

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

OCTOBER 11, 2016

CITY COMMISSION CHAMBERS @ 5:30 P.M.

### AGENDA

- CALL TO ORDER:
- PRAYER:
- PLEDGE OF ALLEGIANCE:
- ROLL CALL:
- HONORS AND AWARDS:
- INTRODUCTIONS/PRESENTATION:
  - A. Diamond Sponsor Recognition
- CITY MANAGER'S REPORT:
- CONSENT AGENDA:
  - A. Approval of Minutes City Clerk
  - B. Demolition Agreement Between City and Kirksey Investment Corporation – 1133 W. Western Avenue Planning & Economic Development
  - C. 3<sup>rd</sup> Amendment to Employment Agreement City Manager
  - D. LC Walker Arena Vision and Branding City Manager
  - E. Lakeshore Museum Loan Agreement (LaFrance Fire Truck) Public Safety
  - F. Heritage District Lighting Agreement Engineering
- PUBLIC HEARINGS:
  - A. Create City Wide Special Assessment for Street Lights Treasurer
- COMMUNICATIONS:
- UNFINISHED BUSINESS:

□ **NEW BUSINESS:**

**A. Western Avenue Parking Lot- Agreement of Purchase & Sale between the City of Muskegon and Core Financial Corporation** City Manager

□ **ANY OTHER BUSINESS:**

□ **PUBLIC PARTICIPATION:**

- ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
- ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
- ▶ Submit the form to the City Clerk.
- ▶ Be recognized by the Chair.
- ▶ Step forward to the microphone.
- ▶ State name and address.
- ▶ Limit of 3 minutes to address the Commission.
- ▶ (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

□ **CLOSED SESSION:**

□ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY-FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1- TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

# Memorandum

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To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: October 6, 2016

Here is a quick outline of the items on next week's agenda:

1. We have a number of items on the Work Session:
  - a. A presentation from Kevin Rico regarding activities at the HUB (formally the MAREC Center).
  - b. A presentation by Planning and Economic Development Staff on PM Park and a more general discussion about critical dune management going forward.
  - c. An update on miscellaneous on-going projects (mostly still in the initial planning stages). An additional memo will follow this packet likely Friday providing more information.
2. At the Tuesday meeting, we will be recognizing our Diamond Sponsors for the recent Farmers Market fundraiser. They were Scrib's Pizza, Jim Gawron, and Julie Balgooyen.
3. Under the Tuesday consent agenda, we are asking the Commission for approval of the following:
  - a. Last meeting's minutes.
  - b. A demolition agreement with Kirksey Investments to help facilitate the demolition and redevelopment of the Anaconda Wire building.
  - c. An amendment to the City Manager's Employment agreement. As discussed at the City Manager's performance review, the goal of the amendment is to reduce overall costs.
  - d. Approval of an agreement with Rossetti to undertake a visioning and branding effort for the LC Walker Arena. The goal of the visioning session will be to help us better understand how we can utilize the arena during events and also during non-event nights. We expect this will help us better understand how we can make the arena better activate Western Ave and improve the fan experience at games, concerts, etc.
  - e. Approval of an agreement to loan the LaFrance Fire Truck to the Lakeshore Museum Center (this is a renewal of an existing lease). The retired fire truck is on display that the Center's Clay Ave fire barn.

4. Under public hearings, we will host the first of two hearings associated with the proposed LED Streetlight Assessment. As of today, the responses have been significantly fewer than last year's attempt and the ration of returned cards with support vs opposed has improved greatly as well.
5. Under new business, we will be asking the Commission to approve a streetlight easement agreement to facilitate the relighting of the Heritage District lights, which have been off for about 5 years.

Under new business, we will also be seeking approval to sell a city-owned parcel on Western Ave to Core Financial. This group recently purchased the Amazon Apartments and a number of other buildings in the downtown. The agreement calls for a \$300,000 sale price and the ability for the city to utilize the site for LC Walker Arena events until the site is developed. Long-term plans for the site are still being developed, as is a timeline for such development. However, the initial items discussed with staff seems to be very compatible with the overall vision for Western Avenue, and would meet our newly adopted form-based code.

Date: October 5, 2016  
To: Honorable Mayor and City Commissioners  
From: Ann Marie Meisch, City Clerk  
RE: Approval of Minutes

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**SUMMARY OF REQUEST:** To approve minutes of the September 27, 2016 Regular City Commission Meeting.

**FINANCIAL IMPACT:** None.

**BUDGET ACTION REQUIRED:** None.

**STAFF RECOMMENDATION:** Approval of the minutes.

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**SEPTEMBER 27, 2016**

**CITY COMMISSION CHAMBERS @ 5:30 P.M.**

### **MINUTES**

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, September 27, 2016. Mayor Stephen J. Gawron, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

#### **ROLL CALL FOR THE REGULAR COMMISSION MEETING:**

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Debra Warren, Willie German, Jr., Dan Rinsema-Sybenga, and Byron Turnquist, City Manager Franklin Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioner Ken Johnson (Arrived at 5:40)

#### **2016-73 CONSENT AGENDA:**

##### **A. Approval of Minutes** City Clerk

SUMMARY OF REQUEST: To approve minutes of the September 12, 2016 Worksession and September 13, 2016 Regular City Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

##### **C. Fire Department Pickup Trucks** DPW/Equipment

SUMMARY OF REQUEST: Authorize staff to purchase two 2017 Ford F 250 4x4 pickup trucks from Gorno Ford, the Mi-Deal State contract holder, for a purchase price of \$30,645 each.

FINANCIAL IMPACT: \$61,290.00 or \$30,645.00 each

BUDGET ACTION REQUIRED: None. The amount is accounted for in the 2016/17 budget.

STAFF RECOMMENDATION: Authorize staff to purchase two Ford F 250 4x4 pickups from Gorno Ford.

**D. Approval of Sale of City-owned home at 2324 Park Drive** Community and Neighborhood Services

SUMMARY OF REQUEST: To approve the resolution and instruct the Community and Neighborhood Services department to complete the sales transaction with Muhamer Nijaziu for the totally rehabilitated home at 2324 Park Drive: purchase price \$105,000.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of affordable homes through the HOME program and provide funding for our Homebuyer's Assistance Program.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

**E. Rezoning request for the properties located at 307 & 313 W Laketon Avenue** Planning & Economic Development

SUMMARY OF REQUEST: Request to rezone the properties at 307 and 313 W. Laketon Avenue from I-2, General Industrial to B-4, General Business by Juan Avreola Villa.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the request at their 9/15/16 meeting.

**Motion by Commissioner Johnson, second by Commissioner German, to approve the Consent Agenda as presented with the exception of Items B and F.**

**ROLL VOTE: Ayes: Gawron, Hood, Warren, German, Rinsema-Sybenga, Turnquist, and Johnson**

**Nays: None**

**MOTION PASSES**

**2016-74 ITEMS REMOVED FROM CONSENT AGENDA:**

**B. Demolition of 1812 Lakeshore Drive – City "Grant" to Share in Costs** Planning & Economic Development Department

SUMMARY OF REQUEST: Dick Ghezzi recently purchased the property at 1812 Lakeshore Drive. This building has been a blight in the Lakeside Business District for several years. Mr. Ghezzi is requesting "grant" assistance from the City in demolishing the building (similar to the request approved for 1785 Beidler last year). It is located along a critical commercial corridor, as well as adjacent to the Lake Express Ferry Terminal. Mr. Ghezzi intends to demolish part of the

building for a parking lot and will improve the remainder.

FINANCIAL IMPACT: Mr. Ghezzi received two quotes. The lowest quote is for \$14,200. It is recommended that the City pay \$7,100 or half the amount of the lowest quoted price, which will be paid from the City's current budget for building demolitions.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To accept the cost share with Mr. Ghezzi for half the amount of the lowest quote, which is \$7,100. The payment will be made after the demolition and parking improvements are completed.

**Motion by Commissioner Turnquist, second by Commissioner Warren, to accept the cost share with Mr. Ghezzi for half the amount of the lowest quote, which is \$7,100. The payment will be made after the demolition and parking improvements are completed.**

**ROLL VOTE: Ayes: Hood, Warren, German, Rinsema-Sybenga, Turnquist, Johnson, and Gawron**

**Nays: None**

**MOTION PASSES**

**F. Adopt a Resolution to Approve a Small Distillery, Thew's Beverage Company, LLC at 930 W. Sherman City Clerk**

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from Thew's Beverage Company, LLC, for a Small Distillery License to be located at 930 W. Sherman.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To adopt the resolution approving Thew's Beverage Company, LLC at 930 W. Sherman as a small distillery.

**Motion by Commissioner Turnquist, second by Commissioner Rinsema-Sybenga, to adopt the resolution approving Thew's Beverage Company, LLC at 930 W. Sherman as a small distillery.**

**ROLL VOTE: Ayes: Warren, German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood**

**Nays: None**

**MOTION PASSES**

**2016-75 PUBLIC HEARINGS:**

**A. Request to Conduct a Public Hearing of the Community & Neighborhood Services Department Consolidated Annual Performance**

**Evaluation Report (CAPER 2015)** Community and Neighborhood  
Services Department

SUMMARY OF REQUEST: To conduct a public hearing of the 2015-2016 CAPER projects funded through CDBG and HOME allocations to the City of Muskegon Community and Neighborhood Services department.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To submit the 2015-2016 CAPER, including any public comments received during the 30-day comment period ending September 27, 2016.

**PUBLIC HEARING COMMENCED**

**Motion by Commissioner Rinsema-Sybenga, second by Vice-Mayor Hood, to close the public hearing and submit the 2015-2016 CAPER, including any public comments received during the 30-day comment period ending September 27, 2016.**

**ROLL VOTE: Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren**

**Nays: None**

**MOTION PASSES**

**B. BID Special Assessment – Resolution Approving District** Planning &  
Economic Development Department

SUMMARY OF REQUEST: The Downtown Business Improvement District (BID) Board is requesting that the special assessment district for downtown properties be renewed. The previous BID district was only approved for one year. Since the BID assessment is still very new, it is proposed that it be extended for another one-year term to allow us to gauge its impact before committing to a longer term. The assessments will continue to go towards various downtown expenditures, including snow removal on sidewalks, spring/fall cleanup and landscaping, events, directional signs, and marketing/advertising. The BID assessment includes both a "Class A" and a "Class B" district.

FINANCIAL IMPACT: The total estimated cost of services within the BID is \$150,000 of which approximately 75% (\$111,924) will be paid by the special assessment to property owners.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution approving the special assessment district and authorize the Mayor and Clerk to sign.

**PUBLIC HEARING COMMENCED**

Dave Alexander with Downtown Muskegon Now spoke about the assessment.  
The following objections were recorded/received by the Planning & Economic Development Office:

Joyce Thebo – 100 W. Western Avenue – 24-205-555-0001-00 - opposed

William Carlston - Hairitage Properties, LLC – opposed

Tammy Jager – First & Clay - opposed

**Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to close the public hearing and approve the resolution approving the special assessment district and authorize the Mayor and Clerk to sign.**

**ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren**

**Nays: German**

***MOTION PASSES***

**PUBLIC PARTICIPATION:** Public Comments were received.

**ADJOURNMENT:** The City Commission adjourned at 6:20 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC, City Clerk

Commission Meeting Date: October 11, 2016

Date: October 4, 2016  
To: Honorable Mayor & City Commission  
From: Planning & Economic Development Department  
RE: Demolition Agreement Between City and  
Kirksey Investment Corp. – 1133 W Western  
Ave.

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**SUMMARY OF REQUEST:** On August 23, 2016, the City Commission concurred with the findings of the Housing Board of Appeals that the structure located at **1133 W. Western Ave.** is unsafe, substandard, a public nuisance and that it be demolished. The Commission allowed for time for City staff to work with the property owner on an agreement for them to conduct the demolition process themselves in a timely manner. An agreement has been reached requiring both the demolition and the site restoration. The demolition is to be completed by December 15, 2016, with restoration being completed by May 31, 2017. Basement walls are to be removed to a minimum of 36 inches below grade and the former basement is to be filled with clean sand, topped with black dirt, and hydroseeded.

**FINANCIAL IMPACT:** Upon execution of the Agreement, Mr. Kirksey is to deposit the sum of \$75,000 with the City. If the demolition and restoration are completed as specified, the funds will be returned to Mr. Kirksey. Otherwise, they will be used by the City to complete the project.

**BUDGET ACTION REQUIRED:** None.

**STAFF RECOMMENDATION:** To approve the attached Demolition Agreement and authorize the Mayor and Clerk to sign.

## **DEMOLITION AGREEMENT**

This Demolition Agreement (“Agreement”) is made this \_\_\_\_\_ day of October, 2016 (“Effective Date”) by and among Kirksey Investment Corporation (“Kirksey”) and the City of Muskegon (“City”) and, for purposes of the Waiver (as defined below), the City of Muskegon Manager, Frank Peterson (“City Manager”), pursuant to the following terms.

### **RECITALS**

- 1) Kirksey owns certain real property and improvements located in the City of Muskegon, with a street address of 1133 West Western Avenue, Muskegon, Michigan (“Property”).
- 2) The Property contains a certain building (“Building”) that has been historically occupied by various manufacturing companies and that is now vacant.
- 3) On July 7, 2016, the City’s Housing Board of Appeals declared the Building to be substandard and dangerous, and issued an order of demolition with recommendation for approval by the City Commission.
- 4) On August 23, 2016, the City Commission approved the Housing Board of Appeals order of demolition.
- 5) Kirksey has obtained Demolition Permit No. PB160535 (“Permit”) to demolish the Building and has authorization to begin demolition at the Property upon execution of this Agreement.
- 6) Pursuant to Muskegon City Code (“City Code”) Section 10-135(b), Kirksey has requested that the City Manager waive certain requirements under City Code Section 10-135(a), which requires that all below-grade materials and structures be removed as part of the demolition of buildings.
- 7) The City Manager agrees to waive the requirements under City Code Section 10-135(a), subject to the terms and conditions provided in this Agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **WAIVER**

Upon execution of this Agreement, pursuant to City Code Section 10-135(b), the City Manager hereby waives the requirement under City Code Section 10-135(a) to remove all below-grade materials and infrastructure at the Property (“Waiver”).

2. **KIRKSEY OBLIGATIONS.**

A. Upon execution of this Agreement, Kirksey shall remit to the City the Deposit (as defined in Section 2(F) below) and shall commence demolition under the Permit as soon as practical. If necessary, demolition may be divided into two phases: (1) “Demolition,” which shall include demolition of the Building, removal of debris, filling the former basement with clean sand and restoring the Property to its original grade; and (2) “Restoration,” which shall include hydroseeding the entire Property and repair or replacement of a portion of the sidewalk (as described in Section 2(E) below).

B. Demolition shall be completed by December 15, 2016. Restoration shall be completed by May 31, 2017.

C. As a part of the Demolition phase, Kirksey shall cause the basement walls of the Building to be cut or removed to a minimum of 36 inches below grade. Pursuant to City Code Section 10-138, Kirksey shall cause the former basement to be filled with clean sand and shall cause the top three inches of the area to be covered with black dirt.

D. As a part of the Restoration phase, Kirksey shall cause the hydroseeding of the entire Property.

E. As a part of the Restoration phase, Kirksey shall replace that portion of the sidewalk along Western Avenue in front of the Building, as depicted on attached **Exhibit A**. In addition, to the extent that any portion of the sidewalk between Franklin Street and the westerly property line of the Property is damaged by demolition activities, Kirksey shall cause such portion of the sidewalk to be repaired or replaced.

F. Upon execution of this Agreement, Kirksey shall deposit the sum of \$75,000 (“Deposit”) with the City, which Deposit shall be held by the City and

subsequently refunded to Kirksey or, if necessary, applied by the City to pay for the completion of Demolition and Restoration, according to the terms and conditions of this Agreement.

- G. Pursuant to City Code Section 10-135(b), Kirksey shall execute and record with the Muskegon County Register of Deeds, a notice to future owners indicating that underground materials or infrastructure remain on the Property, in form substantial to the attached **Exhibit B**.

### 3. **CITY OBLIGATIONS.**

- A. The City hereby authorizes Kirksey and its contractors to proceed forthwith under the Permit to demolish the Building. The City shall process future permit applications, if any, related to Demolition and Restoration activities and final demolition inspections in its normal course and shall not unreasonably delay either the issuance of any permit or the final inspection. In the event that the City delays the issuance of a permit or the final inspection, those deadlines imposed on Kirksey pursuant to Section 2(B) above shall be extended to reasonably accommodate any such delay.
- B. If Kirksey completes Demolition and Restoration in accordance with the deadlines imposed in Section 2(B), Kirksey shall give written notice to the City Manager with a copy to the City Attorney, c/o John Schrier, Parmenter O'Toole, 601 Terrace Street, Suite 200, Muskegon, Michigan 49440 of its completion of each phase (if completed separately) or both (if completed simultaneously), and the City shall refund to Kirksey the Deposit as follows:
  - (i) If Demolition and Restoration are completed on or before December 15, 2016, the City shall promptly remit to Kirksey the entire Deposit balance of \$75,000.
  - (ii) If only Demolition is completed on or before December 15, 2016, the City shall promptly remit to Kirksey \$50,000 of the Deposit and retain the balance of \$25,000 until Restoration is completed on or before May 31, 2017, at which time the City shall promptly remit to Kirksey the remaining Deposit balance of \$25,000.
  - (iii) The City or its agent shall have 30 days after receipt of the above-described notice(s) of completion to approve the work or to provide a written objection specifying its reasons, as to its

dissatisfaction with the condition of the Property or to dispute that Kirksey has otherwise satisfied its obligations under this Agreement. If the City does not provide written objection within 30 days, Kirksey's obligations shall be deemed to be satisfied, and the City shall promptly refund the balance of the Deposit to Kirksey in the manner described above. If the City provides written objection within 30 days of notice(s), Kirksey shall have 30 days to cure any defect specified in the objection. If Kirksey fails to cure such defect within the 30-day period, the City may apply the Deposit (or any portion thereof) toward the cost of Demolition and Restoration completion. If there is a remaining balance of the Deposit after the City has paid for the Demolition and Restoration completion, the City shall promptly remit such balance to Kirksey. If the Deposit is not sufficient to cover the City's cost to complete Demolition and Restoration, the City shall invoice Kirksey for such insufficient amount, in the manner described in Section 3(C)(iii) below.

- C. In the event that Kirksey fails to perform its obligations in accordance with the deadlines specified in Section 2(B) above, the City shall retain the Deposit, subject to the following:
- (i) If Demolition is not completed by December 15, 2016, the City may retain the entire Deposit and apply any or all of the balance, as necessary, for the completion of Demolition and Restoration.
  - (ii) If Demolition is completed on or before December 15, 2016, but Restoration is not completed by May 31, 2017, the City may retain the Deposit (less \$50,000 pursuant to the terms of Section 3(B)(ii) above), and apply any or all of the balance, as necessary, to complete Restoration.
  - (iii) Within 45 days of completion of Demolition and Restoration, the City shall remit to Kirksey any unused balance of the Deposit or, if the cost of Demolition and/or Restoration exceeds the amount of the Deposit in the possession of the City, the City shall invoice Kirksey for the amount exceeding the retained Deposit and, if not paid within 45 days, the City may assess an amount equal to the invoiced amount to the tax bill for the Property and collect such amount consistent with the collection of taxes.

4. **INTERPRETATION.**

This is the entire agreement, including attachments, between the parties as to its subject. It shall not be amended or modified except in writing signed by the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. This Agreement shall be interpreted and construed in accordance with Michigan law, and the parties agree to jurisdiction and venue within the courts for the County of Muskegon.

5. **BINDING.**

This Agreement and the rights and obligations under this Agreement are not assignable and not transferable by any party without the written consent of the other parties, with the exception that the City may assign the obligations to make inspections and notify Kirksey of compliance or non-compliance of the Demolition and Restoration. This Agreement shall, however, be binding upon any successors or permitted assigns of the parties. The City, Kirksey and the City Manager have negotiated to reach the terms of this Agreement, have participated in the drafting of this Agreement, and acknowledge that this Agreement is a joint effort of all parties.

6. **EXECUTION IN COUNTERPARTS.**

This Agreement may be executed in counterparts and via facsimile signature, all of which when signed and taken together, shall constitute one original agreement.

**WHEREFORE**, this Agreement has been executed as of the Effective Date.

*Signatures on following page*

**CITY OF MUSKEGON**

Dated: October \_\_, 2016

By: \_\_\_\_\_

Stephen J. Gawron, Mayor

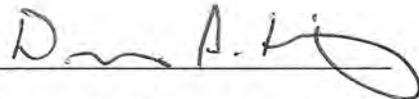
Dated: October \_\_, 2016

By: \_\_\_\_\_

Ann Marie Meisch, Clerk

**KIRKSEY INVESTMENT CORPORATION**

Dated: October <sup>4<sup>TH</sup></sup> \_\_, 2016

By:  \_\_\_\_\_

Dennis A. Kirksey, Vice President

**CITY MANAGER**

Dated: October \_\_, 2016

By: \_\_\_\_\_

Frank Peterson, City Manager

EXHIBIT A

Portion Of Sidewalk To Be Repaired

Exhibit A

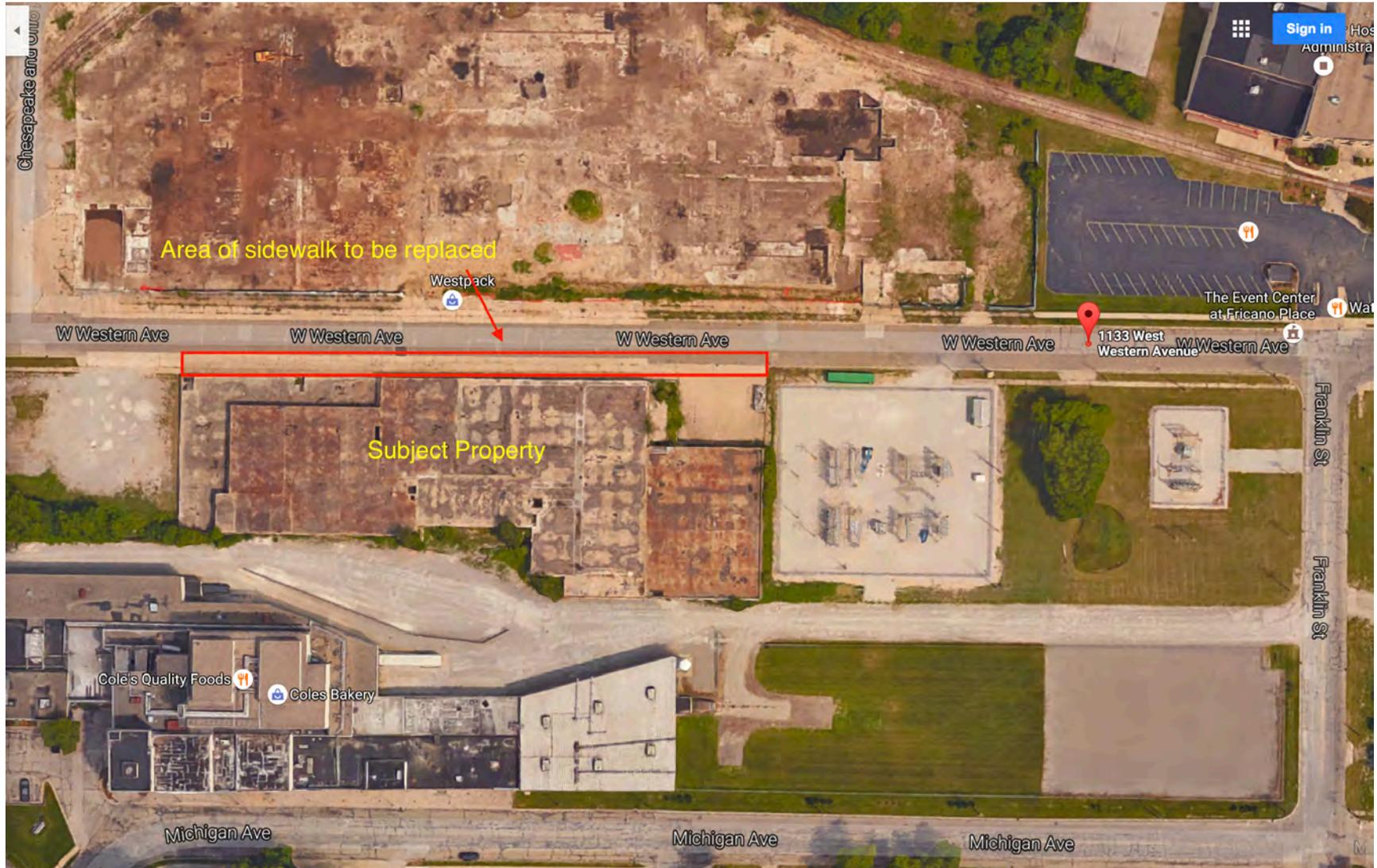


Exhibit B

Notice To Future Owners Regarding Underground Materials

## **NOTICE REGARDING UNDERGROUND MATERIALS OR INFRASTRUCTURE**

Kirksey Investment Corporation, a Michigan corporation, of 1204 West Western Avenue, Muskegon, Michigan ("Kirksey"), holds fee title to real property situated in the City of Muskegon, County of Muskegon, State of Michigan, and described in the attached **Exhibit A** (the "Property").

