

***MEETING OF THE
DOWNTOWN DEVELOPMENT AUTHORITY***

Wednesday, March 27, 2013

8:30 a.m. Special Meeting

Room 601, City Hall

AGENDA

1. Call to order
2. Authorize Execution of Amended Lease Agreement between DDA and Grand Rapids Downtown Market, Inc.....*Motion Larson*
(enclosed)
3. Public Comment
4. Board Member Discussion
5. Adjournment

MEMORANDUM

CITY OF GRAND RAPIDS · DOWNTOWN DEVELOPMENT AUTHORITY

DATE: 03.25.2013
TO: DDA Board
FROM: Kristopher Larson, AICP
Executive Director

**Agenda Item 2
March 27, 2013
DDA Meeting**

SUBJECT: Authorization to Execute an Amended Lease Agreement for Downtown Market Property

Over the past several years, the Downtown Development Authority (DDA) has worked in partnership with the Downtown Market's Board of Directors, Grand Action, and other community stakeholders to facilitate the development of a Downtown Market at the southern end of the DDA area boundaries.

On December 07, 2012, the DDA Board authorized the execution a lease agreement with Grand Rapids Downtown Market, Inc. Since that time and before the lease was executed by either party, circumstances have arisen that have compelled modifications to the language presented in the previous lease agreement.

The amended lease agreement is included herein and reflects the modifications to language regarding the respective obligations of the DDA and the Downtown Market, respectively, toward the annual debt service toward the bonds issued to pay for the costs of the streetscape and roadway improvements in the area of the Downtown Market. Additionally, the amended lease agreement also outlines a more structured fiduciary relationship between the DDA and the Downtown Market.

RECOMMENDATION

On behalf of the City of Grand Rapids Downtown Development Authority, authorize the DDA Board Chair to execute the amended lease agreement with Grand Rapids Downtown Market, Inc. for 435 Ionia Avenue, S.W., and 109 Logan Street, S.W., Grand Rapids, MI, according to the terms listed therein.

GROUND LEASE

between

**CITY OF GRAND RAPIDS
DOWNTOWN DEVELOPMENT AUTHORITY**

and

GRAND RAPIDS DOWNTOWN MARKET, INC.

Dated: _____, as of: January 1, 2012

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GROUND LEASE

THIS GROUND LEASE (the "Lease") is made ~~and executed on~~ _____, as of January 1, 2012 (the "Effective Date"), by and between the **CITY OF GRAND RAPIDS DOWNTOWN DEVELOPMENT AUTHORITY**, a Michigan statutory authority, of 300 Monroe Avenue, N.W., Grand Rapids, Michigan 49503 (the "DDA") and **GRAND RAPIDS DOWNTOWN MARKET, INC.**, a Michigan nonprofit corporation, of 120 Lyon Street, N.W., Grand Rapids, Michigan 49503 ("GRDM"), based upon the following facts:

A. The DDA is the owner of certain real estate consisting of approximately 3.5 acres, located at 435 Ionia Avenue, S.W., and 109 Logan Street, S.W., Grand Rapids, Michigan 49503, as more particularly described on Exhibit A attached hereto (the "Property").

B. The DDA and GRDM desire to allow GRDM (or a wholly-owned entity thereof) to construct and operate a downtown market including, without limitation, multi-vendor space for fresh food markets and other goods, with both a year-round indoor component and an outdoor seasonal farmer's market on the Property, office space, conference and meeting areas, restaurants and brew pubs or similar establishments and various types of kitchens (the "Project"). In reliance upon (i) the Memorandum of Understanding dated August 11, 2010 (as amended on January 12, 2011, and December 14, 2011), between the DDA and Grand Action Committee ("Grand Action") and the Memorandum of Understanding Related to Urban Market Land dated September 14, 2011, between the DDA, Grand Action and the City of Grand Rapids Brownfield Redevelopment Authority both expressing the intent to ground lease the Property to Grand Rapids Urban Market, Inc. (whose name is now GRDM) and (ii) the DDA's consent to GRDM's wholly-owned subsidiary, Grand Rapids Urban Market Holdings, LLC, which entity shall be dissolved, entering into a Demolition Agreement dated _____, February 6, 2012, with Pioneer General Contractors, Inc. (the "Construction Manager"), GRDM has already commenced construction of the Project on the Property.

C. The DDA and GRDM have agreed that the Property shall be leased to GRDM pursuant to the terms and conditions of this Lease.

In consideration of the mutual covenants herein contained, the DDA and GRDM agree as follows:

ARTICLE I

DEMISE AND DESCRIPTION

Section 1.01. Property. The DDA leases to GRDM, and GRDM leases from the DDA, the Property. Except as otherwise provided under this Lease, GRDM has inspected the Property, and agrees to accept the same in its present "as is" condition, with no warranty whatsoever concerning its condition or permitted use, and subject to and benefited by all easements and restrictions, as listed in the title commitment number 79681 dated January 24, 2012, issued by Transnation Title Agency of Michigan (the "Title Commitment"), all zoning laws and ordinances

affecting the same, and any matter that would be discoverable upon a physical inspection of the Property.

ARTICLE II

OWNERSHIP

Section 2.01. Ownership. GRDM and/or its proposed subtenant(s), shall at all times during the term of this Lease have title to the Project, and all improvements, fixtures and other types of fixed personalty appurtenant to the Property, constructed on or adjacent to the Property by GRDM. Upon expiration or early termination of this Lease, title to the Project shall automatically, without action on the part of either of the parties hereto vest in DDA, its successors and assigns. Notwithstanding the foregoing, upon the DDA's request, GRDM covenants and agrees that upon expiration of this Lease, or upon such termination, it will, or will cause its subtenant(s) to, execute and deliver to the DDA a bill of sale to the Project, and to any other structures or improvements on the Property, as the DDA may reasonably request. GRDM shall not permit any willful or deliberate damage to the Project or to such other structures or improvements. If, for any reason, the DDA takes title to the Project by reasons of the termination or expiration of the Lease, such act shall constitute an automatic assignment by GRDM to the DDA of GRDM's right to receive any rents or payments from any tenants, subtenants, sublessees or other occupants of the Project, and GRDM shall cooperate with the DDA in notifying such tenants, subtenants, sublessees and occupants of the DDA's right to receive the same.

ARTICLE III

TERM

Section 3.01. Term. The term of this Lease shall commence on the Effective Date and shall continue for a period of ninety-nine (99) years from the Effective Date (the "Term"). Expiration of the Term (unless extended or sooner terminated as hereinafter provided) shall be at midnight ninety-nine (99) years after the Effective Date.

Section 3.02. Effect of GRDM's Holding Over. Any holding over after the expiration of the Term of this Lease, with or without the consent of the DDA, shall be construed to be a tenancy from month to month, at the monthly Rent as required to be paid by GRDM for the most recently expired term hereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

ARTICLE IV

RENT

Section 4.01. Rent. During the Term, the total base rent for the Property payable by GRDM to the DDA shall be the sum of One and No/100 Dollar (\$1.00) ("Base Rent"). Base Rent shall be payable, in advance, on the Effective Date without demand, notice, setoff or

counterclaim at the DDA's address set forth above or at such other place as the DDA may direct by written notice, from time to time, from the DDA to GRDM. Base Rent is not reflective of the fair market value of the Property and is established at the rate above to be paid in full on the Effective Date in consideration of the improvements and uses being made by GRDM and any subtenant at the expense of GRDM and any subtenant on the Property.

Section 4.02. Additional Rent. All sums in addition to Base Rent due to be paid ~~to~~by GRDM under the terms of this Lease shall constitute "Additional Rent." All Additional Rent shall be due and payable immediately upon demand to ~~GRDM~~DDA at such place as ~~GRDM~~DDA shall from time to time designate. Base Rent and Additional Rent shall be collectively referred to as "Rent."

Section 4.03. Interest. Rent, or any portion thereof, and other charges due to the DDA hereunder not paid when due, shall bear interest at an annual rate equal to eight percent (8%) or the highest rate permitted by applicable law, whichever is lower ("Default Rate").

Section 4.04. Triple Net Lease. The Rent provided for in this Lease shall be an absolutely net return to the DDA for the Term, free from any losses, expenses or charges with respect to the Property, including, without limitation, maintenance, repairs, cost of replacement of buildings, or improvements, insurance, taxes, assessments or other charges imposed upon or related to the Property, or with respect to any easements or rights appurtenant thereto (except as otherwise expressly provided herein). All such amounts shall be paid by GRDM.

