



MEMORANDUM

TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: August 25, 2008
SUBJECT: Troy Plaza PUD Development Agreement

Attached for your review is a revised development agreement. This revised agreement is being substituted for the development agreement included in the agenda packet because of subsequent negotiations with the developer's attorneys. City Administration recommends approval of the substituted development agreement. A redline formatted version has also been included.

If you have any questions concerning the above, please let us know.

TROY PLAZA

**STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF TROY**

**DEVELOPMENT AGREEMENT FOR “TROY PLAZA”
PLANNED UNIT DEVELOPMENT**

This Development Agreement (“Agreement”), dated _____, 2008 is entered into by and between **Tinelle Properties, LLC**, a Michigan limited liability company, whose address is 18700 W. 10 Mile Road, Southfield, Michigan (“Developer”), and the **City of Troy**, a Michigan municipal corporation, having its principal offices at 500 W. Big Beaver Road, Troy, Michigan 48084 (“City”).

RECITALS:

A. Developer is the owner of certain real property located in the City of Troy, Oakland County, Michigan, containing approximately 6.16 acres, located on the west side of Crooks Road and north of Corporate Drive, which is more particularly described in Exhibit A hereto (the “Property”).

B. The Property contains a long-vacant and obsolete office building that has or will be demolished by Developer as part of the project described below.

C. Developer petitioned for an amendment to the City’s Zoning Ordinance granting a rezoning of the Property to Planned Unit Development (“PUD”), in order to develop a mixed-use project consisting of a boutique hotel, banquet/meeting ~~room~~rooms, extended stay hotel suites and retail uses (the “Project” or the “Troy Plaza PUD”). Developer has received Concept Development Plan approval from City Council for the rezoning of the Property to PUD as required by Article XXXV of the City’s Zoning Ordinance.

D. In connection with the grant of rezoning of the Property to PUD, Section 35.50.01 E of the City's Zoning Ordinance requires the execution of a Planned Unit Development Agreement which incorporates the Concept Development Plan, including site plans, landscaping plans and other documents enumerated as PUD Documents, as defined below and which requires Concept Development Plan Approval by City Council as part of the grant of rezoning of the Property to PUD. As part of Concept Development plan approval, Developer has offered and agreed to make the improvements and to proceed with the undertakings described in the PUD Documents which Developer and the City agree were necessary and roughly proportional to the burden imposed in order to (i) ensure that the public services and facilities affected by the Project will be capable of accommodating increased services and facility loads caused by the Project, (ii) protect the natural environment and conserve natural resources, (iii) ensure compatibility with adjacent uses of land, (iv) promote use of the Property in a socially and economically desirable manner and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3101, *et. seq.* and Chapter 39, Article XXXV of the City of Troy Zoning Ordinance.

E. For the purpose of confirming the rights, obligations and restrictions in connection with the improvements and development to be undertaken on the Property, once City Council has granted rezoning to Troy Plaza Planned Unit Development and approved this Agreement and the Concept Development Plan, including final site plans, landscaping plans and the other PUD Documents, this Agreement is effective on the date the City's Zoning Ordinance is amended to grant rezoning of the Property to PUD (the "Effective Date") and to be binding upon the City, the Developer, and their successors and assigns.

NOW, THEREFORE, as an integral part of the grant of the rezoning of the Property to Troy Plaza Planned Unit Development, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

GENERAL TERMS

1.1 This Agreement, incorporates all PUD Documents, and shall run with the land. Reference in this Agreement or any PUD Documents to "Developer" shall include Developer's respective successors and assigns. It is the intent of the City and Developer to put all future owners of the Property or parties in interest on notice of the rights, obligations and restrictions contained herein by recording this Agreement with the Oakland County Register of Deeds. The terms and conditions of this Agreement shall be considered "Deed Restrictions" for any successors or assigns of the Property, and shall be incorporated by reference in any master deed or other restrictions created in connection with the development and/or use of the Property.

1.2 The Property shall be developed and improved only in accordance with the following, which shall be referred to herein as the "PUD Documents":

- A. Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance, and amendments, if any.

B. The Troy Plaza Planned Unit Development Concept Development Plan Application, submitted by Developer to the Planning Department on July 18, 2008. Information included in the Concept Development Plan Application includes but is not limited to the following:

1. The following plans prepared by Moiseev/Gordon Associates, Inc. (“MGA”):

- (a) SP-1 Sheet Schedule Location Plan
- (b) SP-2 Site Plan
- (c) A-1 Lower Level Floor Plan
- (d) A-2 First Floor Plan
- (e) A-3 Typical Floor Plan 2, 3, & 4
- (f) A-4 Fifth Floor Plan
- (g) A-5 Retail & Extended Stay Suites Floor Plans
- (h) A-6 South and West Elevations
- (i) A-7 North and East Elevations

2. The following plans prepared by Giffels-Webster Engineers, Inc. (“GWE”):

- (a) SP-01 Conceptual Development Plan Cover Sheet
- (b) SP-02 Topographic Survey
- (c) SP-03 Demolition Plan
- (d) SP-04 Utility Plan
- (e) SP-05 Geometric Plan
- (f) SP-06 Preliminary Grading Plan
- (g) SP-07 Details
- (h) L-1 Landscape Plan

C. Any and all conditions of the approval of the City Council pertaining to the Troy Plaza Planned Unit Development Conceptual Development Plan as specifically reflected in the resolution of the official minutes of the meeting at which such approval is granted.

- D. An Affidavit of Property Ownership to be recorded with the Oakland County Register of Deeds prior to commencement of construction and prior to the sale or lease of any portion of the Project, containing the legal description of the entire Property, specifying the date of ~~final~~ Concept Development Plan approval and rezoning of the Planned Unit Development by City Council, and declaring that all future development of the Property has been authorized, restricted and required to be carried out in accordance with this Agreement and the Ordinance amendment granting rezoning to Troy Plaza Planned Unit Development.

1.3 The Ordinance amendment granting the Troy Plaza Planned Unit Development reclassifies the zoning of the Property to PUD and constitutes the land use authorization for the Property, and all use and improvement of the Property shall be in substantial conformity with such Ordinance and the PUD Documents referenced herein.

ARTICLE II

DEVELOPER'S RIGHTS, OBLIGATIONS AND PROPERTY RESTRICTIONS

2.1 The Preliminary Development Plan (PDP) application submitted per the requirements of Section 35.50.02 of Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance, shall meet and conform to the criteria of the Conceptual Development Plan. The Final Development Plan application submitted per the requirements of Section 35.50.03 of Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance, shall meet and conform to the criteria of the Conceptual Development Plan and Preliminary Development Plan.

2.2 Developer shall have the right to develop the Property in accordance with the PUD Documents as per Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance. Any changes to the Plan shall be approved in accordance with the PUD Documents and the City's Zoning Ordinance.