Notice is hereby provided as follows:

1. Pursuant to Permit No. PB160535, issued by the City of Muskegon to Kirksey, a structure formerly located on the Property was demolished in accordance with the Code of Ordinances, City of Muskegon, Michigan (the "Code").
2. Pursuant to Section 10-135(b) of the Code, the City Manager waived the requirement under Section 10-135(a) for complete removal of all buildings or other improvements on the Property, including basements or infrastructure below grade.
3. Section 10-135(b) of the Code requires that the landowner execute and record a notice to future owners of the Property that underground materials or infrastructure remain on the Property, and this notice, therefore, has been executed and recorded by Kirksey to provide such notice.
4. The attached **Exhibit B** indicates where such remaining underground materials or infrastructure are located at the Property.

**Kirksey Investment Corporation**, a  
Michigan corporation

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Name: Dennis A. Kirksey  
Title: Vice President

STATE OF MICHIGAN        )  
\_\_\_\_\_ COUNTY         )

On this \_\_ day of \_\_\_\_\_, 2016, before me personally came Dennis A. Kirksey, to me known, who, being by me duly sworn, did depose and say that he is the Vice President of Kirksey Investment Company, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the board of the said corporation.

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

Drafted by and when recorded return to:  
Sueann T. Mitchell  
GIELOW GROOM TERSPSTRA & McEVOY  
281 Seminole Road – 2<sup>nd</sup> Floor  
Norton Shores, MI 49444  
(231) 747-7160 Ext. 109

## Exhibit A Legal Description

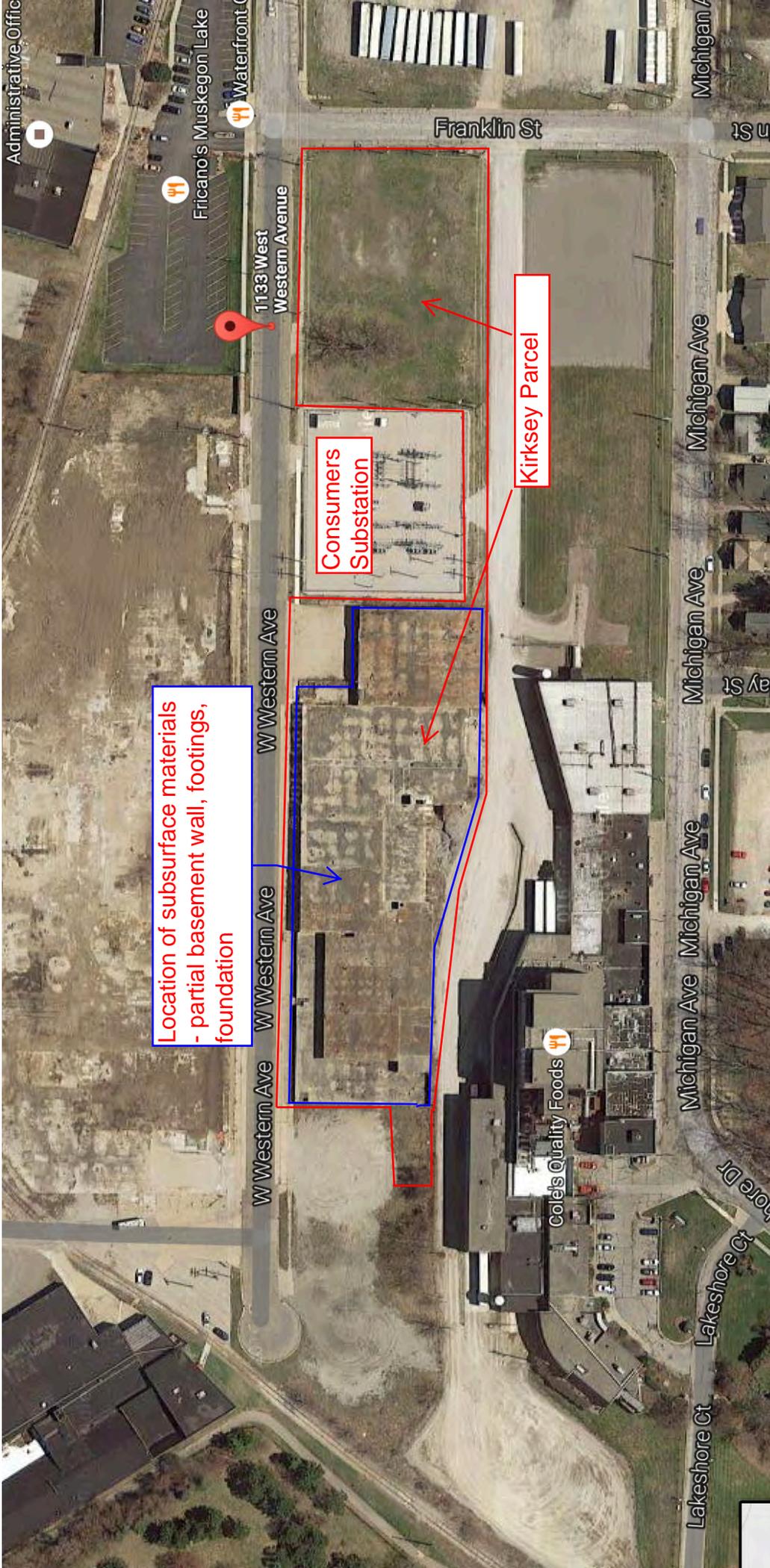
PARCEL A: Beginning at the Northeast corner of Block 469, of the Revised Plat (of 1903) of the City of Muskegon, as recorded in the Muskegon County, Michigan Records; thence South 01 degrees 54 minutes 30 seconds East 200.62 feet; thence South 88 degrees 09 minutes 47 seconds West 623.73 feet; thence North 81 degrees 23 minutes 46 seconds West 275.72 feet; thence North 03 degrees 42 minutes 24 seconds East 10.00 feet; thence Westerly 43.34 feet, along the arc of a 795.59 foot radius curve to the left, the chord of which bears, North 86 degrees 17 minutes 50 seconds West 43.34 feet; thence North 87 degrees 51 minutes 46 seconds West 60.20 feet; thence Westerly 42.61 feet, along the arc of a 1071.79 foot radius curve to the left, the chord of which bears North 89 degrees 15 minutes 52 seconds West 42.61 feet; thence along the West line of lot 6 of Block 470, North 01 degrees 27 minutes 26 seconds West 31.32 feet; thence North 88 degrees 12 minutes 06 seconds East 98.69 feet; thence along the West line of lot 5, Block 470, North 01 degrees 28 minutes 04 seconds West 99.32 feet, to the North line of Block 470; thence North 88 degrees 10 minutes 20 seconds East 504.63 feet, along the North line of Blocks 469 and 470; thence South 01 degrees 43 minutes 27 seconds East 176.10 feet, along the East line of the Westerly 10 feet of the East 1/2 of lot 7, Block 469; thence along the centerline of the vacated alley, North 88 degrees 11 minutes 19 seconds East 195.41 feet; thence along the West line of lot 2, Block 469, North 01 degrees 49 minutes 35 seconds West 176.15 feet, thence along the North line of Block 469, North 88 degrees 10 minutes 20 seconds East 240.17 feet to the point of beginning.

Together with and Subject to an Easement for Ingress and Egress described as: Commencing at the Northeast corner of Block 469, of the Revised Plat (of 1903) of the City of Muskegon, as recorded in the Muskegon County, Michigan Records; thence South 01 degrees 54 minutes 30 seconds East 190.62 feet for the point of beginning; thence continue South 01 degrees 54 minutes 30 seconds East 20.00 feet; thence South 88 degrees 09 minutes 47 seconds West 624.46 feet; thence North 81 degrees 23 minutes 46 seconds West 275.98 feet; thence North 03 degrees 42 minutes 24 seconds East 20.00 feet; thence South 81 degrees 23 minutes 46 seconds East 275.46 feet; thence North 88 degrees 09 minutes 47 seconds East 623.01 feet to the point of beginning.

Together with an Easement for Ingress and Egress described as: Commencing at the Northeast corner of Block 469, of the Revised Plat (of 1903) of the City of Muskegon, as recorded in the Muskegon County, Michigan Records; thence South 01 degrees 54 minutes 30 seconds East 190.62 feet; thence South 88 degrees 09 minutes 47 seconds West 623.01 feet; thence North 81 degrees 23 minutes 46 seconds West 275.46 feet for the point of beginning; thence Westerly 43.34 feet, along the arc of a 795.59 foot radius curve to the left, the chord of which bears, North 86 degrees 17 minutes 50 seconds West 43.34 feet; thence North 87 degrees 51 minutes 46 seconds West 60.20 feet; thence Westerly 42.61 feet, along the arc of a 1071.79 foot radius curve to the left, the chord of which bears North 89 degrees 15 minutes 52 seconds West 42.61 feet; thence along the West line of lot 6 of Block 470, South 01 degrees 27 minutes 26 seconds East 20.00 feet; thence Easterly 41.45 feet, along the arc of a 1051.80 foot radius curve to the right, the chord of which bears, South 89 degrees 15 minutes 16 seconds East 41.45 feet; thence South 87 degrees 51 minutes 46 seconds East 60.11 feet; thence Easterly 42.80 feet, along the arc of a 775.60 foot radius curve to the right, the chord of which bears, South 86 degrees 16 minutes 38 seconds East 42.80 feet; thence North 03 degrees 42 minutes 24 seconds East 20.00 feet to the point of beginning.

**Exhibit B**  
**Location of Underground Materials at the Property**

# Exhibit B - Location of Subsurface Materials



Legend:  
Red lines: approx. location of Kirksey parcel  
Blue lines: approx. location of subsurface materials

AGENDA ITEM NO. \_\_\_\_\_  
CITY COMMISSION MEETING \_\_\_\_\_

TO: Honorable Mayor and City Commissioners  
FROM: Frank Peterson, City Manager  
DATE: October 4, 2016  
RE: 3<sup>rd</sup> Amendment to Employment Agreement – City Manager

**SUMMARY OF REQUEST:**

To amend the City Manager's Employment Agreement as attached, with an effective date of October 1, 2016.

**FINANCIAL IMPACT:**

None.

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

To approve the amendment to the City Manager's Employment Agreement.

**COMMITTEE RECOMMENDATION:**

THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

CITY OF MUSKEGON - FRANKLIN PETERSON  
Amendment effective October 1, 2016  
Containing Retroactive Provisions  
(As approved by the City Commission on October 11, 2016)

This is the Third Amendment to the Employment Agreement, between the CITY OF MUSKEGON ("CITY") and FRANKLIN PETERSON ("MANAGER") concerning Franklin Peterson's services as City Manager of the CITY. The Employment Agreement and First Amendment to Employment Agreement are amended in the following particulars:

1. Paragraph 3 (Pension) of the Employment Agreement and the attached Muskegon City Manager Compensation Proposal shall be amended to eliminate contributions to the ICMA 457 Plan; and
2. Paragraph 3 (Pension) of the Employment Agreement and the attached Muskegon City Manager Compensation Proposal shall be amended to provide a mandatory Manager contribution of 3% of W-2 wages and a City contribution of 15.23% of W-2 wages.
3. Paragraph 5(b) of the Memorandum concerning the Muskegon City Manager Compensation Proposal, which is an attachment to the Employment Agreement, (Automobile Allowance) shall be revised to eliminate the automobile allowance and mileage reimbursement.

This amendment was authorized by a vote of the City Commission on October 11, 2016, and is determined to be effective October 1, 2016. All previous provisions shall remain in full force and effect, except those that are changed by this amendment.

IN WITNESS WHEREOF, the parties execute this amendment to the agreement as of the said effective date.

CITY OF MUSKEGON

By \_\_\_\_\_  
Stephen J. Gawron, Its Mayor

and \_\_\_\_\_  
Ann Marie Meisch, Its Clerk

MANAGER -

\_\_\_\_\_  
Franklin Peterson

AGENDA ITEM NO. \_\_\_\_\_  
CITY COMMISSION MEETING \_\_\_\_\_

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: October 4, 2016

RE: LC Walker Arena Vision and Branding

**SUMMARY OF REQUEST:**

The City's recent decision to pursue a restaurant and distillery to occupy a portion of the LC Walker Arena has led to inquiries from numerous other businesses looking to create similar and compatible businesses at the LC. Before moving forward to consider any of these requests, city staff is asking to have a professional arena designer/developer help create a vision for the arena. This visioning exercise will help us better-understand current trends in area usage and develop the best product for the community. Accordingly, staff is seeking permission to enter into an agreement with Rossetti Architecture to create a conceptual plan for the re-visioning of the LC Walker Arena.

**FINANCIAL IMPACT:**

Not to exceed \$10,000

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

To approve agreement with Rossetti and authorize the City Manager to sign.

**COMMITTEE RECOMMENDATION:**

**09/15/2016**

Franklin Peterson, City Manager  
City of Muskegon  
933 Terrace Street  
PO Box 536  
Muskegon, MI 49443-0536

**RE: L.C. Walker Rebrand**

Dear Frank,

ROSSETTI is very pleased to submit this proposal to provide professional services for the conceptual planning and re-visioning of the L.C. Walker Arena.

## **PROJECT UNDERSTANDING**

The City of Muskegon wishes to develop a concept to rebrand the L.C. Walker Arena to enliven the Western Avenue streetscape, create opportunities for new tenants within the arena, and provide concepts for alternative fan areas. Design consideration will include relocation of existing toilets to make room for additional program on the Western Ave side of the Arena, potential seating reduction to allow for flexible program opportunities, and inclusion of new upper floor area for fans.

## **SCOPE OF SERVICES**

ROSSETTI will perform basic services for this project in one phase:

### **Visualize**

Rossetti will develop a plan(s) and (2) renderings to show the concept. We will:

- Develop preliminary plans for review and confirmation of concept
- Develop preliminary views of renderings for review
- Develop final plan and renderings based on client review
- The final deliverable will be a digital 11x17 presentation
- ROSSETTI anticipates 1 in-person meeting, and 1 webex meeting.

## **CONSULTANTS**

No consultants have been included in our fee for basic services.

## **PROFESSIONAL FEES**

ROSSETTI's fee for the project will be a stipulated sum of \$10,000.

Reimbursable expenses are in addition to the above fee and are itemized below.

### **REIMBURSABLE EXPENSES**

In addition to our fee, ROSSETTI and its consultants (if any) shall be reimbursed for the following items at 1.1 times cost:

- Out-of-town Travel – airfare, hotel accommodations, local transportation, and subsistence expenses incurred in connection with this project. Car mileage will be reimbursed at a rate not exceeding the standard allowance determined by the U.S. Internal Revenue Service.
- Reproductions of drawings, specifications or reports.
- Renderings, models, photography and other special presentation material.
- Regulatory Agency review fees.
- Surveys, soil borings and other physical or chemical tests required for the design when not provided by the owner.
- Postage – express delivery and courier services.
- Consultants not included in this proposal when approved in advance.
- Conference calls and web based conference services such as WebEx or GoToMeeting.

### **SUPPLEMENTAL SERVICES**

Supplemental services, if required and requested by you will be invoiced on an hourly basis in accordance with our standard hourly rate schedule.

### **SCHEDULE**

ROSSETTI is prepared to proceed upon receipt of your written authorization. We anticipate that the effort will take 2-3 weeks to complete.

### **ASSUMPTIONS**

This proposal is based upon the following assumptions:

- This document serves as a record of the basic terms of our agreement. We propose to furnish services described in AIA Document B-101 (2007 Edition) Standard Form of Agreement Between Owner and Architect as modified by this letter.
- Standard of Care – Services provided by ROSSETTI under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- Limitation of Liability – you will limit any and all liability or claim for damages, cost of defense, or expenses to be levied against ROSSETTI to a sum not to exceed the amount of our fee, on account of any design defect, error, omission, or professional negligence.
- The services described herein cover only those services provided by ROSSETTI.

- Cost estimating services are not included. This service can be provided as a reimbursable expense if requested.
- This proposal is based upon the completion of our services by 11/01/2016

**PAYMENT**

All payments due ROSSETTI shall be made every four weeks upon receipt of the invoice for services rendered. Unpaid invoices shall bear interest at the rate of 1% per month commencing thirty (30) days after receipt of the invoice. ROSSETTI shall have the right to suspend work on the project upon invoice past due more than sixty (60) days from presentation, unless or until ROSSETTI is satisfied that payment is forthcoming.

A retainer in the amount of \$2,000 will be required to initiate professional services. Upon completion of services, the retainer will be applied toward payment of our final invoice.

ROSSETTI and the entire design team want to thank you for the opportunity to be involved in this project. If this proposal meets with your approval and is consistent with your understanding, please sign both enclosed copies and return one copy to our office. In the event we do not receive a signed copy of this letter, and we are authorized to begin work verbally, we will assume the terms and conditions of this proposal have been accepted by you. We look forward to working together with you and your colleagues.

Sincerely,

Agreed to and accepted,

ROSSETTI

Matthew Taylor, AIA  
Associate

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**ROD MASTER PLAN STUDY** ///  
VAN ANDEL ARENA

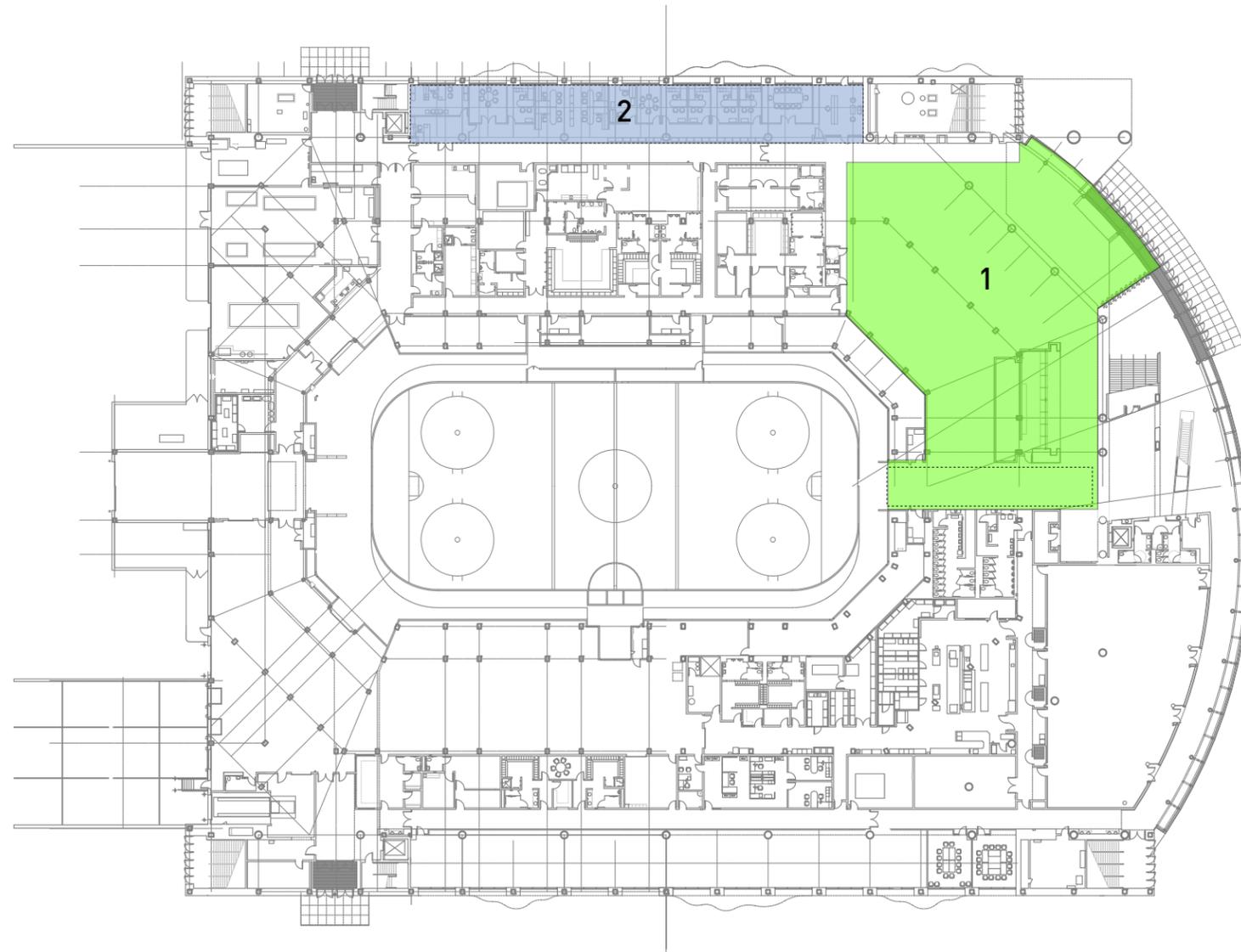


**VAN ANDEL MASTER PLAN AESTHETIC**



*industrial  
 contextual  
 eclectic  
 tailored  
 public  
 natural  
 classic  
 aged  
 warm  
 chic  
 rich*





**LEVEL 01\_ENTRY LEVEL**

- 1. New Open area for Ticket, Retail, Lobby, Amenity 13,000 s.f.
- 2. New Relocated Offices 4,200 s.f.