~~**Section 4.05. Further Additional Rent.** As provided in the P and R Agreement, as hereinafter defined in Section 6.07 hereof, in the event during any annual period related to the Series 2012A Bonds, as hereinafter defined in Section 6.07 hereof, the DDA Annual Payment, as hereinafter defined in Section 6.07 hereof, of Seventy-Five Thousand Dollars (\$75,000) [or such lesser amount as may be available during such annual period from DDA tax increment revenues realized from the Property and the Project] and such Additional Rent paid by GRDM to the DDA pursuant to Section 6.07 hereof plus the Authority Tax Increment Revenues, as hereinafter defined in Section 6.07 hereof, from the Property and Project are insufficient to pay, when due, the debt service on such Series 2012A Bonds during such annual period, the amount of such shortfall shall be [timely paid by GRDM to the DDA as further Additional Rent in order that principal and interest due on the Series 2012A Bonds during such annual period may be paid when due.]~~

ARTICLE V

CONSTRUCTION, ALTERATIONS AND ADDITIONS

Section 5.01. Construction, Alterations and Additions.

(a) All construction, alterations and additions or other work necessary or desirable to place the Property in a condition suitable to construct the Project and associated improvements for the Intended Use, as defined in Section 6.01 hereof, shall be performed in a good and workmanlike manner by or for GRDM at

GRDM's sole cost and expense. The DDA hereby consents to the alterations to the Property as described in the Construction Management Agreement, which has been supplied in draft form to the DDA, between the Construction Manager and GRDM. GRDM shall be permitted to renovate, refurbish or expand the Project without further consent of the DDA, but all such work shall comply with the requirements of this Section 5.01.

(b) GRDM shall, at GRDM's sole cost and expense, procure all permits and licenses and make all contracts necessary for the performance of construction, alterations, additions and other work on the Property. Such work shall fully conform to all applicable statutes, ordinances, regulations and codes. GRDM shall cause its contractors and subcontractors to furnish the DDA with evidence of such insurance coverage in such amounts as set forth in the Construction Management Agreement.

(c) GRDM shall be responsible for periodic removal from the Property of all trash, rubbish and surplus materials resulting from any work being performed on the Property.

(d) In connection with any assignment of this Lease to GRDM's lenders in accordance with such rights as described in Sections 11.03 and 14.01 of this Lease, the DDA hereby agrees that the DDA's approval to perform the alterations under this Section 5.01 is also given to GRDM's lenders, such that they shall have the right to complete GRDM's improvements approved by the DDA. The right of GRDM's lenders to complete the GRDM's improvements shall survive the termination of this Lease and shall continue for the benefit of GRDM's lenders until the earlier of (i) the date that is 18 months after the date of termination of this Lease or (ii) the date of issuance of a certificate of completion pursuant to Brownfield Michigan Business Tax, Project # M-1013. Upon the request of GRDM's lenders, the DDA will deliver to GRDM's lenders an estoppel certificate reasonably acceptable to GRDM's lenders which will include, without limitation, an acknowledgment of the provisions of this Section 5.01(d).

ARTICLE VI

USE OF PROPERTY

Section 6.01. Intended Use. The Property shall be used solely for the erection, maintenance and operation of the Project as may be constructed on the Property by the present and future affiliates or successors of GRDM or other subtenants and occupants (the "Intended Use"). The Property shall be used for no other purpose without the DDA's prior written consent.

Section 6.02. Uses Prohibited. GRDM shall comply with all applicable governmental laws, rules, codes, regulations and restrictions on the Property (the "Legal Requirements"), and GRDM shall not use, nor permit the Property or any part thereof to be used, for any purpose or

purposes other than the purpose or purposes for which the Property is hereby leased; and no use shall be made or permitted to be made of the Property, or acts done, which will cause a cancellation of any insurance policy covering the Project or Property, or any part thereof, nor shall GRDM sell or permit to be kept, used, or sold in or about the Property, any article which may be prohibited by the standard form of fire insurance policy carried by GRDM. GRDM shall, at its sole cost, comply with all requirements pertaining to the Property and with all requirements of any insurance organization or company necessary for the maintenance of insurance, as herein provided, covering any building, improvements or appurtenances at any time located on the Property. Also prohibited is any use that would violate any Legal Requirement or cause any restriction to be placed on the use of the Property.

Section 6.03. Waste and Nuisance Prohibited. During the Term of this Lease, GRDM shall comply with all Legal Requirements affecting the Property, the breach of which might result in any penalty to the DDA or restriction against the DDA's title to the Property. GRDM shall not commit, or suffer to be committed, any waste on the Property, or any nuisance or illegal act.

Section 6.04. Redelivery of Property. GRDM shall pay the Rent and all other sums required to be paid by GRDM hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all the terms and conditions hereof on its part to be kept and performed and, at the expiration or sooner termination of this Lease, peaceably and quietly quit and surrender to the DDA the Property including the Project free and clear of all liens and encumbrances arising from the acts or omissions of GRDM or its subtenants and in good order and condition, subject to reasonable wear and tear, casualty (to the extent insurance proceeds are delivered to the DDA), ordinary depreciation, and obsolescence and subject to the other provisions of this Lease. In the event of the nonperformance by GRDM of any of the covenants of GRDM undertaken herein, this Lease may be terminated as herein provided. Upon termination of this Lease, GRDM shall promptly execute and deliver to the DDA such deeds, bills of sale or other instruments as may be required to convey any interest which it might have in the Property and the Project.

Section 6.05. Abandonment of Property. GRDM shall not vacate or abandon the Property, or any part thereof, at any time during the Term, but GRDM shall not be deemed to have vacated or abandoned the Property during times when alterations, casualty or other activity under this Lease dispossesses GRDM of day to day use of the Property. If GRDM does abandon, vacate or surrender the Property, or any part thereof, or is dispossessed by process of law, or otherwise, any personal property belonging to GRDM or its subtenants and left on the Property shall be deemed abandoned at the option of the DDA.

Section 6.06. Signs. GRDM may erect, maintain, and remove such signs as it deems necessary, appropriate, or desirable to its business operations in, on, or about the Property, provided that the signs are in compliance with all Legal Requirements.

Section 6.07. Bond Debt Service Payments. The City of Grand Rapids Brownfield Redevelopment Authority (the "Authority") issued its Two Million Three Hundred Twenty-Five Thousand Dollars (\$2,325,000) Tax Increment Bonds, Series 2012A on June

12, 2012 (the "Series 2012A Bonds"), which finally mature on June 1, 2032, to pay a portion of the cost of public infrastructure improvements related to the Project. Beginning with the annual period commencing July 1, 2012, and ending July 1, 2013, and continuing for each similar annual period thereafter while the Series 2012A Bonds (or any bonds used to refund the Series 2012A Bonds) are outstanding, the DDA has agreed, pursuant to the terms of a Payment and Repayment Agreement dated April 12, 2012 (the "P and R Agreement"), between the Authority and the DDA attached hereto as Exhibit B, to annually pay the Authority Seventy-Five Thousand Dollars (\$75,000) (the "DDA Annual Payment") which shall be the first amount applied towards debt service due on the Series 2012A Bonds during such annual period. If during each annual period that the DDA makes a DDA Annual Payment to the Authority, the DDA does not receive at least Forty-Two Thousand Dollars (\$42,000) in tax increment revenues (as defined in Act 197 of the Public Acts of Michigan of 1975, as amended) from the Property and the Project (the "DDA Annual Tax Increment Revenues"), the DDA shall promptly notify GRDM of the difference between Forty-Two Thousand Dollars (\$42,000) and the DDA Annual Tax Increment Revenues (the "Annual Difference Amount") which GRDM may elect to reimburse the DDA. Within thirty (30) days of receiving such notice GRDM shall either reimburse the DDA the Annual Difference Amount or notify the DDA that it elects not to reimburse the Authority at that time. Upon an election by GRDM not to reimburse, the Annual Difference Amount shall bear interest at the rate of 3.514% per annum (the average interest rate on the Series 2012A Bonds) (the "Interest Rate") commencing on June 1 during the applicable annual period until the DDA is reimbursed such Annual Difference Amount plus accrued interest either (i) by GRDM (which it may elect to do, but is not obligated to, at any time) or (ii) in accordance with the second succeeding paragraph hereof.

