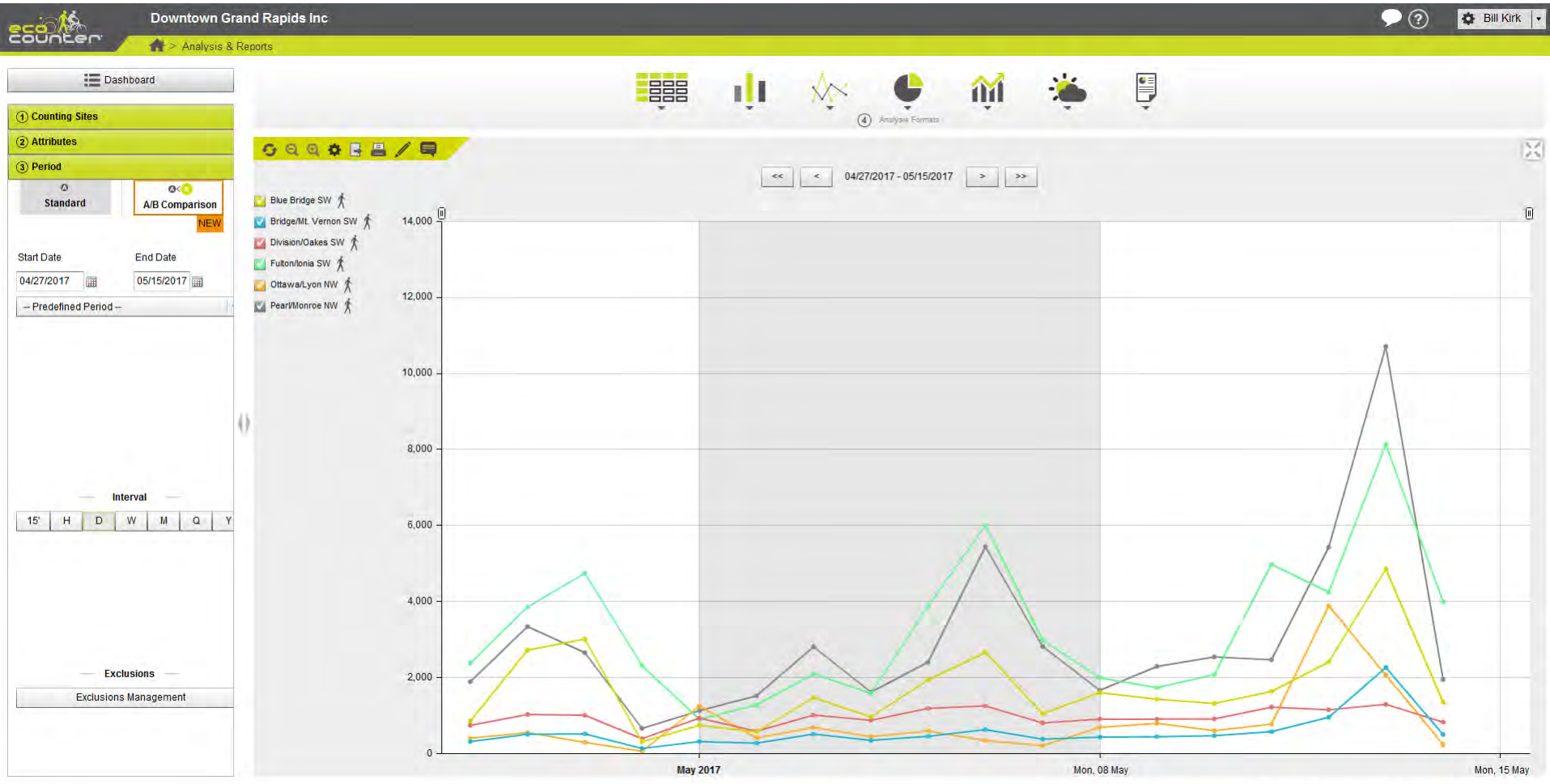
See 10 Counting Sites



# Pedestrian Counter Installed



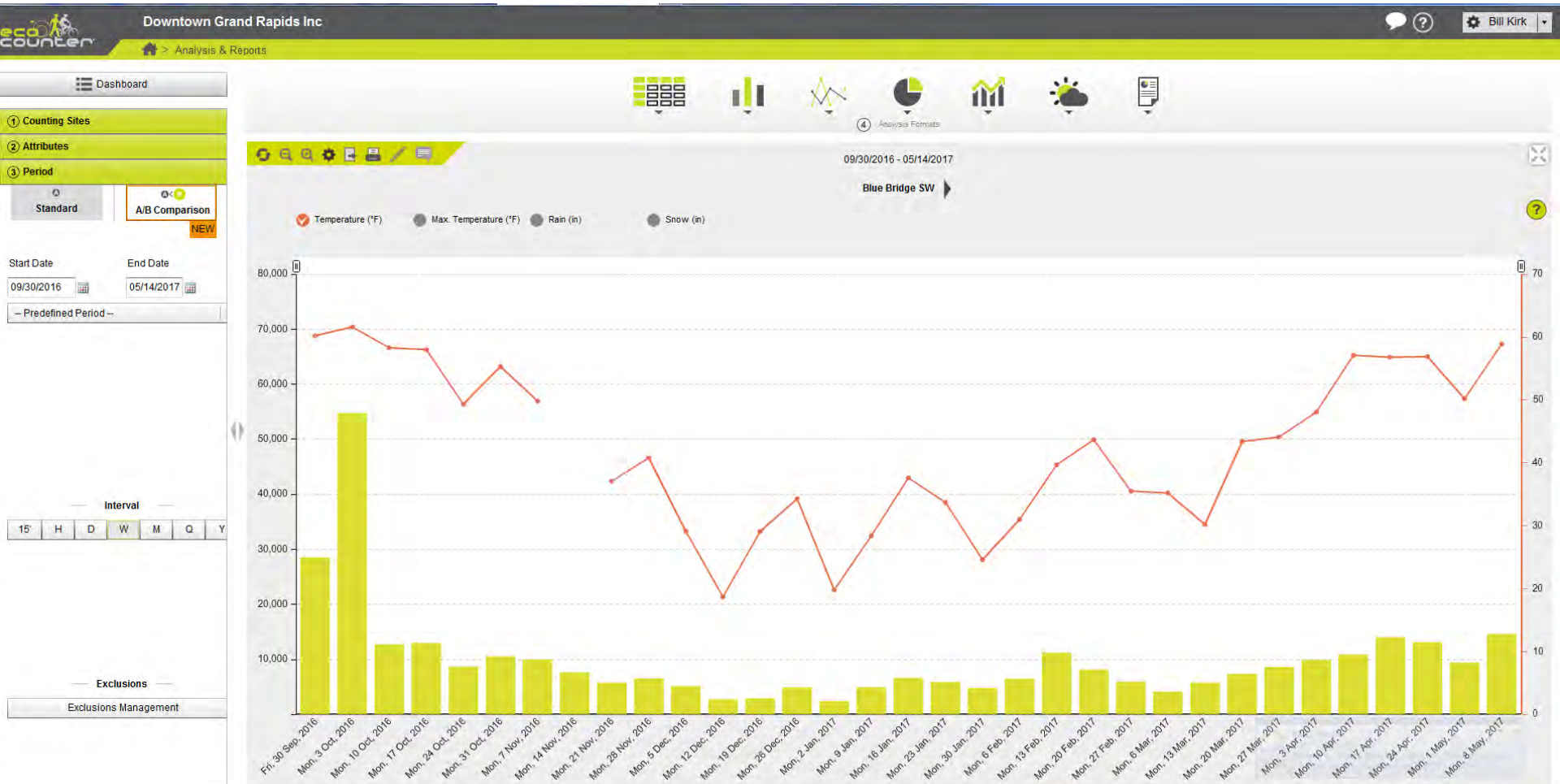
# All six counters, last 3 weeks



# Pearl / Monroe NW, last 3 weeks w/ weather



# Week over week, w/ Temps.

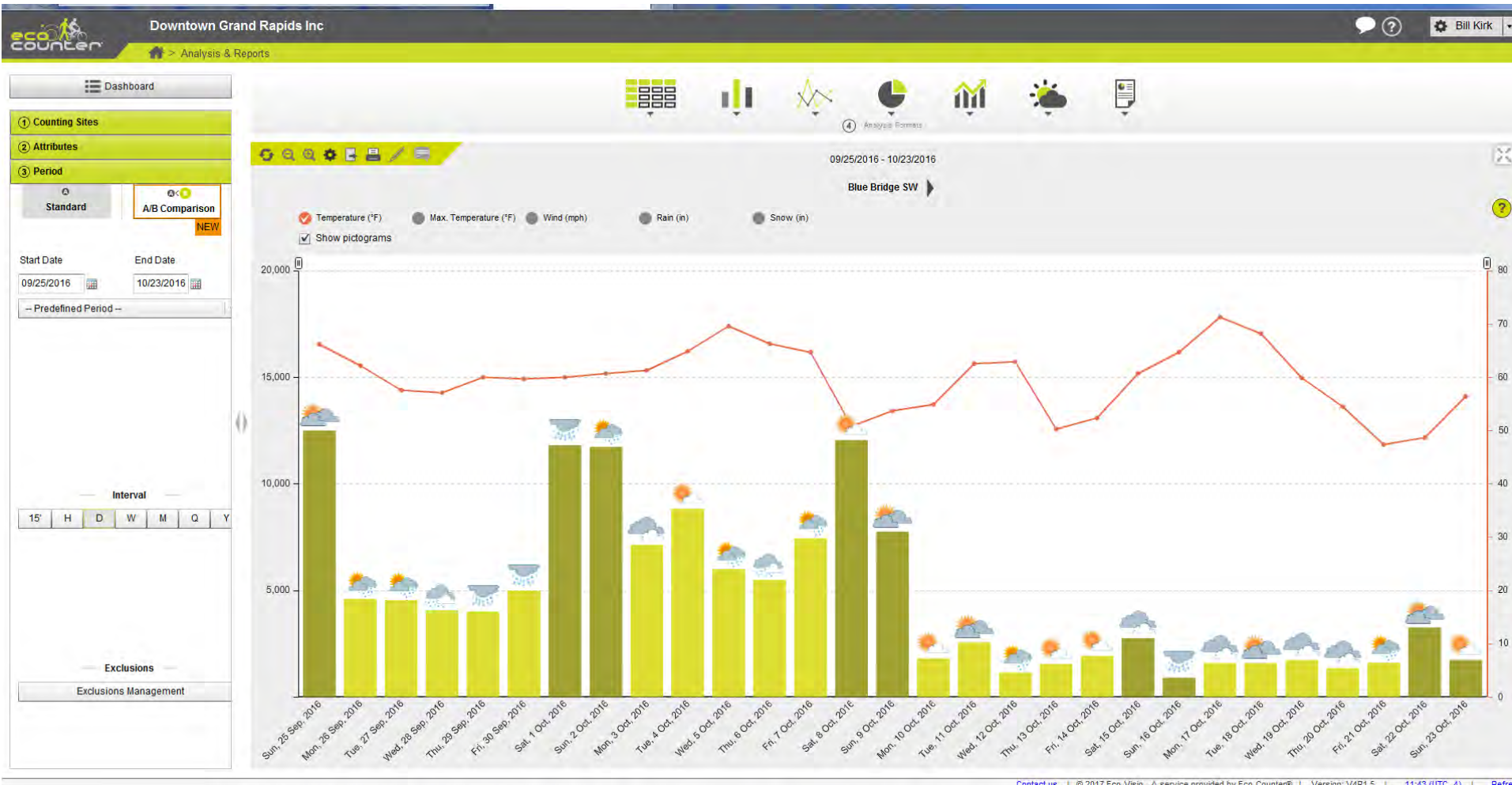




# Bridge / Mt. Vernon – Overpass Improvements



# ArtPrize 2016, with Weather



# Data in use - ArtPrize

## ARTPRIZE EIGHT (2016) IMPACT



47 COUNTRIES  
50 STATES

### TOP STATES

ILLINOIS  
INDIANA  
OHIO  
FLORIDA  
CALIFORNIA



63% DRIVE FROM  
30+ MILES AWAY

**26,710 DAILY VISITORS**

19 day total >500k  
69,198 OUT OF STATE



19,000 STUDENTS  
1,100 VOLUNTEERS

51% OF VISITORS REPORT AN INCREASED  
INTEREST IN ATTENDING ART MUSEUMS,  
GALLERIES AND EVENTS



295  
JOBS  
CREATED



**\$28 MILLION  
ECONOMIC IMPACT**



41,697 HOTEL ROOMS  
BOOKED BY ATTENDEES

\$85  
AVERAGE SPENT  
ON MEALS PER DAY



13 MILES  
ACCESSIBLE  
PATHWAYS

25% OF TOTAL REFUSE COLLECTED  
IS DIVERTED TO RECYCLING  
OR COMPOST

PEDESTRIAN  
TRAFFIC **TRIPLES**



**\$780,000**  
PRIZES + GRANTS  
AWARDED

4 SHOWS IN PRIMETIME

LOCAL TV  
VIEWERSHIP  
**TRIPLES**

**160  
MILLION**

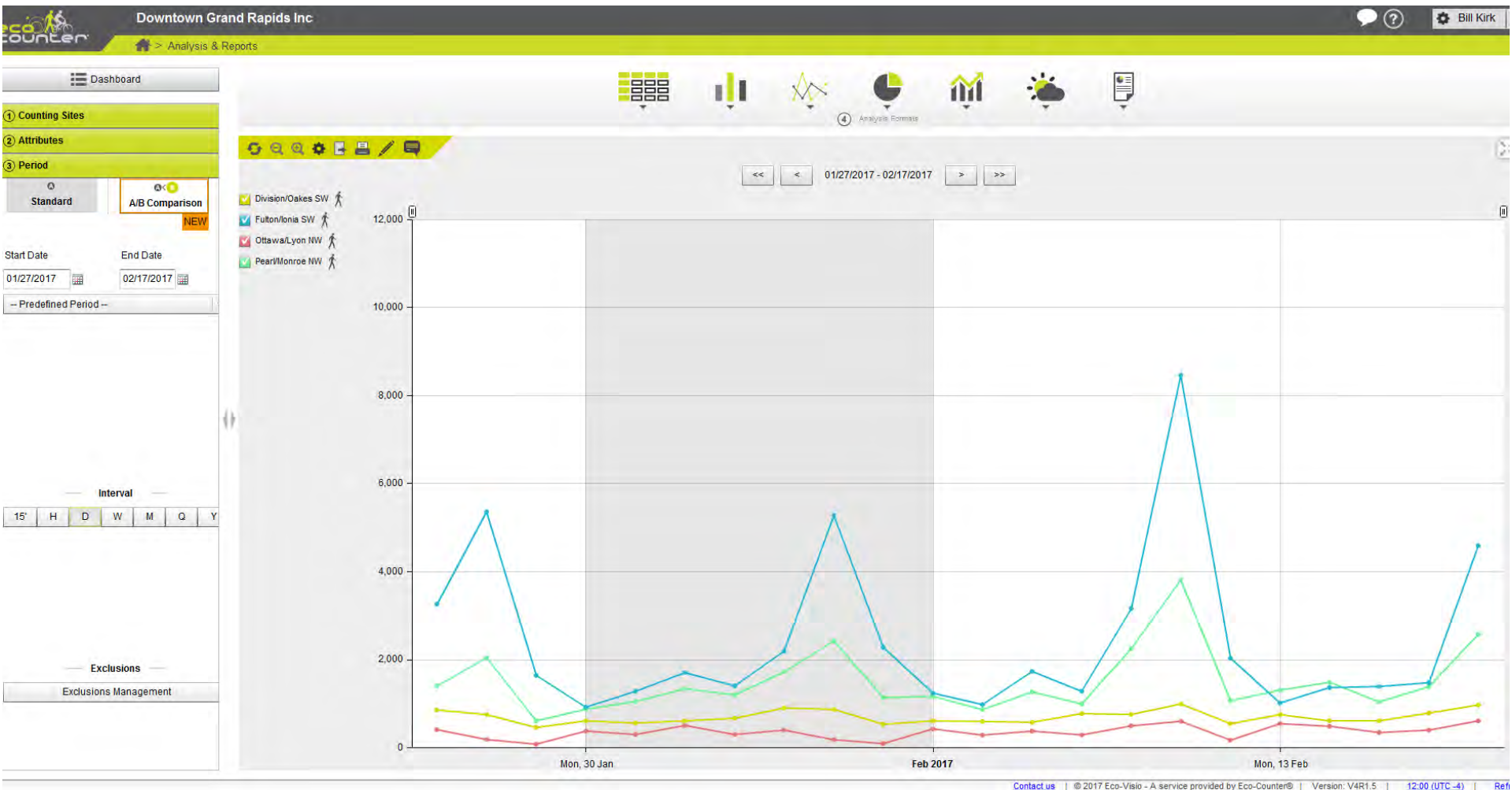


15 OUT OF 20  
US MEDIA MARKETS





# Snow Days 2017, Increase 68%





# MEMORANDUM

DOWNTOWN  
DEVELOPMENT  
AUTHORITY



DATE: August 7, 2017

TO: Downtown Development Authority

FROM: Kristopher Larson, AICP  
President & CEO

**Agenda Item #6**  
**August 9, 2017**  
**DDA Meeting**

SUBJECT: **Approve Development Agreement for Studio C! Mixed-Use Development Project on Areas 4/5**

## BACKGROUND

On February 20, 2012, the property known as “Parking Area 5” was listed on the Multiple Listing Service (MLS). One offer and the required deposit were received by the due date. This offer was received from Jackson Entertainment, LLC, (JE LLC) an offshoot of the Celebration Cinema company. The Downtown Development Authority (DDA) Board approved entering into 2-year option (the Option) for Area 5 with Jackson Entertainment, LLC, on April 11, 2012. The Option was executed by both parties on April 30<sup>th</sup>, 2012, with \$50,000 paid to the DDA.

After entering into the Option, the DDA conducted Arena South Visioning, a 6-month planning process intended to guide the DDA’s disposition of land assets in the area south of the Van Andel Arena. This planning process, approved by the DDA on April 10, 2013, yielded specific principles for guiding the DDA’s investment priorities in the district, including but not limited to growing business and economic opportunities, greening streets, buildings, and public spaces, building compact urban blocks that are densely developed and designed for people, connecting transit, shops, restaurants, hotels, schools, and the Grand River, plus living and engaging in a multi-season inclusive environment.

Representatives from JE LLC participated in Arena South Visioning, as they recognized the importance and value that a community-driven planning process could add to their project’s design and relationship to new investments around them. Their willingness to participate also resulted in a decision to halt design work on the site until a clearer picture of the community’s priorities emerged. Since the completion of Arena South Visioning, and subsequently GR Forward, the development team has sought to incorporate community priorities into the development opportunity site. Recognizing the development team’s intent for the Studio C! development project to best incorporate community goals, the DDA Board provided two additional extensions of the Option before entering into a Term Sheet Agreement (Term Sheet) in April, 2016. The Term Sheet provided a development envelope that included:

- A 9-screen Studio C! movie theater;
- 187 residential units in phase I, plus ~150 in phase II tower (337 residential units total);
- 38,000 SF retail space;



- 900+ space parking ramp built with phase II tower pad (+315 vs. current surface parking supply); and
- a new publicly-owned, privately-managed public piazza.

Among other provisions, the Term Sheet included a mechanism whereby the City of Grand Rapids would purchase the new parking ramp from JE LLC for a cost not-to-exceed \$28M once its construction is complete. Additionally, the Term Sheet provided an obligation for the City and DDA to provide a parking validation subsidy for patrons of the movie theater.

## PROJECT UPDATE

Since the execution of the Term Sheet, the JE LLC development team has worked to further define and refine the proposed Studio C! mixed-use development project to reflect current real estate market trends and secure partnership commitments from various development partners. The current investment total includes \$110M for phase 1 of Studio C!, plus an additional \$30M for the phase II tower. At this stage, the development agreement includes the following development components:

- A 9-screen Studio C! movie theater;
- 98 residential units in phase 1, plus approximately 100 units in phase II tower;
- 32,500 SF retail space;
- a 140-room four-star hotel;
- a minimum of 30,000 SF of Class A office space;
- a 750-900 space parking ramp built with phase II tower pad; and
- a new publicly-owned, privately-managed public piazza

In addition to the refinement of project components, the proposed development agreement includes several additional changes from the previously approved Term Sheet. In no particular order, the proposed deal points include:

- **Parking Ramp Ownership** - Rather than purchasing the completed parking ramp from JE LLC, the City of Grand Rapids will now master lease 300 parking passes from JE LLC for an initial term of 7 years. This structure allows the City to provide additional supply to meet district parking needs while eliminating the need to make a \$28M capital expenditure. This structure also means the parking ramp will be subject to property taxes.
- **Theater Parking Subsidy** - Since the developer would now own the parking ramp and therefore can meet their own demands and address their own sensitivities, the parking subsidy for theater patrons from the City of Grand Rapids and the DDA has been eliminated.
- **Ottawa Ave. Extension** - The City of Grand Rapids and the DDA will incur the cost to construct the Ottawa Ave. extension between Oakes and Cherry Streets. The City will issue reimburse JE LLC for the actual costs to build the street extension, and the City will eventually be reimbursed for those expenses through the Brownfield (\$1.79M, 2023-2049) and DDA TIF (\$2.06 M from 2020-2037) streams. It is anticipated that road work and site preparation could begin as early as late fall, 2017. After construction, the portion of Area 4 that remains, west of the new Ottawa Street, will remain under the ownership of the DDA and can be eventually sold as a future development site.
- **Piazza Management** - The JE LLC development team and the DDA have agreed to collaborate on a programming and management agreement for the DDA-owned public piazza.
- **MWBE Retail Incubator** - The JE LLC development team, the DDA, and the City of Grand Rapids have agreed to collaborate on the development of a women- and minority-owned business retail incubator to be included within the retail component of the Studio C! development project.

