

MEMORANDUM

TO: Mayor and City Council

FROM: Jayne Miller, Community Services Area Administrator

DATE: September 24, 2007

SUBJECT: Resolution to Approve Option Agreement for the Purchase of Land at 350 S. Fifth Avenue (8 Votes)

Attached for your review and action is a resolution to approve an Option to Purchase Agreement with XY, LLC for the City owned property at 350 S. Fifth Avenue (old YMCA property).

The City is the owner of property located on William Street between Fourth and Fifth Avenues formerly housing the Ann Arbor YMCA. In December 2004, City Council authorized the issuance of an RFP for the Sale and Redevelopment of former YMCA site (350 S 5th Ave), particularly for the replacement of 100 units of affordable housing.

On June 20, 2005, City Council selected HDC, LLC/Hope Network's proposal for the purchase and redevelopment of 350 S. Fifth Avenue. HDC's original proposal called for the redevelopment of the City property, together with property owned by the Ann Arbor Transportation Authority and utilized as a bus station, as a multi-use facility including, among other things, a 100 unit affordable housing tower, approximately 100 units of market-rate housing, approximately 110,000 square feet of commercial/office usage, and a replacement bus station.

The City and HDC subsequently entered into an Option Agreement for the Purchase of Land, dated September 6, 2005, as amended by an Amendment to Option Agreement dated March 13, 2006, and as further amended by Second Amendment to Option Agreement dated September 14, 2006, whereby HDC was given the exclusive option to purchase the City property for a limited period of time, subject to a series of terms and conditions and subject to HDC's continued prosecution of all elements necessary to the timely commencement and completion of the Original Project in accordance with the HDC proposal.

On February 21, 2006 the City granted site plan approval to HDC's original site plan incorporating both the City property and the AATA property, and on February 26, 2006, HDC and the City entered into a Development Agreement relating to the development of the original project in accordance with the approved site plan.

Subsequent to the execution of the Original Option Agreement, HDC established XY, LLC for the purposes of owning and developing the City Property and the AATA Property, and organized 200 East William Street Limited Dividend Housing Association, LLC, a Michigan limited dividend housing association limited liability company for the

purpose of owning and operating the component of the Original Project comprising the 100 units of affordable housing mandated by the City Council Resolution.

The Original Option Agreement as amended expired by its terms on February 13, 2007, thus extinguishing HDC's rights to the City property.

On February 26, 2007, XY, LLC advised the City in writing that it intended to modify the original project by converting the market rate housing tower to a hotel, and by converting a significant portion of the office/commercial space to hotel usage, including potential meeting rooms, ballroom(s), restaurant/bar and other amenities typical to an urban hotel.

On April 16, 2007, the City and XY, LLC entered into a lease of the City property which gives XY, LLC limited access to the property for the purpose of performing predevelopment activities, including the preparation of plans and specifications.

On August 27, 2007, XY, LLC submitted a revised site plan calling for the redevelopment of the City property, together with property owned by the Ann Arbor Transportation Authority and utilized as a bus station, as a multi-use facility including a 100 unit affordable housing tower, a hotel tower, meeting and conference rooms, restaurant/bar, commercial/office space, and a replacement bus station.

Notwithstanding the expiration of the Original Option Agreement and the Temporary Lease, the City has continued to work with XY, LLC to determine clear steps (and timetable for those steps) that must be successfully taken or accomplished by XY, LLC to prosecute the revised project to completion. The City has negotiated the terms and conditions of the agreement with XY, LLC that will permit XY, LLC to continue with the purchase of the City property as long as XY, LLC enters into and complies with the terms and conditions within the Option Agreement. The Option Agreement establishes clear steps (and timetable for those steps) that must be successfully taken or accomplished by XY, LLC for the revised project to reach completion.

The key terms of the Option Agreement include the granting of the option to purchase the City land which includes payments to the City for the option to purchase; settlement of the purchase price, reimbursement of relocation expenses and closing for the purchase of the City land; and establishment of project milestones and project goals for the revised project to assure that the affordable housing tower can be placed in service per the Michigan State Housing Development Authority (MSHDA) requirements. The developer will reimburse the City \$1,100,000.00 for costs and expenses incurred with the relocation of the occupants of the former YMCA. This Agreement allows for the sale of the land to be executed if the project milestones and project goals have been fully satisfied by XY, LLC. The established project milestones must be met by XY, LLC for this revised project to continue to move forward.

Staff continues to negotiate the terms and conditions of the supplemental agreement for the revised project that will address, among other things, the operation of the affordable housing tower. The supplemental agreement, when complete, will be submitted to

Council for approval. Additionally, the site plan and development agreement for the revised project will be forthcoming for Council's approval.

Approval of this new Option Agreement with XY, LLC is recommended.

Prepared: Jayne Miller, Community Services Area Administrator

Approved by: Roger W. Fraser, City Administrator

Attachment: 9-12-07 Option Agreement

RESOLUTION TO APPROVE OPTION AGREEMENT FOR THE
PURCHASE OF LAND AT 350 S. FIFTH AVENUE
(8 VOTES)

Whereas, The City is the owner of property located on William Street between Fourth and Fifth Avenues with an existing structure formerly housing the Ann Arbor YMCA;

Whereas, HDC's original proposal, dated March 3, 2005, called for the redevelopment of the City property, together with property owned by the Ann Arbor Transportation Authority and utilized as a bus station, as a multi-use facility including, among other things, a 100 unit affordable housing tower, approximately 100 units of market-rate housing, approximately 110,000 square feet of commercial/office usage, and a replacement bus station;

Whereas, On June 20, 2005, City Council selected HDC, LLC/Hope Network's proposal for the purchase and redevelopment of 350 S. Fifth Avenue (old YMCA building);