The balance of the debt service payments due on the Series 2012A Bonds during an annual period after application of the DDA Annual Payment for such period shall be paid by the Authority from Authority Tax Increment Revenues (as defined in the P and R Agreement) received by the Authority from the Property and the Project (the "Authority Annual Tax Increment Revenues"). If during an annual period, after applying the DDA Annual Payment and the Authority Annual Tax Increment Revenues, there are not sufficient funds to pay the debt service payments due on the Series 2012A Bonds during such annual period, the DDA shall cause the Authority to promptly notify GRDM of the shortfall amount (the "Annual Shortfall Amount") which GRDM may elect to reimburse the Authority. Within thirty (30) days of receiving such notice, GRDM shall either reimburse the Authority the Annual Shortfall Amount or notify the DDA and the Authority that it elects not to reimburse the Authority at that time. Upon election by GRDM not to reimburse, the DDA shall promptly pay the Authority the Annual Shortfall Amount and such Annual Shortfall Amount shall bear interest at the Interest Rate commencing on June 1 during the applicable annual period until the DDA is reimbursed such Annual Shortfall Amount plus accrued interest either (i) by GRDM (which it may elect to do, but is not obligated to, at any time) or (ii) in accordance with the immediately succeeding paragraph hereof.

~~Section 6.07. Payment in Lieu of Property Taxes. The City of Grand Rapids Brownfield Redevelopment Authority (the "Authority") issued its Two Million Three Hundred Twenty-Five Thousand Dollars (\$2,325,000) Tax Increment Bonds, Series 2012A Bonds (the "Series 2012A Bonds") to pay for a portion of the cost of public infrastructure improvements related to the Project. The annual debt service on the Series 2012A Bonds is to be paid from a DDA Annual Payment and Authority Tax Increment Revenues as such terms are defined in a Payment and Repayment Agreement dated April 12, 2012 (the "P and R Agreement"), between the Authority and the DDA attached hereto as Exhibit B. The DDA Annual Payment and the Authority Tax Increment Revenues are based on the assumption that [all] of the Property and the Project will be subject annually, while the Series 2012A Bonds are outstanding, to *ad valorem* real property taxes pursuant to the provisions of the General Property Tax Act, Act 206 of the Public Acts of Michigan of 1893, as amended ("Act 206"). To the extent that [any] of the Property or Project is exempt from the levy and payment of such taxes pursuant to Act 206 or other applicable law, GRDM agrees to pay the DDA as Additional Rent prior to the due date of each annual principal payment of the Series 2012A Bonds an amount that would have been levied and captured as real property taxes by the DDA and the Authority and available to pay debt service on the Series 2012A Bonds had the exemption(s) not applied. The methodology for determining such amounts shall be determined by the DDA and approved by GRDM, which approval shall not be unreasonably withheld.~~

If during the term of the brownfield plan amendment for the Project, the Authority shall receive Authority Annual Tax Increment Revenues from the Property and the Project during an annual period in excess of that needed to pay debt service payments due on the Series 2012A Bonds during such period and the Authority's annual administrative fee (equal to Ten Percent (10%) of the Authority Annual Tax Increment Revenues received for such period), such excess amount shall be used, first, to reimburse the DDA any unreimbursed Annual Difference Amount plus accrued interest at the Interest Rate; second, to reimburse the DDA any unreimbursed Annual Shortfall Amount plus accrued interest at the Interest Rate; and, third, to reimburse GRDM for its Eligible Activities (as defined in Act 381 of the Public Acts of Michigan of 1996, as amended) in accordance with a development and reimbursement agreement between GRDM and the Authority.

ARTICLE VII

TAXES AND ASSESSMENTS

Section 7.01. Taxes as Additional Rent. As Additional Rent hereunder, GRDM shall pay and discharge or cause to be paid and discharged as they become due, promptly and before delinquency, without proration, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special or ordinary or extraordinary, of every name, nature and kind whatsoever, including, without limitation, all governmental charges of whatsoever name, nature or kind, which may be levied, assessed, charged or imposed, or which may become a lien or charge on or against the Property, or any part thereof, the leasehold of GRDM herein, the Project, or any building or buildings or other improvements now or hereafter

on the Property, or on or against GRDM's estate hereby created which may be a subject of taxation, or on or against the DDA's interest in the Property during the Term hereof. Specifically, without in any way limiting the generality of the preceding provisions, GRDM shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements, and shall pay the same in cash as they shall fall due and before they shall become delinquent, and as required by the act, ordinance or proceedings under which any such assessment or levy or charge is made by any political subdivision. If the right is given to pay either in one sum or in installments, GRDM may elect either mode of payment, and its election shall be binding upon the DDA. If, by making any such election to pay in installments, any of such installments shall be payable without penalty after the termination of this Lease, or any extended term hereof, such unpaid installments shall also be paid by GRDM. Failure to pay taxes and assessments herein shall carry with it the same consequence as failure to pay any installment of Rent

Section 7.02. Contesting Taxes. If GRDM shall, in good faith, desire to contest the validity or amount of any tax, assessment, levy or other governmental charge herein agreed to be paid by GRDM, GRDM shall be permitted to do so, and, unless required otherwise by law, shall be permitted to defer payment of such tax or charge, the validity or amount of which GRDM is so contesting, until final determination of the contest, upon giving to the DDA written notice thereof prior to the commencement of any such contest, which shall be given at least ten (10) days prior to delinquency, and upon giving to the DDA, on demand by the DDA, a good and sufficient surety bond or other security satisfactory to the DDA against any such tax, levy, assessment, rate, or governmental charge, and upon holding the DDA harmless from any costs, liability or damage arising out of any such contest. If GRDM loses a tax contest, GRDM shall be required to immediately pay all taxes and charges.

Section 7.03. Disposition of Rebates. All rebates on account of such taxes, rates, levies, charges or assessments required to be paid, and which are paid by GRDM under the provisions hereof, shall belong to GRDM, and the DDA will, at the written request of GRDM, execute any receipts, assignments or other acquittances that may be necessary in order to secure the recovery of any such rebates, and will pay over to GRDM any such rebates that may be received by the DDA.

Section 7.04. Receipts. GRDM shall obtain and deliver to the DDA receipts or duplicate receipts for all taxes, assessments and other items required hereunder to be paid by GRDM, promptly upon the request of the DDA.

ARTICLE VIII

INSURANCE

Section 8.01. Insurance Coverage of Project and Improvements. GRDM shall, at all times during the Term upon completion of construction of the Project, and at GRDM's sole expense, keep all improvements which are now or which may hereafter become a part of the Property or the Project, or both, insured with property insurance with loss payable to the DDA

and GRDM as their interests may appear. Any loss adjustment shall require the written consent of the DDA and GRDM.

Section 8.02. Liability Insurance. GRDM shall maintain in effect, at its sole expense, throughout the Term, commercial general liability insurance coverage (alone or in coordination with an umbrella or excess liability policy) with respect to the Property and the Project with a single limit coverage amount of not less than Five Million Dollars (\$5,000,000) each occurrence for personal injury, death, or property damage, which amount shall be adjusted upward from time to time in GRDM's discretion to be consistent with the coverage limits on projects of a similar nature in the greater Grand Rapids metropolitan area. The DDA shall be named an additional insured on this insurance policy. Said insurance shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for the DDA and GRDM.

Section 8.03. Business Interruption Insurance. Upon request of the DDA, GRDM shall maintain in effect at all times, business interruption insurance in an amount sufficient to enable GRDM to meet its obligations under this Lease.

Section 8.04. Right to Pay Premiums on Behalf of GRDM. All of the policies of insurance referred to in this Article VIII shall be written by reputable insurance companies. GRDM shall pay all of the premiums therefor, and shall deliver such policies or certificates thereof to the DDA and all others designated by the DDA, and in the event of the failure of GRDM to obtain such insurance in the names herein called for, to pay the premiums therefor, or to deliver such policies or certificates thereof to the DDA, within ten (10) days of the DDA's written request, the DDA shall be entitled, but shall have no obligation, to obtain such insurance and pay the premiums therefor, which premiums shall be repayable to the DDA upon written demand therefor, and failure to repay the same shall carry with it the same consequence as failure to pay any installment of Rent. GRDM shall endeavor to obtain from each insurer mentioned in this Article VIII, its agreement, by endorsement on the policy or policies issued by it, or by independent instrument furnished to the DDA, that it will give to the DDA and any mortgagee of the Property thirty (30) days' written notice before the policy or policies in question shall expire, or be altered or cancelled.