2.3 The Project ~~shall~~ may be developed in two phases. The Phases may proceed simultaneously and otherwise overlap. The first phase (Phase I) shall consist of up to 28 extended stay hotel suites, and a maximum of 17,400 square feet of retail. ~~Phase I shall also include a two story parking structure, drop-offs~~ and drive-throughs as shown on Sheet SP-2 Site Plan. The second phase (Phase II) shall be a proposed 5 story full service hotel containing not more than 172 rooms as shown on Sheet SP-2 Site Plan, which will seat a 102 person restaurant ~~and a two story parking structure and drop-offs.~~ Phase II shall also include a walk way connecting the Phase I development to the Phase II development.

2.4 List of Conditions Offered in Exchange for PUD Consideration. As part of the PUD approval and as conditions of said approval and to satisfy the PUD zoning standards, Developer shall do the following: (a) demolish the vacant and obsolete office building on the Property; (b) construct a 30' landscaped buffer along New King Street and a 25' landscaped buffer along Crooks Road; (c) minimize the amount of impervious surfaces and a "sea of parking" by construction and utilizing two parking decks and entering into a shared parking agreement binding on the parties and successors with the owners of the properties adjacent to the

Troy Plaza PUD for ~~316~~306 parking spaces as identified in the correspondence dated May 10, 2008, and included with the PUD application; (d) integrate the various buildings and uses on the Property with common architectural standards and controls; (e) develop the Project using green building practices, including a green roof design and bioswales with native plantings; (f) erect a ramped skywalk between the extended stay/retail uses and the hotel, conference center and restaurant uses; (g) include pedestrian site amenities, including green spaces and a water feature; and (h) create a mixed use and integrated development by combining extended stay and retail uses in the same building structure. The public benefit provided by Developer shall, in addition to the items set forth above, include the elimination of existing blight by redevelopment of the Property with desirable and compatible land uses that provide a logical transition with the surrounding properties, and the creation of an attractive gateway to the City of Troy.

2.5 If the Developer should determine to sell or lease parts of the Project in the form of a business condominium, Developer shall submit to the Troy City Attorney the proposed Master Deed and Bylaws for the Project (collectively the “Master Deed”) for review and approval. If the Master Deed satisfies the requirements of this Development Agreement and other applicable City ordinances then approval shall not be unreasonably withheld. The Master Deed shall acknowledge that each unit owner and the Condominium Association (the “Association”) identified therein will be bound by the terms and provisions of this Agreement. The Master Deed shall comply with all statutes of the State of Michigan and City Ordinances and be recorded with the Oakland County Register of Deeds after the Effective Date of the amendment of the Zoning Ordinance to rezone the Property to PUD.

2.6 The Master Deed shall obligate the Association to maintain the general common elements of the Project, as more particularly set forth in the Master Deed, in good working order and appearance, including, without limitation, storm water drainage and retention facilities, private roadways, landscaping, parking areas, sidewalks, water features, common structures and facilities, and common areas or elements. In addition, the Master Deed shall provide that the Project is controlled by the PUD Documents. The Master Deed shall also contain provisions for the performance of Developer’s maintenance obligations under this Agreement and the PUD Documents.

2.7 Each unit owner in the Project shall be a member of the Association, as applicable, at all times during the term of ownership and, and subject to the assessments of the Association. The Association shall be authorized to perform the functions and duties delegated and assigned under the Master Deed.

2.8 The Master Deed shall prohibit exterior modification of the units within the Project which are in conflict with the PUD Documents.

2.9 Until such time as a Condominium Association is formed or the Developer’s responsibilities are otherwise formally transferred, Developer shall maintain all common areas, storm water drainage and retention facilities, landscaped areas, parking areas and sidewalks in good working order and appearance. Developer may establish an Association or Associations to assume the maintenance obligations set forth in this Article II, this Planned Unit Development Agreement and otherwise, in which event the Association or Associations shall succeed to the Developer’s obligations for those portions of the Property defined in the instrument establishing

each Association, and Developer shall be relieved of all obligation and liability with respect thereto.

2.10 Developer, or successor Association or Associations, shall maintain the landscaping and related improvements in a neat and orderly appearance, substantially free from refuse and debris and, shall promptly replace any dead or dying plants and shrubs. If the weather does not allow for immediate removal and replacement, then it shall be done as soon as possible, but in no event shall it be longer than the end of the current planting season.

2.11 The Property contains one or more structures which Developer intends to demolish. Developer shall comply with all Federal and State statutes and City Ordinances regarding demolition. ~~In connection with the demolition of such structure(s), Developer shall engage a demolition contractor to remove any asbestos and/or asbestos contaminated materials contained within such structures(s) prior to performing its demolition activities. Any asbestos shall be removed in accordance with an action plan prepared by Developer's contractor, which action plan shall include the following: Prior to the removal of any asbestos and/or asbestos contaminated materials, such contractor shall notify the Michigan Department of Environmental Quality that the contractor intends to commence demolition activities involving a structure(s) which contains asbestos; Developer's contractor shall use trained asbestos abatement/removal technicians. All asbestos materials which are removed from the site shall be sent to a Type II landfill and, in connection with the transportation of such materials to the landfill, appropriate shipping manifests shall be obtained and a third party monitoring company shall be engaged to monitor the transportation of asbestos contaminated materials to such landfill. Demolition of structures will commence/resume following completion of asbestos removal activities. During the demolition process, the site will be sprayed with water to minimize airborne particles, including requirements regarding the removal, handling and disposal of asbestos materials, if applicable.~~ Following completion of the demolition activities, the City shall inspect the site prior to the performance of backfilling and grading activities. When the City has approved the site, which approval shall not be unreasonably withheld, the site will then be graded and, for those areas that will not be under construction within twelve (12) months of the completion of demolition, seeded and an acceptable growth of vegetation established to prevent soil erosion.

2.12 Developer shall comply with the City Code and Ordinances, make any necessary application for permits and obtain any necessary permits for the use of temporary sales trailers and/or sale and advertising signs.