Whereas, The City and HDC subsequently entered into an Option Agreement for the Purchase of Land, dated September 6, 2005, as amended by an Amendment to Option Agreement dated March 13, 2006, and as further amended by Second Amendment to Option Agreement dated September 14, 2006, whereby HDC was given the exclusive option to purchase the City property for a limited period of time, subject to a series of terms and conditions set forth therein and subject to HDC's continued prosecution of all elements necessary to the timely commencement and completion of the Original Project in accordance with the HDC Proposal;

Whereas, On February 21, 2006 the City granted site plan approval to HDC's original site plan incorporating both the City Property and the AATA Property, and on February 26, 2006, HDC and the City entered into a Development Agreement relating to the development of the original project in accordance with the approved site plan;

Whereas, Subsequent to the execution of the Original Option Agreement, HDC established XY, LLC for the purposes of owning and developing the City Property and the AATA Property, and organized 200 East William Street Limited Dividend Housing Association, LLC, a Michigan limited dividend housing association limited liability company for the purpose of owning and operating the component of the Original Project comprising the 100 units of affordable housing mandated by the City Resolution;

Whereas, The Original Option Agreement as amended expired by its terms on February 13, 2007, thus extinguishing HDC's rights (as well as those, if any, of XY, LLC as assignee of or successor to HDC), if any, in and to the City Property;

Whereas, On February 26, 2007, XY, LLC advised the City in writing that it intended to modify the original project by converting the market rate housing tower to a hotel, and by converting a significant portion of the office/commercial space to hotel usage, including potential meeting rooms, ballroom(s), restaurant/bar and other amenities typical to an urban hotel;

Whereas, On April 16, 2007, the City and XY, LLC entered into a lease of the City property which gives XY, LLC limited access to the property for the purpose of performing predevelopment activities, including the preparation of plans and specifications;

Whereas, On August 27, 2007, XY, LLC submitted a revised site plan calling for the redevelopment of the City property, together with property owned by the Ann Arbor Transportation Authority and utilized as a bus station, as a multi-use facility including a 100 unit affordable housing tower, a hotel tower, meeting and conference rooms, restaurant/bar, commercial/office space, and a replacement bus station;

Whereas, Notwithstanding the expiration of the Original Option Agreement and the Temporary Lease, the City has continued to work with XY, LLC to determine clear steps (and timetable for those steps) that must be successfully taken or accomplished by XY, LLC to prosecute the revised project to completion; and

Whereas, The City and XY, LLC have negotiated in good faith regarding the purchase and redevelopment of the City site under which the revised project and XY, LLC's efforts to purchase the City Property may be permitted to proceed;

RESOLVED, That City Council approve the Option Agreement, substantially in the form attached, for 350 S. Fifth Avenue with XY, LLC subject to the terms and conditions stated in the attached Option Agreement, which include, but are not limited to, the granting of the option to purchase the City land which include payments to the City for the option to purchase; settlement of the purchase price, reimbursement of relocation expenses and closing for the purchase of the City land; and establishment of project milestones and goals for the revised project to assure that the Affordable Housing Tower can be placed in service per the MSHDA requirements;

RESOLVED, That City Council approve the sale of the land at 350 S Fifth Avenue to XY, LLC if the project milestones and project goals have been fully satisfied by XY, LLC per the attached Option Agreement;

RESOLVED, That funds the City receives as a result of this agreement be placed in the 350 S. Fifth Ave. Project Fund;

RESOLVED, That the Mayor and City Clerk are authorized and directed to execute the Option Agreement after approval as to substance by the City Administrator and approval as to form by the City Attorney; and

RESOLVED, That the City Administrator is authorized to take all necessary actions to implement this Resolution.

Submitted: Community Services Area

Dated: September 24, 2007

Approved: City Attorney

OPTION AGREEMENT

This Option Agreement is made and executed as of the ___ day of September, 2007, by and between the City of Ann Arbor, a Michigan municipal corporation ("City"), whose address is 100 North Fifth Avenue, Ann Arbor, Michigan 48107, and XY, LLC, a Michigan limited liability company ("XY"), whose address is 43115 Main Street, Suite 2202, Novi, Michigan 48375.

RECITALS:

A. City is the owner of a certain parcel of real estate, together with an existing structure formerly housing the Ann Arbor YMCA, located at on William Street between Fourth Avenue and Fifth Avenue, more particularly described on Exhibit A, attached hereto (the "City Property").

B. HDC, LLC, a Michigan limited liability company ("HDC"), an affiliate of XY, was the successful responder to City's Request for Proposal RFP No. 592, relative to the City Property and issued by City on December 7, 2004, calling for, among other things, the replacement of 100 units of affordable housing then located on the City Property (the "City RFP").

C. HDC's proposal, dated March 3, 2005 (the "HDC Proposal"), called for the redevelopment of the City Property, together with certain property adjacent thereto owned by the Ann Arbor Transportation Authority ("AATA") and utilized as a bus station (such property being referred to herein as the "AATA Property"), as a multi-use facility including, among other things, a 100 unit affordable housing tower (to be co-developed by HDC and HOPE Network, a Michigan nonprofit corporation), approximately 100 units of market-rate housing, approximately 110,000 square feet of commercial/office usage, and a replacement bus station (collectively, the "Original Project").

D. The HDC Proposal was accepted by City pursuant, and subject to the conditions set forth in, City Resolution No. R-250-6-05, dated June 20, 2005 (the "Authorizing Resolution").

E. City and HDC subsequently entered into an Option Agreement for the Purchase of Land, dated September 6, 2005, as amended by an Amendment to Option Agreement dated March 13, 2006, and as further amended by Second Amendment to Option Agreement dated September 14, 2006 (as so amended, the "Original Option Agreement"), whereby HDC was given the exclusive option to purchase the City Property for a limited period of time, subject to a series of terms and conditions set forth therein and subject to HDC's continued prosecution of all elements necessary to the timely commencement and completion of the Original Project in accordance with the HDC Proposal.