Section 8.05. Definition of Full Replacement Value. The term "full replacement value" of improvements, as used herein, shall mean the actual replacement cost thereof from time to time, less exclusions provided in the normal fire insurance policy. If either party believes that the full replacement value, that is to say, the then replacement cost less exclusions, has increased or decreased, it shall have the right, but, except as provided below, only at intervals of not less than five (5) years, to have such full replacement value redetermined by ~~the~~ fire insurance company ~~which is then carrying the largest amount of fire insurance on the Project and other improvements on the Property~~ mutually acceptable to the DDA and GRDM, hereinafter referred to as the "impartial appraiser." The party desiring to have the full replacement value so redetermined by such impartial appraiser shall forthwith on submission of its request for redetermination to such impartial appraiser give written notice to the other party hereto. The determination of such impartial appraiser shall be final and binding on the parties hereto, and GRDM shall forthwith increase, or may decrease, the amount of the insurance carried

pursuant to this Article VIII, as the case may be, to the amount so determined by the impartial appraiser. Such determination shall be binding for a period of five (5) years, and until superseded by agreement between the parties hereto or by a subsequent redetermination by an impartial appraiser. GRDM and the DDA shall each pay one-half of the fee, if any, of the impartial appraiser. If during any such five (5) year period GRDM shall have made improvements to the Property or the Project, other than the build out of space for tenants and/or renovations of the Project (but not expansion), the DDA may have such full replacement value redetermined at any time after such improvements are made, regardless of when the full replacement value was last determined.

Section 8.06. Blanket Insurance Policies. Notwithstanding anything to the contrary contained in this Article VIII, GRDM's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by GRDM; as long as the coverage afforded the DDA shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance, and all other requirements of this Article VIII shall be satisfied.

Section 8.07. Cost of Insurance Deemed Additional Rent. The cost of insurance required to be carried by GRDM in this Article VIII shall be deemed to be Additional Rent hereunder.

Section 8.08. Waiver of Subrogation. GRDM and the DDA, each for itself and its respective successors and assigns (including, without limitation, any person, legal entity, firm or corporation which may become subrogated to any of its rights) waives any and all rights and claims for recovery against the other party, and its officers, directors, employees, agents and assigns, or any of them, on account of any loss or damage to any of its property located on the Property insured under any valid and collectible insurance policies, to the extent of any recovery collectible under such insurance policies. Each insurance policy carried by GRDM and the DDA and insuring all or any part of such property shall provide that the insurance company waive all right of recovery by way of subrogation against the DDA or GRDM, as applicable.

ARTICLE IX

ENCUMBRANCE OF PROJECT AND LEASEHOLD INTEREST

Section 9.01. Loans to GRDM. GRDM shall have the right to finance the construction of the Project and pledge this Lease and the leasehold interest herein as security for the financing, provided that the amortization period of the loan shall not exceed the remaining term of this Lease.

Section 9.02. Protection of GRDM's Mortgage. During the existence of any mortgage of this Lease or an interest herein by GRDM of which the DDA has been given notice by GRDM or the mortgagee, the DDA will not terminate this Lease because of any default by the GRDM hereunder if, within a period of thirty (30) days after the DDA has mailed written notice of its intention to terminate this Lease for such cause to the mortgagee or other interest holder at its

last known address, the mortgagee or other interest holder shall commence cure of such default and is actively pursuing in good faith cure of the default.

ARTICLE X

MAINTENANCE, DAMAGE AND DESTRUCTION

Section 10.01. Maintenance. GRDM shall, throughout the Term, at its own cost and without any expense to the DDA, keep and maintain the Property and the Project, including, without limitation, all structural, nonstructural, interior and exterior portions thereof, in good, sanitary and neat order, condition and repair, subject to ordinary wear and tear, casualty, ordinary depreciation, and obsolescence. GRDM shall, except as specifically provided herein, restore, repair, replace or rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever except to the extent such insurance proceeds are delivered to the DDA in lieu thereof. The DDA shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Property or the Project or any buildings or improvements thereon. GRDM shall also comply with and abide by all Legal Requirements affecting the Property, the improvements thereon, or any activity or condition on or in such Property.

Section 10.02. Damage to and Destruction. The damage, destruction, or partial destruction of the Project or any other building or improvements which are on the Property shall not release or diminish GRDM's obligations hereunder, except as hereinafter expressly provided. In case of damage to or destruction of the Project or any other improvement on the Property, GRDM shall, in accordance with Section 5.01 hereof and at its own expense, promptly repair and restore the same to a condition as good as or better than that which existed prior to such damage or destruction. Without limiting such obligations of GRDM, it is agreed that, so long as GRDM is not then in default hereunder, and subject to the rights of any mortgagee of the Property, the proceeds of any insurance covering such damage or destruction shall be made available to GRDM for such repair or replacement. Insurance proceeds shall be held in trust by the DDA for construction disbursement to GRDM.

Section 10.03. Damage or Destruction Occurring Toward the End of Term. Anything to the contrary in Sections 10.01 and 10.02 hereof notwithstanding, in case of destruction of the Project or other improvements to the Property, or damage thereto from any cause so as to make the Project untenable, occurring during the last two (2) years of the Term, the DDA may elect to terminate this Lease by written notice served on GRDM within sixty (60) days after the occurrence of such damage or destruction. In the event of such termination, there shall be no obligation on the part of GRDM to repair or restore the Project or improvements, or any right on the part of GRDM to receive any proceeds collected under any insurance policies covering such Project or other improvements to the Property, or any part thereof, and subject to the rights of any mortgagee of the Property, all insurance proceeds shall belong to the DDA.

Section 10.04. Election Not to Terminate. If, in the event of destruction or damage during the last two (2) years of the Term, the DDA does not elect to terminate this Lease, so long as GRDM is not then in default hereunder, and subject to the rights of any mortgagee of the

Property, the proceeds of all insurance covering such damage or destruction shall be made available to GRDM for such repair or replacement, and GRDM shall be obligated to repair or rebuild the Project as above provided.

ARTICLE XI

LIENS

Section 11.01. GRDM's Duty to Keep Property Free of Liens. GRDM shall keep all of the Property, and every part thereof, the Project, and all other improvements at any time located thereon, and the leasehold estate of GRDM, free and clear of any and all construction liens for or arising out of or in connection with work or construction by, for or permitted by GRDM on or about the Property or the Project, and at all times shall promptly and fully pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify the DDA and all of the Property, the Project and the leasehold estate against all such liens and claims of liens and suits or other proceedings pertaining thereto.

Section 11.02. GRDM's Leasehold Interest. Except as permitted under Section 9.01 hereof, GRDM agrees that it will not mortgage or encumber its leasehold interest in the Property without the DDA's prior written consent which consent shall not be unreasonably withheld, delayed or conditioned.

Section 11.03. Waiver of Security Interest. The DDA waives any security interest in and to all the DDA's liens over GRDM's goods, inventory, trade fixtures, and all other personal property, including insurance over such property, whether statutory, consensual, or equitable. The DDA further agrees to execute an agreement in substance and in form agreeable with GRDM's lender, allowing GRDM's lender access to GRDM lender's collateral, and the insurance proceeds for the collateral, in the Property and Project, if any.

ARTICLE XII

EASEMENTS AND OTHER NONEXCLUSIVE RIGHTS

Section 12.01. Utility Easement. This Lease is subject to all utility easements pertaining to the Property, whether or not of record. The DDA may, without consent of and cost to the GRDM, grant any other easements for public or private utilities or other uses as required by the DDA, provided that such easements do not restrict or interfere with the use of the Property or the Project for the purposes contemplated by this Lease.

ARTICLE XIII

PROHIBITION OF INVOLUNTARY ASSIGNMENT; EFFECT OF BANKRUPTCY OR INSOLVENCY

Section 13.01. Prohibition of Involuntary Assignment. Neither this Lease nor the leasehold estate of GRDM, nor any interest of GRDM hereunder in the Property, the Project, or

any improvements thereon, shall be subject to involuntary assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

Section 13.02 Effect of Bankruptcy, Insolvency, Etc. Without limiting the generality of the provisions of Section 13.01 hereof, GRDM, agrees that:

(a) in the event any proceedings under federal bankruptcy law shall be commenced by or against GRDM, and if commenced against GRDM, shall not be dismissed within thirty (30) days; or

(b) in the event GRDM becomes insolvent or makes an assignment for the benefit of its creditors; or

(c) if a receiver is appointed in any proceeding or action to which GRDM is a party, with authority to take possession or control of all or any part of the Property or the business conducted thereon by GRDM, and such receiver is not discharged within a period of thirty (30) days after its appointment; or

(d) any involuntary assignment prohibited by the provisions of Section 13.01 hereof shall occur;

then such event or occurrence shall be deemed to constitute a breach of this Lease by GRDM and shall, at the election of the DDA, but not otherwise, without notice of entry or other action of the DDA, terminate this Lease and also all rights of GRDM under this Lease and in and to the Property and Project and also all rights of any and all persons claiming under GRDM.