ARTICLE III

PUBLIC IMPROVEMENTS

3.1 Water and Sanitary Sewer Systems. Developer shall, at its sole expense, construct and install improvements and/or connections tying into the municipal water and sewage systems, including any required water hydrants. Such improvements shall be designed and constructed in accordance with the Final Development Plan, approved engineering construction plans and all applicable City, County and State standards, codes, regulations, ordinances and laws. Such water and sanitary sewer service facilities, including any on-site and off-site facilities, extensions and easements to reach the area to be served, shall be provided by

and at the sole expense of the Developer shall be completed, approved and dedicated to (as required by the City in its discretion) the City to the extent necessary to fully service all proposed and existing facilities, structures and uses in the Project. All water and sanitary system improvements shall be completed before construction of Phase I of the development. The Developer shall post security in the form of cash or check or certificate of deposit or, irrevocable letter of credit (issued by an institution doing business in Oakland County); or a performance bond (the "Security"), as specified in a separate agreement approved by the City. The securitySecurity shall be in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction of the water and sanitary sewer systems plus 10% refundable cash deposit. The Agreement shall also authorize the City, at its option, to complete these improvements as required by the City Engineer, if Developer fails to complete the water and sanitary sewer improvements in a timely fashion, once construction has commenced. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. In such case, building permits for the applicable phase of the development to be served by the drainage improvements in question shall be issued upon the posting of such ~~security~~Security and execution of such agreement, which shall be approved by the City Attorney in the exercise of reasonable discretion. The water and and sanitary sewer improvements shall be completed and approved prior to issuance of any certificates of occupancy for the last building within the Phase of that development. At the Developer's request, but not more frequently than once a month, the Security may be reduced by the same percentage as the percentage of completion of the drainage improvements as determined by the City's engineer in the exercise of reasonable discretion. The balance of any Security shall be returned to Developer within thirty (30) days following the determination of the City that the drainage improvements have been completed per the approved engineering plans.

3.2 Storm Water Drainage. The Developer, at its sole expense, shall construct and maintain a storm water and retention system, which system shall include the improvements provided in this Agreement, and shall be installed in accordance with the PUD Documents, the approved engineering construction plans, and all applicable ordinances, laws, codes, standards and regulations. All drainage improvements necessary for the entire Project shall be completed and approved prior to issuance of any Certificate of Occupancy for any structure for any phase. During the development of the Project, the Developer shall be obligated to maintain the storm drainage and retention system and facilities in a fully operational condition. Upon completion of the storm drainage and retention system, the Developer may assign its responsibility with respect to such maintenance to an Association if allowable by applicable Master Deed. In such case, the obligation shall be solely that of the Association. The Developer shall post security in the form of cash or check or certificate of deposit ~~or,~~ irrevocable letter of credit (issued by an institution doing business in Oakland County); or a performance bond (the "Security"), as specified in a separate agreement approved by the City. The ~~security~~Security shall be in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction of the storm drainage system plus 10% refundable cash deposit. The Agreement shall also authorize the City, at its option, to complete the drainage improvements as required by the City Engineer, if Developer fails to complete the drainage improvements in a timely fashion, once construction has commenced. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. In such case, building permits for

the applicable phase of the development to be served by the drainage improvements in question shall be issued upon the posting of such ~~security~~Security and execution of such agreement, which shall be approved by the City Attorney in the exercise of reasonable discretion. The drainage improvements shall be completed and approved prior to issuance of any certificates of occupancy for the last building within the Phase of that development. At the Developer's request, but not more frequently than once a month, the Security may be reduced by the same percentage as the percentage of completion of the drainage improvements as determined by the City's engineer in the exercise of reasonable discretion. The balance of any Security shall be returned to Developer within thirty (30) days following the determination of the City that the drainage improvements have been completed per the approved engineering plans.

All construction, repair, maintenance and replacement of the storm drainage and retention system which are Developer's responsibility, as described in this Section, shall be the sole obligation of the Developer and its successors in ownership except for storm water retention, which can be shifted to any successor Association by Master Deed. Any such Master Deed shall require ongoing maintenance, repair and improvement of such storm drainage and retention system by the Association. During the development of the applicable phase, the Developer shall be obligated to maintain the storm drainage and retention system and facilities in a fully operational condition. Upon the installation of the final or topcoat of asphalt on the roads within a phase, the Developer may assign its responsibility with respect to such maintenance to the Association as provided in the applicable Master Deed or as Deed Restrictions herein. Thereafter, the obligation shall be solely that of the Association. The proper functioning, maintenance and repair of the applicable portion of such drainage and retention facilities shall be a condition for issuance of any and all building permits for construction of dwellings on the Property and for issuance of certificates of occupancy.

3.3 Sidewalks, Drives, Entryways and Parking Lots. All drives, entryways, sidewalks, and parking lots (the "paving improvements") within the Project shall be designed, situated and constructed in accordance with all requirements and applicable ordinances of the City, the PUD Documents and the approved engineering construction plans. All internal drives, entryways, sidewalks, and parking lots will be private except as otherwise set forth herein. The Developer, its successors and assigns, shall provide in the Master Deed provisions for emergency access for public entities and their personnel. The Developer shall post security in the form of cash or check or certificate of deposit or irrevocable letter of credit (issued by an institution doing business in Oakland County); or a performance bond (the "Security"), as specified in a separate agreement approved by the City. The ~~security~~Security shall be in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction plus 10% refundable cash deposit. The Agreement shall also authorize the City, at its option, to complete the sidewalks, drives, entryways and parking lots as required by the City Engineer, if Developer fails to complete the sidewalks, drives, entryways and parking lots in a timely fashion, once construction has commenced. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. In such case, building permits for the applicable phase of the development to be served by the sidewalks, drives, entryways, and parking lots in question shall be issued upon the posting of such ~~security~~Security and execution of such agreement, which shall be approved by the City Attorney in the exercise of reasonable discretion. The sidewalks, drives, entryways, and parking lots shall be completed

and approved prior to issuance of any certificates of occupancy for the last building within the Phase of that development.

Prior to the issuance of the first certificate of occupancy in a phase, parking spaces shall be provided necessary to serve that phase, and shall consist of, at a minimum, striping on a base course of asphalt. Building permits shall be issued subject to installation and maintenance of an adequate gravel surface base as determined by the City Engineer for all entranceways and internal drive areas to provide for access for construction traffic, City personnel, emergency and fire fighting equipment. Further, the Developer shall also sign an agreement that requires completion and approval of the paving of all areas referenced in this Paragraph (including topcoat, ~~and~~ parking lot striping, and permanent traffic control signing) prior to the issuance of more than 95% of the certificates of occupancy within any phase of the condominium Development, but in any event such paving shall be completed within two (2) years of issuance of the first building permit for a building within each phase of the Development. At the Developer's request, but not more frequently than once a month, the Security may be reduced by the same percentage as the percentage of completion of the paving improvements as determined by the City's engineer in the exercise of reasonable discretion. The balance of any Security shall be returned to Developer within thirty (30) days following the determination of the City that the paving improvements have been completed per the approved engineering plans.