F. On February 21, 2006 City granted site plan approval to HDC's site plan incorporating both the City Property and the AATA Property, and being the Original Project (the "Approved Site Plan"), and on February 26, 2006, HDC and City entered

into a Development Agreement relating to the development of the Original Project in accordance with the Approved Site Plan.

G. Subsequent to the execution of the Original Option Agreement, HDC established XY for the purposes of owning and developing the City Property and the AATA Property, and organized 200 East William Street Limited Dividend Housing Association, LLC, a Michigan limited dividend housing association limited liability company (the "LDHA") for the purpose of owning and operating the component of the Original Project comprising the 100 units of affordable housing (the "Affordable Housing Tower") mandated by the City Resolution.

H. The Original Option Agreement expired by its terms on February 13, 2007, thus extinguishing HDC's rights (as well as those, if any, of XY as assignee of or successor to HDC), if any, in and to the City Property.

I. In October 2006, XY advised the City of possible plans to convert the planned for market rate housing to office or hotel use. Subsequently, on February 26, 2007, XY advised City in writing that it intended to modify the Original Project by converting the market rate housing tower to a hotel, and by converting a significant portion of the office/commercial space to hotel usage, including potential meeting rooms, ballroom(s), restaurant/bar and other amenities typical to an urban hotel (the "Revised Project")

J. On April 16, 2007, City and XY entered into a certain Lease of the City Property (the "Temporary Lease"), which gives XY, LLC limited access to the property for the purpose of performing predevelopment activities, including the preparation of plans and specifications.

K. Notwithstanding the expiration of the Original Option Agreement and the Temporary Lease, City has continued to work with XY to determine clear steps (and timetable for those steps) that must be successfully taken or accomplished by XY to prosecute the Revised Project to completion.

L. As of the date hereof, XY has executed a Term Sheet dated February 22, 2007 with AATA (the "AATA Term Sheet"), and continues to negotiate the terms of a formal Development Agreement with AATA (the "AATA Development Agreement") as contemplated by the Term Sheet, and is working with AATA and its legal counsel to prepare a submission to the Federal Transportation Administration ("FTA") for approval of the transaction contemplated by the Term Sheet.

M. FTA approval of the AATA Development Agreement and the transaction contemplated by the AATA Term Sheet and to be implemented pursuant to the AATA Development Agreement is a statutory prerequisite to AATA conveying any interest in the AATA Property to XY, or otherwise engaging in the subject transaction.

N. City and XY have reached agreement on the basic business terms under which the Revised Project and XY's efforts to purchase the City Property may be permitted to proceed, and City has required as a condition of going forward with XY as

the potential developer of the City Property that XY enter into and comply with the terms and conditions of the within Option Agreement for the City Property.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and adequacy of which is acknowledged hereby, City and XY agree as follows:

1. Grant of Option. Subject in all respects to the terms and conditions set forth in this Agreement, City hereby grants to XY the option to purchase the City Property, together with all improvements thereon (subject to certain rights to salvage to be reserved by City in the Supplemental Agreement referred to hereinbelow), and all hereditaments and appurtenances thereunto belonging, subject to a restrictive covenant satisfactory to City to be recorded at the Closing hereunder, binding XY, its successors and assigns to construct and maintain for the period of 99 years after completion the 100 units of affordable housing which was the underpinning of both the HDC Proposal and the Authorizing Resolution.

2. Option Payment. Simultaneously with the execution of this Agreement, and as consideration for City's grant of the within option, XY has paid to City the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) (the "Initial Option Payment"), the receipt of which is acknowledged hereby. XY shall pay to the City the additional sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (the "Additional Option Payment"), which shall be added to the Initial Option Payment and collectively referred to herein and constituting the "Option Payment"), which shall be due and payable fifteen (15) days following the execution of the Supplemental Agreement under Subsection 8.B(i). If this Agreement is terminated for any reason on or before November 15, 2007, the Option Payment shall be refunded to XY in full and final termination of this Agreement and the rights of XY and/or HDC in and to the City Property hereunder and under any other agreement with City with respect thereto or with respect to the Project (Original or Revised). If this Agreement is terminated for any reason during the period November 16, 2007 through January 15, 2008, fifty percent (50%) of the Option Payment shall be deemed fully earned and nonrefundable, and fifty percent (50%) of the Option Payment shall be refunded to XY in full and final termination of this Agreement and the rights of XY and/or HDC in and to the City Property hereunder and under any other agreement with City with respect thereto or with respect to the Project (Original or Revised). From and after January 16, 2008, the entire Option Payment shall be deemed fully earned and non-refundable, and except as expressly provided herein, no portion thereof shall be returned to XY. The Option Payment shall apply to the Purchase Price at Closing.

3. Term of Option; Exercise. The option to purchase hereunder commences on the date of this Agreement, and if not previously terminated will expire unless duly exercised on or before March 15, 2008. This option may not be exercised until all of the Project Milestones and Project Goals (as defined in Section 8, below) have been fully satisfied by XY, and may not be exercised if XY is in default under this Agreement. Exercise of the option shall be by written notice to City, in the manner set forth hereinbelow. Notwithstanding the foregoing, XY may exercise the option if XY is

not in default under this Agreement subject to the extension of date(s) as provided in Section 8 and if each and every Project Milestone and Project Goal has been fully satisfied except receipt of FTA approval under Subsection 8.B(viii), below; provided, however, receipt of such FTA approval shall nevertheless be an express condition to Closing.

4. Purchase Price; Relocation Expense Reimbursement.

A. The purchase price for the City Property hereunder shall be Three Million Five Hundred Thousand and no/100 Dollars (\$3,500,000.00) (the "Purchase Price"), subject to such prorations and adjustments as are otherwise set forth in this Agreement. The Option Payment shall apply to and be credited against the Purchase Price at Closing.