- **Phase II Tower** – With the change in parking ramp ownership, the City of Grand Rapids and the DDA are providing them with a 10-year option to build a 10-story tower (minimum height) on top of the parking ramp. Should the developer not build or cause to be built during that timeframe, the City of Grand Rapids could choose to buy back the air rights to help cause the eventual development of the Phase II tower.

Per the development agreement included herein, the DDA would consider supporting the project via the following methods, including:

- Providing financial support for the project using its Development Support TIF Program, for a period of 18 years and a current reimbursement of approximately \$5.35 M at its 75% reimbursement level, plus reimbursement to the City of Grand Rapids for the cost to extend Ottawa Ave. at 15% (up to \$2.06M). During that 18-year reimbursement period, it is expected that the DDA will retain approximately \$950K. Following the completion of the reimbursement period, the DDA should capture approximately \$525K annually.
- The DDA's Alliance structure will be actively involved in working with the design team for the public piazza. While the developer will pay to design and build the piazza, ownership will rest with the DDA and management, operations, and security will be performed by the developer.
- Subdividing the current areas 4 & 5, currently bisected by a MDOT-owned section of the northbound highway 131 exit ramp, to create a development pad approach that addresses the public ownership of the piazza, several sidewalks and alleys, as well as a new connection of Ottawa St. that connects Oakes and Cherry Streets. The developer is responsible for constructing the new Ottawa Street connector and will be reimbursed for that expense directly by the City of Grand Rapids. At closing, JE LLC will pay the DDA \$6,876,606 for the land, and the DDA would need to complete the transaction with the City to purchase Area 5 (approx. \$3.06M).

In addition to financial support from the DDA, the JE LLC development team is also pursuing additional public incentives from the City of Grand Rapids Brownfield Authority (GRBRA) and the Michigan Economic Development Corporation (MEDC). JE LLC will request reimbursement of approximately \$19.2M from the GRBRA for privately financed eligible activities (\$17.2M for the parking ramp and \$2.0M for site preparation), and a Community Revitalization Program loan from the MEDC for approximately \$8.4M. Approval of the development agreement does not guarantee approvals from the GRBRA or the MEDC.

If approved and executed by the DDA, the Grand Rapids City Commission and the JE LLC development team, it is anticipated that a closing could occur in approximately 90 days. Along the preferred construction timeline, the development project would begin construction in November, 2017, and conclude approximately two years afterward.

### **Recommendation:**

**Approve the attached resolution and authorize the DDA Board Chair to enter into the development agreement between the DDA, the City of Grand Rapids, and Jackson Entertainment, LLC.**

**DEVELOPMENT AGREEMENT**

**between the**

**CITY OF GRAND RAPIDS DOWNTOWN DEVELOPMENT AUTHORITY**

**the**

**CITY OF GRAND RAPIDS, MICHIGAN**

**and**

**JACKSON ENTERTAINMENT, L.L.C.**

**dated as of**

**August 9, 2017**

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into as of August 9, 2017, by and between the **CITY OF GRAND RAPIDS DOWNTOWN DEVELOPMENT AUTHORITY**, a statutory authority created by the City of Grand Rapids, Michigan (the “City”) pursuant to Act 197 of the Public Acts of Michigan of 1975, as amended (“Act 197”), (the “DDA”) the **CITY OF GRAND RAPIDS, MICHIGAN**, a Michigan municipal corporation (the “City”) and **JACKSON ENTERTAINMENT, L.L.C.**, a Michigan limited liability company (“Jackson”).

### RECITALS

A. The DDA owns two public surface parking lots located west of Ionia Avenue, S.W. between Cherry Street and Oaks Street in the City known as Area 4 and Area 5 and identified and legally described on the attached **Exhibit A** (the “Property”).

B. The DDA and Jackson have previously entered into an Option Agreement dated April 30, 2012, and two subsequent amendments dated March 11, 2015, and October 15, 2015, (collectively, the “Option Agreement”), which, subject to its terms and conditions, granted Jackson an option to acquire the Area 5 portion of the Property.

C. The DDA, City and Jackson have previously entered into a Term Sheet for the Purchase and Development of a Portion of Area 4 and Area 5 Surface Parking Lots dated April 13, 2016 (the “Term Sheet”), for the acquisition of a portion of Area 4, all of Area 5 and an area between Area 4 and Area 5 identified and legally described on the attached **Exhibit B** (the “Development Property”) subject to the terms and conditions of this Agreement.

D. As a condition of acquiring the Development Property, Jackson is required to develop or cause the development of a mixed-use project with a multiplex movie theater with adjacent restaurants or other active-use space consisting of 45,000 square feet (the “Movie Theater”), 98 residential housing units (the “Residential Units”), a minimum of 30,000 square feet of ground floor active-use space (the “Active-Use Space”), a not less than 138 key hotel (the “Hotel”), a minimum of 30,000 square feet of upper floor commercial/office space (the “Commercial/Office Space” and together with the Movie Theater, Residential Units, Hotel and Active-Use Space, the “Developer Portion of the Project”), a public parking structure consisting of not less than 750 parking spaces (the “Parking Structure”), a piazza of not less than 11,500 square feet (the “Piazza”) on the Development Property and the extension of Ottawa Avenue, S.W. from Oak Street, S.W. to Cherry Street, S.W. adjacent on the west to the Development Property identified and legally described on the attached **Exhibit C** (the “Adjacent Property”) (the “Ottawa Avenue Extension” and together with the Developer Portion of the Project, Parking Structure and Piazza, the “Project”) in accordance with the conceptual plans attached as **Exhibit D** (the “Conceptual Plans”).

E. Jackson will acquire the Development Property from the DDA and be provided access by the City to the Adjacent Property for the development and construction of the Project including the Ottawa Avenue Extension in accordance with the terms and condition of this Agreement.

F. The DDA has, pursuant to Act 197, established a Tax Increment Financing and Development Plan as from time to time amended (the “Plan”) for the implementation of development activities within Grand Rapids Development Area No. 1 (the “Development Area”).

G. The Plan provides, in part, that it is the purpose of the DDA to support the development of property in the Development Area by entering into development agreements with private parties owning such property and reimbursing said private parties and, in some cases, the incorporating municipality the costs of public facilities as defined in Act 197, related to the development of such property from tax increment revenues, also as defined in Act 197, realized from the development of such property and available to the DDA for reimbursement.

H. In order to implement said provisions of the Plan, the DDA has adopted a Development Support Policy approved by the DDA Board of Directors on January 11, 2006 (the “Policy”).