Developer, its successors and assigns, shall be responsible for maintenance and repair of the drives, entranceways, sidewalks, and parking lots during the period of construction, and shall also keep streets abutting the Project and Crooks Road free from debris and repair any damage to the streets abutting the Project (subject to City of Troy requirements) caused by construction activities on or for the Property or the Project and use of abutting streets and Crooks Road for construction purposes. If the Developer fails to maintain and repair the streets, boulevards, drives, entranceways, parking lots and abutting streets and Crooks Road, as required by this Paragraph, the City may issue stop work orders and/or withhold issuance of further approvals, permits and occupancy certificates for the Project until such failure is cured in addition to any enforcement authorization or remedy provided herein, or any other agreement. At all times during and after completion of construction, Developer, its successor and assigns, shall cause all drives, entranceways and parking lots to be maintained, repaired and kept in an unimpeded, unobstructed, safe and passable condition at all times to allow for the free flow and circulation of traffic throughout the Project, except for temporary closures or obstruction due to repairs or snow. The responsibility and obligation for such ongoing maintenance and repair shall be that of the Developer, its successors and assigns. Developer shall incorporate provisions in any and all Master Deeds stating that property owners and the Association are bound by the obligations and restrictions herein.

3.4 Developer shall have the right, subject to City approvals, to assign its maintenance and repair obligations under this Agreement to an Association. Upon the assignment to and assumption by the Association of Developer's maintenance and repair obligations, Developer shall have no further obligations or liability with respect thereto.

3.5 For purposes of maintenance obligations set forth in this Paragraph, the term "maintenance," "maintain" and "maintained" shall mean and include regular inspections.

ARTICLE IV

THE CITY'S RIGHTS AND OBLIGATIONS

4.1 The City, in each instance, shall provide by written thirty (30) days notice to Developer documentation of any and all deficiencies and shall provide Developer with a time period in which to cure any deficiencies under this agreement, which shall be enough time for Developer, its successors, or assigns, to cure the deficiency. It is understood, however, that each phase shall stand on its own. Any defect or violation that affects a phase shall not be grounds to penalize the other Phase, and the City's remedies should be exercised as to each phase only.

If, following the expiration of the period set forth to cure any deficiencies, such deficiencies have not been cured, the City shall there upon have the power and authority, but not the obligation, to take any of the following actions, in addition to any actions authorized under City ordinance and/or State law:

(a) Demand that the non-performance, deficiency or obligation be fulfilled, performed or completed before Developer assigns its obligations to the Association and set a specific date to complete the performance, fulfill the obligation or correct the deficiency. If Developer has not completed the performance, fulfilled the obligation or corrected the deficiency by the date specified, the Developer shall not assign its obligations to the Association and the City may proceed under paragraph 4.1(b).

(b) Enter upon the Property, or cause its agents or contractors to enter upon the Property and perform such obligation or take such corrective measures as reasonably found by the City Administration to be appropriate. In addition to any financial assurance given to ensure completion of the improvements, the additional costs and expense of making and financing such action by the City, including without limitation notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of ten (10%) percent of the total of all such costs and expenses incurred, shall be paid by Developer within thirty (30) days of City's invoicing to Developer. .

(c) The City may initiate legal action for the enforcement of any of the provisions, requirements, and obligations set forth in the PUD Documents.

(d) The City may issue a stop work order as to any or all aspects of the Project, may deny the issuance of any requested building permit or certificate of occupancy within any part or all of the Project regardless of whether the Developer is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Project.

4.2 At any time throughout the period of development and construction of any part of the Project, the City, its contractors, representatives, consultants and agents, shall be permitted and are hereby granted authority to enter upon all or any portion of the Property for the purpose of inspecting and/or completing the respective improvements, and for the purposes of inspecting for compliance with and enforcement of the PUD Documents.

4.3 To the extent the PUD Documents deviate from the City of Troy Development Standards, Zoning Ordinance or other City ordinances, or any amendments thereto, the PUD Documents shall control. All improvements constructed in accordance with the PUD Documents shall be deemed to be conforming under the Zoning Ordinance and in compliance with all ordinances of the City.

ARTICLE V

MAINTENANCE OBLIGATIONS

5.1 The Developer and any successor Association and any of their successors and assigns shall indemnify and hold harmless the City, from and against any and all claims for injuries and/or damages arising out of their use or maintenance of the areas owned by the City but maintained by the Developer or the Association, except those claims arising from the negligence or willful misconduct of the City, its agents or employees.

5.2 The Developer or any successor Association shall establish and levy assessments against the units within the Project for the purpose of performing the Association's maintenance and repair obligations under this Agreement, in addition to any maintenance obligations for the Project's common elements, including, but not limited to: storm drainage facilities, streets, entranceway improvements, landscaping, irrigation systems, sidewalks, and for any other proper purposes.. If the Developer or successor Association fails to fulfill the obligations as set out in this Agreement and the PUD Documents, the City may take any action available to it under Article IV against the individual property owners of each unit on a pro-rata basis and/or the Association, including, but not limited to, assessing a lien against the individual property owners on a pro-rata share.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1 Nothing in this Agreement is intended to prevent Developer from including in any Master Deed terms and conditions which do not bind the City or are more restrictive requirements and standards with respect to the Project as long as those terms and conditions are not in conflict with this Agreement or the PUD Documents, and as long as such terms and conditions are in compliance with State and Federal law.

6.2 This Agreement may not be modified, replaced, amended or terminated without the prior written consent of the parties to this Agreement. Developer shall have the right to delegate its rights and obligations under this Agreement to a successor Association as set out in this Agreement. Until the rights and responsibilities under this Agreement are transferred to an Association, Developer and the City shall be entitled to modify, replace, amend or terminate this Agreement, without requiring the consent of any other person or entity whatsoever, regardless of whether such person has any interest in the Property, including unit owners, mortgages of co-owners, and others.

6.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

6.4 If there is a conflict between the terms of any of the PUD Documents, such documents shall control in the following order: (a) the Conceptual Development Plan; (b) this Agreement; and (c) Chapter 39, Article XXXV of the City's Zoning Ordinance, and amendments, if any. Where there is a question with regard to applicable regulations for a particular aspect of the Project, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the PUD Documents which apply, the City in the reasonable exercise of its discretion, shall determine the regulations of the City's Ordinances that are applicable, provided such determination is not inconsistent with the nature and intent of the PUD Documents.

6.5 The terms of the PUD Documents, including this Agreement, have been negotiated by the undersigned parties and such documentation represents the product of the joint efforts and agreement of the Developer and the City. Developer and the City fully accept and agree to the final terms, conditions, requirements and obligations of the PUD Documents, and shall not be permitted in the future to claim that the effect of these PUD Documents results in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of any of the PUD Documents causes an inverse condemnation or taking of all or a portion of the Property. Furthermore, it is agreed that the improvements and undertakings set forth in the PUD Documents are necessary and roughly proportional to the burden imposed in order to ensure that services and facilities affected by the Troy Plaza Planned Unit Development will be capable of accommodating increased services and facility loads, traffic and storm water drainage caused by the development thereof, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially and economically desirable manner, and to achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.* It is further agreed and acknowledged hereby that all of such improvements are substantially related to the burdens to be created by the Project contemplated hereby, and all such improvements and the requirements and regulations of the Property under the PUD Documents and Zoning Ordinance, without exception, are clearly and substantially related to the City's legitimate interests in protecting the public health, safety and general welfare.