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

### CONCEPT Arena Level NEW OFFICE LAYOUT

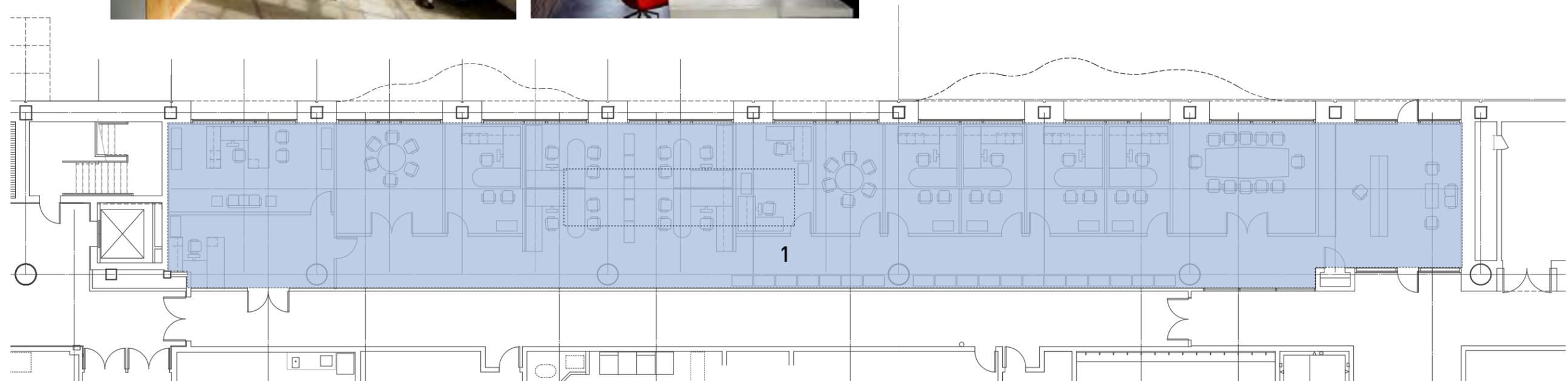
PAGE 4

*"natural day light into offices"*



LEVEL 01\_ENTRY LEVEL\_Office Fit

1. New relocated offices with day light 4,200 s.f.



# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Arena Level OPTION A

PAGE 5

VAN ANDEL  
ARENA

GRAND RAPIDS

"back alley food court"

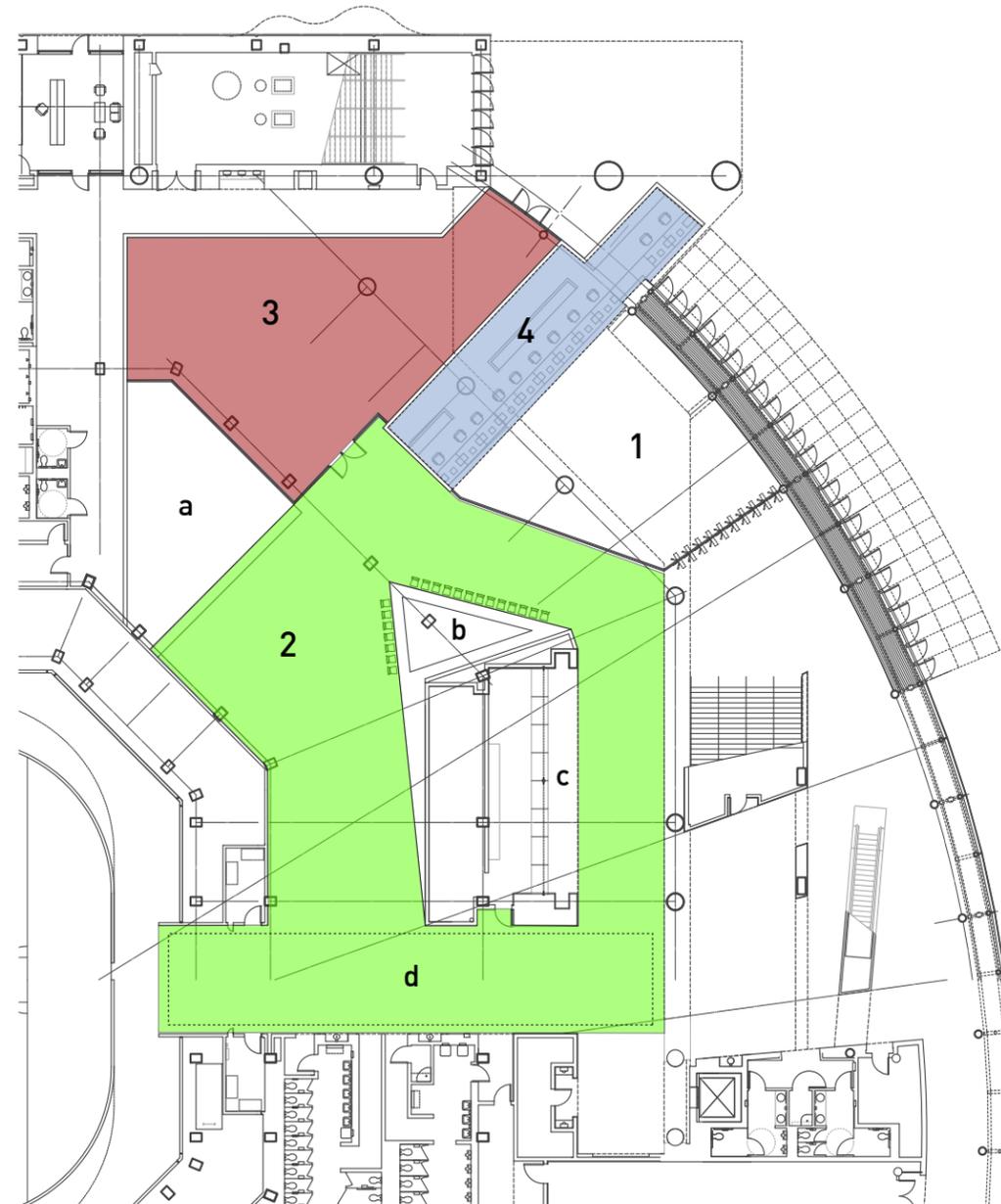


2



2b

"back alley pub"



"retail storefront"

3



#### LEVEL 01\_ENTRY LEVEL\_option A

1. New Sponsored Vestibule 1,700 s.f.
2. New Sponsored Amenity Zone 8,200 s.f.  
note: 8,200 s.f. includes a,b,c and d  
a. new concession 925 s.f.  
b. new bar 425 s.f.  
c. existing concession 1,300 s.f.  
d. new club with bowl connection 1,500 s.f.
3. New Relocated Retail 2,000 s.f.
4. Relocated Ticket Windows with two Exterior 1,000 s.f.

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Arena Level OPTION B

PAGE 6

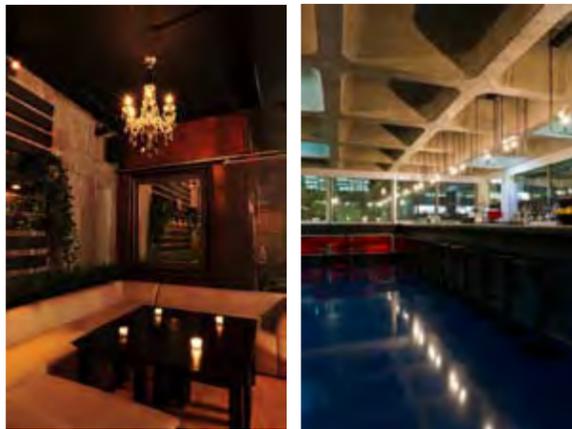
VAN ANDEL  
ARENA

GRAND RAPIDS

"retail object"

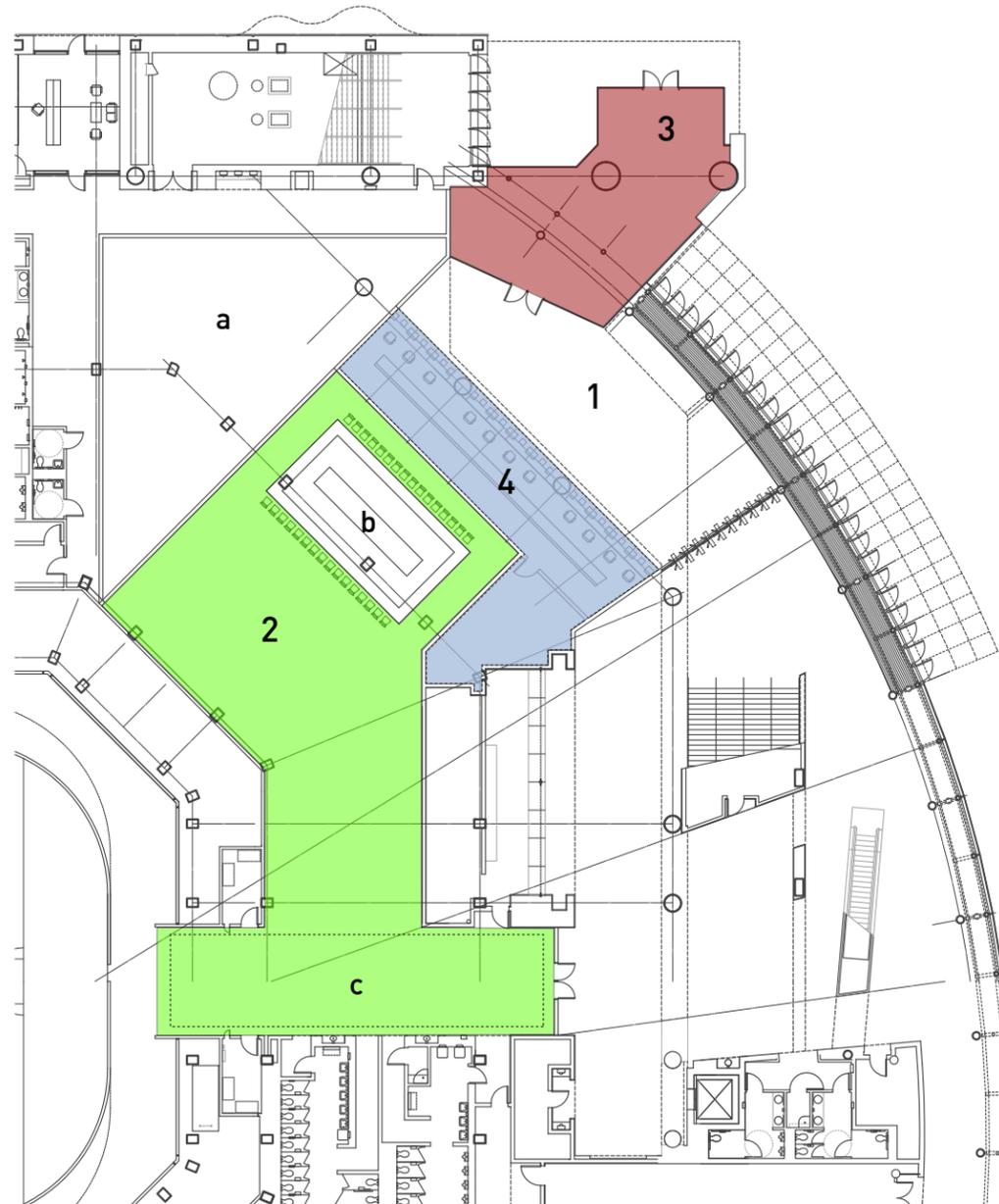


3



2

"bunker club / bar / lounge"



#### LEVEL 01\_ENTRY LEVEL\_option B

1. New Sponsored Vestibule 1,700 s.f.
2. New Sponsored Club 8,200 s.f.  
note: 8,200 s.f. includes a,b and c  
a. new kitchen 2,075 s.f.  
b. new bar 600 s.f.  
c. new club with bowl connection 1,500 s.f.
3. New Relocated Retail 1,200 s.f.
4. Relocated Ticket Windows 1,350 s.f.
5. New Relocated Offices 4,200 s.f.

# ROD MASTER PLAN STUDY VAN ANDEL ARENA

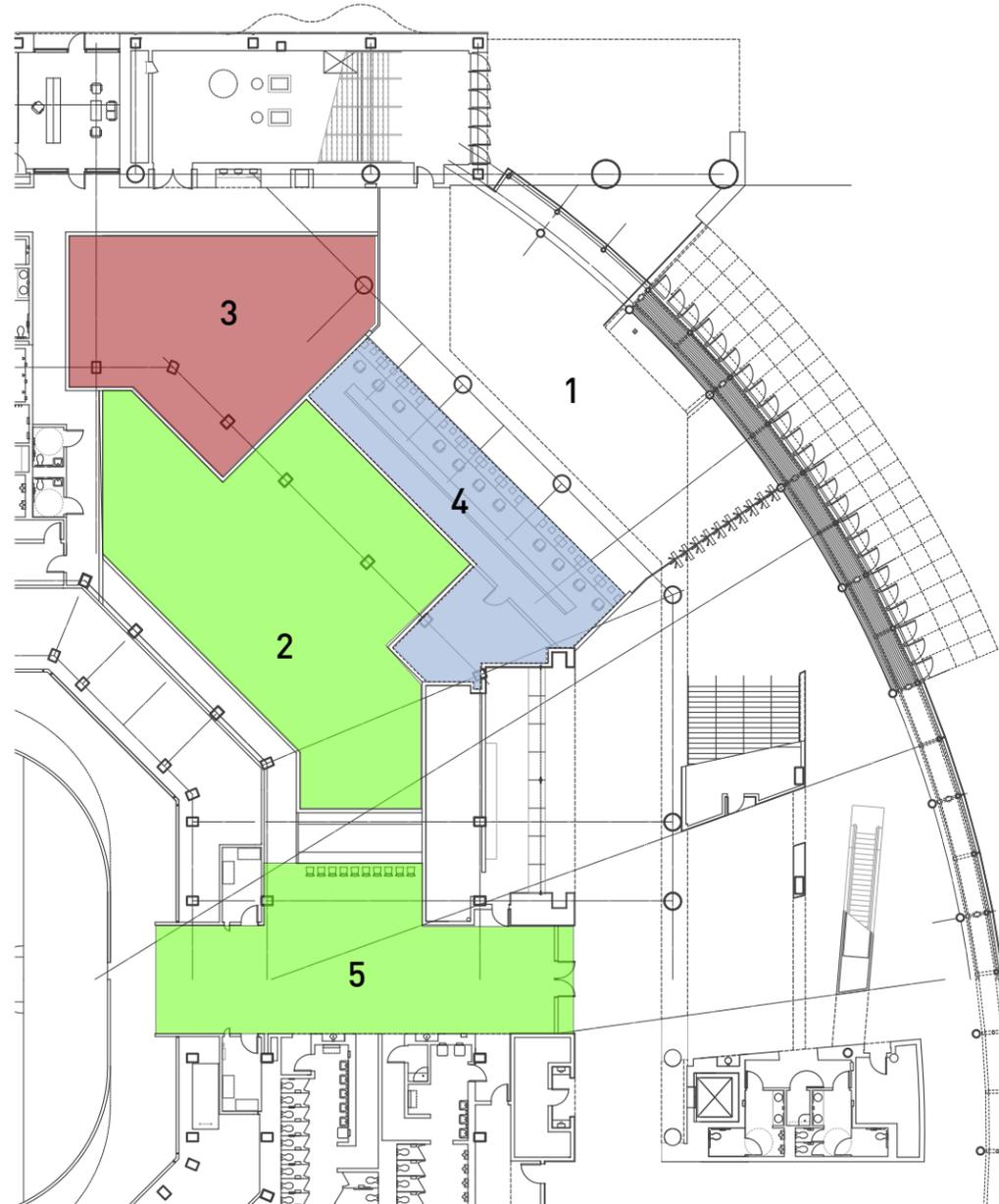
02.09.2012

VAN ANDEL  
ARENA  
GRAND RAPIDS

PAGE 7



"bunker suites"



"bunker suite lounge and bar"



LEVEL 01\_ENTRY LEVEL\_option C

1. New Sponsored Vestibule 3,000 s.f.
2. New Bunker Suites 3,100 s.f.
3. New Relocated Retail 1,500 s.f.
4. Relocated Ticket Windows 1,300 s.f.
5. New Sponsored Bar 2,000 s.f.

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

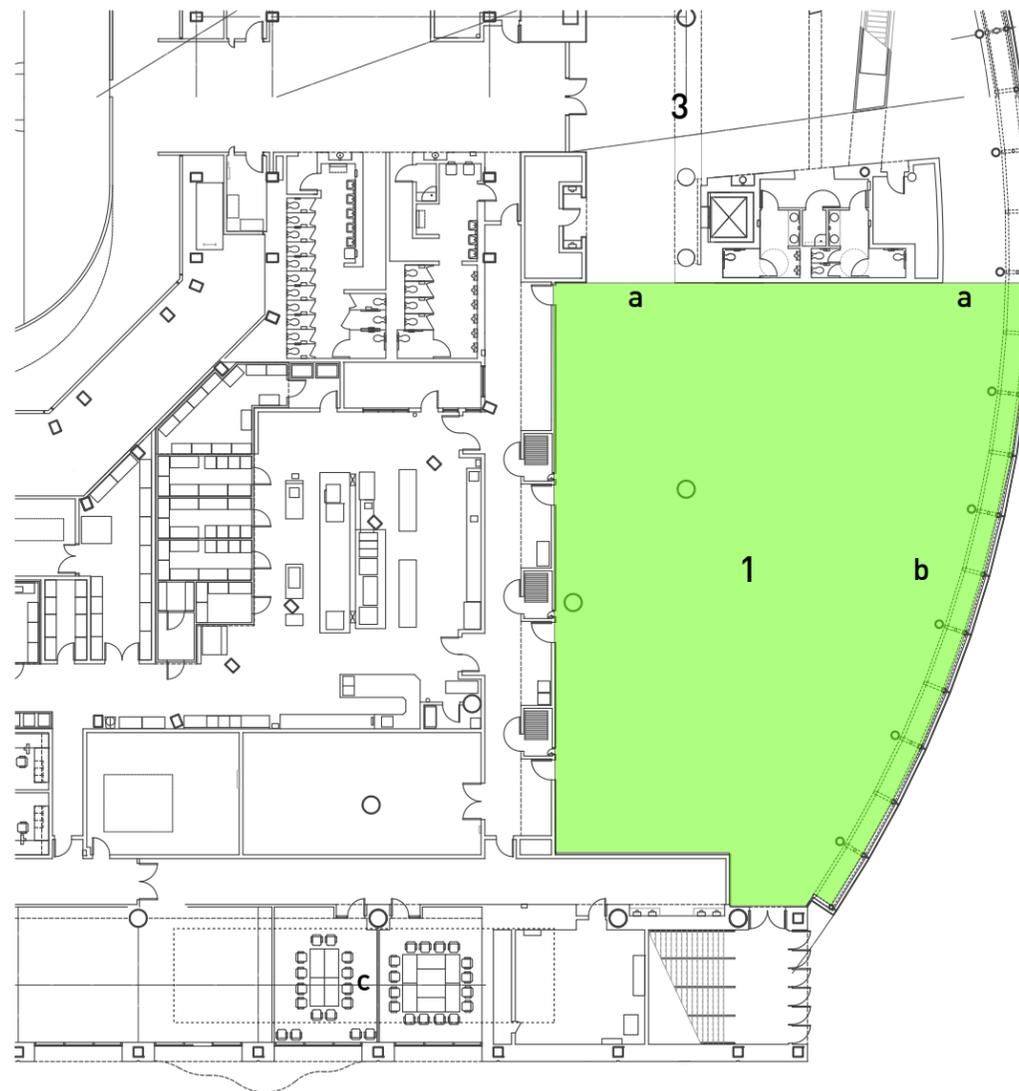
### CONCEPT Arena Level RESTAURANT OPTION

PAGE 8



1

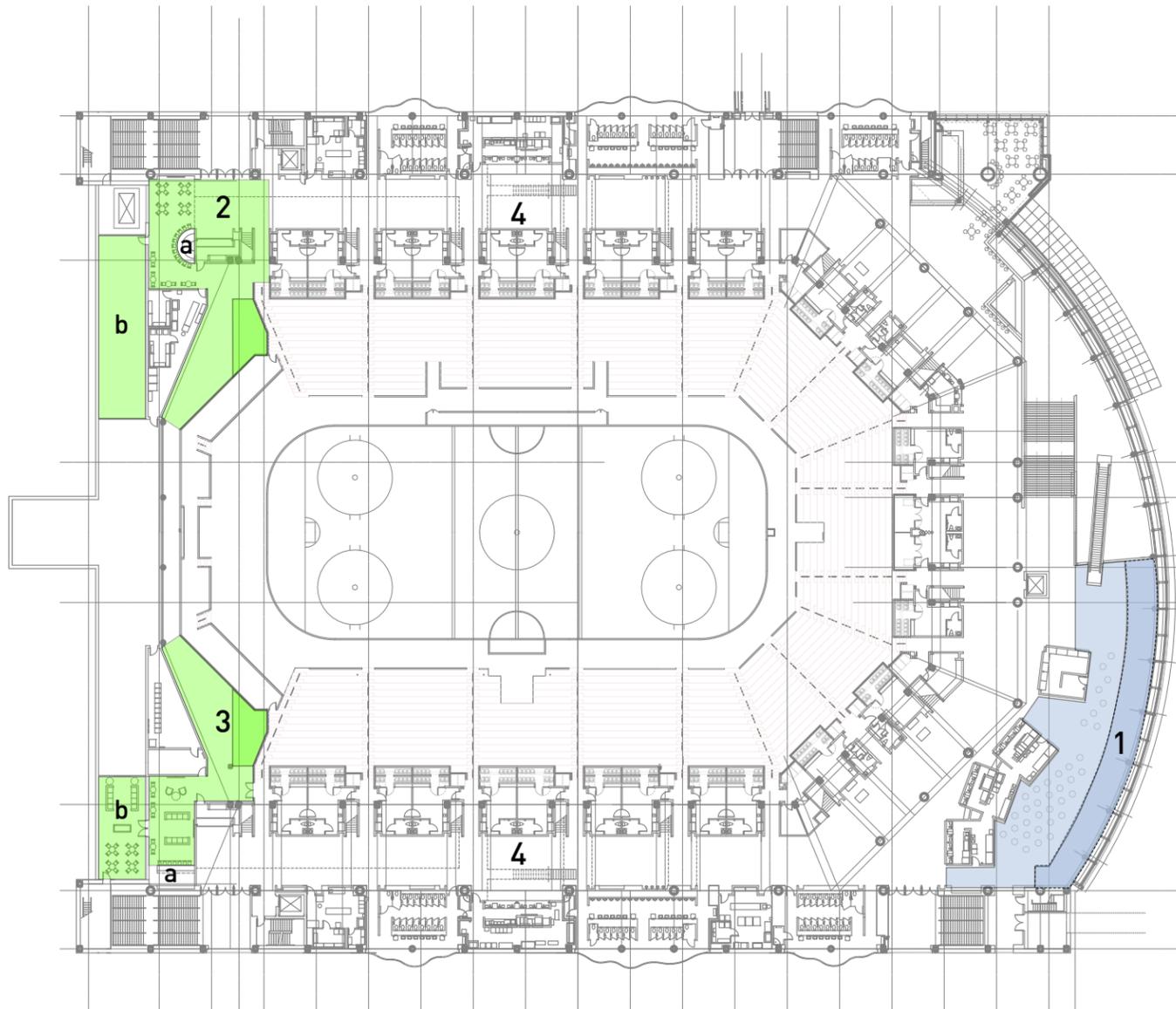
"urban restaurant"



LEVEL 01\_ENTRY LEVEL\_New Restaurant

1. New Sponsored Restaurant 7,500 s.f.
  - a. make accesible from main entry
  - b. remove wall to create connection with the city (potential access to exterior?)

*"open flexible club"*



- LEVEL 02\_CONCOURSE LEVEL**
1. Expand Existing Club +1,400 s.f.
  2. New Sponsored Amenity zone
    - a. New Bar
    - b. Exterior Patio (smoking)
  3. New Sponsored Club
    - a. New Bar
    - b. Exterior Lounge
  4. New Stair and Bridges above offer new branding opportunity

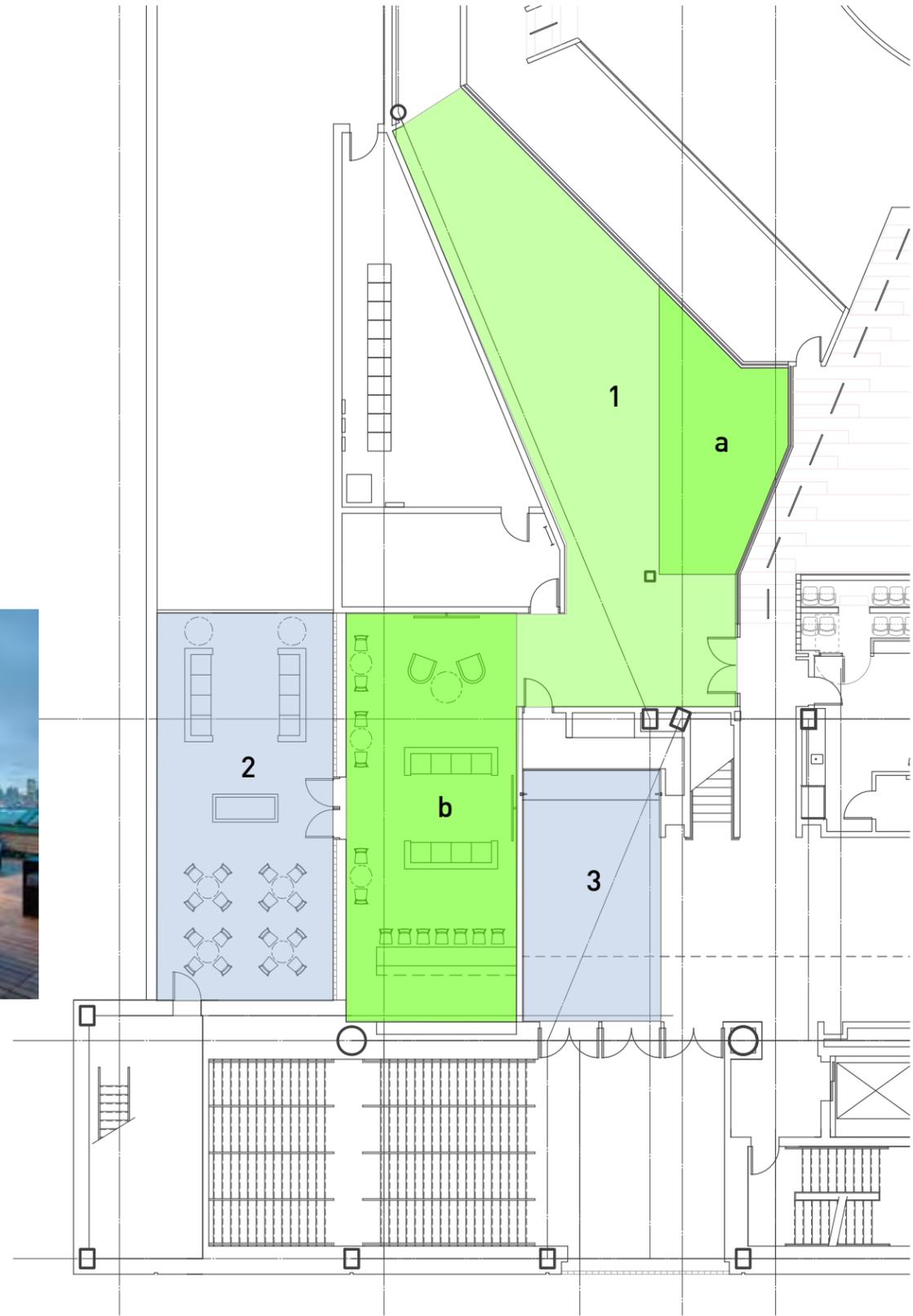
# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Concourse Level SOUTH END OPTION A

PAGE 10



1b

"hidden lounge"

#### LEVEL 02\_SOUTHEAST END OPTION A

1. Update and Brand Existing Party Deck 2,275 s.f.  
note: 2,275 s.f. includes a and b  
a. Expand to add 300 s.f.  
b. Replace concession with new Sponsored Club 800 s.f.
2. New Sponsored Exterior Patio 800 s.f.
3. New Sponsored Concession zone 350 s.f.