I. The Property is located in the DDA Development Area.

J. In connection with its development and construction of the Project on the Property, Jackson and the City will incur the cost of certain “public facilities”, as defined in Act 197, including, but not limited to, public infrastructure and certain costs related to compliance with the legal requirements of the Michigan State Construction Code for architectural designs which eliminate barriers and hindrances and thus deter persons with disabilities from having access to free mobility in and around a building or structure in an amount not to exceed \$8,850,000 (the “Public Facility Improvements”)

K. Jackson and the City have requested reimbursement of such Public Facility Improvement costs from tax increment revenues to be realized by the DDA from the Developer Portion of the Project and the Parking Structure (the “DDA Project Tax Increment Revenues”) in accordance with the terms and conditions of the Policy as modified by the terms of this Agreement for the Project, in connection with its development of the Project.

L. The Project, including the Public Facility Improvements, will fulfill, in part, the purposes of Act 197 and the Plan and assist in the development and redevelopment of the Development Area.

M. The City has established the City of Grand Rapids Brownfield Redevelopment Authority (the “GRBRA”) pursuant to Act 381 of the Public Acts of Michigan of 1996, as amended (“Act 381”), pursuant to which GRBRA is authorized to capture GRBRA tax increment revenues, as defined in Act 381, realized from the Developer Portion of the Project and the Parking Structure to reimburse Jackson for costs of “eligible activities,” as defined in Act 381 in an amount not to exceed \$32,500,000 and to reimburse the City the costs of the Ottawa Avenue Extension.

N. Jackson intends to request GRBRA reimbursement of the cost of Act 381 eligible activities from tax increment revenues to be realized by the GRBRA from the Developer Portion of the Project and the Parking Structure.

O. The City intends to recommend and support a request of Jackson for the capture and use of GRBRA tax increment revenues realized from the Developer Portion of the Project and the Parking Structure for Act 381 eligible activities and understands that the Project is dependent on the availability of such tax increment revenues *provided, however*, it is agreed and understood that (i) the first \$2,000,000 of GRBRA tax increment revenues as received will be used to reimburse Jackson for the cost of its Act 381 eligible activities and (ii) thereafter, GRBRA tax increment revenues will be divided with 91% used to reimburse Jackson for the cost of its Act 381 eligible activities and 9% will be used to reimburse the City for the cost of the Ottawa Avenue Extension eligible activities as shall be adjusted to reflect each's proportional share of actual eligible activities costs, *provided, further*, Jackson shall not be reimbursed from such GRBRA tax increment revenues realized until Completion of the Project has occurred. Until then such amounts shall be held by GRBRA.

P. Jackson intends to apply for a Michigan Strategic Fund (the "MSF") low interest, flexible term Michigan Community Revitalization Program loans in the approximate amount of \$8,400,000 (the "CRP Loans") and the DDA and City agree to be supportive of obtaining the CRP Loans to the MSF.

**NOW, THEREFORE**, for and in consideration of the mutual undertakings as set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the DDA, City and Jackson agree as follows:

## **ARTICLE I DEFINITIONS, LANGUAGE AND CONTEXT**

**Section 1.01. Definitions.** In addition to the terms defined elsewhere in this Agreement, for purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the following meanings:

"Change in Law" means the occurrence, after the Effective Date, of one of the following events, provided (i) such event materially changes the costs or ability of Jackson to carry out its obligations under this Agreement and (ii) such event is not caused by Jackson:

- a. the enactment, adoption, promulgation or modification of any federal, State or local law, ordinance, rule or regulation;
- b. the order or judgment of any federal or State court, administrative agency or other governmental body;
- c. the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for undertaking the services or obligations to be performed under or required by this Agreement; or

d. the adoption, promulgation, modification or change in interpretation in a written guideline or policy statement by a governmental agency.

“City Commission” means the City Commission of the City.

“City Manager” means the City Manager or his/her designee.

“Closing” means the date Jackson acquires the Development Property pursuant to this Agreement.

“Completion of the Project” means Jackson has (a) substantially completed or caused the substantial completion of all buildings, structures and site improvements, including the Piazza and the common areas, for the Project, (b) made available or caused to be made available for lease or purchase all Residential Units, (c) made available or caused to be available for lease or purchase all Retail Space and Commercial/Office Space, (d) opened or caused to be opened to overnight guests the Hotel, (e) completed or caused completion of the Parking Structure so it is available for its intended use in accordance with the terms of this Agreement, and (f) completed or caused completion of the Ottawa Avenue Extension. For purposes of this definition “substantially completed” or “substantial completion” means receipt of a certificate of occupancy for each element of the Project except the Ottawa Avenue Extension and with respect to the Ottawa Avenue Extension means open for motor vehicular traffic.

“Day” means a business day.

“DDA Board” means the Board of Directors of the DDA.

“Effective Date” means the date indicated in the first paragraph of this Agreement.

“Environmental Condition” means any condition or situation existing on, under, at or about the Property, the groundwater, subsurface water, and/or underground soil and geologic conditions thereunder, as of the Execution Date which (i) constitutes a violation of any State or federal environmental law, regulation or ordinance, (ii) does or might form the basis of any public or private claim or cause of action for the cleanup or remediation as a result of the release, threatened release, migration or the existence of any contaminants, pollutants, petroleum and petroleum byproducts, crude oil or any fraction thereof, chemicals, wastes or substance (including, without limitation, regulated substances, hazardous wastes and hazardous substances as such terms are commonly used or understood within the framework of existing federal and State laws), (iii) is a release or a threatened release of hazardous wastes or hazardous substances, or (iv) is described or included in any report provided by the DDA or City to Jackson or in any report or assessment generated by Jackson related to the Property.

“Environmental Law” means any federal or State law, statute, regulation, rule, order, decree, judgment or direction concerning environmental protection or health and safety including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act 1980, as amended, and the Toxic Substance Control Act, as amended.

“Executive Director” means the Executive Director of the DDA and his/her designee.

“Jackson Affiliate” means an entity which controls, is controlled by, or is under common control with Jackson and which has the same members, partners or shareholders owning in the aggregate at least fifty percent (50%) of the ownership interest in Jackson. As used herein “control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract or otherwise.

“Jackson Representative” means a person designated by Jackson to the DDA and City in writing to act as its representative in connection with the planning, development, construction and financing of the Project and the administration of this Agreement.

“Person” means any individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust or government or any agency or political subdivision thereof.

“State” means the State of Michigan.

“Uncontrollable Circumstances” means any event that:

- a. is beyond the reasonable control of and without the fault of Jackson; and
- b. is one or more of the following events:
  - i. a Change in Law;
  - ii. insurrection, riot, civil disturbance, sabotage, act of a public enemy, act of terrorism, explosion, nuclear incident, war or naval blockade;
  - iii. epidemic, hurricane, tornado, landslide, earthquake, lightening, fire, windstorm, other extraordinary weather conditions or other similar act of God;
  - iv. governmental condemnation or taking;
  - v. strikes or labor disputes;
  - vi. delays in the issuance of building or other permits, variances, licenses or approvals by the City or other governmental authority having jurisdiction;
  - vii. shortage or unavailability of essential materials which materially changes the ability of Jackson to carry out its obligations under this Agreement;

- viii. unknown or unforeseeable Environmental Conditions;
- ix. unknown or unforeseeable geotechnical conditions which delay construction of the Project; or
- x. non-performance of the DDA or City which delays construction of the Project.

“Uncontrollable Circumstances” shall not include economic hardship or a failure of performance related to the construction of the Project by a contractor(s) (except as caused by events which are Uncontrollable Circumstances as to the contractor(s)).

“Warranty Deeds” mean the deeds attached hereto as **Exhibit E**.

**Section 1.02. Language and Context.** Except where the context by clear implication shall otherwise require, this Agreement shall be construed and applied as follows:

- a. Definitions include both singular and plural.
- b. Pronouns include both singular and plural and cover all genders.
- c. Section headings are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- d. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be incorporated by reference in the context of use where mentioned and referenced in this Agreement and in the event of a conflict between any exhibit and the terms of this Agreement, this Agreement shall control.
- e. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth.
- f. Reference herein to supplemental agreements, certificates, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- g. The Executive Director, unless the provisions of this Agreement otherwise require, shall be the DDA’s representative in connection with the implementation of the provisions of this Agreement and shall have the authority to make or grant or do those things, certificates, requests, demands, notices and other actions described in this Agreement for and on behalf of the DDA as indicated herein.
- h. The City Manager, unless the provisions of this Agreement otherwise require, shall be the City’s representative in connection with the implementation of the provisions of this Agreement and shall have the authority to make or grant or do those

things, certificates, requests, demands, notices and other actions described in this Agreement for and on behalf of the City as indicated herein.

i. The DDA, City and Jackson shall respectively be entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the DDA, City and Jackson, respectively, as having been properly and legally given by the DDA, City and Jackson, respectively.

j. In connection with all actions to be taken by Jackson under this Agreement and unless this Agreement requires action of Jackson in a different manner, Jackson agrees to designate a Jackson Representative as its authorized representative who shall have the authority to make or grant or do all things, supplemental agreements, certificates, requests, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Jackson as indicated herein. Jackson shall have the right to change its Jackson Representative by providing the DDA and City written notice of such change in accordance with Section 19.13 hereof.

## **ARTICLE II PROJECT**

**Section 2.01. Acquisition of the Development Property.** Subject to the terms of this Agreement, including specifically Article XI hereof, Jackson will acquire and the DDA and/or City will convey all ownership and/or rights in and to the Development Property by Warranty Deed(s).

**Section 2.02. Inspection and Investigation.** Jackson acknowledges that it has conducted inspections, tests, surveys, assessments, studies and investigations of the Property as it determined necessary and has satisfied itself that the Property is suitable for the Project. By execution of this Agreement Jackson is acknowledging to the DDA and City of such satisfaction and suitability.

**Section 2.03. Development of Project.** Jackson agrees, in accordance with the terms of this Agreement, to develop, construct, finance, complete and operate the Project or cause it to be developed, constructed, financed, completed and operated. The terms of this Section 2.03 shall run with the Property, bind the successors in interest of Jackson and shall remain in effect until December 31, 2040.

## **ARTICLE III ENVIRONMENTAL AND OTHER SITE CONDITIONS OF PROPERTY**

**Section 3.01. Environmental Condition of Development Property.** Jackson acknowledges that it has, or will have, performed such environmental assessments of the Development Property as it determined necessary and as of the Closing Date, will have determined that the Environmental Condition of the Development Property is satisfactory. By execution of this Agreement Jackson is acknowledging to the DDA and City such satisfaction. Jackson hereby waives and releases any claim for contribution against, and covenants not to sue

the DDA or City or their respective officers, board members, commissioners, employees, agents, attorneys, representatives, successors or assigns, whether asserted directly or indirectly, or whether in the nature of an action for contribution, third party proceedings or other action or proceeding whatsoever, for all damages including without limitation, punitive damages, liabilities, costs, diminution of value, fines, penalties, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response action costs, compliance costs, investigation expenses, consultants fees, attorney fees and litigation expenses (collectively, the “Claims”) arising out of or in connection with an Environmental Condition on the Development Property or its migration to any other site or location or arising out of or in connection with any Environmental Law.

**Section 3.02. Jackson Acquiring Development Property As Is.** Jackson hereby acknowledges and agrees that it is purchasing the Development Property in its “as is,” “where is,” “with all faults” condition without warranty from the DDA or City, except as provided in the Warranty Deed from each of the DDA and City, and that, as of the Closing, Jackson will be purchasing the Development Property with no recourse or rights of action against the DDA, City or their respective officers, board members, commissioners, Executive Director, City Manager, employees, agents, attorneys, representatives, successors or assigns.

**Section 3.03. Jackson’s Covenant Not to Sue.** Jackson for itself and its successors, assigns and grantees, hereby covenants and agrees that in consideration of this Agreement, neither Jackson nor its successors, assigns or grantees shall directly or indirectly sue the DDA or City or their respective officers, board members, commissioners, Executive Director, City Manager, employees, agents, attorneys, representatives, successors and assigns for any Claims directly arising out of any Environmental Condition or any other condition of, or with respect to, the physical condition of the Development Property or any Environmental Law (the “Covenant Not to Sue”). The parties hereto understand and agree that Jackson’s Covenant Not to Sue, as stated herein, does not apply to any action taken by Jackson to enforce any contractual obligations of the DDA or City as may be specifically set forth in this Agreement.

**Section 3.04. Infrastructure/Site Work Obligations.** The City and/or DDA shall be responsible for all costs associated with the development, design and construction work within the public right-of-way that is required to develop the Project, i.e., the Ottawa Avenue Extension, as depicted on the site plan as attached as **Exhibit F** (the “Public Right-of-Way Costs”). Jackson shall be responsible for construction of the Ottawa Avenue Extension as a part of the Project in accordance with plans and specifications approved by the City. The City shall reimburse Jackson the cost of development, design and construction of the Ottawa Avenue Extension as such costs are incurred in accordance with the progress payment procedures included in the standards of the City Engineer’s office. Thereafter, the City shall be reimbursed such costs plus interest from the DDA and GRBRA tax increment revenues as provided herein. Upon completion of the Ottawa Avenue Extension, as defined in “Completion of the Project” in Section 1.01 hereof, and acceptance by the City, the Ottawa Avenue Extension shall be designated a public street, i.e. public right-of-way by the City.



## **ARTICLE IV ACQUISITION OF PROPERTY**

**Section 4.01. Closing on Property.** The Closing on the conveyance of the Development Property from the DDA to Jackson shall be on a Day after Jackson has (i) received all required City Planning Department approvals and (ii) demonstrated to the reasonable satisfaction of the City that it has completed at least 50% of the Final Plans for the Movie Theater, Residential Units and Parking Structure but in no event later than February 1, 2018 (the "Closing Date"). The Closing shall be at the offices of Dickinson Wright PLLC in Grand Rapids, Michigan, or such other location mutually agreeable to the parties hereto.

**Section 4.02. Failure to Close.** If the Closing of the Development Property does not occur on or before the Closing Date because of prerequisites of the Closing set forth in Article V hereof have not been satisfied, this Agreement shall, at the option of either the DDA, City or Jackson (provided that only Jackson may terminate this Agreement as a result of the conditions in Sections 5.01, 5.02, 5.03 and 5.06 hereof), and upon written notice to the other parties in accordance with Section 19.13 hereof, terminate and thereafter no party hereto shall have any further obligation or liability to the other parties hereto.