B. In addition to the Purchase Price, and not as part thereof, XY shall pay to City the sum of One Million One Hundred Thousand and no/100 Dollars (\$1,100,000.00) (the "Relocation Reimbursement"), as an agreed-upon, liquidated amount to reimburse City for costs and expenses incurred, and administrative oversight and program management, in connection with the relocation of former occupants of the City Property in contemplation of the sale of the City Property and the development by XY of the Project (Original and Revised). The Relocation Reimbursement shall be payable in two installments, the first of which shall be in the amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), payable on or before December 31, 2007, and the second of which shall be in the amount of Eight Hundred Fifty Thousand and no/100 Dollars (\$850,000.00), which shall be payable at Closing. The Initial Relocation Reimbursement payment of \$250,000.00 is subject to refund (or not) as provided for with regard to the Option Payment in Section 2 above.

5. Title and Survey Matters. XY has previously procured both an ALTA commitment for an owner's policy of title insurance without exceptions from Transnation Title Insurance Company dated February 2, 2006, being File No. ANN658853, Rev. No. 5 (the "Title Commitment") and an ALTA survey prepared by C. Wilson & Associates, Inc., being ALTA/ACSM Land Title Survey, City of Ann Arbor Job No. 2005-071, revision date November 18, 2005 (the "Survey"). XY acknowledges and agrees that it has satisfied itself with the state of title and survey conditions set forth in the Title Commitment and Survey. If and in the event this transaction is closed in accordance with this Agreement, City will provide XY an ALTA owner's title insurance policy pertaining to the City Property in the amount of the Purchase Price, issued in accordance with the Title Commitment, without standard exceptions but subject to all other matters set forth on the Title Commitment. City will pay the base premium for the owner's title policy (or the portion thereof allocable to the City Property and Purchase Price if such policy covers the AATA Property as well), but XY shall be responsible for procuring and paying any additional premiums or charges for such additional endorsements and coverage, if any, as XY may elect to obtain.

6. Condition of City Property; AS-IS Transaction. XY represents that it, and its principals, are experienced developers of real property, including urban redevelopment projects, and that as such they are fully capable of assessing the condition of the City Property. XY covenants, acknowledges and agrees that it is acquiring, and at Closing will accept, the City Property "AS IS, WHERE-IS, and WITH ALL FAULTS." In connection therewith, XY covenants and agrees to release City from any claim, demand, or right of action it may have now or in the future with respect to, the physical and environmental condition of the City Property, including but not limited to the presence, release or discharge of any hazardous substance on, in or affecting the City Property and its compliance with environmental laws and any liabilities or obligations associated in any way therewith, whether under this Agreement, federal, state, or local environmental laws, or any other laws, statutes, rules, regulations or ordinances, the common law or in equity. XY further acknowledges and agrees that the within sale by City to XY of the City Property is made without any representations or warranties of any nature whatsoever, express or implied; it being the intention of City and XY to expressly revoke, release, negate and exclude all representations and warranties, including, without limitation, any representations or warranties concerning the nature, quality, construction, condition, state of repair or lack of repair, of the City Property, or any part thereof; the suitability of the City Property, or any part thereof, for any specific purpose or use; the merchantability of the City Property, or any part thereof, or the economic feasibility or the income to be derived from the City Property, or any part thereof; the compliance of the City Property, or any part thereof, with any statute, regulation, rule or ordinance affecting the same, including without limitation, any statutes, rules and regulations regarding soil waste, as defined by the U.S. Environmental Protection Agency regulations or the disposal or existence, in or on the City Property, improvements or any part thereof, of any hazardous substance, as defined by any current State, Federal or municipal statutes, rules or regulations; any and all express or implied representations and warranties created by any affirmation of fact or promise or by any description of the City Property; any and all expression or affirmation of fact or promise or by any description of the City Property, any and all express or implied representations and warranties pertaining to any environmental, geological, structural or other condition or hazard or the absence thereof heretofore, now or hereafter affecting in any manner the City Property, and any and all other express or implied representations and warranties by City or its Council, other administrative bodies, employees and/or agents whatsoever. XY further acknowledges and agrees that prior to XY's execution of this Agreement XY has been given the full and ample opportunity to inspect the City Property, that by executing this Agreement and closing on the transaction contemplated herein, XY is and shall be relying solely on its own investigation, inspection, examinations and evaluations of the City Property, and that XY has not relied and is not (and shall not be) relying on any information provided or to be provided by City. XY further acknowledges and agrees that any information provided or to be provided with respect to the City Property was obtained from a variety of sources and that City has not made any independent investigation or verification of such information and City makes no representation as to the accuracy or completeness of such information.

7. Closing. Provided that XY shall have satisfied, achieved and completed the Project Milestones and Project Goals (as defined in Section 8 hereinbelow), timely and duly exercised the within option pursuant to Section 3, above, and has satisfied any and all other conditions to Closing set forth in this Agreement, closing (the "Closing") shall occur fifteen (15) days following XY's exercise of the within option, but in no event later than March 31, 2008 (the "Closing Date").

8. Project Milestones; Project Goals. This Agreement, the obligations of City hereunder, XY's rights under this Agreement and continuation of XY's involvement in the project which is the subject of this Agreement and other agreements by and between City and XY and/or HDC, are subject to full and complete performance by XY with, and achievement/satisfaction of, the following milestone events (the "Project Milestones") and scheduled goals (the "Project Goals"):

A. The following Project Milestones represent events and dates that are critical to the development of the Revised Project in accordance with a schedule that is intended to assure that the Affordable Housing Tower can be placed in service in accordance with applicable requirements of Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), and therefore maintain the effectiveness and value to the LDHA investors of the Low Income Housing Tax Credits for the Affordable Housing Tower as allocated by the Michigan State Housing Development Authority ("MSHDA") on March 28, 2007. It shall be an express condition to XY's rights under this Agreement and its exercise of the option granted herein that these Project Milestones be timely met. XY acknowledges, agrees and represents to City that it has had full and adequate input in the determination of the Project Milestones and the dates set for each, and that such Project Milestones and respective dates are under facts and circumstances currently known and available to XY fair, reasonable and capable of being met by XY and/or HDC as applicable. If and in the event XY shall at any time during the term of this Agreement determine that it cannot meet one or more Project Milestone(s), it shall promptly notify City of that fact in writing, specifying in detail the reason why such Project Milestone(s) will not be met, and may in such notice request a reasonable and specified extension for the applicable Project Milestone(s). City may in its sole and absolute discretion agree to grant the requested extension(s), but shall be under no obligation whatsoever to do so, and XY may not rely on such requests or any discussions with City as an assurance that any such extension will be granted. No extension of any Project Milestone shall be binding upon City unless in writing and signed by the City Administrator after City Council approval. The above provisions notwithstanding, in the event that a Milestone filing is timely made but the City determines that a Milestone has not been met, it shall notify XY in writing specifying why the Milestone has not been met and XY shall have five (5) business days from the effective date of the notice to cure the basis for such objection.