Section 13.03 Bankruptcy without Termination. If following the filing of a petition by or against GRDM in a bankruptcy court the DDA shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended (the "Bankruptcy Code"), GRDM (including GRDM as Debtor-in-Possession) or any trustee for GRDM agrees to promptly, but no later than fifteen (15) days after petition by the DDA to the bankruptcy court, assume or reject this Lease, and GRDM agrees not to seek or request any extension or adjournment of any petition to assume or reject this Lease by the DDA with such court. GRDM's, or the trustee's, failure to assume this Lease within said fifteen (15) day period shall be deemed a rejection. The DDA shall thereupon immediately be entitled to possession of the Property and Project without further obligation to GRDM or the trustee, and this Lease shall be terminated, except that the DDA's right to damages for GRDM's default shall survive such termination. GRDM or any trustee for GRDM may only assume this Lease if (a) it cures or provides adequate assurance that the trustee will promptly cure any default hereunder, (b) it compensates or provides adequate assurance that GRDM will promptly compensate the DDA for any actual pecuniary loss to the DDA resulting from GRDM's default and (c) it provides adequate assurance of future performance under this Lease by GRDM. In no event after the assumption of this Lease by GRDM or any trustee for GRDM shall any then existing default remain uncured for a period in excess of ten (10) days. Adequate assurance of future performance of this Lease shall include, without limitation, adequate

assurance (d) of the source of Rent required to be paid by GRDM hereunder, and (e) that assumption or permitted assignment of this Lease will not breach any provision hereunder.

ARTICLE XIV

SUBLETTING; ASSIGNMENT; TRANSFER TO MORTGAGEE

Section 14.01. Assignment and Subletting. Only with the DDA's prior written consent, which consent may be withheld in its sole discretion, GRDM may assign or transfer this Lease or any part of the Property or Project (the foregoing herein collectively called "Transfers"), for any lawful purpose. The foregoing notwithstanding and notwithstanding any other provision of this Lease, the DDA's consent shall not be required for any Transfer: (a) which is to a subtenant, sub-subtenant, concessionaire or licensee given in the ordinary course of operating the Property and Project for the Intended Use, any subsequent use by GRDM, or any use by a transferee to whom the DDA has previously consented; (b) to any parent subsidiary, or entity related or affiliated with GRDM; (c) made as part of a merger, consolidation, conversion or reorganization of GRDM, or of a transferee to whom the DDA has consented or, transfer as part of the sale of the stock of, an interest in or the assets or property of GRDM or of a transferee to whom the DDA has consented; or (d) to a GRDM lender as collateral for a loan or line of credit made or given to GRDM for the financing of the Project as provided in Section 9.01 hereof, or given to GRDM, or a transferee to whom the DDA has consented, or the parent, subsidiary, or entity related or affiliated with GRDM or such transferee to the extent such is permitted hereunder.

Section 14.02. Occupants and Subtenants. GRDM, in its sole discretion, may sublease the Property or Project to a wholly-owned subsidiary, and both GRDM and the subsidiary may further license, lease or sublease any space in the Project under any lease, sublease, sub-sublease or other agreement, contract, or other instrument or arrangement, subject to Legal Requirements. All sublessees, concessionaires, and licensees shall take such part or all of the Property or Project subject and be subordinate to the terms and conditions of this Lease.

Section 14.03. Transfer to Mortgagee. Notwithstanding anything to the contrary in this Lease, GRDM and its subsidiary shall have the unrestricted right to assign or transfer its interest in this Lease to a mortgagee or to another party designated by the mortgagee in lieu of default of the mortgage on the leasehold interest of the Property and Project. The transfer of GRDM's and/or its subsidiary's interest in the Property and Project shall not affect the terms of this Lease, and such new lessee shall comply with all terms and conditions of this Lease.

ARTICLE XV

INDEMNIFICATION OF THE DDA

Section 15.01. Indemnification of DDA. The DDA shall not be liable for any loss, injury, death or damage to persons or property, ~~including, but not limited to, claims made for medical malpractice,~~ which at any time may be suffered or sustained by GRDM, or by any persons who may at any time be using or occupying or visiting the Property or the Project, or may be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of GRDM or of an

occupant, subtenant, visitor or user of any portion of the Property or the Project, or shall result from or be caused by any other matter or thing, whether of the same kind as or of a different kind than the matters or things above set forth, and GRDM shall indemnify and defend the DDA and its officers, boardmembers, employees and agents from and against all claims, liabilities, losses or damages whatsoever, including, without limitation, attorneys' fees, on account of any such loss, injury, death or damage. GRDM hereby waives all claims against the DDA or its officers, boardmembers, employees and agents for damages to the Project and other improvements that are now on or are hereafter placed or built on the Property and to the property of GRDM in, on, or about the Property or to the Project, from any cause arising at any time. The foregoing provisions of this Section 15.01 shall not apply to loss, injury, death or damage arising by reasons of the negligence or misconduct of the DDA or its officers, boardmembers, employees and agents.

ARTICLE XVI

WARRANTIES OF TITLE AND QUIET POSSESSION

Section 16.01. Warranties. The DDA covenants that the DDA is seized of the Property, in fee simple, and has full right to make this Lease, and that so long as GRDM is not in default hereunder, GRDM shall have quiet and peaceable possession of the Property and the Project during the Term, in accordance with the terms and conditions hereof. Said warranties are limited to GRDM and all persons claiming under GRDM.

ARTICLE XVII

DEFAULT

Section 17.01. Event of Default. If:

- (a) GRDM fails to make any payment of Rent on the due date thereof and fails to cure such delinquency within ten (10) days after written notice thereof has been given by the DDA to GRDM; or
- (b) GRDM breaches any covenant of this Lease other than the covenant for the payment of Rent and fails to cure such breach within thirty (30) days after written notice thereof has been given by the DDA to GRDM; or
- (c) GRDM becomes involved in a legal proceeding which results in the levy of execution on or the acquisition of its leasehold interest by a trustee in bankruptcy, receiver, assignee or other legal officer appointed in any insolvency or creditors' proceedings, and such default is not corrected or cured within thirty (30) days after receipt of written notice to do so

then, and in any of the foregoing events, GRDM shall be deemed to have committed an "Event of Default" under this Lease.

If GRDM commits an Event of Default, it shall be lawful for the DDA, at its option after giving any written notice as required in subsections (a) through (c), inclusive, without formal demand or further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, subject to the rights of GRDM's lenders as set forth in this Lease, to:

(a) terminate this Lease, repossess the Property and the Project and be entitled to recover immediately, as liquidated agreed final damages, in lieu of any further deficiencies, the total amount due to be paid by GRDM during the balance of the Term, less the fair rental value of the Property and the Project for said period, together with any other sum of money owed by GRDM to the DDA. The DDA's right to terminate this Lease shall be subject to the terms and conditions set forth in Section 9.02 hereof,

(b) terminate GRDM's right of possession and repossess the Property and Project without demand or notice of any kind to GRDM and without terminating this Lease, in which case the DDA may, but need not, relet all or any part of the Property and Project for such rent and upon such terms as shall be satisfactory to the DDA. For the purposes of such reletting, the DDA may make such repairs, alterations, additions, or physical changes in or to the Property and the Project as may be necessary or convenient. If the DDA shall fail or refuse to relet the Property or the Project, then GRDM shall pay to the DDA as damages the total amount due to be paid by GRDM during the balance of the Term. If the Property and Project are relet and a sufficient sum shall not be realized from the reletting, after payment of all costs and expenses of such repairs, alterations, additions, or physical changes and the expense of such reletting and the collection of rent occurring therefrom, to satisfy the Rent herein provided to be paid during the remainder of the Term, GRDM shall satisfy and pay any such deficiency upon demand. GRDM agrees that the DDA may file suit to recover any sums falling due under the terms of this Section 17.01 from time to time, and that any suit, or recovery of any portion due the DDA hereunder shall be no defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of the DDA, and

(c) have specific performance of GRDM's obligations.