**Section 4.03. Purchase Price.** The purchase price for the Development Property shall be \$6,876,606 (142,609 square feet x \$48.22) (the "Purchase Price"). Jackson has made payments to the City under the Option Agreement totaling \$160,000 (the "Option Payment"). At Closing, the City shall retain \$60,000 of the Option Payment and \$50,000 of the Option Payment shall be applied to the Purchase Price. Of the remaining \$50,000 of the Option Payment, the City shall be entitled to its Seller Transaction Costs (as defined in the Option Agreement) and the remainder shall be applied to the Purchase Price. The Purchase Price shall be paid by Jackson to the DDA and City at the Closing in immediately available funds by certified check, wire transfer or other method acceptable to the DDA and City.

**Section 4.04. Conveyance of Development Property.** The DDA and City will each, at the Closing, convey to Jackson all of each of its rights, title and interest in the Development Property by Warranty Deed.

**Section 4.05. Survey and Title Insurance.** Jackson acknowledges that it has, or will have, received the Survey, if it is required by Jackson, and the Commitment (both as identified and defined in the Option Agreement) related to the Development Property and prior to the Closing Date, it will have determined that the Development Property either has no defects or that it, in the alternative, waives any defects with respect to the Development Property in accordance with provisions of the Option Agreement. The DDA shall, at its cost, at the time of the Closing order or cause to be ordered a standard ALTA owner's policy of title insurance (the "Policy") from the Title Company (as defined in the Option Agreement) pursuant to the Commitment for prompt delivery to Jackson.

**Section 4.06. Property Taxes and Assessments.** The Development Property is not currently subject to *ad valorem* property taxes and therefore no pro ration between the DDA and City and Jackson of such taxes is required to be made at Closing. All assessments, if any,

excluding the downtown improvement district assessments, on the Development Property due prior to Closing shall be paid prior to or at Closing by the DDA. The downtown improvement district assessments due prior to Closing shall be paid by the DDA and the downtown improvement district assessments due on and after the Closing shall be paid, or caused to be paid, by Jackson.

**Section 4.07. Closing Costs.** Jackson shall pay the cost of recording the Warranty Deed(s) conveying the Development Property to it and one-half (1/2) of the closing fee charged by the Title Company. Jackson shall be responsible for the cost of all soil borings and other tests, studies or Environmental Assessments it elects to perform or have performed with respect to the Property. The DDA and City shall equally share the premium for a standard ALTA owner's policy (the "Policy") of title insurance in the amount of the Purchase Price, for all documentary, intangible, transfer and other taxes, if any, one-half (1/2) of the closing fee charged by the Title Company and the cost of the Survey.

**Section 4.08. Brokerage Commission.** The DDA agrees to pay MRetail Solutions at Closing a brokerage commission equal to four percent (4%) of that portion of the Purchase Price of the Development Property located within Area 5 based on the square footage of such property located in Area 5 at a purchase price of \$48.22 per square foot.

**Section 4.09. DDA and City Use of the Property for Parking.** Continuing on and after the date that Jackson acquires the Development Property pursuant to this Agreement, the DDA and City shall have the right to continue to operate the Development Property as a surface parking lot and retain the revenues received therefrom. The DDA and City shall vacate the Development Property and deliver possession of the Property to Jackson no later than thirty (30) days after Jackson gives the DDA and City written notice ("Notice of Intent") of its intent to commence construction of the Project (the "Possession Date"). If Jackson shall not commence construction within sixty (60) days following the Possession Date, the right of the City and/or DDA to operate the Development Property as a surface parking lot shall be reinstated and a new Notice of Intent will be required before possession will again be returned to Jackson. Jackson shall not operate, or cause to be operated, on the Development Property a surface parking lot.

During the time that the DDA and/or City has possession of the Development Property pursuant to the provisions of this Section 4.09, the DDA agrees to indemnify and hold Jackson harmless from and against any and all claims, damages, demands, expenses, liabilities and losses of any character or nature whatsoever arising out of or resulting from any injury or damage to person or property with respect to the DDA's and the City's and their respective invitees' use of the Development Property during such period. The indemnification obligation provided above shall include the payment of all reasonable attorneys' fees and other expenses of defense. The DDA and City shall have the option to settle such claim, demand or liability on such terms it shall determine. In providing the above indemnification, the DDA and City are not waiving any defense otherwise available to either of them by law. The DDA and City shall not be responsible for the indemnification obligations set forth above to the extent that Jackson has waived a defense that was otherwise available to it by law.

## **ARTICLE V**

### **CONDITIONS PRECEDENT TO AND REQUIREMENTS AT CLOSING**

**Section 5.01. Financing of Project.** Jackson shall have obtained financing for the Project or caused acceptable financing to be obtained for the Project acceptable to it and furnished to legal counsel to the DDA and City not less than fifteen (15) days prior to Closing documentation that Jackson has equity (or has caused equity to be provided) and lender financing (or has caused lender financing to be provided) in amounts necessary to complete all elements of the Project. For that portion of funds required to finance the Project to be provided by lender financing, Jackson shall have obtained and furnished or caused to be obtained and furnished to legal counsel to the DDA and City, documentation acceptable to the DDA and City that the proceeds thereof are available as needed and are sufficient along with the equity to complete all aspects of the Project.

**Section 5.02. Title Insurance.** The DDA shall, at its cost, order or caused to be ordered the Policy from the Title Company as provided and required by Section 4.05 of this Agreement.

**Section 5.03. DDA and City Compliance.** All representations and warranties of the DDA and City set forth in this Agreement shall be true as of the Closing Date and the DDA and City shall have timely performed and complied in all respects with all covenants, obligations and agreements to be performed or complied with by the DDA and City under this Agreement.

**Section 5.04. Insurance.** Jackson, at its expense, shall have insured the Property in accordance with Article XII hereof and at least five (5) Days prior to Closing shall have delivered to the DDA and City insurance binders or certificates evidencing the required coverages.

**Section 5.05. Approval of Condominium Documents.** The City and DDA shall have approved the condominium documents for the Project (the "Condominium Documents"). It is agreed and understood by Jackson that the DDA, as owner of the Piazza condominium unit, shall have no obligation to pay (i) condominium owner dues, or (ii) assessments against Project condominium unit owners for whatever reason, *provided however*, with respect to major repairs to the Piazza, the provision of Section 14.03 hereof shall apply.

**Section 5.06. Jackson's Requirements at Closing.** At the Closing, Jackson shall provide the following:

- a. the payment of the Purchase Price; and
- b. an opinion of counsel to Jackson reasonably acceptable to the Executive Director and City Manager.

**Section 5.07. DDA's and City's Requirements at Closing.** At the Closing, the DDA and City shall provide the following:

- a. Warranty Deeds for the Development Property from the DDA and City in favor of Jackson in recordable form;
- b. real estate transfer valuation affidavit(s) executed by the Executive Director and City Manager, respectively, in a form prescribed by the Kent County Register of Deeds with respect to conveyance of the Development Property to Jackson;
- c. an affidavit that the DDA and City are not “foreign persons” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;
- d. closing statements related to the Development Property reasonably satisfactory to Jackson;
- e. the Policy from the Title Company in accordance with Sections 4.05 and 5.02 of this Agreement; and
- f. a standard form of title insurance company owner’s affidavits reasonably acceptable to the DDA, City and Jackson, *provided, however*, it is understood that neither the DDA nor the City will provide indemnification to the Title Company in connection with the giving of such affidavit.

**Section 5.08. Recording.** Promptly after the Closing the DDA shall cause this fully executed Agreement including all exhibits attached hereto, or a memorandum thereof, to be recorded with the Kent County, Michigan, Register of Deeds. Jackson shall reimburse the DDA the cost of all fees and charges incurred in connection with such recording. Upon recording, the DDA shall provide Jackson with an executed copy of this Agreement or the memorandum showing the recording information.

## **ARTICLE VI OBLIGATIONS OF DDA PRIOR TO CLOSING**

**Section 6.01. Obligations of DDA Prior to Closing.** During the period commencing on the Execution Date of this Agreement and ending on the Closing Date the DDA shall:

- a. maintain Area 4 and Area 5 in substantially the same condition as on the Execution Date of this Agreement;
- b. pay all costs and expenses and discharge all liabilities, obligations and claims arising out of its ownership of Area 4 and Area 5;
- c. not enter into any agreement, lease, use, occupancy arrangement, easement or other agreement, other than with daily and monthly parkers, with respect to all or any portion of Area 4 and Area 5 without Jackson’s prior written consent;

d. not create, grant or accept any option to purchase, right of first refusal, installment sale agreement or other agreement for the leasing or sale of all or any portion of Area 4 and Area 5 without Jackson's prior written consent;

e. not create or suffer any right, claim, lien or encumbrance of any kind whatsoever on all or any portion of Area 4 and Area 5 that would bind Jackson as the DDA's successor; and

f. maintain Area 4 and Area 5 in compliance with all laws, statutes, ordinances, rules and regulations applicable thereto.

## **ARTICLE VII PARKING STRUCTURE**

**Section 7.01. Construction of Parking Structure.** Subject to the terms and conditions contained in this Agreement including specifically this Article VII, Jackson agrees to construct the Parking Structure.

**Section 7.02. Issuance and Purchase of Monthly Parking Passes.** Beginning with the first day of the first calendar month following the date of completion of the Parking Structure, the issuance of a Certificate of Occupancy by the City and subject to Section 7.04 hereof, the City agrees to purchase and Jackson agrees to issue three hundred (300) monthly parking passes for eighty-four (84) consecutive months (the "Initial Period"). Further, subject to Section 7.03 hereof, the City shall have the option to purchase and Jackson shall issue up to a maximum of three hundred (300) monthly parking passes for an additional sixty (60) consecutive months immediately after the Initial Period (the "Renewal Period"). The City shall have the right to reissue and sell the monthly passes to the general public. A monthly parking pass shall mean the right of the holder thereof to use an unassigned parking space in the Parking Structure Monday through Friday between 7:00 a.m. and 6:00 p.m. without restriction to the number of entries and exits. Both Jackson and the City shall have the option anytime after the first twelve (12) months of the Initial Period upon twelve (12) months prior written notice to the other party to terminate the obligation to sell or purchase, respectively, up to three hundred (300) parking passes at one or more times during the Initial Period or any Renewal Period.

**Section 7.03. Monthly Parking Pass Charge.** Jackson shall bill and the City shall pay for each of the first twelve (12) months of the Initial Period a charge of One Hundred Forty Dollars (\$140) per parking pass. For each of the second, third, fourth and fifth years of the Initial Period the monthly charge for each such twelve-month period shall be increased by two percent (2%) over the charge for the prior twelve-month period. The charge for monthly parking passes for the Renewal Period shall be mutually agreed to by Jackson and the City, and, if not so agreed to, the Renewal Period shall not take effect.

**Section 7.04. Release of Monthly Parking Passes.** Upon twelve (12) months prior written notice by Jackson to the City that the Phase 2 Tower described in Article XV hereof will be completed the City agrees during the Initial Period to release one hundred forty (140) monthly parking passes back to Jackson at the end of such notice period. If such notice is provided

during the Renewal Period the City agrees to release the number of monthly parking passes equal to one hundred forty (140) minus the difference between three hundred (300) and the number of monthly parking passes issued to the City for the Renewal Period.

## **ARTICLE VIII APPROVALS AND SCHEDULE**

**Section 8.01. Final Plans.** Jackson shall, subject to Uncontrollable Circumstances within seven (7) months after the Effective Date, submit to the DDA and City final development plans for the Project substantially in conformance with the Conceptual Plans (the "Final Plans"). Such Final Plans shall be promptly reviewed for substantial conformance with the Conceptual Plans and approved by the Executive Director and City Manager, which approval shall not be unreasonably withheld. For purposes of this Agreement the Executive Director and City Manager shall be deemed to have approved the Final Plans to which he/she does not object to Jackson within fifteen (15) Days after receipt, *provided, however*, such approval or deemed approval shall not be interpreted to mean any and all approvals required by the City's Code of Ordinances including the Zoning Ordinance.

**Section 8.03. Requirements of Final Plans.** The Final Plans shall contain each of the following elements and conform to the following requirements and descriptions:

**A. Site Plan.** A dimensional site plan of minimum scale of one sixteenth (1/16) inch equals one (1) foot and conforming to the requirements of the City's Code of Ordinances, rules and regulations indicating the arrangement, location and setback of all proposed uses, including buildings, structures, signage, open space, loading areas, pedestrian areas and walkways and utilities.

**B. Building Elevations.** Architectural renderings prepared by a registered architect of all elevations of proposed buildings and structures.

**C. Landscape/Streetscape Plan.** A landscape/streetscape plan meeting the DDA's streetscape guidelines prepared to the same scale as the site plan showing (i) the appropriate location, common name species and size of proposed plantings, (ii) street furniture and (iii), if applicable, any irrigation and snowmelt systems.

**D. Exterior Lighting Plan.** An exterior lighting plan prepared to the same scale as the site plan indicating the location of all proposed exterior lighting and including the proposed level of illumination and specific design details to include light color, height of fixtures, illustration of design and applicable screening of light sources.

**Section 8.04. Approvals and Permits.** Jackson shall obtain such approvals as may be required by the City's Code of Ordinances, rules and regulations and applicable State law (the "Applicable Laws"), including, but not limited to, site plan approval and any and all other applicable approvals required by and from the City's Planning Department and Planning Commission, and apply for and receive such permits as required by Applicable Laws. In addition, if required, Jackson shall obtain such City zoning ordinance variances as necessary in

connection with the development and construction of the Project. Such required approvals, permits and zoning law variances shall be obtained in accordance with the Project Schedule referenced in Section 8.05 hereof.

**Section 8.05. Schedule.** The Project shall be developed, constructed and completed subject to Uncontrollable Circumstances, in accordance with the schedule set forth in the attached **Exhibit G** (the "Project Schedule") and the terms and conditions of this Agreement.

**Section 8.06. Progress Reports.** Jackson shall provide the DDA and City during the term of this Agreement prior to the completion of the Project with written quarterly reports within fifteen (15) Days after the end of each calendar quarter beginning with the calendar quarter ending December 31, 2017, detailing the status of the Project.