- a. XY filed a Revised Site Plan for the Revised Project and certain exhibits and accompanying documents and materials required or appropriate under applicable City ordinances, at approximately 12:00 noon EDT on August 27, 2007. Such Revised Site Plan and accompanying materials are presently under City staff review for completeness and compliance with City ordinances and procedures.
- b. XY has, simultaneous with filing its Revised Site Plan, delivered and submitted to City a written and executed acknowledgment from AATA staff, acknowledging that it has reviewed, is satisfied with, and consents to the filing of the Revised Site Plan. This Milestone has been satisfied.
- c. A Pre-Approval Letter and Certificate duly executed by the Michigan Economic Growth Authority ("MEGA"), evidencing pre-approval of the issuance of Brownfield tax credits for the Revised Project, shall be delivered to City by October 15, 2007.
- d. XY shall provide to City within 45 days following approval by the City of the Supplemental Agreement provided for in Section 8.B.i, a written commitment and certification by HOPE Network, dated later than the date of this Agreement, evidencing HOPE Network's continued participation in the project and the Affordable Housing Tower fully consistent with the representations by HOPE and HDC in the HDC Proposal and the Authorizing Resolution.
- e. A true copy of a fully executed joint venture agreement between XY and the operator of the proposed hotel to be located within and comprise a portion of the Revised Project shall be delivered to City by October 15, 2007.
- f. A true copy of a fully executed Franchise Agreement with a nationally recognized hotel chain for the proposed hotel to be located within and comprise a portion of the Revised Project shall be delivered to City by December 1, 2007.
- g. A true copy of AATA's application to the Federal Aviation Authority ("FAA") for approval of the location and height of any and all proposed communications tower to be located on the Revised Project shall be delivered to City by September 30, 2007.
- h. XY shall obtain and provide satisfactory written evidence (including binding commitments) to City of all construction financing from every anticipated source or sources, and including financing for purchase of the City Property and demolition, by November 30, 2007.

- i. XY shall submit a full, complete and adequate demolition and staging plan, and application for demolition permits on the City Property and the AATA Property, to City by October 15, 2007.

Throughout the term of this Agreement and until final City Council approval of the Revised Site Plan, XY shall at all times timely and completely follow all requirements of City's Planning and Development Services Schedule in accordance therewith.

B. The following Project Goals represent events and dates that are also critical to the development of the Revised Project in accordance with a schedule that is intended to assure that the Affordable Housing Tower can be placed in service in accordance with applicable requirements of Section 42 of the Code, and therefore maintain the effectiveness and value to the LDHA investors of the Low Income Housing Tax Credits for the Affordable Housing Tower as allocated by the Michigan State Housing Development Authority ("MSHDA") on March 28, 2007; however, the parties acknowledge that third parties and events outside the control of XY may impact or delay such dates. XY acknowledges, agrees and represents to City that it has had full and adequate input in the determination of the Project Goals and the dates set for each. It shall be an express condition to XY's rights under this Agreement and its exercise of the option granted herein that these Project Goals be met, subject to the provisions of this Subsection 8.B; provided, however, that if and in the event an agreed upon date for a Project Goal is not satisfied, the parties shall immediately meet and discuss an alternative, mutually satisfactory date for meeting such Project Goal, or failing to reach such agreement, the City may elect to provide a written notice with a performance date for such Project Goal with a reasonable performance date based upon facts and circumstances relating to the uncompleted Project Goal but not less than fifteen (15) business days from the effective date of the notice, with the specific understanding that all Project Goals other than approval by FTA shall (without exception) be met by the date of exercise of this Option and XY shall otherwise be required to comply with all the terms and conditions of this Agreement.

- i. XY and City are in the process of negotiating and finalizing the Supplemental Agreement which among other things delineates requirements with respect to the financing and construction of the Revised Project, and the operation, rent structure and rent endowment reserve to be utilized in connection with the Affordable Housing Tower. XY, City and HOPE Network shall use their best good faith efforts to finalize this document in executable form by October 15, 2007. City shall submit the Supplemental Agreement to City Council promptly after finalization and shall place it on the

Council agenda for consideration within thirty (30) days thereafter.

- ii. Preliminary draft condominium documents (Master Deed, Condominium Bylaws and Condominium Subdivision Plan) incorporating all rights and obligations relative to the Affordable Housing Tower and operative provisions for oversight and governance pertaining to the Affordable Housing Tower satisfactory to City must be delivered to the City Attorney by September 15, 2007 for review and comment.
- iii. A complete set of all condominium documents (Master Deed, Condominium Bylaws and Condominium Subdivision Plan signed and certified in accordance with the requirements of the Michigan Condominium Act, as amended and the rules and regulations promulgated thereunder) by the engineer/surveyor who prepared the same) in final form, but subject to modification needed to comply with changes necessitated as a result of the City's Revised Site Plan Approval, shall be delivered to City within eighteen (18) days following Revised Site Plan Approval by City Council.
- iv. Written evidence of Federal Aviation Authority ("FAA") approval of the location and height of any and all proposed communications tower to be located on the Revised Project shall be delivered to City by March 1, 2008.
- v. XY shall obtain final City Council approval of its Revised Site Plan ("Revised Site Plan Approval") by November 19, 2007.
- vi. City staff/administrative approval of the final condominium documents (above) shall be obtained by thirty (30) days following the date City receives such documents from XY.
- vii. XY shall obtain approval of its demolition and staging plan by City by November 30, 2007.
- viii. Full, binding and unconditional FTA approval of the AATA Term Sheet, AATA Development Agreement and all necessary elements of the proposed exchange and other transactions between AATA and XY contemplated by the AATA Term Sheet and AATA Development Agreement in accordance with their respective terms ("FTA Approvals"), shall be obtained, and written evidence thereof submitted to City, by Closing (FTA Approvals being an absolute condition

to Closing notwithstanding the inclusion of this subparagraph within Project Goals).