6.6 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

6.7 This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors and assigns.

THIS AGREEMENT was executed by the respective parties on the date specified with the notarization with their name, and shall take effect on the date of adoption by the Troy City Council of the Zoning Ordinance amendment granting rezoning of the Property to Troy Plaza Planned Unit Development.

[Signatures Follow]

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

BH01\899749-1899749.2
ID\AMG

TROY PLAZA

**STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF TROY**

**DEVELOPMENT AGREEMENT FOR “TROY PLAZA”
PLANNED UNIT DEVELOPMENT**

This Development Agreement (“Agreement”), dated _____, 2008 is entered into by and between **Tinelle Properties, LLC**, a Michigan limited liability company, whose address is 18700 W. 10 Mile Road, Southfield, Michigan (“Developer”), and the **City of Troy**, a Michigan municipal corporation, having its principal offices at 500 W. Big Beaver Road, Troy, Michigan 48084 (“City”).

RECITALS:

A. Developer is the owner of certain real property located in the City of Troy, Oakland County, Michigan, containing approximately 6.16 acres, located on the west side of Crooks Road and north of Corporate Drive, which is more particularly described in Exhibit A hereto (the “Property”).

B. The Property contains a long-vacant and obsolete office building that has or will be demolished by Developer as part of the project described below.

C. Developer petitioned for an amendment to the City’s Zoning Ordinance granting a rezoning of the Property to Planned Unit Development (“PUD”), in order to develop a mixed-use project consisting of a boutique hotel, banquet/meeting rooms, extended stay hotel suites and retail uses (the “Project” or the “Troy Plaza PUD”). Developer has received Concept Development Plan approval from City Council for the rezoning of the Property to PUD as required by Article XXXV of the City’s Zoning Ordinance.

D. In connection with the grant of rezoning of the Property to PUD, Section 35.50.01 E of the City's Zoning Ordinance requires the execution of a Planned Unit Development Agreement which incorporates the Concept Development Plan, including site plans, landscaping plans and other documents enumerated as PUD Documents, as defined below and which requires Concept Development Plan Approval by City Council as part of the grant of rezoning of the Property to PUD. As part of Concept Development plan approval, Developer has offered and agreed to make the improvements and to proceed with the undertakings described in the PUD Documents which Developer and the City agree were necessary and roughly proportional to the burden imposed in order to (i) ensure that the public services and facilities affected by the Project will be capable of accommodating increased services and facility loads caused by the Project, (ii) protect the natural environment and conserve natural resources, (iii) ensure compatibility with adjacent uses of land, (iv) promote use of the Property in a socially and economically desirable manner and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3101, *et. seq.* and Chapter 39, Article XXXV of the City of Troy Zoning Ordinance.

E. For the purpose of confirming the rights, obligations and restrictions in connection with the improvements and development to be undertaken on the Property, once City Council has granted rezoning to Troy Plaza Planned Unit Development and approved this Agreement and the Concept Development Plan, including final site plans, landscaping plans and the other PUD Documents, this Agreement is effective on the date the City's Zoning Ordinance is amended to grant rezoning of the Property to PUD (the "Effective Date") and to be binding upon the City, the Developer, and their successors and assigns.

NOW, THEREFORE, as an integral part of the grant of the rezoning of the Property to Troy Plaza Planned Unit Development, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

GENERAL TERMS

1.1 This Agreement, incorporates all PUD Documents, and shall run with the land. Reference in this Agreement or any PUD Documents to "Developer" shall include Developer's respective successors and assigns. It is the intent of the City and Developer to put all future owners of the Property or parties in interest on notice of the rights, obligations and restrictions contained herein by recording this Agreement with the Oakland County Register of Deeds. The terms and conditions of this Agreement shall be considered "Deed Restrictions" for any successors or assigns of the Property, and shall be incorporated by reference in any master deed or other restrictions created in connection with the development and/or use of the Property.

1.2 The Property shall be developed and improved only in accordance with the following, which shall be referred to herein as the "PUD Documents":

- A. Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance, and amendments, if any.

B. The Troy Plaza Planned Unit Development Concept Development Plan Application, submitted by Developer to the Planning Department on July 18, 2008. Information included in the Concept Development Plan Application includes but is not limited to the following:

1. The following plans prepared by Moiseev/Gordon Associates, Inc. (“MGA”):

- (a) SP-1 Sheet Schedule Location Plan
- (b) SP-2 Site Plan
- (c) A-1 Lower Level Floor Plan
- (d) A-2 First Floor Plan
- (e) A-3 Typical Floor Plan 2, 3, & 4
- (f) A-4 Fifth Floor Plan
- (g) A-5 Retail & Extended Stay Suites Floor Plans
- (h) A-6 South and West Elevations
- (i) A-7 North and East Elevations

[Insert later]

2. The following plans prepared by Giffels-Webster Engineers, Inc. (“GWE”):

- (a) SP-01 Conceptual Development Plan Cover Sheet
- (b) SP-02 Topographic Survey
- (c) SP-03 Demolition Plan
- (d) SP-04 Utility Plan
- (e) SP-05 Geometric Plan
- (f) SP-06 Preliminary Grading Plan
- (g) SP-07 Details
- (h) L-1 Landscape Plan

C. Any and all conditions of the approval of the City Council pertaining to the Troy Plaza Planned Unit Development Conceptual Development Plan

as specifically reflected in the resolution of the official minutes of the meeting at which such approval is granted.

- D. An Affidavit of Property Ownership to be recorded with the Oakland County Register of Deeds prior to commencement of construction and prior to the sale or lease of any portion of the Project, containing the legal description of the entire Property, specifying the date of ~~final~~ Concept Development Plan approval and rezoning of the Planned Unit Development by City Council, and declaring that all future development of the Property has been authorized, restricted and required to be carried out in accordance with this Agreement and the Ordinance amendment granting rezoning to Troy Plaza Planned Unit Development.

1.3 The Ordinance amendment granting the Troy Plaza Planned Unit Development reclassifies the zoning of the Property to PUD and constitutes the land use authorization for the Property, and all use and improvement of the Property shall be in substantial conformity with such Ordinance and the PUD Documents referenced herein.

ARTICLE II

DEVELOPER'S RIGHTS, OBLIGATIONS AND PROPERTY RESTRICTIONS

2.1 The Preliminary Development Plan (PDP) application submitted per the requirements of Section 35.50.02 of Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance, shall meet and conform to the criteria of the Conceptual Development Plan. The Final Development Plan application submitted per the requirements of Section 35.50.03 of Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance, shall meet and conform to the criteria of the Conceptual Development Plan and Preliminary Development Plan.