## **ARTICLE IX JACKSON REPRESENTATIONS AND WARRANTIES**

**Section 9.01. General.** Jackson represents and warrants that:

- a. it is a Michigan limited liability company duly organized, validly existing and qualified to do business in the State;
- b. it has the right, power and authority to enter into, execute, deliver and perform this Agreement;
- c. the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action, and does not and will not violate its operating agreement, as amended and supplemented, any applicable provisions of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which it is now a party or by which it is now or may become bound;
- d. to the best of its knowledge, there are no actions or proceedings by or before any court, governmental body, board or any other administrative agency pending or, to the best of its knowledge, threatened or affecting it which would impair its ability to perform under this Agreement;
- e. to the best of its knowledge, it is not, as of the date of this Agreement, in default with respect to any indenture, loan agreement, mortgage, deed or any other agreement or instrument related to the borrowing of money to which Jackson is a party or by which it is bound;
- f. prior to Completion of the Project, it shall not, without the prior written consent of the Executive Director and City Manager, (i) be a voluntary party to any liquidation or consolidation; (ii) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including, but not limited to, any fixtures or equipment now or hereafter attached thereto) except for a sale in the ordinary course of business; (iii) assume, guarantee, endorse or otherwise become liable



in connection with the obligations of any other Person except in the ordinary course of business; or (iv) enter into any transaction outside the ordinary course of its business;

g. it has not incurred and, prior to Completion of the Project, shall not, without the prior consent of the Executive Director and City Manager, allow the existence of any lien against the Property other than liens for *ad valorem* property taxes, assessments and public water and sanitary sewer service fees and charges not yet past due, mortgage liens related to lender financing for the Project and liens for which it has obtained insurance, or incur any indebtedness secured or to be secured by the Property or any fixtures now or hereafter attached thereto except mortgage liens related to lender financing of the Project and except for liens which Jackson prevents from enforcement or foreclosure by contest, payment, deposit, bond or order of the court or otherwise;

h. to the best of its knowledge, after due inquiry, no judgments are outstanding against it, nor is there now pending or threatened any litigation, contested claim or governmental proceeding by or against it or affecting it or its property; or seeking to restrain or enjoin the performance by it of this Agreement or the transactions contemplated by this Agreement, or contesting the validity thereof;

i. to the best of its knowledge, after due inquiry, it is not in default with respect to any order, writ, injunction or decree from any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand or any government authority or agency or instrumentality, a default under which it would have a material adverse effect on it or its business; and

j. to the best of its knowledge, after due inquiry, there is no default by it or any other party under any material contract, lease, agreement, instrument or commitment to which it is a party or by which it or its properties is bound.

**Section 9.02. Covenant to Construct.** Provided Jackson closes on the Development Property, upon Jackson's receipt of all required permits and government approvals, Jackson shall construct, or cause to be constructed, the Project in accordance with this Agreement and all exhibits attached hereto including specifically **Exhibit D** and the Final Plans, the Plans and Specifications (as identified in Section 10.01 hereof) and all federal, State and City laws, ordinances, rules, regulations applicable to Jackson, the Property and the Project.

**Section 9.03. Jackson to Pay All Fees.** Jackson shall pay all of the applicable fees, rates and charges in connection with the development, permitting, approval and construction of the Project.

**Section 9.04. Use Covenant.** Jackson shall use or cause the use of the Property and the Project solely as permitted by this Agreement.

**Section 9.05. Insurance.** Jackson, at its sole expense, shall comply with all insurance coverage provisions contained in Article XII of this Agreement.

**Section 9.06. Jackson's Performance.** Jackson shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder. The Jackson Representative shall immediately notify the DDA and City of any event or action which may materially affect its ability to perform its obligations under this Agreement.

**Section 9.07. Survival of Warranties, Representations and Covenants.** All warranties, representations and covenants of Jackson contained in this Article IX, Article X and elsewhere in this Agreement shall be true, accurate and complete at the time of the Execution Date of this Agreement and remain in effect during the term of this Agreement unless specifically provided otherwise in this Agreement.

## **ARTICLE X JACKSON OBLIGATIONS, COVENANTS AND AGREEMENTS**

**Section 10.01. Covenant to Complete Project.** Provided Jackson closes on the Development Property, Jackson shall construct, or cause construction of, each element of the Project in substantial accord with the Final Plans and the plans and specifications submitted for building and other required permits (the "Plans and Specifications") within the time periods specified in the Project Schedule and in material compliance with all applicable laws, ordinances, rules and regulations subject to (i) the issuance of permits and governmental approvals for which timely application is made and (ii) Uncontrollable Circumstances.

**Section 10.02. Application for Building Permits and Governmental Approvals.** Provided Jackson closes on the Development Property, Jackson shall not later than seven (7) months from the Effective Date, (which may be extended due to Uncontrollable Circumstances) have filed for all necessary building permits and other governmental approvals except for those related to building A identified on **Exhibit D**. Jackson, at its sole expense, shall have the obligation to take all steps necessary to seek any and all permits, variances, licenses and other approvals for the Project.

**Section 10.03. Commencement of Construction.** Provided Jackson closes on the Development Property, Jackson shall commence construction of the Project no later than thirty (30) days after the Closing, subject to extension due to Uncontrollable Circumstance. If Jackson has not done so and the Property has been conveyed to Jackson, the DDA and City may notify Jackson in writing that the DDA and City desires to repurchase the Property (the "Repurchase Notice"). If Jackson does not commence construction of the Project within fifteen (15) Days of receipt of the Repurchase Notice, then Jackson shall have thirty (30) days after Jackson's receipt of the Repurchase Notice to clear the Property of any liens and encumbrances and return the status of title of the Property to the same condition as it was when the DDA and City conveyed the Property to Jackson. The amount paid for the Property shall equal the Purchase Price paid by Jackson to the DDA and City less any amount expended by the DDA and City to clear title to the condition it was when the DDA and City conveyed the Property to Jackson (the "Repurchase Price"). Any mortgage or other lien encumbering the Property (the "Property Liens") shall be an offset from the Repurchase Price otherwise payable to Jackson hereunder. In the event the Property Liens encumbering the Property are for an amount in excess of the Repurchase Price, Jackson shall be obligated to pay off the excess amount prior to reconveyance of the Property

back to the DDA and City. Jackson shall cause any mortgagee of the Property or any portion thereof to release its lien on the Property upon repurchase of the Property by the DDA and City. Jackson shall reconvey the Property to the DDA and City by warranty deeds. For purposes of this Section 10.03 the phrase “commence construction” shall mean the commencement of material earth moving at the Property.

**Section 10.04. Completion Guaranty.** Jackson shall provide the DDA with an irrevocable letter of credit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the “Completion Guaranty”) on the date Jackson acquires the Property to be paid to the DDA if Jackson fails to achieve Completion of the Project within the time provided in Section 10.05 hereof. If the completion date milestone for the Project as indicated in **Exhibit F** hereof is met, the DDA shall agree to a termination of the letter of credit within ten (10) Days of the Completion of the Project. If the DDA is entitled to the Completion Guaranty, it may be used as the DDA shall solely determine.

**Section 10.05. Completion of the Project.** If construction of the Project has commenced as required by Section 10.03 hereof and completion of all elements of the Project has not occurred by November 1, 2020, in accordance with the Project Schedule in **Exhibit F** hereof, subject to extension due to Uncontrollable Circumstances, the DDA shall notify Jackson in writing. If Jackson does not achieve Completion of the Project or the Parking Structure within forty-five (45) days of receipt of such notice, the DDA shall be entitled to retain the Completion Guaranty, if any, and use it as the DDA shall solely determine.

## **ARTICLE XI**

### **DDA AND CITY REPRESENTATIONS AND WARRANTIES**

**Section 11.01. General.** The DDA and City represent, warrant and covenant that:

a. the DDA is a statutory authority created by the City and the City is a Michigan municipal corporation under the laws of the State each with the power and authority to enter into this Agreement and to consummate all of the transactions contemplated hereby;

b. execution of this Agreement and the consummation of all of the transactions contemplated hereby will not result in any breach of, or constitute a default under, any agreement, contract, lease, mortgage, indenture, deed or other instrument to which the DDA or City is a party;

c. there are no actions, suits or proceedings pending, or to the knowledge of the DDA or City threatened, against or affecting the DDA or City, at law or in equity, or before any governmental authority, which, if adversely determined, would impair the DDA’s or City’s ability to perform its obligations under this Agreement; and

d. all actions of the DDA Board and City Commission required to be taken to authorize execution of this Agreement have been validly and duly taken.

## **ARTICLE XII INDEMNIFICATION AND INSURANCE**

**Section 12.01. Indemnification.** Except for matters arising out of the willful misconduct or gross negligence of the DDA or City, its officers, board members, commissioners, employees or agents (the “Indemnified Parties”), Jackson hereby agrees to indemnify, defend and hold the Indemnified Parties harmless from and against any cost, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorney’s fees and court costs) suffered or incurred by the Indemnified Parties arising from or in connection with (i) the work performed or caused to be performed by Jackson, its employees, agents and contractors related to the Project or under this Agreement, (ii) material misrepresentations of Jackson in this Agreement or any information Jackson is required to provide the DDA and/or City pursuant to this Agreement, (iii) the failure of Jackson to promptly cure or otherwise correct any material misrepresentations or omissions of Jackson in this Agreement or any other agreement related hereto, or (iv) any violation which occurred during the time Jackson owned and/or controlled the Property or any portion thereof, of any applicable law, statute, rule or regulation related to the protection of the environment (an “Environmental Violation”), which occurs or is alleged to have occurred upon the Property or in connection with the imposition of any governmental lien for the recovery of environmental clean-up costs expended by reason of an Environmental Violation, provided that to the extent that the DDA and/or City is strictly liable or alleged to be strictly liable in respect to the Property under any Environmental Law, statute, rule or regulation as a result of an Environmental Violation, Jackson’s obligations to the Indemnified Parties shall be without regard to fault on the part of Jackson, who will also indemnify the Indemnified Parties with respect to the Environmental Violation which results in liability to the Indemnified Parties. The indemnity related to (iv) above shall not apply to any act or omission resulting in an Environmental Violation which arises from the DDA’s and/or City’s own negligence or which arose on any portion of the Property prior to the date on which Jackson acquired the Property.

**Section 12.02. All Risk Insurance.** Jackson shall, at its own expense, cause the Project to be insured against loss or damage by fire, windstorm, hail, explosion, riot and civil commotion, smoke damage, and such other risks as are from time to time included in “extended coverage” endorsements (including during construction thereof builder’s risk insurance which insurance shall also cover the Ottawa Avenue Extension during construction) in an amount and form so that the proceeds are sufficient to provide for actual replacement of the improvements. Said policies of insurance shall, if reasonably available, provide for waivers of subrogation and shall name the DDA and City as an additional insureds.

**Section 12.03. General Liability Insurance.** Jackson shall, at its own expense maintain or cause to be maintained general liability insurance against claims for personal injury or death and property damage occurring upon, in or about the Development Property and the Project with coverage in an amount not less than Two Million Dollars (\$2,000,000) with respect to injury or death to one or more persons arising out of any one occurrence and an amount of not less than One Million Dollars (\$1,000,000) with respect to damage to property per occurrence. Said insurance shall, if reasonably available, provide for waivers of subrogation and shall name the DDA and City as an additional insureds.

## **ARTICLE XIII**

### **DEVELOPMENT SUPPORT REIMBURSEMENT**

**Section 13.01. Eligible Costs.** In connection with the development and construction of the Project including the Ottawa Avenue Extension, Jackson and the City will incur the costs for the Public Facility Improvements in an amount of not to exceed \$8,850,000 as set forth in **Exhibit G** attached hereto (the “Eligible Costs”).

**Section 13.02. Capture of Taxes.** In accordance with the Plan, DDA Project Tax Increment Revenues will be captured and transmitted to the DDA. It is agreed that DDA Project Tax Increment Revenues exclude (i) those Tax Increment Revenues realized from the Project from operating tax levies of the Grand Rapids Public Schools and the Kent Intermediate School District and the State Education Tax and certain voter-approved taxes, all of which may not in accordance with Act 197 or Plan be used to pay for, or reimburse the cost of, the Public Facility Improvements and (ii) any future Tax Increment Revenues realized from a building(s) constructed on top of the Parking Structure including the Phase 2 Tower (as hereinafter defined).

**Section 13.03. Conditions Precedent to Reimbursement.** Jackson shall meet, or cause to have been met, each of the following conditions in order to be entitled to reimbursement of Eligible Costs:

a. Investment in the Project, exclusive of the Purchase Price of the Property, must be at least Fifty Million Dollars \$50,000,000 which Jackson shall document and verify to the reasonable satisfaction of the DDA and the Project shall contain at least 300,000 square feet of buildings and structures exclusive of the Parking Structure and at least one building shall have six (6) stories.

b. Jackson shall only be entitled to reimbursement of Eligible Costs not to exceed \$5,350,000, provided, Jackson shall have included in the Project the retention and/or creation of one permanent fulltime or equivalent fulltime job for each \$10,000 of Eligible Costs reimbursed and/or one residential housing unit for each additional \$10,000 of Eligible Costs reimbursed which Jackson shall document and verify to the reasonable satisfaction of the DDA.

c. The Project shall be located in the Development Area.

d. The Project shall conform to all applicable City building code and zoning ordinance requirements.

e. Construction of the Project shall have commenced in accordance with Section 10.03 of this Agreement.

**Section 13.04. Submission of Eligible Costs.** For those Eligible Costs for which Jackson or the City seeks reimbursement from the DDA pursuant to the Policy, Jackson and the City, respectively, shall submit to the DDA the following, all of which must be reasonably satisfactory to the DDA:

- a. a written statement detailing the costs and substantiating they are Eligible Costs for Public Facility Improvements;
- b. a written explanation of the calculation of the costs reasonably acceptable to the DDA;
- c. copies of invoices from contractors, engineers, vendors or others who have provided services and materials for the Developer Portion of the Project showing sufficient detail to correlate said invoices with Eligible Costs to the satisfaction of the Executive Director; and
- d. for Jackson or City personnel for whose services reimbursement is being sought, detailed time records showing the work performed by such individuals.