9. Conditions to Closing. Closing, and the obligation of City to sell, deliver and convey the City Property to XY, shall be subject to satisfaction of the following conditions as of the Closing Date:

- A. XY shall have timely and duly exercised the within option.
- B. XY shall not be in default, nor shall any event have occurred that, with the passage of time shall become a default unless cured, under any provision of this Agreement, the Supplemental Agreement or any other document or instrument by or between XY and City.
- C. All representations and warranties of XY under this Agreement shall be and remain true and accurate in all respects.
- D. The MEGA Pre-Approval letter shall be and continue to remain in full force and effect, and no fact shall exist which if uncured would preclude the sale of all Brownfield tax credits upon completion of the Revised Project.
- E. The commitment of the tax credit investors to purchase the Low Income Housing Tax Credits under the operating agreement and other relevant documents for the LDHA shall be and remain in full force and effect.
- F. There shall have been no change in the Revised Project that would require any modification, administrative or otherwise, of the Revised Site Plan Approval.
- G. All commitments for construction and demolition financing for the Revised Project provided to City under Section 8, above, shall be and remain in full force and effect.
- H. All prior conditions to XY's rights hereunder, as the same may be revised as provided herein, including without limitation each and every Project Milestone and Project Goal under Section 8, shall have been and shall remain satisfied.
- I. The exchange transaction by which XY will obtain a conveyance of the AATA Property shall occur simultaneously with the Closing on XY's purchase of the City Property hereunder.

10. Representations and Warranties of XY. As a material inducement to City's agreement to enter into this Agreement and to proceed with the transaction contemplated hereby, XY hereby warrants and represents to City, as of the date of this Agreement, and such warranties and representations to be deemed restated in their

entirety as of the date of exercise by XY of the within option, and again as of the Closing Date, as follows:

A. XY is duly formed or organized, validly existing and in good standing under the laws of the State of Michigan.

B. XY has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder. The execution, delivery and performance by XY of this Agreement has been duly authorized by all necessary limited liability company action and all necessary consents required under its organizational documents have been obtained. This Agreement has been duly executed and delivered by XY and is a valid and binding obligation of XY, enforceable in accordance with its terms.

C. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by XY will not (i) conflict with, violate or result in a breach of any provision of its organizational documents; or (ii) conflict with or violate any statute, law, rule, regulation, ordinance, order, writ, injunction, judgment or decree of any court or any local, state or federal governmental or regulatory authority applicable to XY.

D. XY has received no written notice that any litigation materially affecting the ability of XY to acquire either the City Property or the AATA Property, or to carry out its obligations to City and/or AATA to develop the Revised Project, is pending or currently threatened.

E. No waiver, approval, authorization, order, license, permit, franchise or consent of, or registration, declaration, qualification or filing with, any governmental agency or authority is required to be obtained by XY in connection with its execution, delivery and performance of this Agreement.

11. Representations, Warranties and Covenants of City. The City hereby warrants and represents to XY as of the date of this Agreement and again as of the Closing Date as follows:

A. It is a duly formed Michigan municipal corporation under the Michigan Home Rule Cities Act, 1909 P.A. 279, as amended.

B. That the transaction contemplated hereunder is permitted under the provisions of the City Charter, and/or City has taken all steps necessary or required to enter into this transaction in accordance with the City Charter and any other provisions of law.

C. That the persons executing this Agreement on behalf of the City are duly authorized to do so, pursuant to Resolution of the City Council, or as otherwise required by law or City Charter.

D. That City has received no written notice that any litigation materially affecting title to, or the ability of City to convey to XY, the City Property is pending or currently threatened.

The City hereby covenants that from and after the date hereof, without XY's prior written consent, which consent may be given or withheld in XY's sole and absolute discretion, City shall not take any actions that would (i) create any additional lien or encumbrance on the City Property not reflected on the Title Commitment, other than recordation of the Supplemental Agreement upon or after execution thereof, or any other instrument necessary to the consummation of the within transaction and contemplated by this Agreement, the Supplemental Agreement, or any other written agreement between XY and the City, unless it shall cause such lien or encumbrance to be discharged or insured-over at Closing, or (ii) rezone the City Property from its current zoning unless at the request of XY or as part of the approval processes contemplated herein. At all times prior to the Closing, City shall continue to be the continuous and sole owner of the Property.

12. Closing Costs; Prorations.

A. City shall pay the premium for the base owners title insurance policy in accordance with Section 5, above, together with transfer taxes, if any, on the deed conveying the City Property to XY. All other costs and charges not otherwise provided for in this Agreement shall be allocated in accordance with closing customs for Washtenaw County.

B. There shall be no prorations at Closing. The City Property is presently exempt from ad valorem property taxes and assessments. City shall provide written notice to utility companies, if any, of the pending change of ownership of the City Property not less two (2) days prior to the Closing and shall concurrently therewith deliver copies of such notices to XY. City will use reasonable efforts to have all the utility meters, if any, read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date.