Section 17.02. DDA's Right to Perform. In the event that GRDM, by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default hereunder and such failure shall continue after written notice specified in Section 17.01 hereof from the DDA specifying the nature of the act or thing to be done or performed, then the DDA may, but shall not be required to, do or perform or cause to be done or performed such act or thing, entering upon the Property and Project for such purposes, if the DDA shall elect, and the DDA shall not be or be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to the DDA on account thereof, and GRDM shall repay to the DDA, on demand, the entire expense thereof, including compensation to the agents and employees of the DDA. Any act or thing done by the DDA pursuant to the provisions of this Section 17.02 shall not be or be construed as a waiver of any such default by GRDM, or as a

waiver of any covenant, term or condition herein contained, or of the requirement of performance thereof, or of any other right or remedy of the DDA, hereunder or otherwise. All amounts payable by GRDM to the DDA under any of the provisions of this Lease, if not paid when the same become due as in this Lease provided, shall bear interest from the date they become due until paid, at the Default Rate.

Section 17.03. Waiver. The waiver by the DDA of, or the failure of the DDA to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of subsequent breach of the same, or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the DDA shall not be deemed to be a waiver of any preceding breach by GRDM of any term, covenant or condition of this Lease, other than the failure of GRDM to pay the particular Rent so accepted, regardless of the DDA's knowledge of such preceding breach at the time of acceptance of such Rent.

Section 17.04. DDA Default; Remedies. If the DDA fails to perform any material obligation under this Lease and such failure continues beyond a reasonable period of time, not to exceed thirty (30) days after the DDA's receipt of written notice from GRDM specifying in reasonable detail the nature of such failure (unless such default is not reasonably capable of being cured within such thirty (30) day period and the DDA is diligently prosecuting such cure to completion), GRDM may, by written notice to the DDA, elect to: (a) terminate this Lease; and/or (b) bring an action for specific performance or for damages; and/or (c) pay or perform such obligation on behalf of and at the expense of the DDA (making and doing all necessary work and payments in connection therewith, including, but not limited to, paying fees, costs, and charges, including, but not limited to, reasonable attorneys' fees, in connection with any legal action). The DDA covenants and agrees to pay to GRDM the amount incurred by GRDM, together with interest thereon at the Default Rate within thirty (30) days after the DDA's receipt of a statement therefore. However, if the DDA desires to contest the validity or correctness of any lien or encumbrance, it may do so, provided that it shall first furnish GRDM with a good and sufficient bond indemnifying GRDM against any loss, liability, or damage on account thereof.

ARTICLE XVIII

EFFECT OF EMINENT DOMAIN

Section 18.01. Effect of Total Condemnation. In the event the entire Property and Project shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, or shall be conveyed by the DDA to any public or quasi-public authority under a threat of such appropriation or taking, this Lease shall terminate and expire as of the date of such taking or conveyance, Rent shall be prorated to such date, and GRDM and the DDA shall thereupon be released from any liability thereafter accruing hereunder. All proceeds shall first be used to pay off GRDM indebtedness related to the Property or the Project, and any excess funds shall belong to the DDA.

Section 18.02. Effect of Partial Condemnation. If the taking consists of less than five percent (5%) of the Property and Project, there will be no termination of the Lease. If there is a taking of more than five percent (5%) of the Property and Project, then either the DDA or

GRDM may terminate the Lease, and if the Lease is terminated, the proceeds will be applied in the same way as under Section 18.01 hereof. If the Lease is not terminated, then GRDM shall rebuild to the extent possible and consistent with the previous structure, and subject to the rights of any mortgagee of the Property, the proceeds shall be used first to pay for such rebuilding, and any excess will go to the DDA and GRDM as their interests may appear.

ARTICLE XIX

MISCELLANEOUS

Section 19.01. Utilities. GRDM shall install and connect to all utilities at its sole cost and expense. GRDM shall fully and promptly pay for all water, sewer, gas, heat, light, power, janitorial services, garbage disposal, communication service, telephone service and other public utilities of every kind furnished to the Property or the Project throughout the Term, and all other costs and expenses of every kind whatsoever, of or in connection with the use, operation and maintenance of the Property and the Project, and all activities conducted thereon or therein, and the DDA shall not have responsibility of any kind for any payment thereof. Utility payments shall be deemed Additional Rent under this Lease.

Section 19.02. DDA's Right of Entry. GRDM shall permit the DDA, and employees and agents of the DDA, to enter into and upon the Property and Project at all reasonable times for the purpose of inspecting the same or for the purpose of posting notices required by Legal Requirements.

Section 19.03. Surrender of Lease. The voluntary or other surrender of this Lease by GRDM, or by a mutual cancellation thereof, shall not work a merger, and may, at the option of the DDA, terminate all existing subleases or subtenancies, or may, at the option of the DDA, operate as an assignment to it of any or all such subleases or subtenancies.

Section 19.04. Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on the DDA shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

Section 19.05. Notices.

(a) All notices, demands or other writings in this Lease provided to be given or made or sent shall be deemed to have been fully given or made or sent when made in writing and delivered to the principal office of, and acknowledged by, the party to whom notice is given, or three (3) days after deposited in the United States mail, registered and postage prepaid, or upon receipt or refusal when delivered by overnight express mail and addressed as follows:

TO THE DDA City of Grand Rapids Downtown Development Authority
300 Monroe Avenue, N.W
9th Floor
Grand Rapids, Michigan 49503

Attention: Executive Director

TO GRDM: Grand Rapids Downtown Market, Inc.
120 Lyon Street, N.W.
Grand Rapids, Michigan 49503
Attention: President

(b) The address to which any notice, demand or other writing shall be given or made or sent to any party may be changed by written notice given by such party in accordance with this Section 19.05.

Section 19.06. Captions. The captions appearing under the Article and Section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

Section 19.07. Construction. This Lease shall be construed and interpreted according to the laws of the State of Michigan (the "State") that are applied to leases made and to be performed in the State.

Section 19.08. Subordination; Attornment; Estoppel Certificate. This Lease shall be subject and subordinate to the interests of the holders of any notes secured by mortgages on the Property, including a mortgage on this Lease by GRDM, now or in the future, and to all underlying leases and to all renewals, modifications, consolidations, replacements, and extensions thereof, and while the provisions of this Section 19.08 are self-executing, GRDMDDA shall execute such customary documents as may be reasonably necessary to affirm or give notice of such subordination. ~~Such subordination shall be contingent upon the DDA or any mortgagee providing GRDM with a customary non-disturbance agreement.~~

Upon request of the holder of any note secured by a mortgage on the Property or Project, DDA and/or GRDM, as applicable, shall agree in writing that no action taken by such holder to enforce said mortgage shall terminate this Lease or invalidate or constitute a breach of any of its provisions, and GRDM shall attorn to such mortgagee, or to any purchaser of the Property or the Project at any foreclosure sale, or sale in lieu of foreclosure, for the balance of the Term on all the terms and conditions herein contained. While the provisions of this Section 19.08 are self-executing, all persons affected thereby shall execute such documents necessary to affirm or give notice of such attornment.

At the request of the DDA, GRDM shall within ten (10) days deliver to the DDA, or anyone designated by the DDA, a certificate stating and certifying as of its date (a) the date to which Rent and other charges under this Lease have been paid, (b) whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants, or conditions hereof on the part of GRDM to be performed or complied with (and, if so, specifying the same), and (c) if such be true, that this Lease is unmodified and in full force and effect and the DDA is not in default under any provision of this Lease. Upon the same terms and conditions as provided in this Section 19.08, the DDA shall provide an estoppel certificate to GRDM or anyone designated by GRDM within ten (10) days of GRDM's request.

Section 19.09. Parties Bound. The covenants and conditions herein contained shall, subject to the provisions of this Lease as to assignment, transfer and subletting, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

Section 19.10. Expenses of Enforcement. GRDM shall pay all reasonable attorneys' fees and expenses incurred by the DDA in enforcing any provision of this Lease, as Additional Rent, together with interest thereon from the date paid at the Default Rate.