#### **Section 13.05. Reimbursement Payments.**

a. Subject to the conditions contained in Section 13.04 above and the limitations contained in Section 13.06 below, Seventy-five percent (75%) of the Project Tax Increment Revenues received annually by the DDA on and after completion of the Project (the “Start Date”), shall be paid to Jackson until Jackson has been reimbursed for Eligible Costs of Public Facility Improvements in an amount not to exceed \$5,350,000 without interest. Fifteen percent (15%) of the Project Tax Increment Revenues received annually by the DDA on or after the Start Date shall be paid to the City for the period that Jackson is being reimbursed for its Eligible Costs and, thereafter, Ninety percent (90%) of Project Tax Increment Revenues received annually by the DDA shall be paid to the City until the City has been reimbursed for Eligible Costs of Public Facility Improvements in an amount not to exceed \$3,500,000 plus interest equal to the interest rate paid on bonds to be issued by the City to finance such Public Facility Improvements. Except as otherwise provided in Section 13.06 below, the DDA shall have no obligation to reimburse Jackson or the City for Eligible Costs from DDA Project Tax Increment Revenues captured and received by the DDA after December 31 of the twentieth (20<sup>th</sup>) year after the Start Date (the “Termination Date”).

b. The DDA shall pay Jackson and the City, in accordance with subsection a. above, the amounts for which submissions have been made pursuant to Section 13.04 above within thirty (30) days after the DDA receives DDA Project Tax Increment Revenues after the Start Date from which the submission may be wholly or partially paid, *provided, however*, such DDA Project Tax Increment Revenues received shall be held by the DDA and not paid to Jackson until Completion of the Project has occurred. If partial payment is made by the DDA because of insufficient DDA Project Tax Increment Revenues, the DDA shall make additional payments toward the remaining amount payable within thirty (30) days of its receipt of additional DDA Project Tax Increment Revenues until (i) Jackson and the City have been fully paid Eligible Costs or (ii) the Termination Date (as such date may be extended pursuant to Section 13.06 below) whichever occurs first.

**Section 13.06. Limitation on Reimbursement.** The obligation of the DDA to reimburse Jackson and the City for Eligible Costs pursuant to Section 13.05 hereof shall be

subordinate to the payment of existing and future debt obligations of the DDA. To the extent that such obligations are an “eligible advance,” “eligible obligation” or “other protected obligation” as defined in Act 197 and school tax increment revenues, i.e., Grand Rapids Public Schools and Kent Intermediate School District operating tax levies and the State Education Tax levy received by the DDA in any fiscal year of the DDA are not sufficient to pay debt service on such obligations in such fiscal year, a pro rata portion of the Project Tax Increment Revenues received by the DDA from the Developer Portion of the Project and the Parking Structure in the same percentage of all other non-school tax increment revenues received by the DDA in such fiscal year and used to pay debt service on such obligations shall be used to pay such debt service. For all other existing and future debt service obligations of the DDA, a percentage of the DDA Project Tax Increment Revenues received by the DDA each fiscal year from the Project equal to the percentage of all other non-school tax increment revenues received by the DDA in such fiscal year and used to pay debt service on such obligations may be used to pay debt service on such obligations in such fiscal year. To the extent Project Tax Increment Revenues are used to pay debt service on DDA debt obligations pursuant to this Section 13.06, the Termination Date shall be extended an appropriate time to reflect such use of DDA Project Tax Increment Revenues, *provided, however*, the Termination Date may not be extended beyond the term of the Plan.

**Section 13.07. Adjustments in Reimbursement.** If due to an appeal of any tax assessment of all or any portion of the Developer Portion of the Project including the Parking Structure, or for any other reason, the DDA is required to reimburse any DDA Project Tax Increment Revenues (that have been used to reimburse Jackson or the City for Eligible Costs) to the City or any other tax levying governmental entity, the DDA may deduct the amount of any such reimbursement, including interest, penalties and other amounts due in relation thereto, from any amounts due and owing to Jackson. If all amounts due Jackson under this Article XIII have been fully paid or the DDA is no longer obligated to make any further payments to Jackson, the DDA shall invoice Jackson for the amount of such reimbursement, including interest, penalties and other amounts due in relation thereto, and Jackson shall pay the DDA such invoiced amount within thirty (30) Days of Jackson's receipt of the invoice. Nothing in this Agreement shall limit the right of Jackson or any other owner of any portion of the Property to appeal any tax assessment. Amounts invoiced to Jackson and paid to the DDA by Jackson pursuant to this Section 13.07, excluding interest, penalties and other amounts due in relation thereto, shall be reinstated as Eligible Costs for which Jackson shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement.

**Section 13.08. Term of Reimbursement.** The obligation of the DDA to reimburse Jackson and the City for Eligible Costs from DDA Project Tax Increment Revenues shall terminate the sooner of (i) the date the DDA fully reimburses Jackson and the City for Eligible Costs or (ii) the Termination Date as it may be extended pursuant to Section 13.06 above.

## **ARTICLE XIV PIAZZA**

**Section 14.01. Design of Piazza.** The selection of the designer and the design of the Piazza and Project streetscape improvements shall be subject to the reasonable approval of the Director in collaboration with Downtown Grand Rapids, Inc.

**Section 14.02. Piazza Ownership, Operation and Use.** Upon completion of the construction of the Piazza, Jackson shall convey the Piazza to the DDA by warranty deed for One Dollar (\$1.00). The DDA shall be the owner of the Piazza. As the owner, the DDA agrees that Jackson or an assignee of Jackson, approved by and documented to the satisfaction of the DDA (the “Jackson Assignee”), shall be responsible at its sole cost, for operation, use and programming of the Piazza, subject to reasonable rules and regulations established from time to time by the DDA.

**Section 14.03. Repair and Maintenance of Piazza.** Jackson or a Jackson Assignee shall be responsible, at its sole cost, for the routine repair, maintenance and security of both the Piazza and other common areas identified on attached **Exhibit D**. Such repair and maintenance shall be a standard at least equal to that maintained at other public open space areas in the City’s downtown such as Rosa Parks Circle and Calder Plaza. The responsibility for major repairs of the Piazza shall be addressed in the Project Condominium Documents and the DDA agrees to pay its share of such costs in accordance with a methodology approved by the DDA and Jackson and provided in the Condominium Documents related to the Project.

**Section 14.04. Joint Programming and Operation.** Notwithstanding the provisions of Section 14.02 hereof, Jackson and the DDA agree to explore the development of an agreement for the joint programming and operation of the Piazza.

## **ARTICLE XV PHASE 2 TOWER**

**Section 15.01. Construction of Phase 2 Tower.** Jackson shall have ten (10) years from the Effective Date of this Agreement (the “Phase 2 Tower Development Period”) to commence construction or cause commencement of construction of a building, on top of the Parking Structure at the location indicated on **Exhibit D** (the “Tower Location”), consisting of at least ten (10) floors, a minimum of one hundred twenty thousand (120,000) square feet and not less than one hundred fifty-four (154) residential living units (the “Phase 2 Tower”). For purposes of this Section 15.01, “commence construction” or “commencement of construction” shall mean the erection of vertical structural support beams.

**Section 15.02. Progress Reports.** During the Phase 2 Tower Development Period up to the time of commencement of the Phase 2 Tower, Jackson shall, on June 1 and December 1 beginning June 1, 2018, provide the DDA and City a written progress report regarding the development and construction of the Phase 2 Tower.



**Section 15.03. Option to Acquire Air and Access Rights.** If Jackson shall be unable to commence construction or cause commencement of construction of Phase 2 Tower, the DDA and/or City shall have the option to acquire from Jackson the air rights above the Parking Structure at the Phase 2 Tower Location and access thereto through the Parking Structure for resale in connection with the development and construction of a building similar, but not necessarily identical, to the Phase 2 Tower, *provided, however*, the developer and the use(s) thereof shall be subject to the prior approval of Jackson, which approval shall not be unreasonably withheld. Jackson shall convey such air rights including access thereto through the Parking Structure by warranty deed to the DDA and/or City or directly to the developer of the building as the DDA and City shall direct.

**Section 15.04. Determining Value of Air and Access Rights.** The value of the air rights above the Parking Structure at the Phase 2 Tower Location including access thereto through the Parking Structure shall be determined by an independent MIA Certified Appraiser mutually acceptable to Jackson and the City and DDA. Such appraisal shall take into consideration the additional costs incurred when constructing the Parking Structure to support the Phase 2 Tower. The cost of the appraisal shall be equally shared by Jackson and the DDA and/or City.

**Section 15.05. Incorporation into Condominium Documents.** The rights and obligations of the parties hereto contained in this Article XV shall be included within the Condominium Documents for the Project.

## **ARTICLE XVI ASSIGNMENT AND LEASING**

**Section 16.01. Assignment to Jackson Affiliate.** Jackson shall have the right to transfer any or all of its interest in the Development Property and the Developer Portion of the Project and this Agreement to a Jackson Affiliate and such assignment shall transfer to the Jackson Affiliate all of Jackson's rights, duties, obligations, covenants, undertakings and liabilities hereunder and the Jackson Affiliate by accepting such assignment shall assume in writing all of Jackson's rights, duties, obligations, covenants, undertakings and liabilities hereunder.

**Section 16.02. Other Assignment Requirements.** The following shall apply with respect to assignments:

- a. Except as provided in Section 17.01 hereof, this Agreement is personal and may not be assigned prior to Completion of the Project without the prior written approval of the DDA and City.
- b. After Completion of the Project, this Agreement may be assigned to any Person, without approval of, but upon written notice to, the DDA and City.

**Section 16.03. Sale and Leasing.** Notwithstanding the foregoing restrictions on transfers and assignments in this Article XVI or elsewhere in this Agreement, Jackson and

Jackson Affiliates are permitted to sell, lease or sublease all or any portion of the Project by and among one another and to third parties so long as such sale, lease or sublease is and remains subject to the terms of this Agreement.

## **ARTICLE XVII TERM OF AGREEMENT, RECORDING, BINDING EFFECT, RIGHTS AND REMEDIES**

**Section 17.01. Term.** The term of this Agreement shall commence as of the Execution Date and shall end on December 31, 2040, unless extended pursuant to Section 13.06 hereof or otherwise terminated in accordance with the provisions of this Agreement.

**Section 17.02. Recording.** The DDA and Jackson agree to execute and deliver an original copy of this Agreement in proper form for recording or a memorandum thereof with the Kent County, Michigan, Register of Deeds and further agree that this Agreement or a memorandum thereof shall be recorded with the Kent County, Michigan, Register of Deeds to evidence the obligations and covenants contained herein, which shall, upon such recording, run with the land and bind the Development Property and each successor of interest of Jackson until this Agreement has been terminated in accordance with its terms or by a written instrument signed by the DDA, City and Jackson.

**Section 17.03. Binding Effect.** This Agreement shall bind the parties hereto and their successors and assigns.

**Section 17.04. Rights and Remedies.** Except to the extent expressly limited herein, each of the DDA, City and Jackson shall have the right to avail itself of any equitable or legal right or remedy to enforce the provisions hereof.

## **ARTICLE XVIII MISCELLANEOUS**

**Section 18.01. Conditions for Execution of Agreement.** The execution of this Agreement shall not occur until and unless Jackson shall provide the DDA and City the following which shall be in a form acceptable to the DDA and City:

- a. a current financial proforma covering all elements of the Project; and
- b. a firm commitment to construct a Hotel and evidence that the Hotel will have a national “flag”.

On or before the Closing Date Jackson shall provide a signed letter of interest from the MSF of receipt of the CRP Loan for the Project.

**Section 18.02. Utilization of Steam System.** Jackson agrees, in good faith, to evaluate and consult with the City regarding the feasibility of utilizing the downtown steam system for heating and cooling of the Project.

**Section 18.03. Signs.** Jackson may erect signs on the Property prior to and during construction of the Project in conformity with the City Code of Ordinances, rules and regulations. At least one of the signs, approved by the DDA and City, shall identify the DDA, City and Downtown Grand Rapids, Inc. as supporters of the Project.

**Section 18.04. Construction Staging.** The DDA, City and Jackson shall cooperate with each of the others to assure that construction of the Project is carried out in a manner that minimizes the negative impact and inconvenience to the surrounding neighborhood. The DDA, City and Jackson shall agree upon procedures governing staging, staging areas, pedestrian and vehicular traffic control, construction boundaries, worker parking and other matters related to the construction of the Project.

**Section 18.05. Time of Essence.** Time is of the essence with respect to this Agreement and, therefore, all dates and terms shall be strictly adhered to unless waived in writing by the parties hereto.

**Section 18.06. DDA and City Review and Approval.** Whenever in this Agreement, the DDA, City, Executive Director or City Manager are required to approve plans, specifications, drawings, reports or other documents (the "Documents"), such Documents shall be deemed to have been approved unless the DDA, City, Executive Director or City Manager shall object in writing to Jackson within fifteen (15) Days after receipt of such Documents.

**Section 18.07. Extension of Time.** In the event Jackson requires an extension of time for any of the milestone events identified in the Project Schedule, because of an Uncontrollable Circumstance, Jackson shall notify the DDA and City in writing indicating the reason(s) for such extension and the estimated number of days of the extension. If Jackson requires an extension for other than Uncontrollable Circumstances, it shall request an extension in writing from the DDA and City. Such request shall indicate the reason(s) and the amount of additional time being requested. Except as otherwise provided in Section 13.06 hereof, any extension other than for Uncontrollable Circumstances shall be at the sole discretion of the DDA and City.

**Section 18.08. Non-Discrimination.** Jackson agrees not to discriminate against any employee or applicant for employment to be employed in the planning, development and construction of the Project under this Agreement with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, handicap or marital status. Breach of this covenant may be regarded as a material breach of this Agreement as provided for in Act 453 of the Public Acts of Michigan of 1976, as amended, entitled the "Michigan Civil Rights Act." Jackson also agrees that it will require similar non-discrimination covenants from all subcontractors under this Agreement and all contractors and subcontractors related to the development and construction of the Project.

**Section 18.09. Amendment.** Except as otherwise may be expressly permitted in this Agreement, this Agreement and any of the exhibits attached hereto may not be amended except in writing by a document signed by all parties hereto.

**Section 18.10. No Other Agreements.** Except as may otherwise be expressly provided in this Agreement, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and represents the full understanding of the parties with respect to such subject matter.

**Section 18.11. Consent.** Except as otherwise provided in this Agreement, whenever consent or approval of a party is required herein, such consent or approval shall not be unreasonably withheld.