13. Conditions Precedent to Closing. The following are conditions precedent to XY's obligation to purchase the City Property (each a "Condition Precedent" and collectively the "Conditions Precedent"). The Conditions Precedent are intended solely for the benefit of XY and may be waived only by XY in writing. In the event any Condition Precedent is not satisfied, XY may, in its sole and absolute discretion, terminate this Agreement, and all obligations of XY and City hereunder shall terminate and be of no further force or effect. In such event the Option Payment shall be immediately returned in full to XY:

A. All of City's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing.

B. As of the Closing, there shall be no litigation pending which constitutes a lien or encumbrance on the City Property, or precludes City from delivering title to the City Property in the condition contemplated by this Agreement, or which would modify or revoke the existing zoning classification, Revised Site Plan approvals or other legal entitlements obtained by XY from City for the City Property.

C. The Title Company shall have unconditionally committed to issue the Title Policy at the Closing in the form of the Title Commitment referred to in Section 5 of this Agreement, subject however to any liens, exceptions or other matters which are created or permitted by XY or by the acts of its employees, agents, contractors and consultants, or any other matter which is expressly insured over by the Title Company at Closing.

14. Closing Deliveries by XY. At the Closing, XY shall deliver the following to City:

A. The Purchase Price, after credit for the Option Payment and after adjustments, if any, as identified on the Closing Statement. The Purchase Price shall be paid by wire-transferred, immediately available Federal funds, as directed by City.

B. The unpaid balance of the Relocation Reimbursement, which shall be paid by wire-transferred, immediately available Federal funds, as directed by City.

C. A copy of the final, executed Master Deed, Condominium Bylaws and Condominium Subdivision Plan for the Revised Project, certified to be true and complete by an appropriate authorized officer or manager of XY, and in identical form to that previously submitted to and approved by City as hereinabove provided.

D. Certified copies of the Articles of Organization of XY and any entities comprising its members and manager (if any), together with a certificate of good standing (or equivalent issued by the State of Michigan) for each, all of which shall be dated within thirty (30) days of Closing.

E. Incumbency Certificates and certified copies of authorizing resolutions as to XY and its constituent members and manager, as applicable, for this transaction and execution of the documents for Closing.

F. A certified copy of the Articles of Organization and the Operating Agreement for the LDHA and its managing member or manager, as applicable, together with a certificate of good standing (or equivalent issued by the State of Michigan) for each, all of which shall be dated within thirty (30) days of Closing.

G. A certification, executed by an appropriate officer or manager of XY, that all the warranties and representations of XY herein are and remain true and accurate in all respects as of the Closing Date, and further certifying that the Project Milestones and Project Goals under Section 8 and the conditions to Closing under Section 9 have been met and satisfied in all respects, unless waived in writing by City.

H. A counter-part copy of the Closing Statement for the transaction.

I. Such other documents and instruments as may be reasonably required by City and/or the title company for the express purpose of implementing the Closing.

15. Closing Deliveries of City. At the Closing, City shall deliver the following to XY:

A. A fully executed Limited Warranty Deed for the City Property, in recordable form, subject in all respects to anything reflected as an exception (other than standard exceptions) on the Title Commitment, subject however to any liens, exceptions or other matters which are created or permitted by XY or by the acts of its employees, agents, contractors and consultants, or any other matter which is expressly insured over by the Title Company at Closing, and further subject to the restrictive covenant establishing the requirement of affordable housing in accordance with the requirements of the Authorizing Resolution and the terms and conditions of this Agreement.

B. A fully executed Quit Claim Bill of Sale without warranty, conveying the personal property, fixtures and equipment on the City Property (other than and subject to the salvage rights of City under the Supplemental Agreement) to XY.

C. A "non-foreign affidavit" stating that City is not a foreign person as defined in Section 1445 of the Code, but only if required under the provisions of that Section.

D. A counterpart copy of the Closing Statement for the transaction.

E. Certified copies of authorizing resolutions of City for this transaction and execution of the documents for Closing.

F. ALTA Owner's Title Policy issued in accordance with the requirements of this Agreement.

G. Such other documents and instruments as may be reasonably required by XY and/or the title company in connection with and for the express purpose of implementing the Closing.

16. Default.

A. If and in the event XY fails to fully perform or achieve any of the Project Milestones and Project Goals set forth in (and subject to the provisions of) Section 8 of this Agreement in accordance with the terms thereof, or if any warranty or representation by XY in this Agreement proves to be false or untrue, or if XY defaults in any other respect under this Agreement prior to the due and timely exercise by XY of the within option, City may terminate this Agreement and all of XY's rights hereunder, by written notice to XY. In such event, the disposition of the Option Payment shall be as set forth in Section 2 hereof, in full and final termination of the rights of either party hereunder; provided, however, that XY shall nevertheless be required and obligated to pay the fees of City's legal counsel in accordance with the prior letter agreement between City and XY dated April 3, 2007, as the same may be amended from time to time.

B. If and in the event XY defaults under this Agreement from and after its due and timely exercise of the option to purchase the City Property in accordance with the terms hereof, City may elect, by written notice to XY, to: (i) immediately terminate this Agreement and retain the entire Option Payment as liquidated damages and not as a penalty, in full and final termination of the rights of either party hereunder; provided, however, that XY shall nevertheless be required and obligated to pay the fees of City's legal counsel in accordance with the prior letter agreement between City and XY dated April 3, 2007, as the same may be amended from time to time; or (ii) specifically enforce this Agreement and XY's obligation to purchase the City Property in accordance with the terms hereof and to perform all XY's obligations under any other agreement or document/instrument between XY and City pertaining to the City Property and the Project (Original or Revised).

C. If and in the event City defaults in any of its obligations under this Agreement prior to the timely and due exercise by XY of the within option to purchase the City Property in accordance with this Agreement, XY's sole remedy shall be to terminate this Agreement by written notice to City, and if XY is not then itself in default of any of the provisions of this Agreement, the Option Payment shall be immediately (but not less than ten (10) business days) returned in full to XY and XY shall have no further liability to the City under this Agreement or under any other agreement with the City.