2



"rooftop living room"



3

"corridor focal point and destination"

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Concourse Level SOUTH END OPTION B

PAGE 11



"sponsored bar"

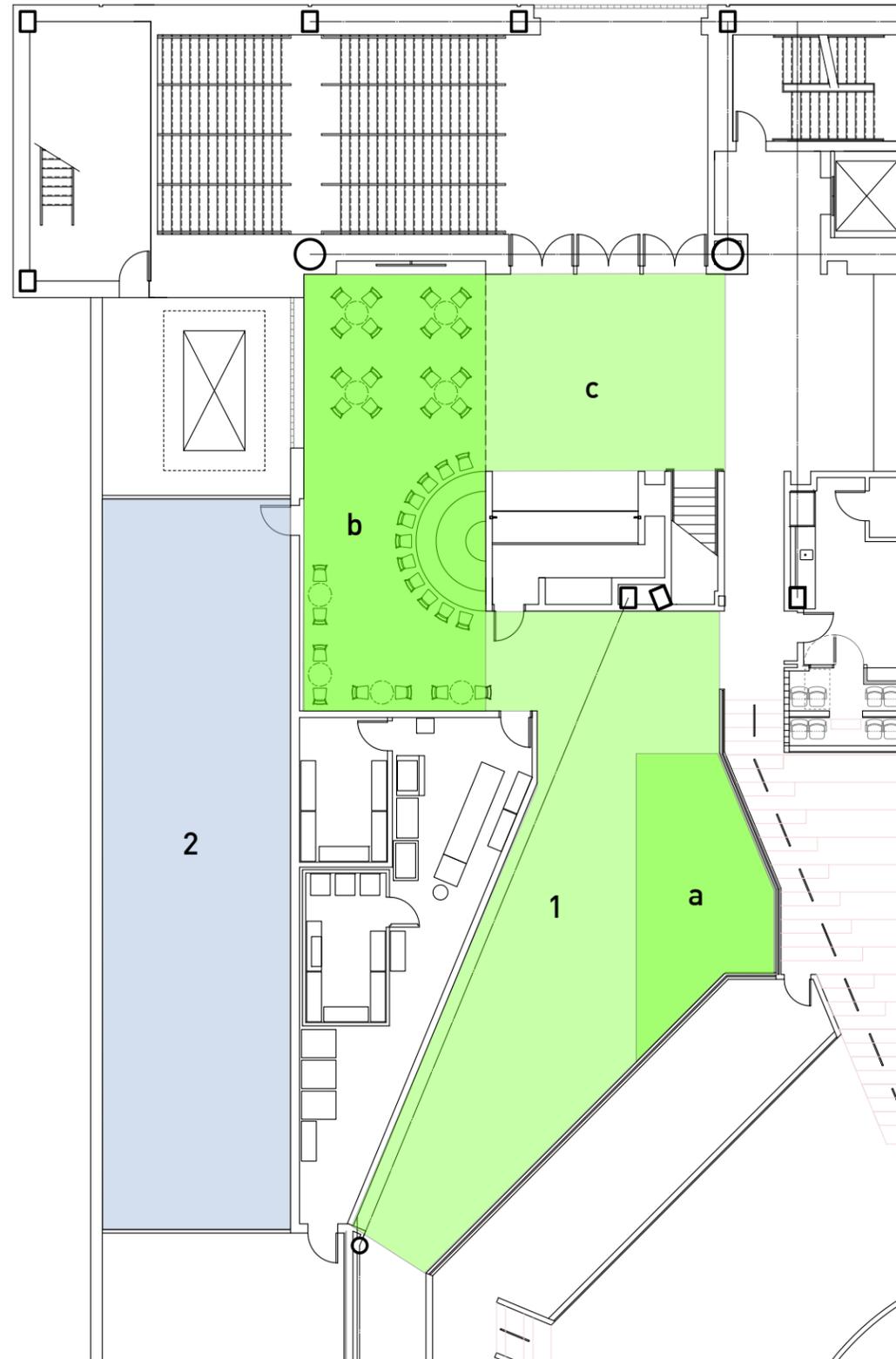


b



c

"branded entry"



#### LEVEL 02\_SOUTHWEST END OPTION B

1. Update, Brand and consolidate existing Party Deck and concession to create one Public Party Zone 2,600 s.f.  
note: 2,600 s.f. includes a,b and c  
a. Expand to add 300 s.f.  
b. New Sponsored Bar 850 s.f.  
c. New Sponsored Entry to Bar 475 s.f.
2. New Sponsored Exterior Patio (smoking) 1,200 s.f.

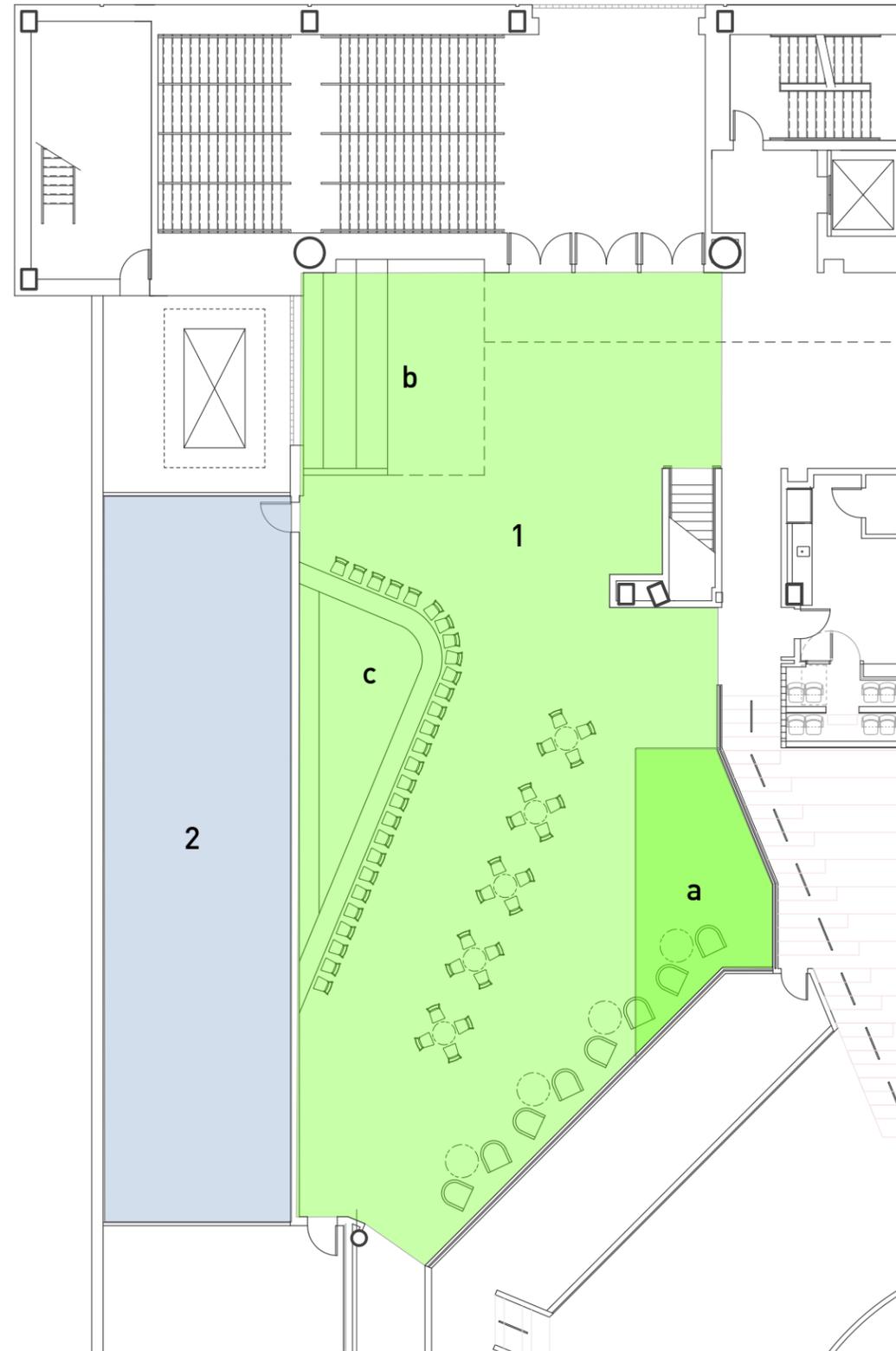
# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Concourse Level SOUTH END OPTION C

PAGE 12



"branded focal point"

b



1



c



"sponsored bar and party deck"

#### LEVEL 02\_SOUTHWEST END OPTION B

1. Update, Brand and consolidate existing Party Deck, Concession and Storage to create one Public Party Zone 3,400 s.f.  
note" 3,400 s.f. includes a,b and c  
a. Expand to add 300 s.f.  
b. relocate concession for visibility from concourse 350 s.f.  
c. New Sponsored Bar visible from Bowl 400 s.f.
2. New Sponsored Exterior Patio (smoking) 1,200 s.f.

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Mechanical Level

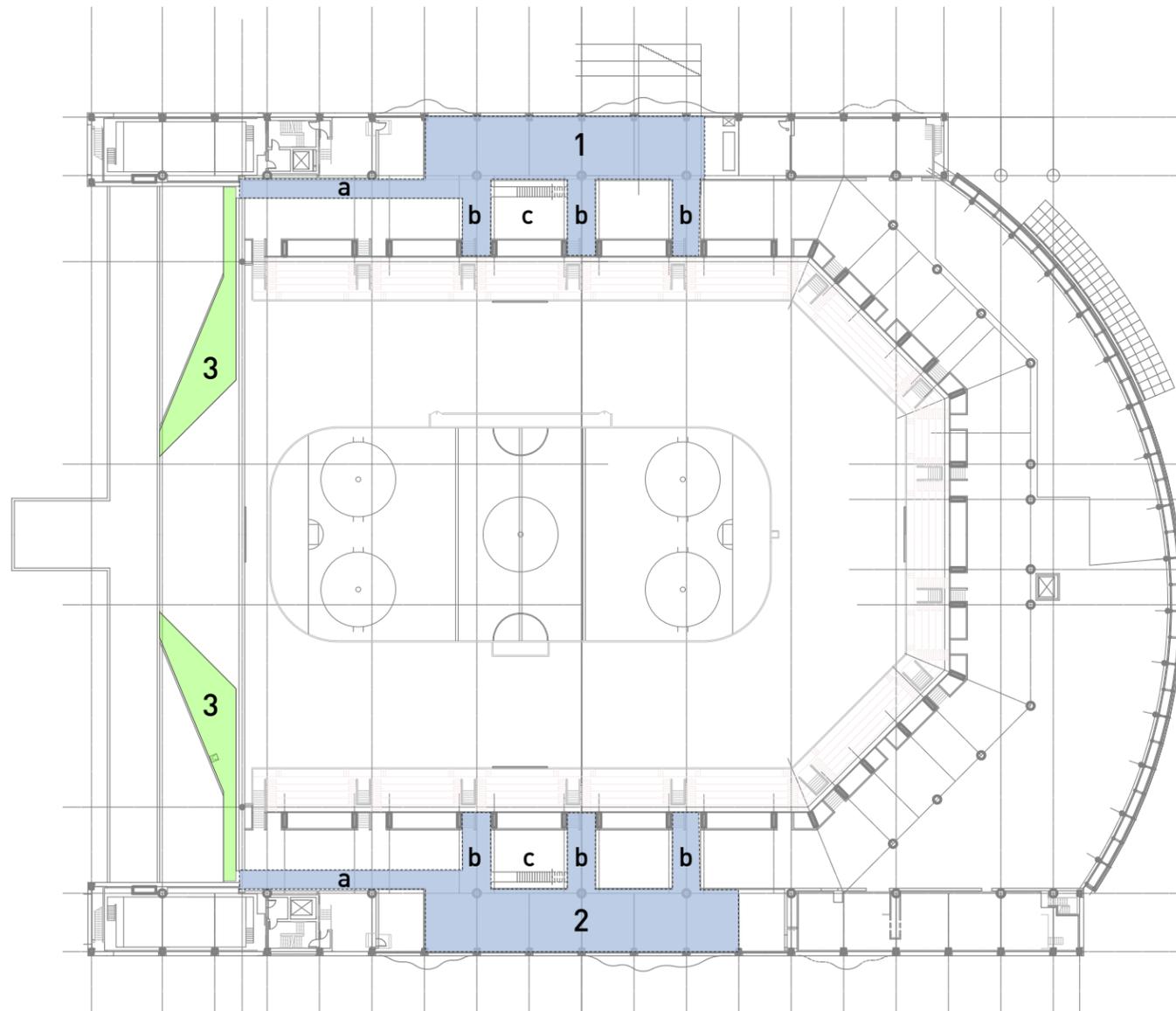
PAGE 13



"fire stair inspired" connection between concourse and new loft



"sponsored loft" herman miller, knoll, etc.



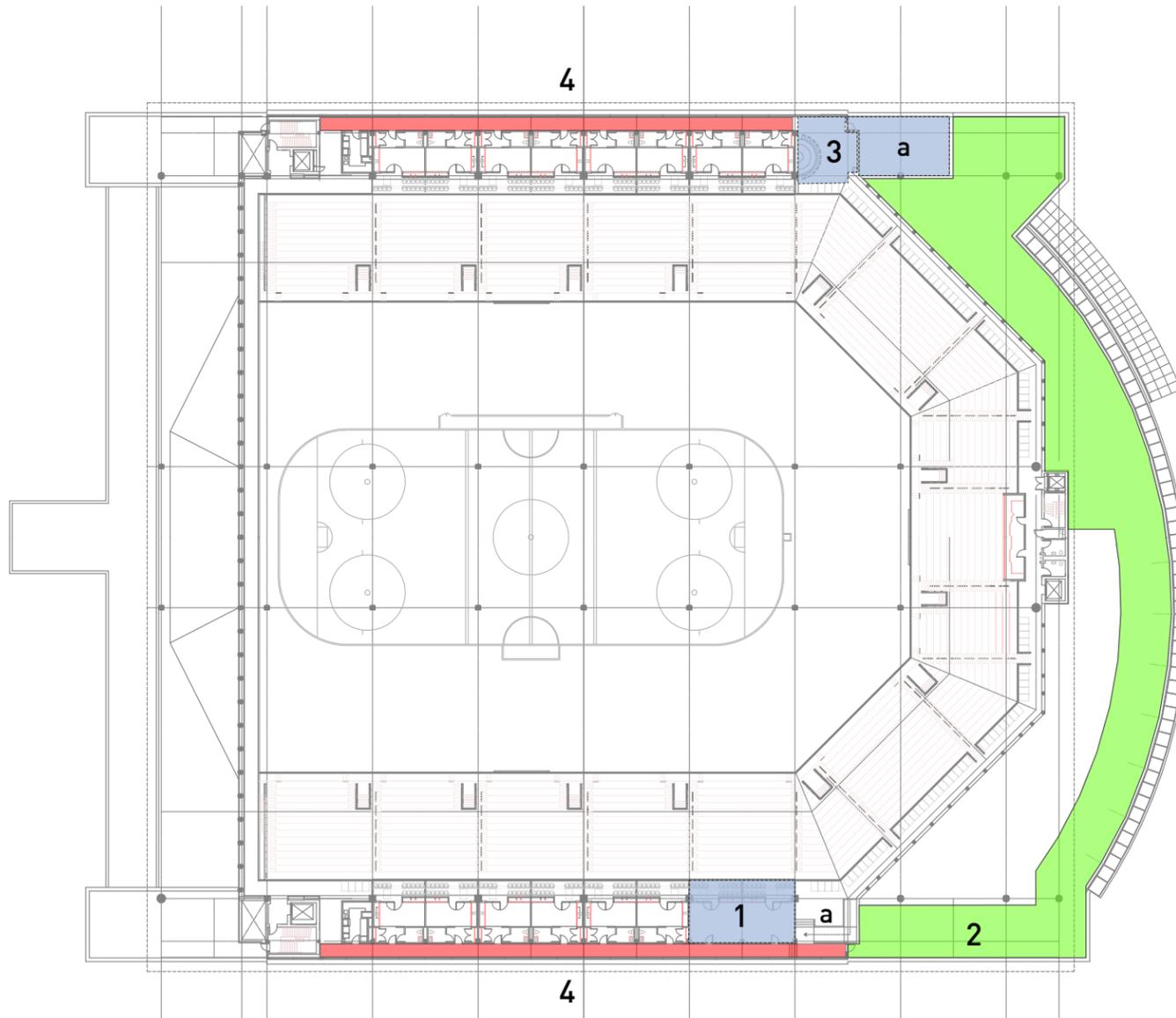
#### LEVEL 03\_MECHANICAL LEVEL

1. New Sponsored Amenity Loft 2,700 s.f.  
note: 2,700 s.f. does **not** include a,b and c  
a. Connect to Existing Elevator 675 s.f.  
b. Connect to Existing Bowl 3 bridges @ 275 s.f.  
c. New Stair connects to concourse below 12'-9" floor to floor
2. New Sponsored Loft Club 3,000 s.f.  
note: 3,000 s.f. does **not** include a,b and c  
a. Connect to Existing Elevator 675 s.f.  
b. Connect to new Club Seats on Existing Bowl 3 bridges @ 675 s.f.  
c. New Stair connects to concourse below 12'-9" floor to floor
3. New Sponsored Party Towers 1,000 s.f. each

"industrial garden"

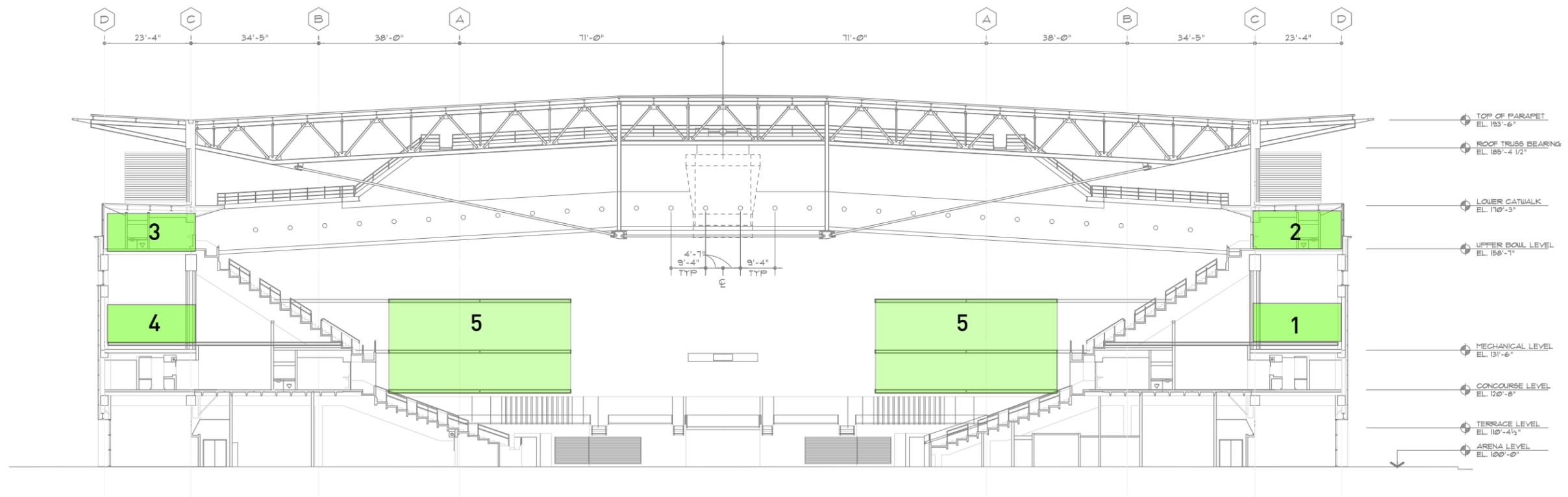


2



**LEVEL 04\_UPPER CONCOURSE**

- 1. New "Penalty Box" Party Suite 1,300 s.f.
- 2. New Sponsored Exterior Patio 11,000 s.f.  
a. remove vending for new ramp
- 3. New Sponsored Bar 600 s.f.  
a. New Exterior Lounge off of Bar 800 s.f.
- 4. New Branded Corridors 2 @ 1,000 s.f.



**SECTION 01\_EAST WEST**

1. New "Loft" Amenity above existing toilets
2. New Bar and Exterior Lounge
3. New "Penalty Box" Party Suite
4. New "Loft" Club above existing toilets
5. 2 New Sponsored Towers with 3 floors @ 1,000 s.f.



"water towers"

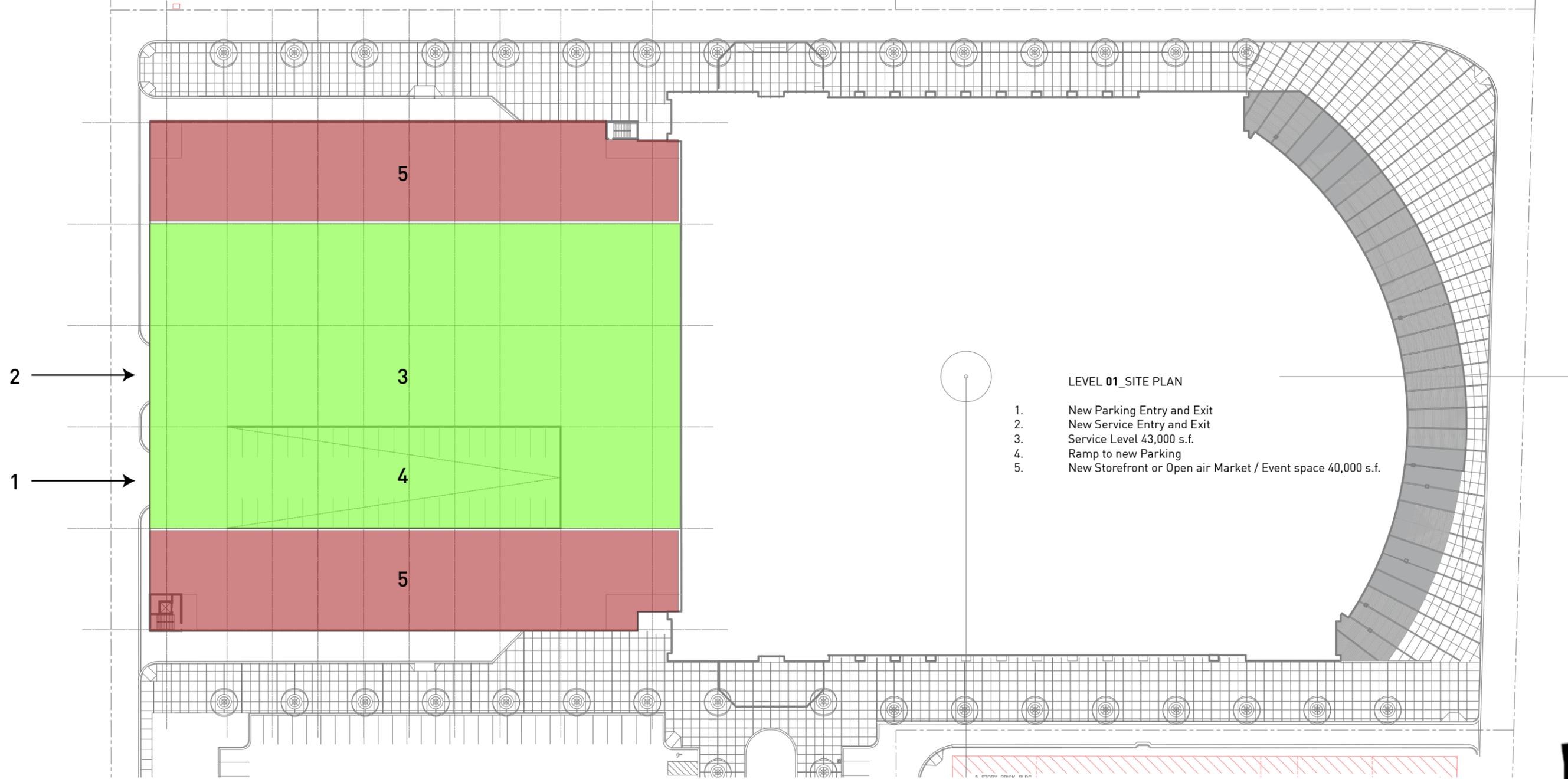
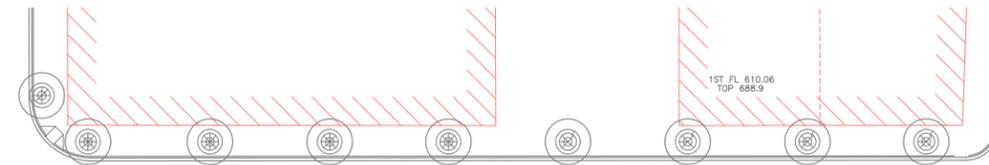
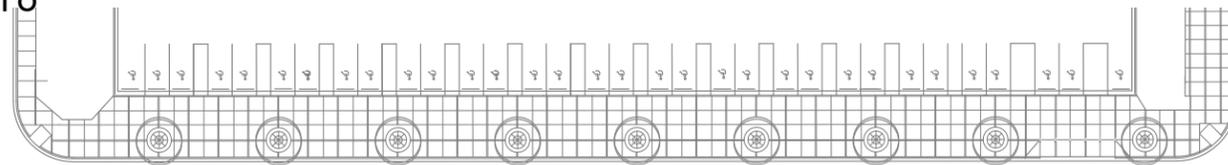
# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

### CONCEPT Upper Bowl Level

PAGE 16



LEVEL 01\_SITE PLAN

- 1. New Parking Entry and Exit
- 2. New Service Entry and Exit
- 3. Service Level 43,000 s.f.
- 4. Ramp to new Parking
- 5. New Storefront or Open air Market / Event space 40,000 s.f.