**Section 18.12. Remedies Cumulative.** The remedies of the DDA, City or Jackson hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of the other remedies of such party unless specifically so provided herein.

**Section 18.13. Governing Law.** This Agreement shall be construed in accordance with the laws of the State and any action brought in law or equity arising out of its construction or enforcement shall be filed in the Circuit Court for the 17th Judicial District of Michigan (Kent County Circuit Court) or in the United States District Court for the Western District of Michigan, Southern Division.

**Section 18.14. Notices.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when in writing and dispatched by regular, registered or certified mail, postage prepaid or hand delivered, addressed or delivered as follows:

If to the DDA:

City of Grand Rapids, Downtown Development Authority  
29 Pearl Street, N.W., Suite 10  
Grand Rapids, Michigan 49503  
Attention: Executive Director

With copy to;  
Dickinson Wright PLLC  
200 Ottawa Avenue, N.W.  
Suite 1000  
Grand Rapids, Michigan 49503  
Attention: Richard A. Wendt

If to the City:

City of Grand Rapids  
City Hall  
300 Monroe Avenue, N.W.  
Grand Rapids, Michigan 49503  
Attention: City Manager

With copy to;  
Dickinson Wright PLLC  
200 Ottawa Avenue, N.W.  
Suite 1000  
Grand Rapids, Michigan 49503  
Attention: Richard A. Wendt

If to Jackson

Jackson Entertainment, L.L.C.  
2121 Celebration Drive, N.E.  
Grand Rapids, Michigan 49525  
Attention: John D. Loeks

With copy to:  
Miller, Johnson, Snell & Cummisky, P.L.C.  
45 Ottawa Avenue, S.W.  
Suite 1100  
Grand Rapids, Michigan 49503  
Attention: Eric R. Starck

The parties hereto may, by notice given hereunder, designate any further or different address to which subsequent notices or other communications may be sent.

**Section 18.15. Counterparts.** This Agreement may be executed by the parties hereto in counterparts, each of which shall be an original and when taken together, shall constitute a single agreement.

**Section 18.16. Successors and Assigns.** The terms, conditions, covenants and restrictions of this Agreement shall extend and apply to and bind the successors and assigns of the DDA, City and Jackson.

**Section 18.17. Severability.** The invalidity or enforceability of any provision or part of any provision of this Agreement shall not affect the other provisions or parts hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted, provided, that removal of such provisions or parts does not materially change the terms and provisions of this Agreement and the intent of the parties hereto.

**Section 18.18. Survival of Agreement.** This Agreement shall not be merged into any instruments or documents executed and delivered at Closing, but shall survive the Closing and the representations, warranties, covenants and obligations herein shall remain in full force and effect.

**Section 18.19. No Partnership or Joint Venture.** The DDA, City and Jackson are not partners, fiduciaries or joint ventures and nothing in this Agreement creates or will create the relation of partners, fiduciaries or joint ventures between them. Without limiting the generality of the foregoing, each is acting independently, is obligated to separately account for its respective activities and expressly disclaims any fiduciary duty to the others.

**Section 18.20. No Third Party Beneficiaries.** The terms, conditions, obligations and benefits of this Agreement are intended solely for the parties hereto. No third party is an intended beneficiary of this Agreement nor is entitled to enforce the provisions hereof.

**Section 18.21. Additional Documents.** Each party hereto agrees to execute any additional documents reasonably requested by the other parties to carry out the intent of this Agreement.

**Section 18.22. Retail Business Incubator.** The Developer, DDA and City agree that it is essential to support the establishment and expansion of minority and women-owned businesses in the City. To that end, the Developer, DDA and City commit to dutifully exploring, as partners, the creation of a minority and women-owned retail business incubator within the ground floor retail space contained in the Project.

{ signatures on next page }

**IN WITNESS WHEREOF**, the DDA, City and Jackson have caused these presents to be signed by their respective duly authorized officer(s) or member as of the date and year first written above.

**CITY OF GRAND RAPIDS  
DOWNTOWN DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Brian Harris, Chairperson

**CITY OF GRAND RAPIDS**

By: \_\_\_\_\_  
Rosalynn Bliss, Mayor

Attest: \_\_\_\_\_  
Darlene O'Neal, City Clerk

**JACKSON ENTERTAINMENT, L.L.C.**

By: \_\_\_\_\_  
John D. Loeks, Member

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF KENT         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Brian Harris, the Chairperson of the Board of Directors of the City of Grand Rapids, Downtown Development Authority.

---

Notary Public, Kent County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in Kent County

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF KENT         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Rosalynn Bliss and Darlene O’Neal, the Mayor and City Clerk, respectively, of the City of Grand Rapids.

---

Notary Public, Kent County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in Kent County

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF KENT         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by John D. Loeks a member of Jackson Entertainment, L.L.C.

---

Notary Public, Kent County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in Kent County



## **EXHIBIT A**

### **Legal Description of Area 4 and Area 5**

#### **Area 4**

Part of Lots 29, 31, 33, 35, 37, 39, 41 and 43 of Kent Plat Almy Street Block according to the plat thereof recorded in Liber 19 of Plats, Page 12 and vacated alley adjacent thereto on the West, and part of Lots 30, 32, 34, 36, 38, 40, 42 and 44 of Kent Plat Calder Street Block according to the plat thereof recorded in Liber 19 of Plats, Page 12, and vacated alley adjacent thereto on the East, Kent County Records, and part of the Southeast 1/4 of Section 25, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan, described as:

Commencing at the East 1/4 corner of said Section; thence S00°21'00"E 842.50 feet along the East line of said Section; thence S89°39'00"W 669.56 feet perpendicular to said East line to the intersection of the West right-of-way of Ionia Avenue and the South right-of-way of Oakes Street also being the Northeast corner of Lot 29 of Kent Plat Prairie Street Block; thence S89°34'24"W 326.83 feet to the Point of Beginning; thence S89°34'24"W 179.46 feet along said along said South right-of-way line; thence S00°22'29"E 47.01 feet; thence Southeasterly 112.39 feet along a 317.44 foot radius curve to the left, said curve having a central angle of 20°17'05", and a chord bearing S10°31'01"E 111.80 feet; thence S20°40'25"E 35.20 feet; thence Southerly 143.55 feet along a 383.00 foot radius curve to the right, said curve having a central angle of 21°28'29", and a chord bearing S09°56'10"E 142.71 feet; thence S00°48'04"W 39.37 feet to the North right-of-way of Cherry Street; thence S88°35'37"E 86.99 feet along said right-of-way; thence S00°42'24"W 9.26 feet; thence N83°38'12"E 56.45 feet; thence N43°40'54"E 43.82 feet to the West right-of-way of US-131 Business Loop; thence N00°13'17"W 223.76 feet along said right-of-way; thence N06°54'59"W 83.40 feet; thence N48°53'23"W 53.15 feet; thence N00°18'48"W 3.09 feet to the South right-of-way of Oakes Street and the Point of Beginning.

Contains 1.67 acres. Subject to easements, restrictions and rights-of-way of record.

#### **Area 5**

Part of Lots 29, 31, 33, 35, 37, 39, 41 and 43 of Kent Plat Prairie Street Block according to the plat thereof recorded in Liber 19 of Plats, Page 12 and vacated alley adjacent thereto on the West, and part of Lots 30, 32, 34, 36, 38, 40, 42 and 44 of Kent Plat Almy Street Block according to the plat thereof recorded in Liber 19 of Plats, Page 12, and vacated alley adjacent thereto on the East, Kent County Records, and part of the Southeast 1/4 of Section 25, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan, described as:

Commencing at the East 1/4 corner of said Section; thence S00°21'00"E 842.50 feet along the East line of said Section; thence S89°39'00"W 669.56 feet perpendicular to said East line to the intersection of the West right-of-way of Ionia Avenue and the South right-of-way of Oakes Street also being the Northeast corner of Lot 29 of Kent Plat Prairie Street Block; thence S00°20'41"E 54.04 feet along said West right-of-way to the Point of Beginning; thence N45°43'01"W 72.56 feet to the South right-of-way of Oakes Street and a limited access right-of-way line; thence S89°37'13"W 14.30 feet along said right-of-way; thence S82°35'25"W 85.91 feet; thence S41°09'07"W 65.26 feet to the East right-of-way of US-131 Business Loop; thence S00°17'16"E 281.78 feet along said right-of-way; thence S44°47'49"E 53.20 feet to the North

right-of-way of Cherry Street (the previous five courses being along said limited access right-of-way line); thence S88°43'23"E 77.92 feet along the North right-of-way line of Cherry Street; thence N83°50'04"E 41.34 feet along the North right-of-way line of Cherry Street; thence N41°49'21"E 57.27 feet to the West right-of-way of Ionia Avenue; thence N00°20'41"W 283.80 feet along said right-of-way to the Point of Beginning.

Contains 1.58 acres. Subject to easements, restrictions and rights-of-way of record.

## **EXHIBIT B**

### **Legal Description of Development Property**

Part of Kent Plat Prairie Street Block, part of Kent Plat Almy Street Block, part of Kent Plat Calder Street Block, and vacated alleys and streets therein, according to the plat thereof recorded in Liber 19 of Plats, Page 12, and part of the Southeast 1/4 of Section 25, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan, described as:

Commencing at the East 1/4 corner of said Section; thence S00°21'00"E 842.50 feet along the East line of said Section; thence S89°39'00"W 669.56 feet perpendicular to said East line to the intersection of the West right-of-way of Ionia Avenue and South right-of-way of Oakes Street also being the Northeast corner of Lot 29 of Kent Plat Prairie Street Block being the Point of Beginning; thence S89°34'24"W 506.29 feet; thence S00°22'29"E 47.01 feet; thence Southeasterly 112.39 feet along a 317.44 foot radius curve to the left, said curve having a central angle of 20°17'05", and a chord bearing S10°31'01"E 111.80 feet; thence S20°40'25"E 35.20 feet; thence Southerly 143.55 feet along a 383.00 foot radius curve to the right, said curve having a central angle of 21°28'29", and a chord bearing S09°56'10"E 142.71 feet; thence S00°48'04"W 39.37 feet to the North right-of-way of Cherry Street; thence S88°35'37"E 451.51 feet to the West right-of-way of Ionia Avenue; thence N00°20'41"W 384.66 feet along said right-of-way to the Point of Beginning.

Contains 4.14 acres. Subject to easements, restrictions and rights-of-way of record.

## **EXHIBIT C**

### **Adjacent Property Legal Description**

Part of Lots 30, 32, 34, 36, 38, 40, 42 and 44 of Kent Plat Calder Street Block according to the plat thereof recorded in Liber 19 of Plats, Page 12, and part of vacated Ottawa Avenue adjacent thereto on the West, Kent County Records, and part of the Southeast 1/4 of Section 25, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan, described as:

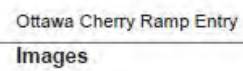
Commencing at the East 1/4 corner of said Section; thence S00°21'00"E 842.50 feet along the East line of said Section; thence S89°39'00"W 669.56 feet perpendicular to said East line to the intersection of the West right-of-way of Ionia Avenue and the South right-of-way of Oakes Street also being the Northeast corner of Lot 29 of Kent Plat Prairie Street Block; thence S89°34'24"W 506.29 feet to the Point of Beginning; thence S00°22'29"E 47.01 feet; thence Southeasterly 112.39 feet along a 317.44 foot radius curve to the left, said curve having a central angle of 20°17'05", and a chord bearing S10°31'01"E 111.80 feet; thence S20°40'25"E 35.20 feet; thence Southerly 143.55 feet along a 383.00 foot radius curve to the right, said curve having a central angle of 21°28'29", and a chord bearing S09°56'10"E 142.71 feet; thence S00°48'04"W 39.37 feet to the North right-of-way of Cherry Street; thence N88°35'37"W 122.05 feet to the West right-of-way of Ottawa Street; thence N00°20'35"W 366.32 feet along said right-of-way to the South right-of-way of Oakes Street, also being the Northeast corner of Lot 29 of Kent Plat Calder Street Block; thence N89°34'24"E 66.99 feet to the Point of Beginning.

Contains 0.82 acres. Subject to easements, restrictions and rights-of-way of record.

**EXHIBIT D**

**Project Conceptual Plans**





20150610

84 2017

**Arena South** Grand Rapids, Michigan

**Arena South** Grand Rapids, Michigan









**EXHIBIT E**

**Forms of Warranty Deeds**

**WARRANTY DEED**

THE GRANTOR: **CITY OF GRAND RAPIDS DOWNTOWN DEVELOPMENT AUTHORITY**, a statutory authority created by the City of Grand Rapids, Kent County, Michigan

WHOSE ADDRESS IS: 29 Pearl Street, N.W., Grand Rapids, Michigan 49503

CONVEYS and WARRANTS

TO THE GRANTEE: **JACKSON ENTERTAINMENT, L.L.C.** a Michigan limited liability company

WHOSE ADDRESS IS: 2121 Celebration Drive, N.W., Grand Rapids, Michigan 49525

the real estate situated in the City of Grand Rapids, Kent County, Michigan, more fully described on Exhibit A attached to this Deed, together with all improvements, fixtures, easements, hereditaments and appurtenances associated with the real estate (the "Property"), subject to (a) easements and restrictions of record; and (b) taxes and assessments not yet due and payable, if any.

This Deed is given in consideration of the purchase price of: See attached Valuation Affidavit.

**CITY OF GRAND RAPIDS DOWNTOWN  
DEVELOPMENT AUTHORITY**

Dated this \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Brian Harris, Chairperson

STATE OF MICHIGAN

)

)ss:

COUNTY OF KENT

)

Acknowledged before me in Kent County, Michigan, on \_\_\_\_\_, 20\_\_\_\_, by Brian Harris, not individually, but as Chairperson of the Board of Directors of the City of Grand Rapids Downtown Development Authority (the “DDA”) on behalf of the DDA.