Section 19.11. Litigation. The DDA and GRDM do hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other upon any matters whatsoever arising out of or in any way connected with this Lease, GRDM's use or occupancy of the Property and Project, or any claim of injury or damage or both. It is further mutually agreed that if the DDA commences any summary proceeding for nonpayment of any Rent, GRDM will not interpose any counterclaim whatsoever in any such proceeding; *provided, however*, that the foregoing shall not constitute a waiver of GRDM's right to bring a separate action for any claim GRDM may have.

Section 19.12. Covenants and Conditions. All covenants and conditions contained in this Lease are independent of one another. All of the covenants of GRDM contained herein shall, at the option of the DDA, be construed as both covenants and conditions.

Section 19.13. Limitation on Liability. If the DDA is in default of this Lease, and as a consequence GRDM recovers a money judgment against the DDA, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title and interest of the DDA in the Property, out of rent or other income from the Property or Project receivable by the DDA, or out of the consideration received by the DDA from the sale or other disposition of all or any part of the DDA's right, title and interest in the Property or Project.

Section 19.14. Accord and Satisfaction. No payment by GRDM or receipt by the DDA of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and the DDA shall accept such check or payment without prejudice to the DDA's right to recover the balance of such Rent or to pursue any other remedy in this Lease as provided.

Section 19.15. Counterparts. This Lease may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one agreement. Faxed signatures, or scanned and electronically transmitted signatures on this Lease, shall be deemed to have the same legal effect as original signatures on this Lease.

Section 19.16. Brokers. Each party under this Lease represents and warrants that it has dealt with no broker in connection with this Lease and agrees to hold harmless and indemnify the other from and against any broker's claim for any commission related to this Lease.

Section 19.17. Hazardous Materials. GRDM shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials, as defined herein, in, on, upon, under or through the Property or Project. GRDM shall not allow the storage or use of Hazardous Materials in any manner not sanctioned by law for the storage and use of Hazardous Materials, nor allow to be brought into the Property or Project any Hazardous Materials, except to use in the ordinary course of GRDM's business, and then only after written notice is given to the DDA of the identity of such Hazardous Materials. "Hazardous Materials" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local laws and the regulations adopted under these acts (the "Environmental Laws"). GRDM shall execute affidavits, representations and the like from time to time at the DDA's request concerning GRDM's best knowledge and belief regarding the presence of Hazardous Materials on the Property and Project. As used herein, the term "Hazardous Material" means petroleum products, asbestos, and any other hazardous or toxic substance, material or waste, which is or becomes regulated by any applicable state, local or federal governmental authority, whether originating from the Property or the Project, or migrating, flowing, percolating, diffusing or in any way moving onto or under the Property or the Project.

Section 19.18. Non-Disturbance Agreements. **The Executive Director of the DDA is authorized to execute customary non-disturbance agreements requested by subtenants of the Project or their lenders in a form approved by DDA legal counsel.**

Section 19.19. Survival. All obligations arising prior to the termination of this Lease and all provisions of this Lease allocating responsibility or liability between the parties, including without limitation the indemnity provisions contained herein, shall survive the termination of this Lease. No obligation which survives the term of this Lease shall give GRDM any possessory interest in the Property or Project nor have the effect of extending the Term of this Lease.

Section 19.19.19.20. Entire Agreement; Amendment. This Lease, **including the exhibits attached hereto,** represents the entire agreement between the parties. Except as expressly referenced herein, no oral or written, prior or contemporaneous agreements shall have any force or effect, and the Lease may not be amended, altered or modified unless done so by means of a written instrument signed by both parties.

The DDA and GRDM have executed this Lease as of the date first indicated above.

**CITY OF GRAND RAPIDS DOWNTOWN
DEVELOPMENT AUTHORITY
"DDA"**

Dated: March 27, 2013

By: _____
Brian Harris, Chairperson

**GRAND RAPIDS DOWNTOWN
MARKET, INC.
“GRDM”**

Dated: March 27, 2013

By: _____
Mimi K. Fritz, President
Its: _____

DRAFT

EXHIBIT A

Legal Description of Property

Parcel A:

Part of McConnell's Addition, Taylor's Addition, Tanner's Addition and the East one-half of the Northeast 1/4, Section 36, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan, described as: Beginning at the Southwest corner of Wealthy Street and Ionia Avenue; thence South 0 degrees 00 minutes 00 seconds along the West line of Ionia Avenue (66.00 feet wide) 594.15 feet; thence North 88 degrees 28 minutes 08 seconds West 144.80 feet along the North line of Logan Street (66.00 feet wide); thence North 3 degrees 38 minutes 45 seconds West 64.12 feet; thence North 14 degrees 30 minutes 45 seconds West 70.79 feet; thence South 88 degrees 28 minutes 08 seconds East 16.97 feet; thence North 14 degrees 22 minutes 00 seconds West 129.00 feet; thence North 6 degrees 32 minutes 00 seconds West 24.33 feet; thence North 1 degree 13 minutes 00 seconds East 53.89 feet; thence North 11 degrees 33 minutes 00 seconds East 46.55 feet; thence North 14 degrees 05 minutes 00 seconds East 80.00 feet; thence Northeasterly 140.98 feet along a 1 degree curve to the left, the long chord of which bears North 16 degrees 35 minutes 33 seconds East 140.98 feet; thence South 88 degrees 26 minutes 18 seconds East 114.23 feet along the South line of Wealthy Street (66.00 feet wide) to the place of beginning.

Parcel B:

That part of C. H. Taylor's Addition, that part of McConnell's Addition, part of vacated McConnell Street and part of the Northeast quarter, Section 36, Township 7 North, Range 12 West, described as: Beginning at a point on the South line of Old Wealthy Street, which is North 88 degrees 05 minutes 56 seconds West, 114.25 feet from the Northeast corner of Lot 14, McConnell's Addition; thence Southwesterly 140.98 feet along a 5,729.6 foot radius curve to the right, the chord of which bears South 16 degrees 57 minutes 47 seconds West, 140.98 feet; thence South 14 degrees 27 minutes 14 seconds West, 80.00 feet; thence South 11 degrees 55 minutes 14 seconds West, 46.55 feet; thence South 1 degree 35 minutes 14 seconds West, 53.89 feet (the last four calls being along the Easterly line of Railroad right of way); thence North 88 degrees 18 minutes West, 16.93 feet; thence Northerly 54.08 feet along a 279.5 foot radius curve to the right, the chord of which bears North 1 degree 41 minutes East, 54.0 feet; thence North 88 degrees 18 minutes West, 7.58 feet; thence South 24 degrees 00 minutes West 58.37 feet along the Easterly line of Railroad right of way; thence South 16 degrees 57 minutes West, 153.23 feet along said Easterly line; thence North 88 degrees 06 minutes 09 seconds West, 62.40 feet along the Southerly line of Lots 19, 20 and 21, Taylor's Addition; thence North 12 degrees 48 minutes 42 seconds East, 112.42 feet along the Easterly line of Highway U.S. 131 right of way; thence North 20 degrees 49 minutes 48 seconds East 220.62 feet along said Easterly line; thence South 69 degrees 10 minutes 12 seconds East, 5.00 feet; thence North 20 degrees 49 minutes 48 seconds East, 16.0 feet along said Easterly line; thence North 12 degrees 48 minutes 42 seconds East, 131.79 feet along said Easterly line; thence South 88 degrees 05 minutes 56 seconds East, 82.97 feet along the Southerly line of Old Wealthy Street to the place of beginning.

Except that part of Lots 19 and 20 of "C.H. Taylor's Addition", Part of Lots 17 and 18 of "McConnell's Addition", Part of vacated McConnell Street and Part of the Northeast 1/4 of Section 36, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan, more particularly described as:

All that part which lies Westerly of the following described line: Commencing at the Northeast corner of Section 36, Town 7 North, Range 12 West, City of Grand Rapids, Kent County, Michigan; thence North 88 degrees 26 minutes 29 seconds West along the North line of said Section, also being the centerline of old Wealthy Street, 260.238m (853.80 feet) to a point on a limited access right of way line (restricting all ingress and egress) and the point of beginning of this description; running thence along said limited access right of way line, South 33 degrees 59 minutes 40 seconds West, 11.867m (38.93 feet); thence Southerly along the arc of a 766m (2,513.12 foot) radius curve to the right, 74.005m (242.80 feet) ((chord bearing South 13 degrees 46 minutes 53 seconds West, chord distance 73.976m (242.70 feet)) to the point of tangency of said curve; thence South 16 degrees 32 minutes 57 seconds West, 69.845m (229.15 feet) to the point of curvature of a 1194m (3,917.32 foot) radius curve to the left; thence Southerly along the arc of said curve, 10m (32.81 feet) ((chord bearing South 16 degrees 18 minutes 33 seconds West, chord distance, 10m (32.81 feet)) to a point of ending.