3

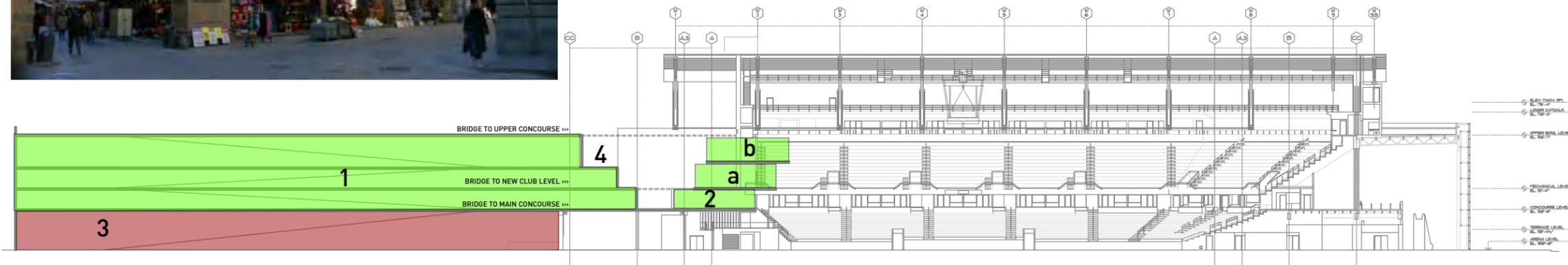


"open air market / event space"

4



"parking terrace"



3



"urban storefront"

SECTION 02\_NORTH SOUTH

1. New Elevated Parking Deck to connect to Concourse levels 87,000 s.f. footprint  
3 levels with approximately 300 spaces @ each level
2. New Bar and Exterior Lounge, tower level one  
a. tower level two, 2 towers @ 1,000 s.f.  
b. tower level three, 2 towers @ 1,000 s.f.
3. New Storefront @ street with Service Beyond
4. Parking Terrace offers daylight to Circulation Bridges

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

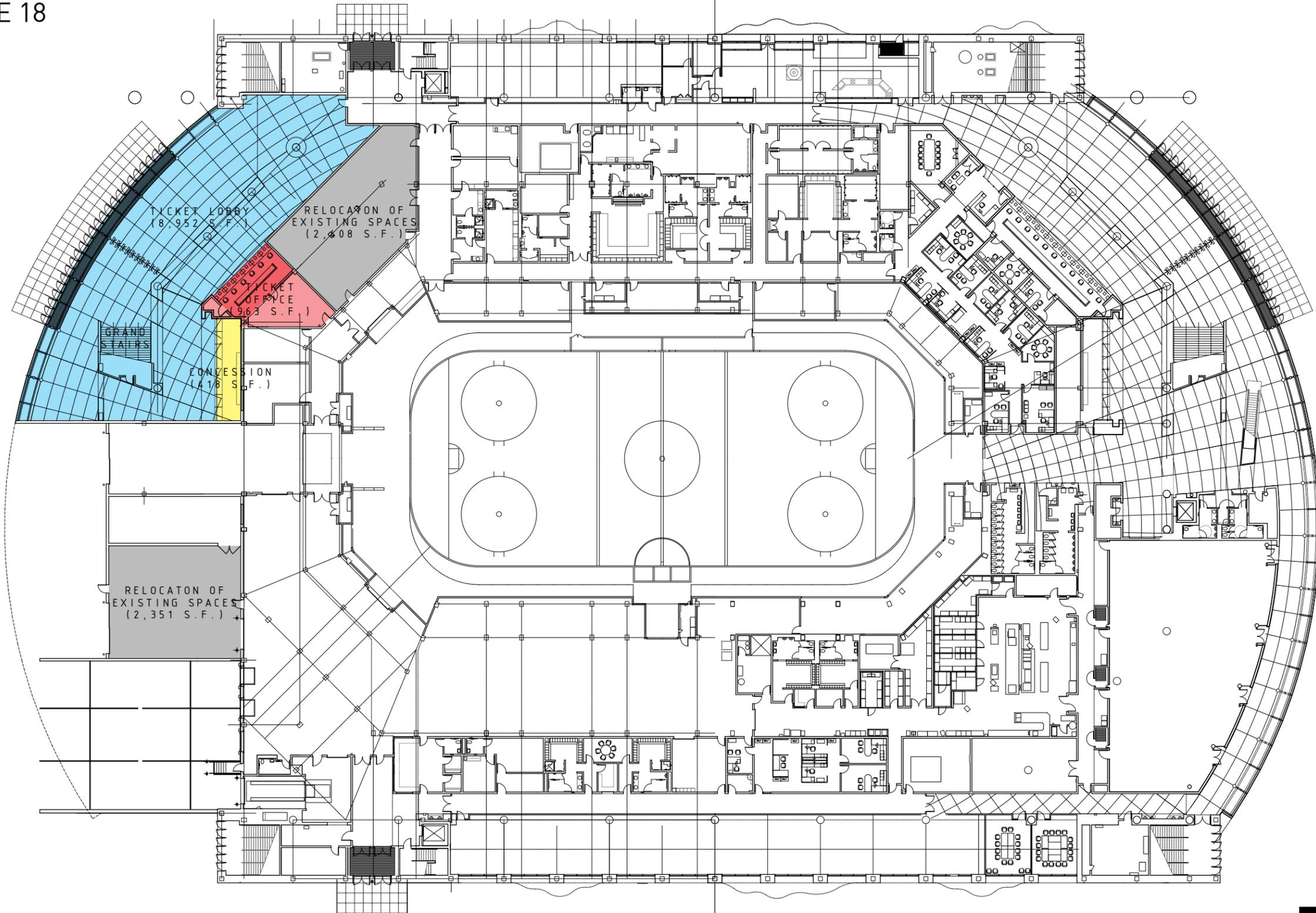
02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

### SOUTH EXPANSION Level 1 \_ Plan

PAGE 18



ROSSETTI

# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

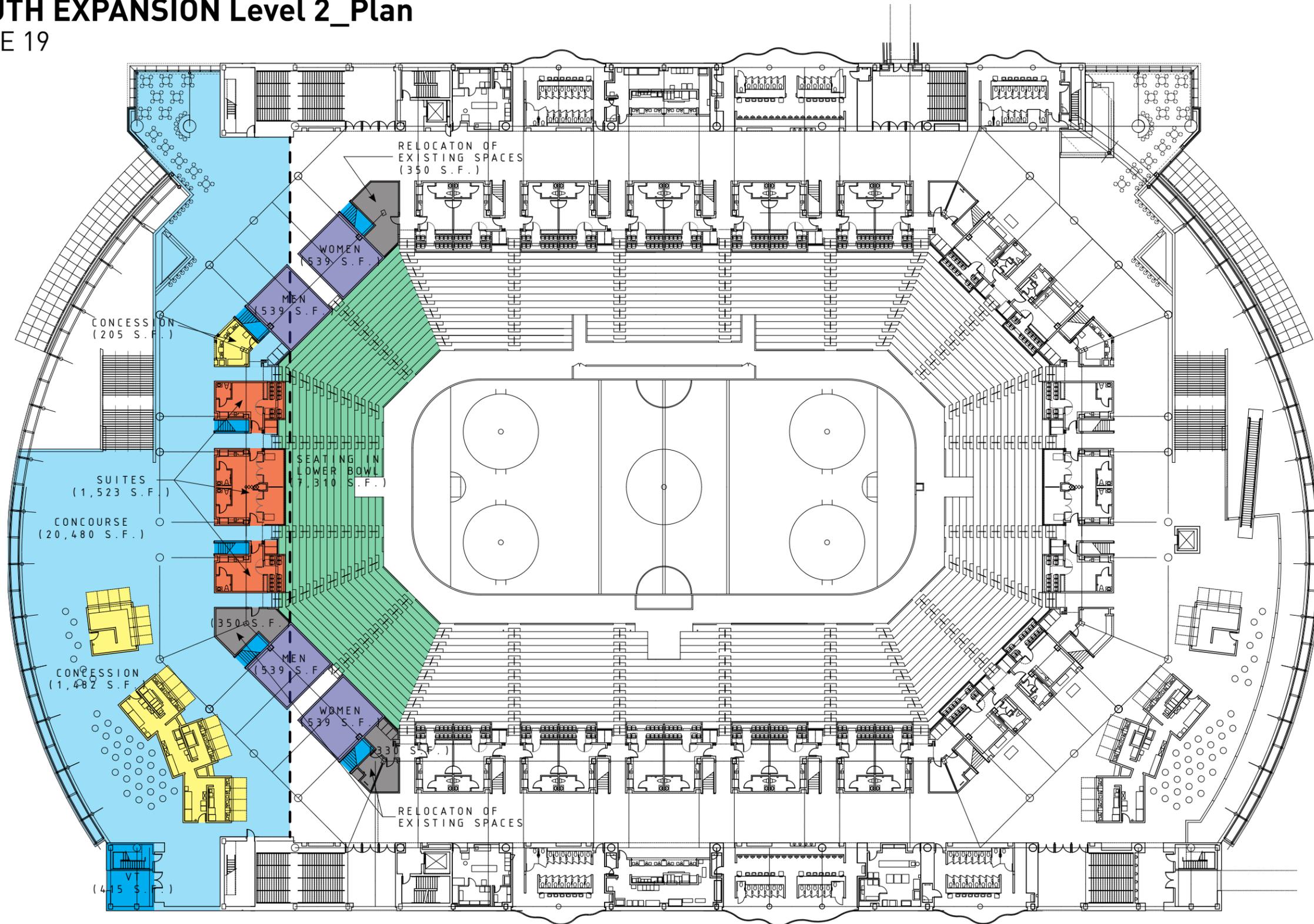
02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

### SOUTH EXPANSION Level 2\_Plan

PAGE 19



# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

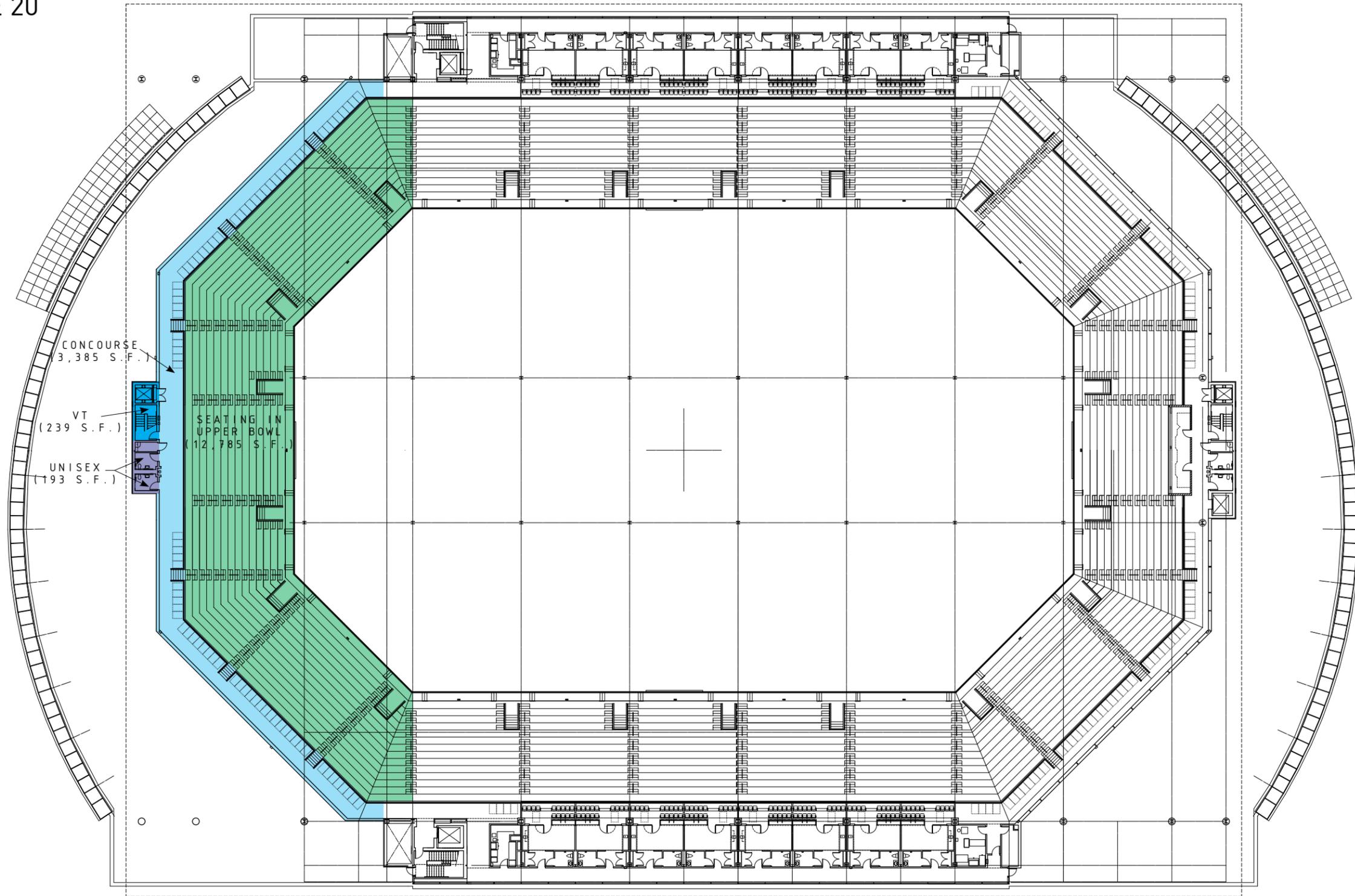
02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

### SOUTH EXPANSION Level 4\_Plan

PAGE 20



# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

### SOUTH EXPANSION OPTION

PAGE 21



# ROD MASTER PLAN STUDY

## VAN ANDEL ARENA

02.09.2012

VAN ANDEL  
ARENA

GRAND RAPIDS

### SOUTH EXPANSION Area Calculation

PAGE 22

Rooms	Area (s.f.)
<b>LEVEL 1</b>	
Ticket Lobby	8,952
Ticket Office	963
Concession	418
Relocation of Existing Spaces	4,759
<b>Sub-total</b>	<b>15,092</b>
<b>LEVEL 2</b>	
Concourse	20,480
Concessions	1,687
Suites	1,523
Toilets	2,156
Vertical Transportation	877
Seating in Lower Bowl	7,310
Relocation of Existing Spaces	1,030
<b>Sub-total</b>	<b>35,063</b>
<b>LEVEL 4</b>	
Concourse	3,385
Toilets	193
Vertical Transportation	239
Seating in Upper Bowl	12,785
<b>Sub-total</b>	<b>16,602</b>
<b>Total</b>	<b>66,757</b>

COMMISSION MEETING DATE: OCTOBER 11, 2016

Date: OCTOBER 4, 2016

To: Honorable Mayor and City Commissioners

From: Director of Public Safety Jeffrey Lewis

Re: Lakeshore Museum Loan Agreement  
(LaFrance Fire Truck)

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**SUMMARY OF REQUEST:** The Director of Public Safety requests that the City Commission review and authorize the Lakeshore Museum Center Loan Agreement relating to the 1923 American LaFrance Fire Truck with attached equipment. Currently, the LaFrance is on display at the Fire House Museum (Clay Avenue).

**FINANCIAL IMPACT:** N/A

**BUDGET ACTION REQUIRED:** N/A

**STAFF RECOMMENDATION:** Staff recommends approval of this loan agreement.



# Loan Agreement

Incoming Loan for Exhibit  
PastPerfect record Incoming Loan# 41

**Name:** City of Muskegon/Jeffrey Lewis Muskegon Public Safety Director

**Phone:** 231-724-6955

**Address:** 980 Jefferson Street

**City, State Zip:** Muskegon MI 49443

**Email:** jeff.lewis@shorelinecity.com

**Start Date:** Renewal 6-30-2016

**End Date:** Yearly review and renewal

**For Use in:** Fire Barn Museum Exhibit

---

The objects listed below and on any attached sheets are on loan subject to the conditions printed on the reverse.

**Detailed description of items:**

Long-term Loan for Fire Barn Museum Exhibit

1923 LaFrance Fire Engine and attached equipment

See reverse for terms and conditions.

**Insurance Coverage** Lakeshore Museum Center agrees to provide insurance coverage, see attached documentation.

---

The object(s) described above have been received by the Lakeshore Museum Center as a loan for exhibit, subject to the conditions on the reverse of this form. I acknowledge that I have read and agree to the conditions accompanying this form and certify that I have the authority to enter into this loan agreement.

**Lender Signature:** \_\_\_\_\_ **Date:** 9/15/16

**LMC Representative:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Returned to Lender:**

I acknowledge that the object(s) described above have been returned in satisfactory condition and hereby release the Lakeshore Museum Center from any further responsibility for their care.

**Lender Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**LMC Representative:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Lakeshore Museum Center, 430 West Clay Avenue, Muskegon, MI 49440

Phone 231.722.0278 • Fax 231.728.4119 • Email: info@lakeshoremuseum.org • www.lakeshoremuseum.org

9/15/16



### EVIDENCE OF PROPERTY INSURANCE

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.		DATE (MM/DD/YYYY) 06/17/2016
AGENCY Jerviss-Fethke Insurance Agency 71 W. Webster Avenue Muskegon, MI 49440	COMPANY Auto-Owners Insurance Company 6101 Anacapri Blvd Lansing, MI 48917	
FAX No. (231)728-6545 EMAIL Address: Lorraine@jfhins.com CODE: 010826	POLICY NUMBER 16338813	
AGENCY INSURED Lakeshore Museum Center 430 W Clay Ave Muskegon, MI 49440-1002	EFFECTIVE DATE 01/10/2016	CONTINUED UNTIL 01/10/2017
PROPERTY INFORMATION LOCATION/DESCRIPTION 1923 LAFRANCE FIRE ENGINE	EXPIRES (MM/DD/YYYY) 2311722-2375	THIS REPLACES PRIOR EVIDENCE DATED:
COVER INFORMATION 1923 LAFRANCE FIRE ENGINE		AMOUNT OF INSURANCE \$50,000
REMARKS (Including Special Conditions)		
CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.		
ADDITIONAL INTEREST NAME AND ADDRESS		
AUTHORIZED REPRESENTATIVE 		
LLN		

ACORD 27 (2009/12)

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Printed by LLN on June 17, 2016 at 04:15PM

**Loan Terms and Conditions  
Incoming Loan for Exhibit**

**Special Terms and Conditions – 1923 LaFrance Fire Engine, Lender City of Muskegon**

**Care and Preservation**

1. The Lakeshore Museum Center (LMC) agrees to exercise reasonable care of the truck and will do what is reasonably necessary to preserve it in as good a condition as when received – with the exception of deterioration due to age and wear and tear due to approved use of truck for education and special event hands on use.
2. LMC does not agree to keep the truck in operating condition or to maintain any components, including tires, brakes or other mechanical systems. Cleaning will be limited to dusting when necessary.
3. City of Muskegon and Fire Department agree that the truck is available for hands on interaction with the public under the supervision of LMC staff – including but not limited to allowing the public to sit in the driver's seat, stand on running boards and other surfaces available for such use in normal operating conditions. Members of the public will not be allowed to operate the truck or be in physical contact with it while in motion.
4. City of Muskegon and/or Fire Department personnel will cooperate to start engine or move vehicle outside of LMC Fire Barn Museum property for special events or to facilitate City of Muskegon/Fire Department maintenance activities. LMC requests a 30 day notice if possible before these activities occur.
5. In the event of damage to the objects while on loan, LMC will notify the Lender as soon as possible.
6. City of Muskegon/Fire Department personnel are welcome during business hours or at some other mutually agreed upon time to come onto Museum premises to service the truck, and if desired by both parties, to keep it in operating condition.
7. Any expense associated with keeping the truck in operating condition or any other work on truck, is the responsibility of the City Muskegon

**Insurance**

1. LMC agrees to insure under its contents insurance policy for an amount not less than \$40,000. LMC shall have no liability for destruction or diminution in value of the truck above and beyond the insurance coverage.

**Ownership and Lender Contact Information**

1. Lender is responsible for updating address and contact information with LMC for the duration of the loan.
2. LMC may periodically renew the loan to keep current with responsible parties within City of Muskegon and Fire Department Management.

**Return of Loans**

1. LMC will arrange for return of Loaned objects within 30 days of the End Date indicated on this Loan form.
2. Loans left unclaimed more than one year from the End Date will be considered an unrestricted gift to the Lakeshore Museum Center and will be disposed of according to LMC policies. Lenders are referred to the Michigan Disposition of Property Act and the Uniform Unclaimed Property Act as relevant statutes.
3. LMC is not required to exhibit any loaned object. If an object is not selected for exhibit LMC will arrange to return objects to Lender.

**Credit and Photography of Loaned Objects**

1. LMC may photograph objects and the photographs may be reproduced for exhibit materials, publicity materials and relevant publications. The Lender may be identified in publications or exhibit material unless he/she requests anonymity.
2. Loaned objects may be photographed by the general public while on exhibit unless prohibited in writing by the Lender.

AGENDA ITEM NO. \_\_\_\_\_  
CITY COMMISSION MEETING \_\_\_\_\_

TO: Honorable Mayor and City Commissioners  
FROM: Frank Peterson, City Manager  
Mohammed Al-Shatel, Engineering  
DATE: October 6, 2016  
RE: Heritage District Lighting Agreement

**SUMMARY OF REQUEST:**

Over the past two years, staff has worked with representatives from the Heritage District Association as well as property owners in the Heritage District to accomplish the re-lighting of their decorative street lights. We have negotiated an agreement that will allow for the lights to be activated and eventually upgraded to LED fixtures.

**FINANCIAL IMPACT:**

None

**BUDGET ACTION REQUIRED:**

None.

**STAFF RECOMMENDATION:**

To approve lighting agreement and corresponding easement agreements as presented, and authorize the reactivation of the Heritage District lights.

**COMMITTEE RECOMMENDATION:**

## STREET LAMP EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is effective as of \_\_\_\_\_, 2016, between the **City of Muskegon**, a Michigan municipal corporation ("Grantee" or "City"), and \_\_\_\_\_, ("Grantor"), on the following terms and conditions:

### Recitals

A. Grantor is the owner of real property along Webster Avenue in the City of Muskegon, Muskegon County, Michigan, legally described on **Exhibit A** (the "Burdened Property").

B. Grantee desires to obtain an easement on, over, across, and through a portion of the Burdened Property more particularly described on **Exhibit A** ("Easement Property") for the maintenance and repair of street lamps, and Grantor has agreed to grant to Grantee an easement for such purpose, as set forth herein.

C. A drawing of the area is attached as **Exhibit B**.

NOW, THEREFORE, for valuable consideration, including a payment by Grantee to Grantor of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Easement.** Grantor grants to Grantee, its successors and assigns, a non-exclusive easement and right of way with respect to the Easement Property for the purposes, and on the terms and conditions, set forth herein (the "Easement").

2. **Term.** The term of the Easement shall be perpetual and shall run with the Burdened Property.