\_\_\_\_\_

Notary Public, Kent County, Michigan

My commission expires: \_\_\_\_\_

Acting in the County of Kent

Prepared by and return to:  
Richard A. Wendt  
Dickinson Wright PLLC  
200 Ottawa Avenue, N.W., Suite 900  
Grand Rapids, Michigan 49503  
(616) 458-1300

**WARRANTY DEED**

THE GRANTOR:                   **CITY OF GRAND RAPIDS**, a Michigan municipal corporation

WHOSE ADDRESS IS:       300 Monroe Avenue, N.W., Grand Rapids, Michigan 49503

CONVEYS and WARRANTS

TO THE GRANTEE:           **JACKSON ENTERTAINMENT, L.L.C.**, a Michigan limited liability company

WHOSE ADDRESS IS:       2121 Celebration Drive, N.W., Grand Rapids, Michigan 49525

the real estate situated in the City of Grand Rapids, Kent County, Michigan, more fully described on Exhibit A attached to this Deed, together with all improvements, fixtures, easements, hereditaments and appurtenances associated with the real estate (the "Property"), subject to (a) easements and restrictions of record; and (b) taxes and assessments not yet due and payable, if any.

This Deed is given in consideration of the purchase price of: See attached Valuation Affidavit.

**CITY OF GRAND RAPIDS**

Dated this \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Rosalynn Bliss, Mayor

Attest: \_\_\_\_\_  
Darlene O'Neal, City Clerk

)

)

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Acting in the County of Kent

E-4

## **EXHIBIT F**

### **Project Schedule**

<b><u>Milestone Event</u></b>	<b><u>Development Agreement Section Reference</u></b>	<b><u>Completion/Deadline Date</u></b>
Jackson Acquires Development Property	2.01	February 1, 2018
Completion and Submission to City/DDA of Conceptual Plans	Recital D	August 9, 2017
Completion of 50% of Theater, Residential and Parking Structure Plans and City's Planning Department approvals	4.01	February 1, 2018
Completion and submission to City/DDA of Final Plans	8.01	March 9, 2018
File for Necessary Building Permits and Other Governmental Approvals	10.02	March 9, 2018
Commence Construction of Project	10.03	March 1, 2018
Complete Construction of Project	10.05	November 1, 2020

## EXHIBIT G

### DDA Eligible Costs

#### Jackson Eligible Costs:

##### Public Infrastructure:

Sidewalks and streetscape improvements \$ 150,000

##### Accessibility Compliance:

Ramps, grab bars, elevators (cabs and shafts), doors, parking improvements, etc. \$5,200,000

#### City Eligible Costs:

##### Public Infrastructure:

Ottawa Street Extension  
(i.e. utilities, paving, sidewalks, curbs, streetscape improvements, etc.) \$3,500,000

**Total** **\$8,850,000**

**DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF GRAND RAPIDS**

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A  
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GRAND  
RAPIDS DOWNTOWN DEVELOPMENT AUTHORITY, THE CITY OF  
GRAND RAPIDS AND JACKSON ENTERTAINMENT, L.L.C.**

Boardmember \_\_\_\_\_, supported by Boardmember \_\_\_\_\_,  
moved the adoption of the following resolution:

**WHEREAS**, the City of Grand Rapids Downtown Development Authority (the “DDA”) owns two surface parking lots known as Area 4 and Area 5; and

**WHEREAS**, the DDA and Jackson Entertainment, L.L.C. (“Jackson”) previously entered into an Option Agreement dated April 30, 2012, and two subsequent amendments dated March 11, 2015, and October 15, 2015, which, subject to their terms, granted Jackson an option to acquire Area 5; and

**WHEREAS**, the DDA, the City of Grand Rapids (the “City”) and Jackson previously entered into a Term Sheet for the Purchase and Development of a portion of Area 4 and Area 5 Surface Parking Lots dated April 13, 2016 (the “Term Sheet”), related to the acquisition and development by Jackson of a portion of Area 4, all of Area 5 and the area between Area 4 and Area 5 currently used as a public right-of-way; and

**WHEREAS**, the Term Sheet contemplates that the DDA, City and Jackson enter into a development agreement regarding the acquisition and development of such properties; and

**WHEREAS**, the DDA, City and Jackson have negotiated the terms of a development agreement (the “Development Agreement”) which is acceptable to the DDA; and

**WHEREAS**, Jackson has met the terms for execution of the Development Agreement and has executed it.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. That the Development Agreement in the form presented at this meeting is approved with such modifications, not materially adverse to the DDA, approved as to content by the DDA Executive Director and as to form by DDA legal counsel.

2. That, subject to the approval of the Development Agreement by the City Commission of the City, the Chairperson of the Board of Directors of the DDA is authorized and directed to execute the approved Development Agreement for and on behalf of the DDA.

3. That all resolutions or parts of resolutions in conflict herewith shall be and the same are hereby rescinded.

YEAS: Boardmembers \_\_\_\_\_

\_\_\_\_\_

NAYS: Boardmembers \_\_\_\_\_

ABSTAIN: Boardmembers \_\_\_\_\_

ABSENT: Boardmembers \_\_\_\_\_

**RESOLUTION DECLARED ADOPTED.**

Dated: August 9, 2017

\_\_\_\_\_  
Murphy Ackerman  
Recording Secretary

**CERTIFICATION**

I, the undersigned duly qualified and acting Recording Secretary of the of the City of Grand Rapids Downtown Development Authority (the "DDA"), do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Directors of the DDA at a regular meeting held on August 9, 2017, and that public notice of said meeting was given pursuant to, and in compliance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

Dated: August 9, 2017

\_\_\_\_\_  
Murphy Ackerman  
Recording Secretary





# Downtown Grand Rapids Ambassador Report

July 2017



**DOWNTOWN**  
GRAND RAPIDS INC.



# Hospitality



Marcia provides first aid to a homeless individual



Melvin helps a pedestrian with her parking meter



Ariel poses for a picture with a youth volunteer group



Rebecca spends time with Jake and Diana covering Ambassador Operations



Rebecca provides information and directions to pedestrians sitting on a bench on Grandville Ave,

Activity	Stats
Business Contact	143
Motorist Assist	5
Outreach Contact	1041
Pedestrian Assistance	13451
Panhandling	392
Umbrella Escorts	1
Request for EMS/Fire	8
Obs. Fighting	73
Request for GRPD	7
Safety Escort	134
Suspicious Person	32
Suspicious Package	2



# Clean & Beautiful



Evangeline and Ariel use the backpack blower and Billy Goat to mechanically clean Monroe Center.



Marcia replaces the dog bags in the dog bag dispenser on Monroe Center near Rosa Parks Circle.

Activity	Stats
Planters Watered	756
Weed Abatement	3475
Pressure Washing	26

Activity	Stats
Bio Hazard Clean Up	249
Graffiti Removal	240
Snow Removal	0
Trash Bags	1504



Rebecca pulls the full trash bag at Rosa Parks after Relax @ Rosa event on Thursday.



Erin scrubbing the sidewalk on Grandville Ave,



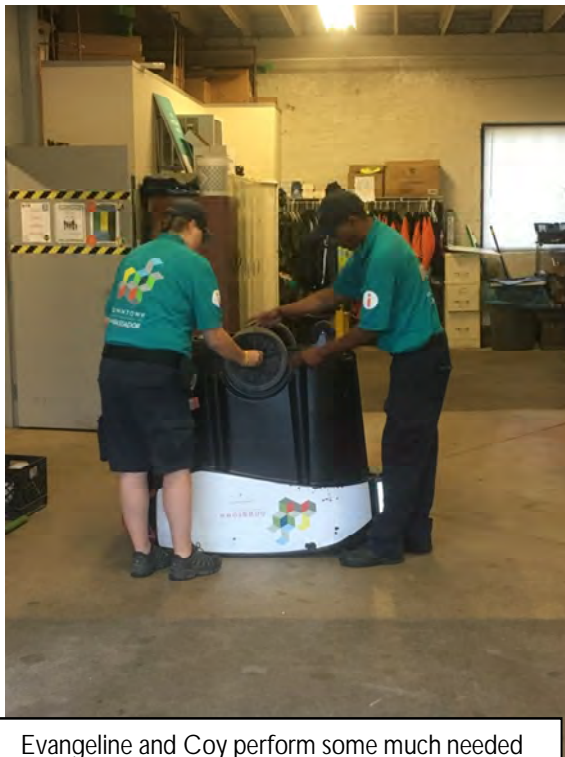
# Special Projects



Joel power washes the sidewalk near Grandville and Cherry,



Ellen waters the flowers on Monroe Center



Evangeline and Coy perform some much needed maintenance on a MegaBrute

Activity	Stats
ATLV Hours	49
Backpack Blower	19
Billy Goat	24
Segway Hours	0



Tyler tackles the weeds on Wealthy Street near the downtown Market



# Special Projects: Storm Damage



Ambassadors worked to clear damage from a severe storm that swept through the area. The team deployed a special patrol to find and clear branches and other debris caused by the storm. The debris was collected and brought to the horticulture waste recycling center on Butterworth.



Rebecca helps a woman clear the debris from the back of her truck.

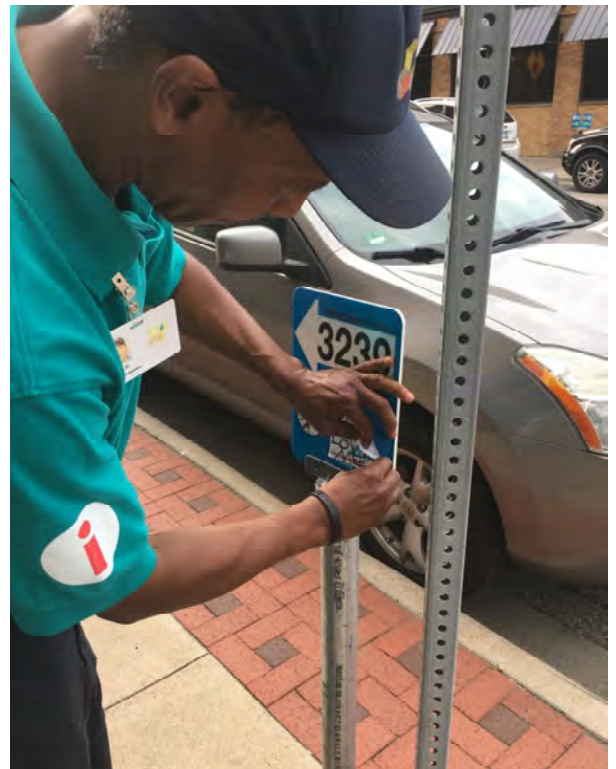


# Highlights & Feedback



Evangeline cleans out a store front on Monroe Center

I wanted to give a review for one of your employees. I was trying to figure out the parking meter, and Coy Davis, was kind enough to walk me through it my first time. He was more personable and friendly than I would have expected a person cleaning streets to be. Please thank him and give him kudos from me!!!!



Coy removes graffiti from a parking sign



Marcia informs a pedestrian about GRAM on the Green

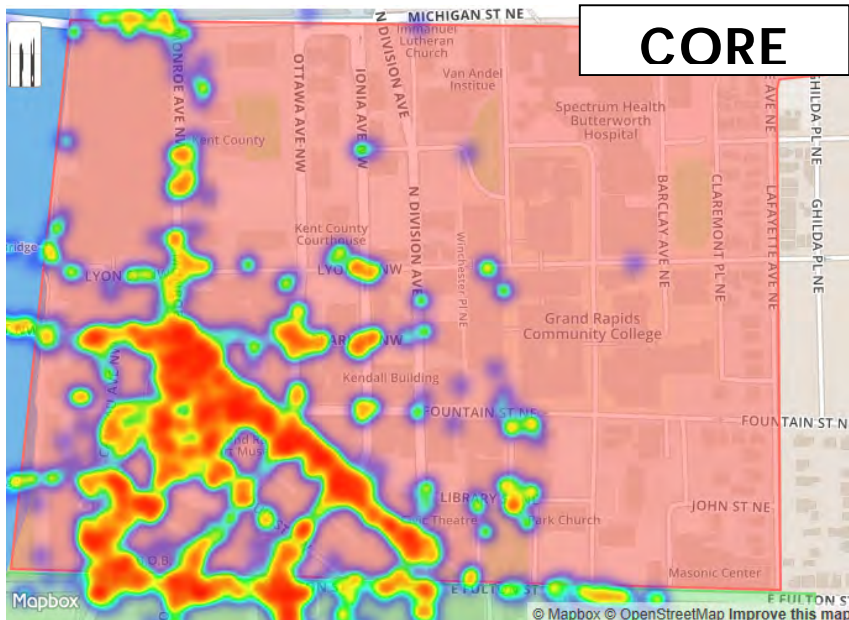
# Statistics

July Activity		2017	2016	2015	2017 YTD
Equipment Usage	ATLV Hours	49	39.5	NA	108
	Backpack Blower (hours)	19	0	NA	41
	Bicycle (miles)	62	63	259.45	68
	Billy Goat Hours	24	0	NA	55
	Segway Hours	0	25	18.5	117.25
	<b>Total Equipment Hours</b>	<b>154</b>	<b>127.5</b>	<b>277.95</b>	<b>389.25</b>
Cleaning	Biohazard Clean Up	249	NA	NA	3545
	Graffiti - Removed	240	936	99	2356
	Planters Watered	756	3511	NA	2366
	Power Washing (block faces)	26	48	NA	165
	Snow Removal	0	0	NA	4499
	Trash (Bags collected)	1504	1107	NA	7644
	Weed Abatement	3475	1842	NA	7282
	<b>Total Cleaning Activity</b>	<b>6250</b>	<b>7444</b>	<b>99</b>	<b>27857</b>
Hospitality & Engagement	Business Contact	143	97	244	1287
	Motorist Assist	5	16	3	82
	Observation - Fighting	73	16	56	780
	Outreach Contact	1041	1101	2643	2972
	PA - Directions	649	513	1865	8334
	PA - Information	3932	2116	4880	27070
	PA - Other	7815	10645	9396	149246
	PA - Program Information	1055	539	2327	5593
	Panhandling - Aggressive	192	13	125	780
	Panhandling - Passive	200	37	88	1130
	Request for Fire/EMS	8	1	15	29
	Request for Police	7	1	10	10
	Safety Escort	134	67	1626	775
	Sidewalk Violation	2011	491	646	4926
	Suspicious Package	2	0	16	12
	Suspicious Person	32	42	536	184
	Umbrella Escorts	1	10	0	58
	<b>Total Hospitality &amp; Engagement Activity</b>	<b>17300</b>	<b>15705</b>	<b>24476</b>	<b>203268</b>
<b>Total Ambassador Activity</b>		<b>23550</b>	<b>23149</b>	<b>24575</b>	<b>231125</b>



# Statistics

## CORE



## North Monroe



## West Side



## Heartside