2.2 Developer shall have the right to develop the Property in accordance with the PUD Documents as per Chapter 39, ARTICLE XXXV of the City's Zoning Ordinance. Any changes to the Plan shall be approved in accordance with the PUD Documents and the City's Zoning Ordinance.

2.3 The Project may be developed in two phases. The phases may proceed simultaneously and otherwise overlap. The first phase (Phase I) shall consist of up to 28 extended stay hotel suites, and a maximum of 17,400 square feet of retail and drive-throughs as shown on Sheet SP-2 Site Plan. The second phase (Phase II) shall be a proposed 5 story full service hotel containing not more than 172 rooms as shown on Sheet SP-2 Site Plan, which will seat a 102 person restaurant and a two story parking structure and drop-offs. Phase II shall also include a walk way connecting the Phase I development to the Phase II development.

2.4 List of Conditions Offered in Exchange for PUD Consideration. As part of the PUD approval and as conditions of said approval and to satisfy the PUD zoning standards, Developer shall do the following: (a) demolish the vacant and obsolete office building on the Property; (b) construct a 30' landscaped buffer along New King Street and a 25' landscaped buffer along Crooks Road; (c) minimize the amount of impervious surfaces and a "sea of

parking” by construction and utilizing two parking decks and entering into a shared parking agreement binding on the parties and successors with the owners of the properties adjacent to the Troy Plaza PUD for 306 parking spaces as identified in the correspondence dated May 10, 2008, and included with the PUD application; (d) integrate the various buildings and uses on the Property with common architectural standards and controls; (e) develop the Project using green building practices, including a green roof design and bioswales with native plantings; (f) erect a ramped skywalk between the extended stay/retail uses and the hotel, conference center and restaurant uses; (g) include pedestrian site amenities, including green spaces and a water feature; and (h) create a mixed use and integrated development by combining extended stay and retail uses in the same building structure. The public benefit provided by Developer shall, in addition to the items set forth above, include the elimination of existing blight by redevelopment of the Property with desirable and compatible land uses that provide a logical transition with the surrounding properties, and the creation of an attractive gateway to the City of Troy.

2.5 If the Developer should determine to sell or lease parts of the Project in the form of a business condominium, Developer shall submit to the Troy City Attorney the proposed Master Deed and Bylaws for the Project (collectively the “Master Deed”) for review and approval. If the Master Deed satisfies the requirements of this Development Agreement and other applicable City ordinances then approval shall not be unreasonably withheld. The Master Deed shall acknowledge that each unit owner and the Condominium Association (the “Association”) identified therein will be bound by the terms and provisions of this Agreement. The Master Deed shall comply with all statutes of the State of Michigan and City Ordinances and be recorded with the Oakland County Register of Deeds after the Effective Date of the amendment of the Zoning Ordinance to rezone the Property to PUD.

2.6 The Master Deed shall obligate the Association to maintain the general common elements of the Project, as more particularly set forth in the Master Deed, in good working order and appearance, including, without limitation, storm water drainage and retention facilities, private roadways, landscaping, parking areas, sidewalks, water features, common structures and facilities, and common areas or elements. In addition, the Master Deed shall provide that the Project is controlled by the PUD Documents. The Master Deed shall also contain provisions for the performance of Developer’s maintenance obligations under this Agreement and the PUD Documents.

2.7 Each unit owner in the Project shall be a member of the Association, as applicable, at all times during the term of ownership and, and subject to the assessments of the Association. The Association shall be authorized to perform the functions and duties delegated and assigned under the Master Deed.

2.8 The Master Deed shall prohibit exterior modification of the units within the Project which are in conflict with the PUD Documents.

2.9 Until such time as a Condominium Association is formed or the Developer’s responsibilities are otherwise formally transferred, Developer shall maintain all common areas, storm water drainage and retention facilities, landscaped areas, parking areas and sidewalks in good working order and appearance. Developer may establish an Association or Associations to assume the maintenance obligations set forth in this Article II, this Planned Unit Development

Agreement and otherwise, in which event the Association or Associations shall succeed to the Developer's obligations for those portions of the Property defined in the instrument establishing each Association, and Developer shall be relieved of all obligation and liability with respect thereto.

2.10 Developer, or successor Association or Associations, shall maintain the landscaping and related improvements in a neat and orderly appearance, substantially free from refuse and debris and, shall promptly replace any dead or dying plants and shrubs. If the weather does not allow for immediate removal and replacement, then it shall be done as soon as possible, but in no event shall it be longer than the end of the current planting season.

2.11 The Property contains one or more structures which Developer intends to demolish. Developer shall comply with all Federal and State statutes and City Ordinances regarding demolition, including requirements regarding the removal, handling and disposal of asbestos materials, if applicable. Following completion of the demolition activities, the City shall inspect the site prior to the performance of backfilling and grading activities. When the City has approved the site, which approval shall not be unreasonably withheld, the site will then be graded and, for those areas that will not be under construction within twelve (12) months of the completion of demolition, seeded and an acceptable growth of vegetation established to prevent soil erosion.

2.12 Developer shall comply with the City Code and Ordinances, make any necessary application for permits and obtain any necessary permits for the use of temporary sales trailers and/or sale and advertising signs.

ARTICLE III

PUBLIC IMPROVEMENTS

3.1 Water and Sanitary Sewer Systems. Developer shall, at its sole expense, construct and install improvements and/or connections tying into the municipal water and sewage systems, including any required water hydrants. Such improvements shall be designed and constructed in accordance with the Final Development Plan, approved engineering construction plans and all applicable City, County and State standards, codes, regulations, ordinances and laws. Such water and sanitary sewer service facilities, including any on-site and off-site facilities, extensions and easements to reach the area to be served, shall be provided by and at the sole expense of the Developer shall be completed, approved and dedicated to (as required by the City in its discretion) the City to the extent necessary to fully service all proposed and existing facilities, structures and uses in the Project. All water and sanitary system improvements shall be completed before construction of Phase I of the development. The Developer shall post security in the form of cash or check or certificate of deposit, irrevocable letter of credit (issued by an institution doing business in Oakland County) or a performance bond (the "Security"), as specified in a separate agreement approved by the City. The Security shall be in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction of the water and sanitary sewer systems plus 10% refundable cash deposit. The Agreement shall also authorize the City, at its option, to complete these improvements as required by the City Engineer, if Developer fails to complete the water

and sanitary sewer improvements in a timely fashion, once construction has commenced. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. In such case, building permits for the applicable phase of the development to be served by the water and sanitary sewer improvements in question shall be issued upon the posting of such Security and execution of such agreement, which shall be approved by the City Attorney in the exercise of reasonable discretion. The water and sanitary sewer improvements shall be completed and approved prior to issuance of any certificates of occupancy for the last building within the Phase of that development. At the Developer's request, but not more frequently than once a month, the Security may be reduced by the same percentage as the percentage of completion of the water and sanitary sewer improvements as determined by the City's engineer in the exercise of reasonable discretion. The balance of any Security shall be returned to Developer within thirty (30) days following the determination of the City that the water and sanitary sewer improvements have been completed per the approved engineering plans.