3. **Use.** The Easement shall be used for the purpose of the maintenance and repair of street lamps and their appurtenances and accessories within the Easement Property. The Easement and right of way shall include the City's right to enter upon the Easement at such times as are reasonably necessary to construct, maintain, repair, replace, reinstall and inspect its street lamps within the Easement Property. The Grantor shall not construct any improvements within the Easement Property without the written permission of Grantee, or interfere with the use of the Easement in any manner. Grantor shall reimburse the Grantee for all reasonable costs of removal of any improvements placed within the Easement Property by Grantor.

4. **Removal; Restoration.** City shall have the right to remove trees, brush and undergrowth and other obstructions within the Easement Property interfering with the location, construction, maintenance and repair of the street lamps. City shall be obligated, at its sole expense, to restore the driveways and parking areas within the Easement Property to their condition that existed prior to City's work within the Easement.

5. **Warranty.** The parties warrant that they have the right and authority to enter into this Easement Agreement.

6. **Binding Effect.** This Easement Agreement shall bind the parties, and their successors and assigns.

7. **Recording.** Grantee shall record this Easement Agreement with the Muskegon County Register of Deeds, and Grantee shall pay all recording costs.

8. **Amendment.** This Agreement shall not be amended or modified except in a writing signed by both parties.

This Easement Agreement was entered into on the date set forth above.

**Grantor –**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF MICHIGAN  
COUNTY OF MUSKEGON

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_.

\_\_\_\_\_  
Type/Print Name: \_\_\_\_\_  
Notary Public, Muskegon County, Michigan  
Acting in the County of Muskegon  
My commission expires: \_\_\_\_\_

**Grantee – CITY OF MUSKEGON**

By: \_\_\_\_\_  
Name: Stephen Gawron  
Title: Mayor  
Date: \_\_\_\_\_

and: \_\_\_\_\_  
Name: Ann Marie Meisch  
Title: Clerk  
Date: \_\_\_\_\_

STATE OF MICHIGAN  
COUNTY OF MUSKEGON

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Stephen Gawron, Mayor, and Anne Marie Meisch, Clerk, of the City of Muskegon, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Type/Print Name: \_\_\_\_\_  
Notary Public, Muskegon County, Michigan  
Acting in the County of Muskegon  
My commission expires: \_\_\_\_\_

Prepared by and when recorded return to:

John C. Schrier  
Parmenter O'Toole  
P.O. Box 786  
Muskegon, MI 49443-0786

**Exhibit A**

**Legal Description of Burdened Property:**

**Legal Description of Easement Property:**



**ELECTRICAL SITE PLAN - PHASE I**

SCALE: 1" = 40'



## CONTRACT FOR STREET LIGHTING

This Contract is made this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date") by and between Muskegon Heritage Association, Inc. ("Heritage Association"), Nelson Neighborhood Improvement Association ("NNIA") and the City of Muskegon ("City") pursuant to the following terms.

### RECITALS

1. The Heritage Association is the owner of 27 lamp style street lights in the Heritage Village, which is the area between Muskegon Avenue and Clay Avenue, Fourth Street to Sixth Street. The location is more specifically noted on attached Exhibit A. The lamp style street lights in this area have been turned off.
2. Of the 27 lamp style street lights, 10 lamp style street lights are located on private property. Neither the Heritage Association, the NNIA, nor any other entity has an easement for the lamp style street lights or power lines located on private property.
3. The residents of Heritage Village desire to have the overhead street lights retrofitted from the existing light fixtures to LED lamps. NNIA shall seek grants and has the financial ability to pay for the retrofitting of the lamps.
4. NNIA agrees to have the lamp style street lights retrofitted and replaced as provided below and, upon completion City agrees to take ownership and control of the lamp style street lights.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1. **NNIA/HERITAGE ASSOCIATION OBLIGATIONS.**

- A. NNIA shall, either by its members or agents, remove the three lamp style street lights in the alley between Fifth Street and Sixth Street, which is parallel to Webster Avenue and Clay Avenue.
- B. Of the 24 remaining lamp style street lights as depicted in Exhibit A, NNIA shall retain Windemuller to complete Option A as outlined in Windemuller's letter to Terry MacAllister dated August 4, 2016 and attached as Exhibit B. The lamp fixture shall be as described in attached Exhibit C. NNIA shall insure that Windemuller, and any subcontractor, shall be paid in full.

- C. As to all lamp style street lights on private property, NNIA shall obtain recordable easements from all property owners listed on attached Exhibit D in a form consistent with attached Exhibit E and provide such to City. NNIA shall reimburse City for the recording of all easements.
- D. Heritage Association and NNIA shall execute and deliver any documents necessary to transfer ownership of the 24 lamp style street lights to the City.

2. **CITY OBLIGATIONS.**

A. City shall accept the donation of the lamp style street lights in the Heritage Village, as depicted in Exhibit A, upon completion of the following:

- i) removal of the 3 lamp style street lights in the alley between Fifth Street and Sixth Street, which is parallel to Webster Avenue and Clay Avenue;
- ii) retrofitting the 24 remaining lamp style light posts consistent with Exhibits B and C; and
- iii) recording easements in the favor the City for all lampposts and electrical wires located on private property consistent with Exhibits D and E.

B. After acceptance of the lamp style street lights, City shall assume all of the responsibilities of maintaining, repairing and operating the lamp style street lights. City agrees that it shall not turn off the lights, other than for a short period of time due to unusual circumstances from the acceptance date through June 30, 2019. Thereafter, if the City decides to cease maintaining, repairing or operating the lamp style street lights, NNIA or Heritage Association may request and City shall return ownership of the lights to NNIA or Heritage Association.

3. **INTERPRETATION.**

This is the entire agreement, including attachments, between the parties as to its subject. It shall not be amended or modified except in writing signed by the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. This Agreement shall be interpreted and construed in accordance with Michigan law, and the parties agree to jurisdiction and venue within the courts for the County of Muskegon.

4. **BINDING.**

This Agreement and the rights and obligations under this Agreement are not assignable and not transferable without the consent of the other parties. It shall, however, be binding upon any successors or permitted assigns of the parties. City, Heritage Association and NNIA have negotiated together to reach the terms of this Contract, have participated in the drafting of this Contract, and acknowledge that this product is a joint effort of all three parties.

5. **WAIVER.**

One or more waivers by any party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

**WHEREFORE**, this Agreement has been executed as of the date first written above.

**CITY OF MUSKEGON**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_

Steven J. Gawron, Mayor

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_

Ann Marie Meisch, Clerk

**MUSKEGON HERITAGE  
ASSOCIATION, INC.**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**NELSON NEIGHBORHOOD  
IMPROVEMENT  
ASSOCIATION**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**EXHIBIT A**

**STREET LIGHT LOCATIONS**

**EXHIBIT B**

**WINDEMULLER PROPOSAL**



**WINDEMULLE**

*Partners in your success*

August 4, 2016

Terry Macalister  
458 West Webster Ave.  
Muskegon, MI 49440

Project: Muskegon Heritage Village Street lighting.  
Project #TJV16-033

Dear Terry,

This proposal is for labor, material and equipment to complete the following:

**Option #1**

- Furnish and install 3-new metered lighting control panels per locations on the drawings.
- Re-route all existing lighting circuits into the new lighting control panels.
- Furnish and install new conduit and wiring to refeed the existing lights on the west side of 6<sup>th</sup> street and reconnect into the new lighting control panel.
- Re-wire all of the existing light poles to retro fit the fixtures for the new LED lamp.
- Clean all of the existing light lenses.
- Furnish and install new LED lamps per the proposed specs.
- All electrical permits and coordination with Consumers Energy to complete work.

Price for this option is **\$26,735.00**

**Deduct** for not installing the LED lamps (**\$4,535.00**)

**Option #2**

- Remove the 25 existing light fixtures and install 25 new Lumecon Ring of Fire LED fixtures.

Price for this option is **\$25,300.00**

**AUTOMATION | COMMUNICATIONS & IT | ELECTRICAL | OUTDOOR UTILITIES | RENEWABLE**

Corporate Headquarters: 1176 Electric Avenue - Wayland, MI 49348 | 800.333.3641 | 616.877.8770  
Mid Michigan Branch: 2936 Venture Drive - Midland, MI 48640 | 989.631.2023  
Northern Michigan Branch: 1714 Northern Star Drive - Traverse City, MI 49696 | 800.891.5319 | 231.935.4800  
Other Michigan Locations: Big Rapids | Kalamazoo | Petoskey | Whitehall

[windemuller.us](http://windemuller.us)



# WINDEMULLER

Partners in your success

This proposal is valid for 30 days.

Thank you for the opportunity to provide a proposal for your requirements. If you have any questions, please feel free to contact us.

Sincerely,

Tim VanderPloeg  
Outdoor Utilities Manager

Accepted by \_\_\_\_\_ Printed Name \_\_\_\_\_

Purchase Order \_\_\_\_\_ Date \_\_\_\_\_

**AUTOMATION | COMMUNICATIONS & IT | ELECTRICAL | OUTDOOR UTILITIES | RENEWABLE**

Corporate Headquarters: 1176 Electric Avenue - Wayland, MI 49348 | 800.333.3641 | 616.877.8770  
Mid Michigan Branch: 2936 Venture Drive - Midland, MI 48640 | 989.631.2023  
Northern Michigan Branch: 1714 Northern Star Drive - Traverse City, MI 49696 | 800.891.5319 | 231.935.4800  
Other Michigan Locations: Big Rapids | Kalamazoo | Petoskey | Whitehall

windemuller.us

**EXHIBIT C**

**LAMP FIXTURE DESCRIPTION**



Catalog Number:	
Project:	
Comments:	
Prepared By:	Date:

## Description

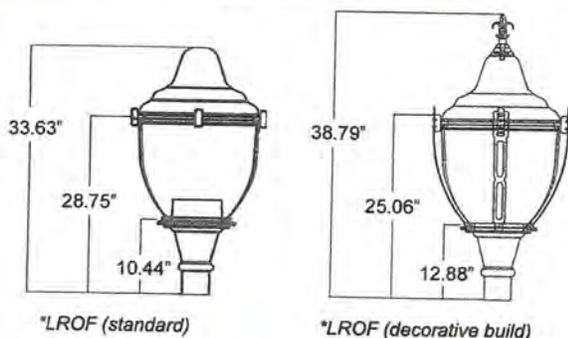
The LROF post-top fixture utilizes our patented thermal integrated trim ring for maximize heat dissipation. Available in multiple wattage and distribution versions, this fixture is able to replace existing 175W-250W HID's one-for-one. Each model delivers superior lumen output to illuminate your next downtown lighting project.

## Performance Data

Model	Watts	Equip	Delivered Lumens	Efficacy
LROF-1 (Type III)	27W	175W HID	2,370 Lm	88 LPW
LROF-2 (Type V)	54W	175W HID	4,692 Lm	86 LPW
LROF-3 (Type III)	58W	250W HID	4,574 Lm	80 LPW
LROF-4 (Type V)	84W	250W HID	6,809 Lm	81 LPW
LROF-5 (Type III)	88W	250W HID	6,240 Lm	71 LPW
LROF-6 (Type V)	113W	250W HID	8,426 Lm	74 LPW

## Dimensions & Weights

Model	Width	Height	Depth	Weight
LROF	15.9"	25.06"	15.9"	22 lbs.



## Technical Specifications

**Input Voltage:** 120-277V or 347-480V

**Light Distribution:** LEDs are mounted to the inside of the fixture trim ring which serves as a heat sink to ensure optimal heat dissipation. This type of mounting allows for both Type 5 (standard) and Type 3 light distribution patterns to be offered.

**Globe:** Our two-piece acrylic or polycarbonate lens post top features precise prisms achievable only through injection molding. The prisms provide pleasing daytime "prismatic sparkle" and provide excellent uniformity, light distribution and efficiency for nighttime performance.

There are also two options for limiting uplight that is emitted from the fixture. The perforated light lid is a polished reflector above the LEDs that limits uplight to approximately 30% in the upper globe. The cutoff light lid is a solid polished reflector that virtually eliminates light to the upper globe.

**Fitter/ Base:** Fitter options are compatible with 8" or 9" globe neck sizes and are designed to slip fit 3" or 4" OD poles. \*Fitter capabilities differ depending on the model selected.

**Decorative Struts:** Decorative struts require the use of a fitter/ base option.

**Effective Projected Area (EPA):** 1.40 ft<sup>2</sup>

**Color Temperature:** 2700K WW, 4000K NW (standard), 5700K CW. All LED's are rated for a minimum of 100,000 hours of continuous operation at ambient temperatures from -40°F/-40°C to 95°F/35°C.

**Color Rendering Index (CRI):** Minimum of 70 or higher.

**Dimming:** 0-10V standard dimming capability.

**Surge Protection:** A 20kA surge suppressor is included and complies with IEEE/ANSI C62.41.2 guidelines for "C High." Surge location rated Category C3.

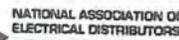
**Lumecon ETD System:** The enhanced thermal dissipation system engines are thermally bonded to provide maximum thermal dissipation to the exterior of the fixture to ensure long life. To protect the light engine panel from moisture and corrosion, the LED light engine panel is uniformly coated with a UV stabilized acrylic polymer resin that meets MIL and ASTM dielectric standards, UL, and IPC standards for flammability, moisture resistance and thermal shock.

**Certification Data:** ETL Listed to UL 1598, UL 8750 and CSA 22.2 No. 250 for Wet Locations. \*Full compliance and test documentation is available for TM-21, LM-79, LM-80, ETL Listing to UL1598 and UL 8750, Lighting Facts and DLC. Not all versions of this product may be DLC qualified. For a complete list of Lumecon DLC Qualified Products visit: [www.designlights.org](http://www.designlights.org).

**Manufacturing Origin:** US Manufactured and Assembled.

**Buy American:** Meets Buy American requirements within the ARRA.

**Warranty:** 10 Year L70 performance based warranty. For full warranty terms, please visit our website: [www.lumecon.com](http://www.lumecon.com)



**EXHIBIT D**

**LIST OF PROPERTY OWNERS GRANTING EASEMENT**

Names & Addresses of Residents with no Easement:

Nathaniel Porter  
487 W. Webster Avenue  
Muskegon, MI 49440

Gary P. Decamp & Cathie L. Decamp  
475 W. Webster Avenue  
Muskegon, MI 49440

Cornelius J. Major & Marian J. Minor  
469 W. Webster Avenue  
Muskegon, MI 49440

Sandra Anderson  
461 W. Webster Avenue  
Muskegon, MI 49440

Brandon R. Morrison & Elizabeth A. Morrison  
453 W. Webster Avenue  
Muskegon, MI 49440

Muskegon County Museum  
484 W. Webster Avenue  
Muskegon, MI 49440

Muskegon County Museum  
472 W. Webster Avenue  
Muskegon, MI 49440

Doug Pollock  
462 W. Webster Avenue  
Muskegon, MI 49440-1046

Tirrell J. MacAllister  
458 W. Webster Avenue  
Muskegon, MI 49440

William F. Wright & Marcia H. Hovey-Wright  
452 W. Webster Avenue  
Muskegon, MI 49440

David Loring & Lori Loring  
446 W. Webster Avenue  
Muskegon, MI 49440

**EXHIBIT E**

**EASEMENT FORM**

## STREET LAMP EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is effective as of \_\_\_\_\_, 2016, between the City of Muskegon, a Michigan municipal corporation ("Grantee" or "City"), and \_\_\_\_\_, ("Grantor"), on the following terms and conditions:

### Recitals

- A. Grantor is the owner of real property along Webster Avenue in the City of Muskegon, Muskegon County, Michigan, legally described on **Exhibit A** (the "Burdened Property").
- B. Grantee desires to obtain an easement on, over, across, and through a portion of the Burdened Property more particularly described on **Exhibit A** ("Easement Property") for the maintenance and repair of street lamps, and Grantor has agreed to grant to Grantee an easement for such purpose, as set forth herein.
- C. A drawing of the area is attached as **Exhibit B**.

NOW, THEREFORE, for valuable consideration, including a payment by Grantee to Grantor of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Easement.** Grantor grants to Grantee, its successors and assigns, a non-exclusive easement and right of way with respect to the Easement Property for the purposes, and on the terms and conditions, set forth herein (the "Easement").
2. **Term.** The term of the Easement shall be perpetual and shall run with the Burdened Property.
3. **Use.** The Easement shall be used for the purpose of the maintenance and repair of street lamps and their appurtenances and accessories within the Easement Property. The Easement and right of way shall include the City's right to enter upon the Easement at such times as are reasonably necessary to construct, maintain, repair, replace, reinstall and inspect its street lamps within the Easement Property. The Grantor shall not construct any improvements within the Easement Property without the written permission of Grantee, or interfere with the use of the Easement in any manner. Grantor shall reimburse the Grantee for all reasonable costs of removal of any improvements placed within the Easement Property by Grantor.
4. **Removal; Restoration.** City shall have the right to remove trees, brush and undergrowth and other obstructions within the Easement Property interfering with the location, construction, maintenance and repair of the street lamps. City shall be obligated, at its sole expense, to restore the driveways and parking areas within the Easement Property to their condition that existed prior to City's work within the Easement.
5. **Warranty.** The parties warrant that they have the right and authority to enter into this Easement Agreement.
6. **Binding Effect.** This Easement Agreement shall bind the parties, and their successors and assigns.

7. **Recording.** Grantee shall record this Easement Agreement with the Muskegon County Register of Deeds, and Grantee shall pay all recording costs.

8. **Amendment.** This Agreement shall not be amended or modified except in a writing signed by both parties.

This Easement Agreement was entered into on the date set forth above.

**Grantor—**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF MICHIGAN  
COUNTY OF MUSKEGON

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_.

\_\_\_\_\_  
Type/Print Name: \_\_\_\_\_  
Notary Public, Muskegon County, Michigan  
Acting in the County of Muskegon  
My commission expires: \_\_\_\_\_

**Grantee – CITY OF MUSKEGON**

By: \_\_\_\_\_  
Name: Stephen Gawron  
Title: Mayor  
Date: \_\_\_\_\_

and: \_\_\_\_\_  
Name: Ann Marie Meisch  
Title: Clerk  
Date: \_\_\_\_\_

STATE OF MICHIGAN  
COUNTY OF MUSKEGON

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Stephen Gawron, Mayor, and Anne Marie Meisch, Clerk, of the City of Muskegon, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Type/Print Name: \_\_\_\_\_  
Notary Public, Muskegon County, Michigan  
Acting in the County of Muskegon  
My commission expires: \_\_\_\_\_

Prepared by and when recorded return to:

John C. Schrier  
Parmenter O'Toole  
P.O. Box 786  
Muskegon, MI 49443-0786

**Exhibit A**

**Legal Description of Burdened Property:**

**Legal Description of Easement Property:**

AGENDA ITEM NO. \_\_\_\_\_

CITY COMMISSION MEETING: October 11, 2016

**TO: HONORABLE MAYOR AND CITY COMMISSIONERS**

**FROM: Kenneth D. Grant, Treasurer**

**DATE: October 6, 2016**

**RE: Public Hearing**  
**Create City Wide Special Assessment for Street Lights.**

**SUMMARY OF REQUEST:**

To hold a public hearing on the proposed special assessment for the entire city and appoint two City Commissioners to the Board of Assessors if it is determined to proceed with the project.

**FINANCIAL IMPACT:**

**BUDGET ACTION REQUIRED:**

None

**STAFF RECOMMENDATION:**

To create the special assessment for all eligible parcels for the entire city and assign to City Commissioners to the Board of Assessors by adopting the attached resolution.

**COMMITTEE RECOMMENDATION:**

SEPTEMBER 20, 2016

NAME	PROPERTY ADDRESS
ADDRESS	PROPERTY NUMBER
CITY ST ZIP	

**NOTICE OF HEARING ON SPECIAL ASSESSMENT**

Dear Property Owner:

The Muskegon City Commission is considering the creation of a special assessment district that would assess your property for LED street lighting upgrades:

The proposed special assessment district will be for all eligible tax parcels located in the **City of Muskegon** with a State Equalized Value of one thousand dollars (\$1,000) and above at the time the assessment roll is approved.

It is proposed that all of the above LED street light conversion costs will be paid by special assessment against properties in the aforementioned district. Following are conditions of the proposed special assessment which are important to you:

**Public Hearings**

An initial public hearing for the creation of the special assessment district will be held at the City of Muskegon City Commission Chambers on OCTOBER 11, 2016 at 5:30 P.M. Affected property owners are encouraged to appear at this hearing, either in person, or by agent. Property owners may also express their approval or objection concerning the proposed special assessment in writing by returning the enclosed Hearing Response Card to the City Clerk. Written objections or appearances must be made at or prior to the hearing. **THE SPECIAL ASSESSMENT WILL BE EITHER CREATED OR NULLIFIED AT THIS HEARING, SO IT IS IMPORTANT FOR YOU TO EITHER RETURN THE RESPONSE CARD OR COMMENT AT THIS HEARING.**

A second public hearing will be held to confirm the special assessment roll after the project is under way. You will be mailed a separate notice for the second hearing. At this second hearing, the special assessment costs will be spread to the affected properties accordingly. **YOU HAVE A RIGHT TO PROTEST YOUR ASSESSMENT AMOUNT EITHER IN WRITING**

OR IN PERSON AT THIS HEARING AS WELL. IF THE SPECIAL ASSESSMENT ROLL IS CONFIRMED AT THE SECOND HEARING, YOU WILL HAVE THIRTY (30) DAYS FROM THE DATE OF CONFIRMATION OF THE ROLL TO FILE A WRITTEN APPEAL WITH THE MICHIGAN STATE TAX TRIBUNAL. HOWEVER, UNLESS YOU PROTEST AT ONE OF THE PUBLIC HEARINGS, EITHER IN PERSON, BY AGENT, OR IN WRITING, AS DESCRIBED ABOVE, YOUR RIGHT TO APPEAL TO THE MICHIGAN TAX TRIBUNAL WILL BE LOST.

By City Charter, if the owners of more than one-half of the properties being assessed formally object to the assessment in writing at or before the hearing, the improvements cannot be made unless the City Commission votes unanimously that the safety or health of the public necessitates the special assessment.

### **Estimated Costs**

It is hereby determined that, based on the estimates of cost for street lights, the City will assess **\$188.50** per parcel with a state equalized value of over \$1,000 at the time the assessment roll is approved, including all City owned parcels, payable in ten (10) equal installments commencing with the Winter 2016 tax bill, which means that approximately 100% of the cost of the LED street lighting upgrade will be paid by special assessments.

Please convey your support or opposition by returning the enclosed hearing response card indicating your preference or doing so at the scheduled public hearing. If you would rather use email, you can scan or photograph your response card and send to [LED@shorelinecity.com](mailto:LED@shorelinecity.com). However, if you intend to appeal the assessment to the Michigan Tax Tribunal, you must either return the hearing response card or attend one of the public hearings and voice your opposition.

Your views are important to the City and to your neighbors. Additional information, including preliminary project plans and cost estimates, will be available online at [www.shorelinecity.com/LED](http://www.shorelinecity.com/LED) and in the City Clerk's Office located on the first floor of City Hall. Regular business hours are from 8:30 A.M. to 5:00 P.M. Monday through Friday except holidays.

Sincerely,

Kenneth D. Grant  
City Treasurer  
231-724-1196





1175 Devin Drive  
 Norton Shores, MI 49441  
 (231) 798-1221

# Invoice

DATE	INVOICE #
9/29/2016	1-22935

CUSTOMER
City of Muskegon Ken Grant PO Box 536 Muskegon, MI 49443

# RECEIVED

OCT - 3 2016

CITY OF MUSKEGON  
 TREASURER DEPARTMENT

P.O. NUMBER	TERMS	REP	DROP DATE	VIA	ROUTER
	Upon Receipt	MEA	9/28/2016		7884

QUANTITY	ITEM CODE	DESCRIPTION	PRICE /M	AMOUNT
114	DM Move Update P Postage	Public Hearing Notice Mailing 13,791 Units @ \$.537 Move Update Processing Postage	 0.25 5,258.49	7,405.77 28.50 5,258.49

This Invoice is Due Upon Receipt per No Advance Postage. Thank you!			<b>Total</b>	\$12,692.76
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October 4, 2016

Ken Grant, City Treasurer  
City of Muskegon  
933 Terrace Street  
Muskegon, MI 49443

Dear Mr. Grant:

In accordance with your request, I have examined the proposed special assessment district for the maintenance of street lighting in the City of Muskegon. The purpose of this analysis is to document the reasonableness of this special assessment district by identifying and quantifying any accrued benefits. It is subject to the normal governmental restrictions of escheat, taxation, police power and eminent domain. The effective date is October 4, 2016.

The proposed special assessment district encompasses all classes of properties. The City of Muskegon Treasurer's Department has provided per parcel cost estimates in accordance with the City's Special Assessment Policy and all project-related costs.

The total project cost is estimated to be \$2,730,000 to be spread over 10 years.