D. If and in the event City defaults by failing or refusing to close in accordance with the terms and conditions hereof following the due and timely exercise by XY of its option to purchase the City Property in accordance with this Agreement, and provided that XY shall meet all conditions to Closing under Section 9 hereof, and shall tender full payment

of the Purchase Price and performance of all the terms and conditions of this Agreement, XY may, at its option and as its sole remedy, by written notice to City: (i) obtain a full return of the Option Payment in complete and final termination of the rights and obligations of either party hereunder, as liquidated damages and not as a penalty; or (ii) specifically enforce this Agreement and the obligation of City to close in accordance with the terms hereof.

E. Each party waives the right to bring an action for damages, actual or consequential, in the event of a default by the other, their respective remedies being limited to those under subsections 14.A through D, above.

17. Certain Other Defaults. Without limiting the foregoing, any default by XY under the Supplemental Agreement or any other agreement, document or instrument by and between XY and City relating to the Project (Original or Revised), shall likewise and without further action constitute a default under this Agreement and entitle City to exercise its remedies under Section 14 (as well as any remedies under the other agreements to which City is a party).

18. No Brokers. The parties represent to each other that no broker, salesperson, finder or other comparable person or entity has in any way been involved with this transaction and that no party has a right to claim any finder's fee, commission or other compensation by reason of this transaction. City and XY each agree to indemnify, save and hold harmless the other from and against any and all claims, losses, costs, damages and expenses (including reasonable attorney's fees) for brokerage commissions or finder's or other fees related to a breach of its foregoing warranty and representation. The provisions of this Section shall survive the Closing.

19. Damage or Destruction. The former YMCA building on the City Property, as well as its contents, is contemplated to be demolished in connection with development of the Revised Project. Therefore, if and in the event the building and/or other improvements on the City Property, or the personal property, fixtures and equipment therein, are damaged or destroyed due for any reason or by any cause prior to the Closing, neither party shall have the right to terminate this Agreement, and the parties shall proceed to Closing in accordance with this Agreement.

20. Care and Maintenance of the Property. The City Property is unoccupied and not in use for any purpose. From the date of this Agreement until the Closing Date, City shall continue to maintain the City Property in accordance with its existing practice with respect thereto.

21. Notices. All notices, consents, demands, requests, or other communications which may or are required or permitted to be given hereunder shall be in writing and shall be sent by overnight courier in each case to the parties at the addresses listed below. Any party may change its address for the giving of notices, consents, demands, requests, or other communications by delivering written notice to all parties of its or his or her new address for such purpose. Notices, consents,

demands, requests, or other communications shall be deemed given or served on one business day after deposit with an overnight courier. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 17, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 17 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

If to City:

City of Ann Arbor
Attn: Jayne Miller
Community Services Area Administrator
Guy C. Larcom Municipal Building
100 N. 5th Avenue
Ann Arbor, MI 48107

With copy to:

City of Ann Arbor
City Attorney
Guy C. Larcom Municipal Building
100 N. 5th Avenue
Ann Arbor, MI 48107

And copy to:

James C. Adams
Butzel Long
Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, MI 48304

If to XY:

XY, LLC
Attn: Michael H. Jacobson
43155 Main Street, Suite 2202
Novi, MI 48375

With copy to:

Richard W. Pennings
Loomis Ewert Parsley Davis & Gotting PC
124 W Allegan St Ste 700

Lansing, MI 48933

22. No Assignment by XY. Except for (i) a purchase agreement to acquire Unit 7 of the William Street Station Condominium to be formed (the Unit which will comprise the Affordable Housing Tower) to be entered into between XY and 200 East William Limited Dividend Housing Association LLC, the Low Income Housing Tax Credit awardee, and (ii) and a purchase agreement between XY and a limited liability company to be formed of which Michael Jacobson shall be the managing member which shall acquire the hotel condominium unit after closing, this Agreement and the rights and obligations of XY may not be assigned, hypothecated or otherwise transferred by XY (whether as a gift or for consideration, outright or as security, by operation of law, or otherwise), except with the prior written consent of City, which consent may be withheld in City's sole and unfettered discretion. No sale, assignment, hypothecation or transfer by XY, permitted or unpermitted, shall have the effect of releasing XY from liability under this Agreement. Any such prohibited assignment, hypothecation or other transfer shall be void and of no force or effect if made prior to consummation of Closing.

23. Miscellaneous.

A. This Agreement, which may be executed in multiple counterparts, is to be governed by and construed under the laws of the State of Michigan that are applied to contracts made and to be performed in that state concerning real property located therein, is to take effect as a sealed instrument, sets forth the entire contract between the parties, merges all prior and contemporaneous agreements, understandings, warranties or representations with respect to the purchase or potential purchase of the City Property by XY or its predecessor HDC, and may be cancelled, modified or amended only as set forth herein or by a written instrument executed by both City and XY. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement.

B. No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing, signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default.

C. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, personal representatives, successors, and assigns.

D. Each party hereto represents to the other that it is duly authorized to enter into this Agreement, and that the person or persons executing this Agreement on its behalf are and have been duly exercised to do so and to bind such party.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the date first above written.

CITY OF ANN ARBOR
100 North Fifth Avenue
Ann Arbor, Michigan 48104

Witnesses:

By _____
John Hieftje
Mayor

By _____
Jacqueline Beaudry
City Clerk

Approved as to Substance:

Roger W. Fraser, City Administrator

Jayne Miller, Community Services Area Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

Witnesses:

XY, LLC, a Michigan limited liability company

By _____, a
Michigan _____, its
Manager

By: _____
Michael H. Jacobson

Its: _____

EXHIBIT A
Legal Description of Property

South 6 Ft of Lot 2 and all of Lots 3, 4, 5 and 6, B3S, R5E of the Original Plat of Ann Arbor.

Parcel No. 09-29-404-001

Commonly known as: 350 S. Fifth Ave., Ann Arbor, MI