3.2 Storm Water Drainage. The Developer, at its sole expense, shall construct and maintain a storm water and retention system, which system shall include the improvements provided in this Agreement, and shall be installed in accordance with the PUD Documents, the approved engineering construction plans, and all applicable ordinances, laws, codes, standards and regulations. All drainage improvements necessary for the entire Project shall be completed and approved prior to issuance of any Certificate of Occupancy for any structure for any phase. During the development of the Project, the Developer shall be obligated to maintain the storm drainage and retention system and facilities in a fully operational condition. Upon completion of the storm drainage and retention system, the Developer may assign its responsibility with respect to such maintenance to an Association if allowable by applicable Master Deed. In such case, the obligation shall be solely that of the Association. The Developer shall post security in the form of cash or check or certificate of deposit, irrevocable letter of credit (issued by an institution doing business in Oakland County) or a performance bond (the "Security"), as specified in a separate agreement approved by the City. The Security shall be in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction of the storm drainage system plus 10% refundable cash deposit. The Agreement shall also authorize the City, at its option, to complete the drainage improvements as required by the City Engineer, if Developer fails to complete the drainage improvements in a timely fashion, once construction has commenced. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. In such case, building permits for the applicable phase of the development to be served by the drainage improvements in question shall be issued upon the posting of such Security and execution of such agreement, which shall be approved by the City Attorney in the exercise of reasonable discretion. The drainage improvements shall be completed and approved prior to issuance of any certificates of occupancy for the last building within the Phase of that development. At the Developer's request, but not more frequently than once a month, the Security may be reduced by the same percentage as the percentage of completion of the drainage improvements as determined by the City's engineer in the exercise of reasonable discretion. The balance of any Security shall be returned to Developer within thirty (30) days following the determination of the City that the drainage improvements have been completed per the approved engineering plans.

All construction, repair, maintenance and replacement of the storm drainage and retention system which are Developer's responsibility, as described in this Section, shall be the sole obligation of the Developer and its successors in ownership except for storm water retention, which can be shifted to any successor Association by Master Deed. Any such Master Deed shall require ongoing maintenance, repair and improvement of such storm drainage and retention system by the Association. During the development of the applicable phase, the Developer shall be obligated to maintain the storm drainage and retention system and facilities in a fully operational condition. Upon the installation of the final or topcoat of asphalt on the roads within a phase, the Developer may assign its responsibility with respect to such maintenance to the Association as provided in the applicable Master Deed or as Deed Restrictions herein. Thereafter, the obligation shall be solely that of the Association. The proper functioning, maintenance and repair of the applicable portion of such drainage and retention facilities shall be a condition for issuance of any and all building permits for construction of dwellings on the Property and for issuance of certificates of occupancy.

3.3 Sidewalks, Drives, Entryways and Parking Lots. All drives, entryways, sidewalks, and parking lots (the "paving improvements") within the Project shall be designed, situated and constructed in accordance with all requirements and applicable ordinances of the City, the PUD Documents and the approved engineering construction plans. All internal drives, entryways, sidewalks, and parking lots will be private except as otherwise set forth herein. The Developer, its successors and assigns, shall provide in the Master Deed provisions for emergency access for public entities and their personnel. The Developer shall post security in the form of cash or check or certificate of deposit or irrevocable letter of credit (issued by an institution doing business in Oakland County) or a performance bond (the "Security"), as specified in a separate agreement approved by the City. The Security shall be in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction plus 10% refundable cash deposit. The Agreement shall also authorize the City, at its option, to complete the sidewalks, drives, entryways and parking lots as required by the City Engineer, if Developer fails to complete the sidewalks, drives, entryways and parking lots in a timely fashion, once construction has commenced. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. In such case, building permits for the applicable phase of the development to be served by the sidewalks, drives, entryways, and parking lots in question shall be issued upon the posting of such Security and execution of such agreement, which shall be approved by the City Attorney in the exercise of reasonable discretion. The sidewalks, drives, entryways, and parking lots shall be completed and approved prior to issuance of any certificates of occupancy for the last building within the Phase of that development.

Prior to the issuance of the first certificate of occupancy in a phase, parking spaces shall be provided necessary to serve that phase, and shall consist of, at a minimum, striping on a base course of asphalt, as determined by the City Engineer for all entranceways and internal drive areas to provide for access for construction traffic, City personnel, emergency and fire fighting equipment. Further, the Developer shall also sign an agreement that requires completion and approval of the paving of all areas referenced in this Paragraph (including topcoat, parking lot striping, and permanent traffic control signing on site) prior to the issuance of more than 95% of the certificates of occupancy within any phase of the condominium Development, but in any event such paving shall be completed within two (2) years of issuance of the first building permit

for a building within each phase of the Development. At the Developer's request, but not more frequently than once a month, the Security may be reduced by the same percentage as the percentage of completion of the paving improvements as determined by the City's engineer in the exercise of reasonable discretion. The balance of any Security shall be returned to Developer within thirty (30) days following the determination of the City that the paving improvements have been completed per the approved engineering plans.

Developer, its successors and assigns, shall be responsible for maintenance and repair of the drives, entranceways, sidewalks, and parking lots during the period of construction, and shall also keep streets abutting the Project and Crooks Road free from debris and repair any damage to the streets abutting the Project (subject to City of Troy requirements) caused by construction activities on or for the Property or the Project and use of abutting streets and Crooks Road for construction purposes. If the Developer fails to maintain and repair the streets, boulevards, drives, entranceways, parking lots and abutting streets and Crooks Road, as required by this Paragraph, the City may issue stop work orders and/or withhold issuance of further approvals, permits and occupancy certificates for the Project until such failure is cured in addition to any enforcement authorization or remedy provided herein, or any other agreement. At all times during and after completion of construction, Developer, its successor and assigns, shall cause all drives, entranceways and parking lots to be maintained, repaired and kept in an unimpeded, unobstructed, safe and passable condition at all times to allow for the free flow and circulation of traffic throughout the Project, except for temporary closures or obstruction due to repairs or snow. The responsibility and obligation for such ongoing maintenance and repair shall be that of the Developer, its successors and assigns. Developer shall incorporate provisions in any and all Master Deeds stating that property owners and the Association are bound by the obligations and restrictions herein.

3.4 Developer shall have the right, subject to City approvals, to assign its maintenance and repair obligations under this Agreement to an Association. Upon the assignment to and assumption by the Association of Developer's maintenance and repair obligations, Developer shall have no further obligations or liability with respect thereto.

3.5 For purposes of maintenance obligations set forth in this Paragraph, the term "maintenance," "maintain" and "maintained" shall mean and include regular inspections.