The amount of money to be spread is based on a per parcel rate of \$18.85 to each parcel with an assessed value of more than \$1,000 affecting 14,482 property owners and 2,900 street lights. The City Treasurer's Department is solely responsible for these figures.

In conclusion, it is my opinion that the special assessment amounts as provided by the City justly and reasonably represents the accrued benefits to the properties encompassed by this project. The amounts reflect the sum of the immediate estimated value enhancement and the intrinsic value that will accrue from an overall increase in property values due to an improved quality of life created by the proposed project. Simply stated, the rate of \$18.85 per parcel to be spread over parcels with an assessed value greater than \$1,000 for the maintenance in the above mentioned project area appears reasonable and equitable based upon the data presented by the City of Muskegon Treasurer's Department, and supporting office records.

Sincerely,

A handwritten signature in black ink, appearing to read "D Vandervries".

Donna Vandervries, MMAO  
City of Muskegon Assessor

CITY OF MUSKEGON

Resolution No. \_\_\_\_\_

Resolution at First Hearing Creating Special Assessment District  
For Street Lights

Location and Description of Properties to be assessed:  
See Exhibit A attached to this resolution

RECITALS:

1. By resolution of the City Commission, a hearing has been held on October 11, 2016, at 5:30 o'clock p.m. at the City Commission Chambers. Notice was given by mail and publication as required by law.
2. That estimates of costs of the project, a feasibility report and valuation and benefit information are on file with the City and have been reviewed for this hearing.
3. At the hearing held on October 11, 2016, there were \_\_\_\_\_ objections by the owners of the property in the city registered at the hearing either in writing received before or at the hearing or by owners or agents present at the hearing, and the Commission has considered the advisability of proceeding with the project.

FINDINGS:

1. The City Commission has examined the estimates of cost, including all assessable expenses, and determines them to be reasonable.
2. The City Commission has considered the value of the property to be assessed and the value of the benefit to be received by each property to be assessed in the district with the continuation of street lighting. The City Commission determines that the assessments of costs of the City project will enhance the value of the property to be assessed in an amount at least equivalent to the assessment and that the improvement thereby constitutes a benefit and remove a burden from the property associated with the loss of street lighting to the property.

THEREFORE, BE IT RESOLVED:

1. The City Commission hereby declares a special assessment district to include all of the property in the city.
2. The City Commission determines to proceed with the special assessment.

3. The City Commission hereby appoints a Board of Assessors consisting of City Commissioners \_\_\_\_\_ and \_\_\_\_\_ and the City Assessor who are hereby directed to prepare an assessment roll. Assessments shall be made upon a benefit basis.
  
4. It is hereby determined that, based on the estimates of cost for street lights, the City will assess \$185.50 per parcel with a state equalized value of over \$1,000 including all City owned parcels, payable in ten equal installments commencing with the Winter 2016 tax bill, which means that approximately 100% of the cost of LED street lighting will be paid by special assessments. (A tax parcel having a state equalized value of over \$1,000 will pay an extra \$18.85 per year for ten years for LED street lighting.)
  
5. Upon submission of the special assessment roll, the City staff is hereby directed to notify all owners and persons interested in properties to be assessed of the hearing at which the City Commission will consider confirmation of the special assessment roll.

This resolution adopted.

Ayes \_\_\_\_\_

---

Nays \_\_\_\_\_

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CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Marie Meisch, Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on \_\_\_\_\_, 2016. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public acts of 1976.

CITY OF MUSKEGON

By \_\_\_\_\_  
Ann Marie Meisch, Clerk



## Exhibit A

All eligible parcels located inside the City of Muskegon with a state equalized value of over \$1,000.

Commission Meeting Date: October 11, 2016

Date: October 5, 2016  
To: Honorable Mayor & City Commission  
From: City Manager  
RE: Western Avenue Parking Lot- Agreement of Purchase & Sale between the City of Muskegon and Citiparc, LLC.

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**SUMMARY OF REQUEST:** Harold Back of Citiparc, LLC, has offered \$300,000 to purchase the City's Western Avenue Parking Lot between Fourth & Fifth Streets. Citiparc, LLC will continue to use the property for public parking, including commitments agreed to for Lumberjack parking, for a year. After that time, the purchaser expects to develop the property (see "Agreement of Purchase & Sale" attached). The property includes one lot that is technically owned by the DDA (lot farthest to the east). This lot will need approval to sell by the DDA, as well.

**FINANCIAL IMPACT:** The City will receive \$300,000 as the purchase price for the property. The proceeds are expected to go into the "Economic Development Project Fund" (formerly "Sappi Economic Development Fund").

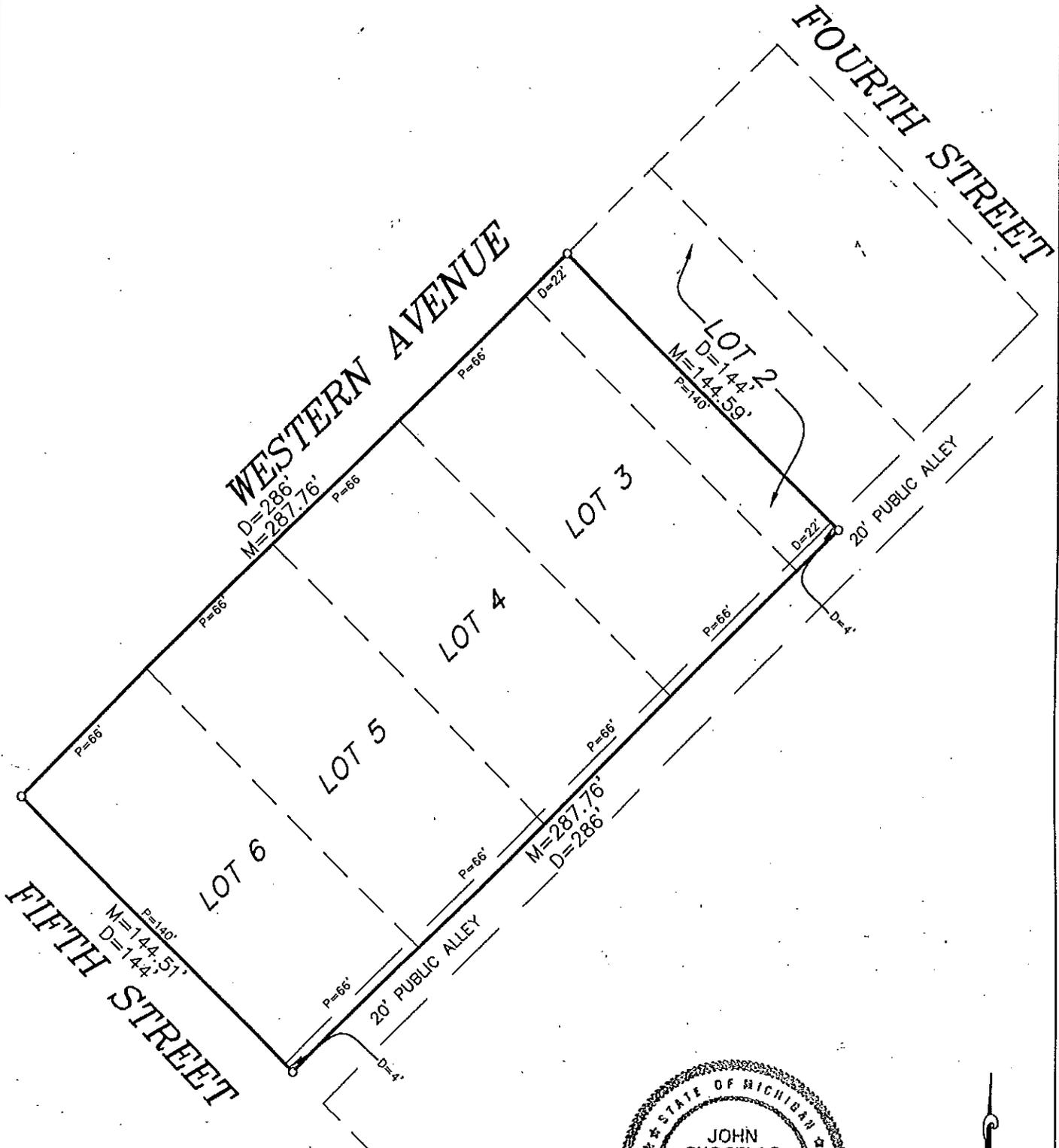
**BUDGET ACTION REQUIRED:** None.

**STAFF RECOMMENDATION:** To approve the Agreement of Purchase & Sale between the City of Muskegon and Citiparc, LLC and authorize the Mayor and Clerk to sign all necessary documents, including closing documents at the time of sale, on the condition the DDA approves the sale of their lot as part of this transaction.

# PLAT OF SURVEY

This parcel is located in the City of Muskegon, Muskegon County, Michigan and is described as follows:

Lots 3, 4, 5, and 6, and the Southwesterly 22 feet of Lot 2, Block 314 and also the Northerly 4 feet of adjacent alley of said Block, Revised Plat (of 1903) of the City of Muskegon, Muskegon County Records.



SCALE: 1"=50'

TREET

521

1063

1064

1060

470

454

448

444

430

505

495

500

490

489

479

477

471

445

AGREEMENT OF PURCHASE AND SALE

[505, 495, 489 & 479] [CONFIRM] West Western Avenue, Muskegon MI

ARTICLE 1: BASIC TERMS

1.1 Certain Basic Terms. The underlined terms shall have the following meanings:

(a) Purchaser: Citiparc, LLC, a Delaware limited liability company

(b) Purchaser's Notice Address:

c/o Core Financial Corporation  
6991 East Camelback Road, Suite D-300  
Scottsdale, AZ 85251  
Telephone: (312) 909-9936  
E-mail: Harold@hsback.com

with a copy to:

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661  
Attn: Brooks T. Giles, Esq.  
Telephone: (312) 902-5386  
E-mail: brooks.giles@kattenlaw.com

Attn: Brian M. Spangler, Esq.  
Telephone: (312) 902-5402  
E-mail: brian.spangler@kattenlaw.com

(c) Seller: The City of Muskegon, a Michigan municipal corporation (the "City"), and the Muskegon Downtown Development Authority, an agency of the City (the "DDA"); the DDA and the City are hereinafter referred individually and collectively, as the context may imply, as the "Seller")

(d) Seller's Notice Address:

City of Muskegon  
933 Terrace Street  
Muskegon, Michigan 49443  
Attention: City Manager  
Director Community & Economic Development  
Telephone: (231) 724-6724  
E-mail: [frank.peterson@shorelinecity.com](mailto:frank.peterson@shorelinecity.com)

with a copy to:

Parmenter O'Toole  
601 Terrace Street  
Muskegon, MI 49443-0786  
Attn: John C. Schrier  
Telephone: (231) 722-5401  
E-mail: john@parmenterlaw.com

(e) Title Company:  
Transnation Title Agency  
570 Seminole Rd., Suite 102  
Muskegon, Michigan 49444  
Attn: Teresa Lavigne  
Telephone: (231) 737-9111  
E-mail: tlavigne@transmi.com

(f) Escrow Agent:  
Transnation Title Agency  
570 Seminole Rd., Suite 102  
Muskegon, Michigan 49444  
Attn: Teresa Lavigne  
Telephone: (231) 737-9111  
E-mail: tlavigne@transmi.com

(g) Execution Date: The later date of execution by Seller and Purchaser, as indicated on the signature pages hereto.

(h) Purchase Price: \$300,000.

(i) Due Diligence Period: Subject to extension as set forth in Paragraphs 2.2 and 3.2 hereof, the period beginning on the Execution Date and ending at 11:59p.m. (Central Time) on the business day immediately preceding the Closing Date.

(j) Closing Date: October 14, 2016, subject to postponement as set forth in Paragraphs 3.2, 4.3. and 5.2(c). Purchaser and Seller may accelerate the Closing Date to an earlier date upon the joint written agreement of the parties.

1.2 Property. Subject to the terms and conditions of this Agreement of Purchase and Sale (this "Agreement"), Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the property described in Paragraphs 1.2(a) and 1.2(b) below (collectively, the "Property"):

(a) The "Real Property," being (i) the land owned by the City legally described in Exhibit A-1 attached hereto, commonly known as [\_\_\_\_\_] (the "City Land"), (ii) the land owned by the DDA legally described in Exhibit A-2 attached hereto, commonly known as [\_\_\_\_\_] (the "DDA Land"; the DDA Land and the City

Land are hereinafter referred to collectively as the “Land”) (ii) any improvements located on the Land (the “Improvements”), (iii) all and singular of Seller’s interest in and to the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining to the Land, and (iv) all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Land.

(b) Intentionally Omitted.

The term “Property” shall not include (i) any cash on hand or other liquid assets of Seller, or (ii) any minute books, membership ledgers or governing documents of Seller (collectively, the “Excluded Assets”).

ARTICLE 2: INSPECTION

2.1 Seller’s Delivery of Specified Documents. Seller shall provide to Purchaser the following (collectively, the “Property Information”) within 5 days after the Execution Date:

(a) Lease Documentation. Copies of any leases, including, but not limited to the Lumberjacks Sublease, as hereinafter defined (the “Leases”), affecting the Property and all documentation pertaining thereto;

(b) Intentionally Omitted;

(c) Environmental Reports. Any environmental reports in Seller’s possession related to the Real Property, including, but not limited to, any and all existing soil reports, baseline environmental assessments, due care notices and phase I and phase II environmental assessments, provided, however that the phase I and phase II environmental assessments required to be delivered by Seller to Purchaser hereunder need only be delivered at least two (2) business days prior to closing in accordance with Section 4.2(b) hereof. ;

(d) Existing Title and Survey Documents. Copies of Seller’s existing title insurance policy and any existing ALTA, boundary and/or as-built survey of the Real Property; and

(e) Other Documentation. Books, records and other materials in Seller’s possession that pertain to the Property (except for the Excluded Assets) and are reasonably required for Purchaser’s investigation and proposed development, operation and management of the Property.

Upon delivery of the last item of Property Information, Seller shall deliver to Purchaser a written notice certifying that all such deliveries have been completed, together with a list of the documents and other items delivered or made available to Purchaser. Seller shall have an ongoing obligation at the earliest possible occasion prior to Closing and during the survival period of this Agreement to provide Purchaser with any document described above and coming into Seller’s possession or produced by Seller after the initial delivery of Property Information.

## 2.2 Due Diligence.

(a) Purchaser, from and after the Execution Date, shall have through the last day of the Due Diligence Period in which to examine, inspect, analyze and investigate the Property, applicable laws and regulations, the Property Information, the Title Commitment, the Survey, any Amended Report or Revised Survey and any and all other information Seller is required to provide to Purchaser hereunder. Purchaser, in its sole and absolute judgment and discretion, may elect to terminate this Agreement by giving written notice of such election to Seller (the “Due Diligence Termination Notice”) on or before the last day of the Due Diligence Period. If this Agreement terminates pursuant to this Paragraph 2.2, all further rights and obligations of the parties under this Agreement shall terminate, except for such rights and obligations as expressly survive the termination of this Agreement. Purchaser, by written notice to Seller and Escrow Agent, may waive its right to terminate this Agreement pursuant to this Paragraph prior to the last day of the Due Diligence Period and the Due Diligence Period shall be deemed to have ended on the date such notice is received by Seller. If Purchaser fails to deliver to Seller a Due Diligence Termination Notice prior to the expiration of the Due Diligence Period, this Agreement shall continue in full force and effect, and the Due Diligence Period shall end on the date determined in accordance with this Agreement.

(b) Purchaser, from and after the Execution Date shall have access to the Real Property at all reasonable times for the purpose of conducting surveys, architectural, engineering, geotechnical and environmental inspections and tests (including intrusive inspection and sampling), and any other inspections, studies, or tests reasonably required by Purchaser. Purchaser shall keep the Property free and clear of any liens and shall indemnify, defend, and hold Seller harmless from all claims and liabilities for physical damage caused to persons or property asserted against Seller as a result of and to the extent caused by any such entry or activities by Purchaser, its agents, employees or representatives. If any inspection or test disturbs the Property, Purchaser shall restore the Property to the same condition as existed prior to any such inspection or test. Purchaser and its agents, employees, and representatives shall have a continuing right of access to the Property at any reasonable time prior to Closing for the purpose of performing non-intrusive inspections and investigations, examining and making copies of all books and records and other materials relating to the Property in Seller’s or its property manager’s possession (except for the Excluded Assets), and, with Seller’s consent, for any other reasonable purpose. Purchaser shall have the right to conduct a “walk-through” of the Real Property at any reasonable time prior to the Closing. In the course of its investigations, Purchaser may make inquiries to third parties, including, without limitation, tenants, lenders, contractors, subcontractors, property managers, parties to agreements affecting the Property, and municipal, local and other government officials and representatives, and Seller consents to such inquiries. If this Agreement terminates or the Closing does not occur for any reason, Purchaser shall promptly return to Seller all original documents and materials provided to Purchaser by or on behalf of Seller, shall destroy all copies of all documents provided to Purchaser by or on behalf of Seller, and shall keep any information disclosed by or on behalf of Seller to Purchaser in connection with this Agreement confidential between the parties hereto. The obligations of Purchaser under this Paragraph shall survive the termination of this Agreement.

## 2.3 Intentionally Omitted.

### ARTICLE 3: TITLE AND SURVEY REVIEW

3.1 Delivery of Title Commitment and Survey. Purchaser shall cause to be prepared (a) a current, effective commitment for title insurance (the "Title Commitment") issued by the Title Company, in the amount of the Purchase Price with Purchaser named as the proposed insured, and accompanied by true, complete, and legible copies of all documents referred to in the Title Commitment; and (b) a current ALTA/NSPS Land Title Survey of the Real Property (the "Survey") in a form acceptable to Purchaser. The costs of procuring the Title Commitment and the Survey shall be allocated between Purchaser and Seller pursuant to Section 3.4 below.

#### 3.2 Title Review and Cure.

(a) Seller shall remove at or prior to Closing (i) liens of an ascertainable dollar amount created by, under or through Seller, or (ii) any exceptions or encumbrances to title which are created by, under or through Seller after the Execution Date without Purchaser's consent (together, the "Prohibited Liens"). If the Title Company, after the delivery of the initial Title Commitment and less than 5 business days prior to Closing, issues a supplemental or amended title report adding or modifying title exceptions (other than Prohibited Liens) or adding or modifying the conditions to obtaining the Title Policy or any of Purchaser's Endorsements previously requested by Purchaser (an "Amended Report"), or the surveyor, less than 5 business days prior to Closing, revises the Survey to disclose any material matters not appearing on the Survey previously delivered to Purchaser (a "Revised Survey"), Purchaser may elect by written notice to Seller to adjourn the closing for a period of 5 business days to provide Purchaser sufficient time to review the Amended Report or Revised Survey, as applicable. Any matter shown on the Title Commitment, the Survey, any Amended Report or any Revised Survey at Closing (other than Prohibited Liens, which Seller shall be obligated to cause to be released at or prior to Closing), as the case may be, shall be deemed to have been approved by Purchaser and shall be deemed to be a Permitted Exception.

(b) If Seller does not release prior to Closing any Prohibited Lien, Purchaser may (i) elect to terminate this Agreement by delivering a Due Diligence Termination Notice to Seller, or (ii) elect to close the transaction notwithstanding the Prohibited Lien, utilize such portion of the Purchase Price at Closing as may be necessary to remove or release any such Prohibited Lien, and pursue any other remedy available to Purchaser hereunder as set forth in Paragraph 8.1 below.

(c) The term "Permitted Exceptions" shall mean (i) any exception disclosed by the Title Commitment, an Amended Report, the Survey or a Revised Survey, except for the Prohibited Liens, and (ii) general real estate taxes not yet due and payable.

3.3 Delivery of Title Policy at Closing. As a condition to Purchaser's obligation to close, the Title Company shall deliver to Purchaser at Closing an ALTA Owner's Policy of Title Insurance in substance satisfactory to Purchaser in accordance with Paragraph 3.2 above (the "Title Policy"), with extended coverage (i.e., with all ALTA and any state specific general exceptions deleted), issued by the Title Company as of the date and time of the recording of the Deeds, in the amount of the Purchase Price, containing the Purchaser's Endorsements, insuring Purchaser as owner of good, marketable and indefeasible fee simple title to the Real Property,

and subject only to the Permitted Exceptions. “Purchaser’s Endorsements” shall mean, to the extent such endorsements are available under the laws of the state in which the Real Property is located and are not waived by Purchaser: (a) owner’s comprehensive; (b) access; (c) survey accuracy; (d) same as survey/legal description equivalency; (e) separate tax lot; (f) subdivision; (g) zoning 3.1, with parking; (h) contiguity (if applicable); (i) environmental 8.1; (j) waiver of arbitration; (k) creditor’s rights; and (l) such other endorsements available in the state in which the Real Property is located as Purchaser may require based on its review of the Title Commitment, Survey and any Amended Report and Revised Survey. Seller shall execute and deliver at Closing such affidavits, indemnities, lien waivers and other documents as the Title Company shall reasonably require for the issuance of the Title Policy with Purchaser’s Endorsements. The Title Policy may be delivered after the Closing if, at the Closing, the Title Company issues a currently duly-executed “marked-up” Title Commitment providing title coverage effective as of the Closing Date and irrevocably commits in writing to issue the Title Policy in the form of the “marked-up” Title Commitment promptly after the Closing Date.

3.4 Title and Survey Costs. Seller shall pay, at or prior to Closing, (i) the one half of the cost of the Survey, including any revisions necessary to make the Survey conform to the requirements of this Agreement, (ii) the search and examination fee and other fees charged in connection with the Title Commitment, (iii) the base premium for the Title Policy, including the premium for extended coverage, and (iv) any additional costs associated with satisfying the Title Company’s requirements or conditions to the issuance of the Title Policy. Purchaser shall pay, at or prior to Closing, (i) the one-half of the cost of the Survey, including any revisions necessary to make the Survey conform to the requirements of this Agreement, (ii) the cost of any Purchaser’s Endorsements, and (iii) the cost of any mortgagee title insurance coverage.

#### ARTICLE 4: COVENANTS, OPERATIONS AND RISK OF LOSS

4.1 Ongoing Operations. During the pendency of this Agreement and prior to Closing:

(a) Maintenance of the Property. Seller shall continue to maintain the Property in a manner consistent with the manner in which Seller has maintained the Property prior to the Execution Date.

(b) Performance under Leases and Other Agreements. Seller shall continue to perform all of its obligations under the Leases and shall perform its material obligations under any other agreements that may affect the Property.

(c) New Contracts. Seller will not enter into or permit to exist any (i) contract that will be an obligation of Purchaser or otherwise affecting the Property, or Purchaser’s proposed development thereof, subsequent to Closing, or (ii) any oral or written amendment, supplement, modification or termination of or any supplement to any existing contract that shall affect the Property, or Purchaser’s proposed development thereof, subsequent to Closing.

(d) Listings and Other Offers. Seller will not list the Real Property with any broker or otherwise solicit any offers to sell the Real Property or enter into any binding contracts or agreements (whether binding or not) regarding any disposition of the Real Property.

(e) Leasing Arrangements. Seller will not enter into any lease of all or any part of the Property without Purchaser's prior written consent.

(f) Actions Regarding Representations and Warranties. Seller shall not take any action, or fail to take any action, which would cause any of the representations and warranties of Seller contained in Article 7 hereof to no longer be true and correct.

#### 4.2 Environmental Covenants.

(a) Seller covenants and agrees that, from and after the Closing Date, Seller shall use its best efforts to cooperate with Purchaser in providing all reports, test results, and other documents as may be required by the Michigan Department of Environmental Quality (the "MDEQ") to limit Purchaser's liability under MICH. COM. LAWS §324.20101 et. seq. (commonly known as the Natural Resources and Environmental Protection Act, and hereinafter referred to as the "NREPA"), including, but not limited to §324.21323a of the NREPA, with respect to the Real Property. This covenant shall survive the Closing and shall not be deemed merged with the Deeds under any circumstance.

(b) Seller shall deliver to Purchaser at least two (2) business days prior to Closing a Phase I and Phase II environmental assessment, prepared at Seller's sole cost and expense, in a form and substance reasonably satisfactory to Purchaser and necessary to obtain a baseline environmental assessment in accordance with the NREPA, and file a plan for due care compliance for the Real Property with the MDEQ in accordance with §324.20114g of the NREPA.