Parcel C:

THAT PART of Lots 16, 17 and vacated McConnell Street of C. H. Taylor's Addition to the City of Grand Rapids, and of the Northeast Quarter of the Northeast Quarter of Section 36, Township 7 North, Range 12 West, described as:

COMMENCING 149.66 feet westerly along the south line of C. H. Taylor's Addition from the west line of Ionia Avenue; thence west along the south line of said Addition 17.84 feet to a point on the westerly line of said New York Central Spur Track right of way (16.50 feet wide); thence at an angle to the right of 74° 08', a distance of 127.23 feet; thence on an angle of 7° 50' to the right, a distance of 25.96 feet to the intersection of a line which is 281 feet north from the north line of Logan Street; thence easterly along said line, 16.93 feet; thence at an angle to the right from said line of 82° 12', a distance of 24.33 feet; thence at an angle of 7°50' to the left, a distance of 129 feet to the place of BEGINNING.

Parcel D:

PART OF BLOCK 2, TANNER'S ADDITION, PART OF TAYLOR'S ADDITION, AND PART OF THE NE ¼, SECTION 36, T7N, R12W, CITY OF GRAND RAPIDS, KENT COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE SE CORNER OF LOT 1 BLOCK 2, TANNERS ADDITION; THENCE N88° 44'07"W 144.80 FEET ALONG THE NORTH LINE OF LOGAN STREET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE N88°44'07"W 189.65 FEET ALONG SAID NORTH LINE TO THE EASTERLY R.O.W. LINE OF HIGHWAY US-131; THENCE N02°49'52"E 18.54 FEET ALONG SAID EASTERLY LINE; THENCE S87°10'08"E 8.53 FEET AND N02°49'52"E 62.22 FEET ALONG SAID EASTERLY LINE; THENCE NORTHEASTERLY 53.35 FEET ALONG

SAID EASTERLY LINE ON A 3917.32 FOOT RADIUS CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS N16°04'12"E 53.35 FEET TO THE NORTH LINE OF BLOCK 2, TANNERS ADDITION; THENCE S88°44'07"E 44.44 FEET ALONG SAID NORTH LINE; THENCE N00°16'01"W 0.70 FEET; THENCE N88°44'07"W 11.55 FEET; THENCE N16°18'53"E 152.50 FEET; THENCE N23°21'53"E 58.37 FEET; THENCE S88°56'07"E 7.58 FEET; THENCE SOUTHERLY 54.08 FEET ALONG A 279.50 FOOT RADIUS CURVE TO THE LEFT, THE CHORD OF WHICH BEARS S01°02'53"W 54.00 FEET; THENCE S05°17'43"E 25.76 FEET; THENCE S14°35'20"E 127.33 FEET TO THE NORTH LINE OF BLOCK 2, TANNERS ADDITION; THENCE S14°46'28"E 70.79 FEET; THENCE S03°54'28"E 64.18 FEET TO THE PLACE OF BEGINNING.

WITH RESPECT TO PARCEL D, EXCLUDING:

THAT PART OF LOTS 7 AND 8 OF BLOCK 2 OF TANNER'S ADDITION, SECTION 36, TOWN 7 NORTH, RANGE 12 WEST, CITY OF GRAND RAPIDS, KENT COUNTY, MICHIGAN, AS RECORDED IN LIBER 2 OF PLATS ON PAGE 47, KENT COUNTY RECORDS, DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK 2; THENCE N 88°44'07"W ALONG THE SOUTH LINE OF SAID BLOCK 278.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE N 88°44'07"W ALONG SAID SOUTH LINE 56.45 FEET TO THE EASTERLY RIGHT OF WAY LINE OF HIGHWAY U.S. – 131 (VARIABLE WIDTH); THENCE N 02°49'52"E ALONG SAID EASTERLY LINE 18.54 FEET; THENCE S 87°10'08"E ALONG SAID EASTERLY LINE 8.53 FEET; THENCE N 02°49'52"E ALONG SAID EASTERLY LINE 41.69 FEET; THENCE S 88°44'07"E 44.67 FEET TO THE EAST LINE OF SAID LOT 7; THENCE S 00°16'07"E ALONG SAID EAST LINE 60.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.067 ACRES.

DRAFT

EXHIBIT B

DRAFT

EXHIBIT C

ADDENDUM TO GROUND LEASE

THIS ADDENDUM TO GROUND LEASE (the "Addendum") dated as of January 1, 2012, is entered into by the DDA and GRDM with the understanding that it shall be a part of and is incorporated in its entirety in a Ground Lease (the "Lease") dated as of January 1, 2012, between the DDA and GRDM. This Addendum is executed by the parties hereto to evidence additional consideration of the parties' rights, agreements, obligations and covenants in the Lease including specifically the DDA's agreement contained in Section 19.18 of the Lease.

The provisions of this Addendum shall be effective September 1, 2014, and shall remain in effect during the Term of the Lease only during such time that a non-disturbance agreement executed by the DDA pursuant to Section 19.18 of the Lease is effective. All capitalized terms used in this Addendum and not defined herein shall have those meanings as defined in the Lease.

The parties hereto recognize and agree that they are partners in the Project with each having made and will continue to make significant contributions to the Project and that they will mutually share and benefit from its success. Further, it is the intent of the parties for the Project to retain Normal Independent Status (as hereinafter defined) to the extent GRDM consistently maintains Minimum Operating Standards (as hereinafter defined).

During "Normal Independent Status" GRDM shall operate and maintain the Project without any required advice or input from the DDA, *provided, however*, the highest executive officer of Downtown Grand Rapids, Inc. ("DGRI") shall be a Boardmember of the GRDM Board of Directors and shall be a member of its finance committee and shall abide by protocol for the finance committee as established from time to time by the GRDM Board of Directors. Further, during Normal Independent Status, GRDM will provide DDA legal counsel on a timely basis quarterly unaudited financial reports.

If the Project does not at the end of any full fiscal year for the Project meet "Minimum Operating Standards" which is defined as (1) the Project market building having an occupancy of at least Sixty Percent (60%), (2) the Project operating fund having a fund balance of at least Two Hundred Fifty Thousand Dollars (\$250,000) and (3) the Project's projected income of the then current fiscal year not being less than Ninety Percent (90%) of projected expenses, "Level One Adjustment" shall apply and, along with continuing to meet the requirements of Normal Independent Status, GRDM shall cause a third party independent audit to be completed for the Project's last full fiscal year and GRDM shall prepare a performance improvement plan (the "Performance Plan"), both of which shall be timely provided to DDA legal counsel. When all three Minimum Operating Standards are met, the Project shall automatically return to Normal Independent Status.

If after one full fiscal year of being in Level One Adjustment one or none of the three Minimum Operating Standards has been met, the Project shall be in "Level Two Adjustment" and, along with continuing to meet the requirements of Normal Independent Status, GRDM shall cause a third party independent audit to be completed for such fiscal year which shall timely be provided to DDA legal counsel. In addition, GRDM shall prepare an updated Performance Plan which shall be timely provided to, and reviewed and approved by, the highest executive officer of DGRI who may share Level Two Adjustment status and the approved updated Performance Plan with the DDA Board of Directors. Further, written progress reports toward accomplishing the Performance Plan shall be provided to the highest executive officer of DGRI on a quarterly basis. If all three Minimum Operating Standards are met, the Project shall automatically return to Normal Independent Status. If after one full year of being in Level Two Adjustment, two of the three Minimum Operating Standards have been met, the Project shall automatically return to Level One Adjustment and meet the requirements thereof. If one or none of the Minimum Operating Standards have been met after being in Level Two Adjustment for one full fiscal year, the Project shall remain in Level Two Adjustment until the requirements have been met to return to Normal Independent Status or Level One Adjustment.

The DDA and GRDM have executed this Addendum as of the date first indicated above.

CITY OF GRAND RAPIDS DOWNTOWN
DEVELOPMENT AUTHORITY
"DDA"

Dated: March 27, 2013

By:

Brian Harris, Chairperson

GRAND RAPIDS DOWNTOWN MARKET,
INC.

"GRDM"

Dated: March 27, 2013

By:

Mimi K. Fritz, President