ARTICLE IV

THE CITY'S RIGHTS AND OBLIGATIONS

4.1 The City, in each instance, shall provide by written thirty (30) days notice to Developer documentation of any and all deficiencies and shall provide Developer with a time period in which to cure any deficiencies under this agreement, which shall be enough time for Developer, its successors, or assigns, to cure the deficiency. It is understood, however, that each phase shall stand on its own. Any defect or violation that affects a phase shall not be grounds to penalize the other Phase, and the City's remedies should be exercised as to each phase only.

If, following the expiration of the period set forth to cure any deficiencies, such deficiencies have not been cured, the City shall there upon have the power and authority, but not

the obligation, to take any of the following actions, in addition to any actions authorized under City ordinance and/or State law:

(a) Demand that the non-performance, deficiency or obligation be fulfilled, performed or completed before Developer assigns its obligations to the Association and set a specific date to complete the performance, fulfill the obligation or correct the deficiency. If Developer has not completed the performance, fulfilled the obligation or corrected the deficiency by the date specified, the Developer shall not assign its obligations to the Association and the City may proceed under paragraph 4.1(b).

(b) Enter upon the Property, or cause its agents or contractors to enter upon the Property and perform such obligation or take such corrective measures as reasonably found by the City Administration to be appropriate. In addition to any financial assurance given to ensure completion of the improvements, the additional costs and expense of making and financing such action by the City, including without limitation notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of ten (10%) percent of the total of all such costs and expenses incurred, shall be paid by Developer within thirty (30) days of City's invoicing to Developer. .

(c) The City may initiate legal action for the enforcement of any of the provisions, requirements, and obligations set forth in the PUD Documents.

(d) The City may issue a stop work order as to any or all aspects of the Project, may deny the issuance of any requested building permit or certificate of occupancy within any part or all of the Project regardless of whether the Developer is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Project.

4.2 At any time throughout the period of development and construction of any part of the Project, the City, its contractors, representatives, consultants and agents, shall be permitted and are hereby granted authority to enter upon all or any portion of the Property for the purpose of inspecting and/or completing the respective improvements, and for the purposes of inspecting for compliance with and enforcement of the PUD Documents.

4.3 To the extent the PUD Documents deviate from the City of Troy Development Standards, Zoning Ordinance or other City ordinances, or any amendments thereto, the PUD Documents shall control. All improvements constructed in accordance with the PUD Documents shall be deemed to be conforming under the Zoning Ordinance and in compliance with all ordinances of the City.

ARTICLE V

MAINTENANCE OBLIGATIONS

5.1 The Developer and any successor Association and any of their successors and assigns shall indemnify and hold harmless the City, from and against any and all claims for injuries and/or damages arising out of their use or maintenance of the areas owned by the City

but maintained by the Developer or the Association, except those claims arising from the negligence or willful misconduct of the City, its agents or employees.

5.2 The Developer or any successor Association shall establish and levy assessments against the units within the Project for the purpose of performing the Association's maintenance and repair obligations under this Agreement, in addition to any maintenance obligations for the Project's common elements, including, but not limited to: storm drainage facilities, streets, entranceway improvements, landscaping, irrigation systems, sidewalks, and for any other proper purposes.. If the Developer or successor Association fails to fulfill the obligations as set out in this Agreement and the PUD Documents, the City may take any action available to it under Article IV against the individual property owners of each unit on a pro-rata basis and/or the Association, including, but not limited to, assessing a lien against the individual property owners on a pro-rata share.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1 Nothing in this Agreement is intended to prevent Developer from including in any Master Deed terms and conditions which do not bind the City or are more restrictive requirements and standards with respect to the Project as long as those terms and conditions are not in conflict with this Agreement or the PUD Documents, and as long as such terms and conditions are in compliance with State and Federal law.

6.2 This Agreement may not be modified, replaced, amended or terminated without the prior written consent of the parties to this Agreement. Developer shall have the right to delegate its rights and obligations under this Agreement to a successor Association as set out in this Agreement. Until the rights and responsibilities under this Agreement are transferred to an Association, Developer and the City shall be entitled to modify, replace, amend or terminate this Agreement, without requiring the consent of any other person or entity whatsoever, regardless of whether such person has any interest in the Property, including unit owners, mortgages of co-owners, and others.

6.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

6.4 If there is a conflict between the terms of any of the PUD Documents, such documents shall control in the following order: (a) the Conceptual Development Plan; (b) this Agreement; and (c) Chapter 39, Article XXXV of the City's Zoning Ordinance, and amendments, if any. Where there is a question with regard to applicable regulations for a particular aspect of the Project, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the PUD Documents which apply, the City in the reasonable exercise of its discretion, shall determine the regulations of the City's Ordinances that are applicable, provided such determination is not inconsistent with the nature and intent of the PUD Documents.

6.5 The terms of the PUD Documents, including this Agreement, have been negotiated by the undersigned parties and such documentation represents the product of the joint efforts and agreement of the Developer and the City. Developer and the City fully accept and agree to the final terms, conditions, requirements and obligations of the PUD Documents, and shall not be permitted in the future to claim that the effect of these PUD Documents results in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of any of the PUD Documents causes an inverse condemnation or taking of all or a portion of the Property. Furthermore, it is agreed that the improvements and undertakings set forth in the PUD Documents are necessary and roughly proportional to the burden imposed in order to ensure that services and facilities affected by the Troy Plaza Planned Unit Development will be capable of accommodating increased services and facility loads, traffic and storm water drainage caused by the development thereof, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially and economically desirable manner, and to achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.* It is further agreed and acknowledged hereby that all of such improvements are substantially related to the burdens to be created by the Project contemplated hereby, and all such improvements and the requirements and regulations of the Property under the PUD Documents and Zoning Ordinance, without exception, are clearly and substantially related to the City's legitimate interests in protecting the public health, safety and general welfare.

6.6 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

6.7 This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors and assigns.

THIS AGREEMENT was executed by the respective parties on the date specified with the notarization with their name, and shall take effect on the date of adoption by the Troy City Council of the Zoning Ordinance amendment granting rezoning of the Property to Troy Plaza Planned Unit Development.

[Signatures Follow]

IN WITNESS WHEREOF, Developer has caused this Development Agreement to be executed the day and year first above written.

“Developer”

Tinelle Properties, LLC,
a Michigan limited liability company

By: _____

Name: _____

Its: _____

Dated: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, the _____ of Tinelle Properties, LLC, a Michigan limited liability company, on behalf of the company.

Print Name: _____

Notary Public, Oakland County, Michigan

My Commission Expires: _____

Acting in the County of Oakland

“City”

CITY OF TROY,
a Michigan municipal corporation

By: _____

Name: Louise E. Schilling

Its: Mayor

Dated: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

BH01\900848.1
ID\SRE