### ARTICLE 5: CLOSING

5.1 Closing. The consummation of the transaction contemplated herein ("Closing") shall occur on the Closing Date, through an escrow with, Escrow Agent. Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon the satisfaction or completion of unwaived Closing Conditions and deliveries, the parties shall direct Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the Closing Statement. Escrow Agent shall agree in writing with Purchaser by way of the joint order escrow instructions by and among Purchaser, Seller and Escrow Agent (the "Joint Order Escrow Instructions") that (1) recordation of the Deeds constitutes its representation that it is holding the closing documents, closing funds and Closing Statement and is prepared and irrevocably committed to disburse the closing funds in accordance with the Closing Statement and Joint Order Escrow Instructions, and (2) the release of funds to Seller shall irrevocably commit the Title Company to record the Deeds and to issue the Title Policy in accordance with the Joint Order Escrow Instructions and this Agreement.

#### 5.2 Conditions to the Parties' Obligations to Close.

(a) Seller's Closing Conditions Defined. In addition to all other conditions set forth in this Agreement to Seller's obligation to consummate the transactions contemplated hereunder, the obligation of Seller to consummate the transactions contemplated hereunder shall also be subject to the fulfillment, on or before the Closing Date, of all of the following

conditions, any or all of which may be waived by Seller in its sole discretion (collectively with all other conditions to Seller's obligation to close set forth in this Agreement, the "Seller's Closing Conditions," and each, a "Seller Closing Condition"):

(i) Purchaser's representations and warranties contained herein shall be true and correct in all material respects as of the Execution Date and the Closing Date. For purposes of this clause (i) only, a representation that is limited to Purchaser's knowledge or notice shall be false if the factual matter that is the subject of the representation is false notwithstanding any lack of knowledge or notice to Purchaser;

(ii) As of the Closing Date, Purchaser shall have performed its obligations required hereunder to be performed by the Closing Date in all material respects and all deliveries to be made by Purchaser at or prior to Closing shall have been tendered;

(iii) There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against Purchaser that would materially and adversely affect Purchaser's ability to perform its obligations under this Agreement; and

(iv) There shall exist no pending or threatened action, suit or proceeding with respect to Purchaser before or by any court or administrative agency which seeks to restrain or prohibit, this Agreement or the consummation of the transactions contemplated hereby.

(b) Purchaser's Closing Conditions Defined. In addition to all other conditions set forth in this Agreement to Purchaser's obligation to consummate the transactions contemplated hereunder, the obligation of Purchaser to consummate the transactions contemplated hereunder shall also be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion (collectively with all other conditions to Purchaser's obligation to close set forth in this Agreement, the "Purchaser's Closing Conditions," and each, a "Purchaser Closing Condition," and Purchaser's Closing Conditions and Seller's Closing Conditions, together, shall be referred to herein as the "Closing Conditions" and each, a "Closing Condition"):

(i) Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Execution Date and the Closing Date;

(ii) As of the Closing Date, Seller shall have performed its obligations required hereunder to be performed by the Closing Date and all deliveries to be made by Seller at or prior to Closing shall have been tendered;

(iii) There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against Seller that would materially and adversely affect the operation or value of the Property or Seller's ability to perform its obligations under this Agreement;

(iv) There shall exist no pending or threatened action, suit or proceeding with respect to Seller before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated hereby; and

(v) Seller has delivered to Purchaser a Phase I and Phase II environmental assessment, prepared at Seller's sole cost and expense, in a form and substance reasonably satisfactory to Purchaser and necessary to obtain a baseline environmental assessment in accordance with the NREPA, and file a plan for due care compliance for the Real Property with the MDEQ in accordance with §324.20114g of the NREPA.

(c) Failure of a Closing Condition.

(i) Seller's Closing Condition Failure. So long as Seller is not in default hereunder, if any Seller Closing Condition hereunder has not been satisfied by Purchaser or waived by Seller, in each instance as of the Closing Date, Seller may (1) as its sole remedy, terminate this Agreement by delivering written notice to Purchaser on or before the second business day following the Closing Date, or (2) elect to consummate the transactions contemplated hereby notwithstanding the non-satisfaction of any one or more Seller Closing Conditions, in which event Seller shall be deemed to have waived any such Seller Closing Condition. In the event Seller elects to close, notwithstanding the non-satisfaction of any one or more Seller Closing Conditions, there shall be no liability on the part of Purchaser for breaches of representations and warranties of which Seller had knowledge at the Closing. Except as provided above, the failure of a Seller Closing Condition due to Purchaser's breach shall not relieve Purchaser from any liability it would otherwise have hereunder.

(ii) Purchaser's Closing Condition Failure. So long as Purchaser is not in default hereunder, if any Purchaser Closing Condition hereunder has not been satisfied by Seller or waived by Purchaser, in each instance as of the Closing Date, Purchaser may, in its sole discretion, (1) elect to terminate this Agreement by delivering written notice of such election to Seller on or before the second business day following the Closing Date, (2) elect to adjourn the Closing for a period or periods not to exceed 90 days in the aggregate to permit Seller to cause such Purchaser Closing Condition to be satisfied, except that Purchaser may withdraw such election to adjourn at any time prior to Seller's cure of all unsatisfied Purchaser Closing Conditions and select any other remedy available to Purchaser hereunder, or (3) elect to consummate the transactions contemplated hereby notwithstanding the non-satisfaction of any one or more Purchaser Closing Conditions, in which event Purchaser shall be deemed to have waived any such Purchaser Closing Condition. In the event Purchaser elects to close, notwithstanding the non-satisfaction of any one or more Purchaser Closing Conditions, there shall be no liability on the part of Seller for breaches of representations and warranties of which Purchaser had knowledge at the Closing. Except as provided above, the failure of a Purchaser Closing Condition due to Seller's breach shall not relieve Seller from any liability it would otherwise have hereunder.

5.3 Seller's Deliveries in Escrow. At least one business day prior to the Closing Date, Seller shall deliver in escrow to Escrow Agent the following:

(a) City Deed. A quitclaim deed (or special or limited warranty deed, if required by the Title Company to issue the Title Policy) in the form attached hereto as Exhibit B, duly executed and acknowledged by the City, conveying to Purchaser good, indefeasible and marketable fee simple title to the portion of the Real Property owned by the City, in recordable form, subject only to the Permitted Exceptions (the “City Deed”);

(b) DDA Deed. A quitclaim deed (or special or limited warranty deed, if required by the Title Company to issue the Title Policy) in the form attached hereto as Exhibit B, duly executed and acknowledged by the DDA, conveying to Purchaser good, indefeasible and marketable fee simple title to the portion of the Real Property owned by the DDA, in recordable form, subject only to the Permitted Exceptions (the “DDA Deed”; the DDA Deed and the City Deed are referred to collectively herein as the “Deeds”);

(c) Intentionally Omitted;

(d) Intentionally Omitted;

(e) State Law Disclosures. Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;

(f) FIRPTAs. Foreign Investment in Real Property Tax Act affidavits executed by each of the City and the DDA. If Seller fails to provide the necessary affidavits and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law;

(g) Title Requirements. Any and all lien waivers of any contractors and subcontractors and any and all sworn statements or other affidavits and other documentation reasonably required by the Title Company to issue to the Title Policy;

(h) CCRs. If the Real Property is subject to a declaration of covenants, conditions and restrictions or similar instrument (“CCRs”) governing or affecting the use, operation, maintenance, management or improvement of the Real Property, estoppel certificates, in form and substance satisfactory to Purchaser, from the declarant, association, committee, agent and/or other person or entity having governing or approval rights under the CCRs, and to the extent applicable, a recordable assignment, in form and substance satisfactory to Purchaser, assigning any and all developer, declarant or other related rights or interests of Seller (or any Affiliate of Seller) in or under the CCRs;

(i) Authority. Evidence of the existence, organization and authority of each of the City and the DDA and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to Escrow Agent and the Title Company;

(j) Intentionally Omitted;

(k) Joint Order Escrow Instructions. The Joint Order Escrow Instructions, in form reasonably acceptable to the parties hereto, executed by Seller;

(l) Lumberjacks Sublease Amendment. An amendment to that certain Sublease Agreement (the “Lumberjacks Sublease”) dated as of July, 2015, entered into by and between the City and WC Hockey, LLC, a Michigan limited liability company (“Lumberjacks”), terminating the Lumberjacks’ right to park on the Property (the “Lumberjacks Sublease Amendment”), in form and substance reasonably satisfactory to Purchaser and Seller, and duly executed and acknowledged by the City and Lumberjacks;

(m) Parking License Agreement. A license agreement in the form attached hereto as Exhibit C (the “Parking License”), duly executed and acknowledged by the City and Purchaser, granting to the City a license to use and to sublicense the use of the Real Property upon the terms and conditions set forth in the Parking License;

(n) Additional Documents. Any additional documents that Purchaser, Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.4 Purchaser’s Deliveries in Escrow. Except as specified below, at least one business day prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

(a) Purchase Price. On the Closing Date, the Purchase Price, plus or minus applicable prorations (collectively, the “Net Closing Payment”);

(b) Intentionally Omitted;

(c) Intentionally Omitted;

(d) State Law Disclosures. Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;

(e) Parking License. A duly executed counterpart to the Parking License;

(f) Joint Order Escrow Instructions. The Joint Order Escrow Instructions, in form reasonably acceptable to the parties hereto, executed by Purchaser; and

(g) Additional Documents. Any additional documents that Seller, Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.5 Closing Statements. On or prior to the Closing Date, Seller and Purchaser shall deposit with Escrow Agent the final executed closing statement consistent with this Agreement in the form required by Escrow Agent (the “Closing Statement”).

5.6 Title Policy. The Title Company shall deliver to Purchaser the Title Policy in accordance with the provisions of Paragraph 3.3.

5.7 Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date immediately following Closing, subject only to the Permitted Exceptions,

5.8 Delivery of Books and Records. Immediately after, if not prior to, Closing, to the extent in Seller's custody or control and to the extent not previously provided to Purchaser, Seller shall deliver to Purchaser: (i) copies or originals of any agreement being assumed by Purchaser, if any; (ii) copies or originals of all books and records of account, copies of correspondence with suppliers, receipts for deposits, unpaid bills and other papers or documents which pertain to the Property; (iii) all advertising materials, booklets, keys and other items, if any, used in the operation of the Property; (iv) the any original plans and specifications; and (v) any other material documentation which pertains to the Property and that is reasonably required for Purchaser's development, operation and management of the Property. To the extent information reasonably necessary to Purchaser's development, operation and management of the Property is not in Seller's custody or control at Closing and has not been previously provided to Purchaser, Seller shall reasonably facilitate Purchaser's access to and cooperate with Purchaser to obtain such information. Seller shall cooperate with Purchaser after Closing to transfer to Purchaser any such information stored electronically.

#### ARTICLE 6: PRORATIONS

6.1 Prorations. The following items shall be prorated on an accrual basis between Seller and Purchaser as of the close of business on the day immediately preceding the Closing Date, the Closing Date being a day of income and expense to Purchaser:

(a) Taxes and Assessments. Purchaser shall receive a credit for any accrued but unpaid real estate taxes and any irrigation assessments, improvement lien assessments and other special assessments (including without limitation any assessments imposed by private covenant) ("Taxes"), if any, applicable to any period before the Closing Date, even if such taxes and assessments are not yet due and payable. If the amount of any such Taxes have not been determined as of Closing, such credit shall be based upon the latest available information and shall be prorated upon issuance of the final tax bill. In no event shall Purchaser be liable for any real estate taxes or assessments payable with respect to the portion of the 2016 tax year occurring prior to the Closing Date, provided, however, that Purchaser shall pay the entire ~~2016~~ Business Improvement District Special Assessment which may be levied on the December, 2016 tax bill and a street light special assessment which may be levied on the December, 2016 tax bill, both of which would be with respect to the Property assessed in 2016 and becomes due payable in 2017.

(b) Intentionally Omitted.

(c) Sales, Transfer, and Documentary Taxes. Seller shall pay all sales, gross receipts, compensating, stamp, excise, documentary, transfer, deed or similar taxes and fees imposed in connection with this transaction under applicable state or local law. Purchaser shall pay the recording fees for the recording of the Deeds (excluding any transfer taxes or similar taxes imposed under applicable state or local law).

(d) Utility Deposits. Seller shall receive a credit for the amount of deposits, if any, with utility companies that are transferable and that are assigned to Purchaser at the Closing.

(e) Sales Commissions. Each of Seller and Purchaser represents and warrants

to the other that it has not dealt with any real estate broker, sales person or finder in connection with this transaction. The foregoing representation shall survive the Closing indefinitely.

## 6.2 Other Closing Costs.

(a) At Closing, Seller and Purchaser each agree to pay one-half (1/2) of the escrow charges. Any other closing costs not otherwise addressed in this Agreement shall be paid by Purchaser and Seller according to the usual and customary practice in Muskegon County, Michigan. All closing costs payable by Seller shall be deducted from Seller's proceeds at Closing. On or before the Closing Date, Purchaser shall deposit with Escrow Agent cash in an amount sufficient to pay all closing costs payable by Purchaser.

(b) No expense related to the ownership or operation of the Property, other than those specifically identified by this Agreement as being chargeable to Purchaser or those obligations expressly assumed by Purchaser, shall be charged to or paid or assumed by Purchaser, whether allocable to any period before or after the Closing. Likewise, Seller shall not be responsible for payment of any charge or expense against the Property specifically identified by this Agreement as being chargeable to Purchaser or for those obligations expressly assumed by Purchaser. If Seller and Purchaser retain services from the same third party in connection with this Agreement, and the responsibility for payment of such services is not specifically addressed by this Agreement, then Seller and Purchaser shall each pay for the services initiated by it, unless the other party hereto has agreed to pay for such service in writing.

6.3 Reproration. Either party shall be entitled to a post-Closing adjustment for any incorrect proration or adjustment once the actual amount of any item so prorated is available.

## ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties. As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

(a) Authority. Seller has been duly formed and is validly existing and is in good standing under the laws of the State of Michigan and is qualified to do business in the state in which the Real Property is located. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) Ownership of Land. The City is the sole, fee simple owner of the City Land. The DDA is the sole, fee simple owner of the DDA Land.

(c) Conflicts and Pending Actions or Proceedings. There is no agreement to which Seller is a party or binding on Seller that is in conflict with this Agreement and there is no (i) default or violation under any agreements to which Seller is a party, nor (ii) any action or

proceeding pending or, to Seller's knowledge, threatened against Seller, that challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

(d) Contractors and Suppliers. All amounts due as of Closing to any contractors, subcontractors, suppliers, architects, engineers, mechanics, materialmen, vendors and others who have performed services or labor or have supplied materials in connection with Seller's acquisition, development, ownership, or management of the Property, have been paid in full and all liens arising therefrom (or claims which with the passage of time or giving of notice, or both, could mature into liens) have been satisfied and released. Seller shall provide Purchaser and the Title Company with reasonably satisfactory evidence of such payment.

(e) Leases and Licenses. Other than the Lumberjacks Sublease, there are no leases affecting the Real Property, no licenses affecting the Property, and no leasing, licensing or other fees or commissions are due, nor shall any become due, and no understanding or agreement with any party exists as to payment of any leasing or licensing commissions or fees regarding future leases or licenses or as to the procuring of tenants or licensees with respect to the Property, other than as disclosed in writing to Purchaser prior to the expiration of the Due Diligence Period.

(f) Contracts. There are no management, service, supply, equipment rental, or other contracts related affecting the Property which would impose upon Purchaser any obligation from or after the Closing Date.

(g) Permits. Seller has obtained and shall maintain in effect all permits required for the ownership and operation of the Property, if any.

(h) Notice of Violations or Defects. Seller has received no written notice: (i) that the Property or the use thereof violates any governmental law or regulation or any covenants or restrictions encumbering the Real Property; (ii) of any material physical defect in the Improvements; or (iii) from any insurance company or underwriter of any defect that would materially adversely affect the insurability of the Real Property or cause an increase in insurance premiums.

(i) Bankruptcy. Seller has not (a) made a general assignment for the benefit of creditors, (b) admitted in writing its inability to pay debts as they become due, (c) filed a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy, or (d) consented to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official), or otherwise suffered the attachment or judicial seizure, of its or a substantial part of its property.

(j) Environmental. Seller has no knowledge of any underground storage tank (in use or abandoned) on or about the Real Property or any previously existing underground storage tank on or about the Real Property that was not removed in compliance with all applicable laws, rules, regulations and orders. Seller has no knowledge of any violation of Environmental Laws related to the Real Property or the presence or release of Hazardous Materials on or from the Real Property except as disclosed in the Property Information. Seller has not manufactured, introduced, released or discharged from or onto the Real Property any

Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos), and Seller has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials, in violation of any Environmental Laws. The term “Environmental Laws” includes without limitation the NREPA, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the Execution Date together with their implementing regulations and guidelines as of the Execution Date, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. The term “Hazardous Materials” includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law.

(k) Intentionally Omitted.

(l) Obligations. Other than as set forth in the Lumberjacks Sublease, Seller has made no commitment to any governmental authority, utility company, association or any group, individual, or group of individuals relative to or in connection with the Real Property which would impose upon Purchaser any obligation to make any contribution or dedication of land or to construct, install or maintain any improvements of a public or private nature on or off the Real Property.

(m) Assessments and Rights of Way. Except for a special assessment for the Business Improvement District and a special assessment for street lights, both of which may be adopted and may be levied commencing on the December, 2016 tax bill, Seller has no knowledge of any proposed special assessments against the Real Property or any changes in any rights of way or other roads bordering or providing access to the Real Property.

(n) Intentionally Omitted.

(o) Independent Unit. The Real Property is an independent unit which does not now rely on any facilities (other than facilities covered by Permitted Exceptions or facilities of municipalities or public utilities) located on any property that is not part of the Real Property to fulfill any municipal or other governmental requirement, or for the furnishing to the Real Property of any essential building systems or utilities (including drainage facilities, catch basins, and retention ponds). No other building or other property that is not part of the Real Property relies upon any part of the Real Property to fulfill any municipal or other governmental requirement, or to provide any essential building systems or utilities.

(p) Withholding Obligation. Seller’s sale of the Property is not subject to any federal, state or local withholding obligation of Purchaser under the tax laws applicable to Seller or the Property.

7.2 Survival of Representations and Warranties. The representations and warranties set forth in this Article 7 are made as of the Execution Date and shall be automatically remade by

Seller as of the Closing Date and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing until the date that is the second anniversary of the Closing Date. Seller and Purchaser shall have the right to bring an action thereon only if Seller or Purchaser, as the case may be, has given the other party written notice of the circumstances giving rise to the alleged breach within the survival period.

#### ARTICLE 8: DEFAULT AND REMEDIES

8.1 Seller's Default. If this transaction fails to close as a result of Seller's default, the Purchaser shall be entitled to (i) terminate this Agreement, in which event the parties shall be relieved of all obligations under this Agreement, except for those obligations which expressly survive Closing pursuant to the terms of this Agreement; or (ii) initiate an action against Seller for specific performance within sixty (60) days after the event of default. Notwithstanding the foregoing, if Seller willfully, through act, omission or failure to act, defaults under this Agreement for purposes of selling the Property to another buyer, then, in such event, Seller shall pay to Purchaser the amount of Purchaser's reasonable out-of-pocket costs and expenses incurred in connection with this Agreement and the transaction contemplated herein, including reasonable attorneys' fees and expenses and due diligence expenditures, up to a maximum of Thirty Thousand Dollars (\$30,000). The foregoing reimbursement obligation shall survive the termination of this Agreement.

8.2 Purchaser's Default. If this transaction fails to close due to the default of Purchaser, then Seller's sole remedy in such event shall be to terminate this Agreement, Seller waiving all other rights or remedies in the event of such default by Purchaser. Notwithstanding the above, if this transaction fails to close for any reason, Purchaser shall promptly return all original documents and materials provided to Purchaser by or on behalf of Seller, shall destroy all copies of all documents provided to Purchaser by or on behalf of Seller, and shall keep any information disclosed to Purchaser in connection with this Agreement confidential between the parties hereto.

8.3 Notice of Default. Except for a party's failure to close on the Closing Date when otherwise obligated by the terms of this Agreement to do so, neither party shall have the right to declare a default by the other party and terminate this Agreement because of a failure by such other party to perform under the terms of this Agreement unless the other party shall fail to cure such failure to perform within 5 days after its receipt of written notice of such failure to perform.

8.4 Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to Escrow Agent.

#### ARTICLE 9: MISCELLANEOUS

9.1 Assignment, Parties Bound. Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void; provided, however, that Purchaser may assign this Agreement without Seller's consent to an Affiliate that assumes Purchaser's obligations hereunder, provided, further, that Purchaser shall not be released from its obligations hereunder. Regardless of any consent, an assignment (including an assignment to an Affiliate) shall not release Purchaser or Seller, as the case may be, from its

obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. For the purposes of this Paragraph, the term “Affiliate” means an entity that directly or indirectly controls, is controlled by or is under common control with Purchaser whose common or equity interest is entirely owned, directly or indirectly, by Harold Back; and the term “control” means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

9.2 Headings. The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

9.3 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party’s right to enforce against the other party the same or any other such term or provision in the future.

9.4 Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state in which the Real Property is located.

9.5 Survival. Except as otherwise provided herein, the provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing shall survive the Closing until the date that is the second anniversary of the Closing Date and such provisions shall not be deemed to be merged into or waived by the instruments of Closing

9.6 No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

9.7 Entirety and Amendments. This Agreement embodies the entire agreement between the parties hereto and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

9.8 Time. Time is of the essence in the performance of this Agreement.

9.9 Intentionally Omitted.

9.10 Attorneys’ Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including reasonable attorneys’ fees, expended or incurred in connection therewith.

9.11 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Paragraph 1.1. Any such notices shall be (a) sent by overnight delivery using a nationally recognized overnight courier, (b) sent by portable document format via electronic mail; or (c) sent by personal delivery. Notices shall be considered given and effective upon receipt by the party addressee, unless the failure to receive is due to the refusal of the addressee to accept delivery or is caused by a change of address of which no notice was given, and in either such event, notice shall be considered given and effective 1 business day after it was sent. Any copies of notices that are required to be sent to individuals or entities that are not parties to this Agreement are for informational purposes only and a failure to give or receive such copies shall not be deemed a failure to give proper notice. Notices given by counsel to Purchaser shall be deemed given by Purchaser and notices given by counsel to Seller shall be deemed given by Seller.

9.12 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction, which dictates that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

9.13 Calculation of Time Periods, Business Days. Unless otherwise specified, in computing any period of time described herein, the day on which the act or event triggering the designated period of time is not to be included in computing such period of time and the last day of such period is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Real Property is located, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 6:00 p.m. Chicago, Illinois time.

9.14 Execution in Counterparts. This Agreement may be executed in counterparts, all of which counterparts collectively shall constitute one agreement, binding on the parties hereto notwithstanding that all of the parties hereto are not signatories to the same counterpart. For purposes of this Agreement, each of the parties hereto agree that a facsimile or electronically mailed copy of the signature of the person executing this Agreement on any party's behalf shall be effective as an original signature and legally binding and effective as an execution counterpart hereof. Each of the undersigned parties authorizes the assembly of one or more original copies of this Agreement through the combination of the several executed counterpart signature pages with one or more bodies of this Agreement, including the exhibits to this Agreement, such that this Agreement shall consist of the body of this Agreement, counterpart signatures pages which collectively will contain the signatures of the undersigned parties hereto and the exhibits to this Agreement. Each such compilation of this Agreement shall constitute one complete original or copy, as the case may be, of this Agreement.

9.15 Limitation of Liability. None of the officers, employees, managers or members of Purchaser or Seller assumes any personal liability for obligations entered into by or on behalf of Purchaser or Seller, respectively.

9.16 Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional

liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

**[Execution Pages Follow]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**SELLER:**

**CITY:**

Dated: \_\_\_\_\_, 2016

By:

\_\_\_\_\_  
**Stephen Gawron, Mayor**

By:

\_\_\_\_\_  
**Ann Marie Meisch, City Clerk**

**CITY OF MUSKEGON**, a Michigan municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DDA:**

Dated: \_\_\_\_\_, 2016

**MUSKEGON DOWNTOWN  
DEVELOPMENT AUTHORITY**

By:

\_\_\_\_\_  
**Eugene Fethke, Its Chairman**

By:

\_\_\_\_\_  
**Michael Kleaveland, Its Secretary**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER:**

Dated: \_\_\_\_\_, 2016

**CITIPARC, LLC**, a Delaware limited liability

company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBITS

- A-1 - Legal Description of City Portion of the Real Property
- A-2 - Legal Description of DDA Portion of the Real Property
- B - Form of Deed
- C - Parking License Agreement

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF CITY PORTION OF THE REAL PROPERTY**

[TO BE INSERTED]

**EXHIBIT A-2**

**LEGAL DESCRIPTION OF DDA PORTION OF THE REAL PROPERTY**

[TO BE INSERTED]

**EXHIBIT B**  
**FORM OF DEED**

[SELLER TO PROPOSE]

**EXHIBIT C**  
**FORM OF PARKING LICENSE AGREEMENT**

[TO BE ATTACHED]