

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made as of June \_\_\_\_, 2023 by and between 101 W. Cass, LLC, a Michigan limited liability company (the “Developer”), whose address is 503 Mall Court, Suite 312, Lansing, Michigan 48912, and the City of St. Johns, a Michigan municipal corporation (the “City”), whose address is 100 East State Street, Suite 1100, St. Johns, Michigan 48879 (sometimes referred as the “Parties” or a “Party”).”

### **Recital of Facts**

The Developer and the City entered into an Agreement to Purchase and Sell Real Estate (the “Purchase Agreement”) dated September 15, 2022, for the creation of a condominium and the purchase by the City of a portion of the real property located at 101 West Cass Street in the City of St. Johns, Clinton County, Michigan, comprising the gym and auditorium that now constitute Unit 1 of the 101 W. Cass Condominiums (the “Condominium”), and according to the Master Deed recorded in Liber \_\_\_\_, Page \_\_\_\_ (“Master Deed”), designated as Clinton County Subdivision Plan No. \_\_\_\_\_, together with rights in the general common elements and the limited common elements as shown on the Master Deed and as described in Act 59 of the Public Acts of 1978, as amended. Capitalized terms not defined herein have the meanings ascribed to them in the Master Deed. Developer is the owner of Unit 2 of the Condominium. The Developer and the City agreed upon the terms of the Master Deed and Bylaws of the Condominium and wish to coordinate the development of the general common elements of the Condominium (the “Common Elements”), shown on Exhibit B of the Master Deed as designed to be built, and the development by each of them of the units in the Condominium.

NOW, THEREFORE, the Developer and the City, for themselves and their successors and assigns, in consideration of the foregoing and the covenants and agreements set forth in this Agreement, agree as follows:

1. The foregoing Recital of Facts is not merely prefatory but is expressly made a part of this Agreement.
2. Definitions. The terms in this Agreement shall be as defined in the Recital of Facts and as follows:
  - a. Common Elements. The term “Common Elements” refers to General Common Elements as defined in the Master Deed.
  - b. Owner. The term “Owner” refers to a person possessing fee title, by deed or other instrument or arrangement whereby such person has acquired title to any Unit or any portion of any Unit.
  - c. Public Improvements. The term “Public Improvements” shall mean the Public Utility Lines defined in Section 2d.
  - d. Public Utility Lines. The term “Public Utility Lines” shall mean those Utility Lines for water, sanitary sewer, and storm sewer services that are publicly-owned or

dedicated and those utility lines for electricity, natural gas, telecommunications, internet service, or other services of a similar nature that are owned by the supplier or provider.

e. Separate Utility Lines. The term “Separate Utility Lines” shall mean those Utility Lines that are installed to provide the applicable service to one particular Unit. For the purposes of this Agreement, the portion of a Utility Line extending between a Public Utility Line and the termination of the line shall be considered a Separate Utility Line.

f. Utility Lines. The term “Utility Lines” shall mean those facilities and systems for the transmission of utility services, including sanitary sewer, water, electricity, natural gas, telecommunications, internet service, or other services of a similar nature, and the stormwater drainage, collection, detention, and distribution facilities. Upon completion of construction, Utility Lines shall be depicted as General Common Elements or Limited Common Elements on an amended utility plan to be recorded as an amendment to the Master Deed.

g. Unit Improvements. The term “Unit Improvements” shall mean those improvements within a Unit or improvement of any portion of a Unit as defined in the Master Deed.

3. Public Improvements and Common Elements. The Developer and the City shall share the costs of the Public Improvements and Common Elements with fifty percent (50%) allocated to the Developer and fifty percent (50%) allocated to the City. The City shall be responsible for obtaining bids to construct the Public Improvements and Common Elements. The City shall oversee the construction of the Public Improvements and Common Elements, with input from the Developer. To the extent necessary for the City to perform its obligations hereunder, the Developer hereby assigns to the City its rights and obligations as Developer pursuant to the Master Deed. Prior to commencement of construction, the parties shall agree on the design, location and other aspects of the Public Improvements and the Common Elements and the estimated costs to construct. Before accepting any bids for construction, the parties shall agree upon which bid(s) are acceptable. The parties shall share the design costs equally, which costs shall be paid within 30 days of invoicing. If they are unable to agree, the resolution of any dispute shall be by arbitration as provided in the Master Deed.

4. Funding and Payment.

a. The Developer and the City shall each fund the cost of construction of the Public Improvements and Common Elements for which each is responsible under Section 3. Each party shall submit to the other a budget for the costs associated with construction including the costs for surveying, engineering, and soils testing. Each Party shall submit to the other construction plans for each improvement. Each Party shall have (fifteen) 15 days following submission to approve or reject the budget or plans in writing. If the budget or plans are not approved or rejected within the fifteen (15) day period, they shall be deemed approved. If a party rejects all or any portion of any budget or plans, that Party shall state its objections in writing and the other Party shall resubmit them or portions of them, and the objecting Party shall have seven (7) days after resubmission within which to accept or reject them.

b. Each Party shall deliver to the other Party applications for payment on a calendar-month basis documenting the Public Improvements and Common Elements work that has been performed and costs incurred during the preceding calendar month and requesting reimbursement. Applications for payment shall include invoices, sworn statements and waivers of lien for the work for which payment is requested. Within thirty (30) days of receiving an application for payment, a Party shall pay to the other its share (as set forth in Section 3) of the amount of the application. Any party may audit on written request the books and records of the other party relating to costs associated with the Public Improvements and Common Elements.

c. All parties shall use best efforts to cause the Public Improvements and Common Elements to be completed as follows:

- i. Public Improvements and Common Elements to permit access to Unit 1: December 31, 2024;
- ii. All other Public Improvements and Common Elements: July 1, 2025.

In the event that either party hereto shall be delayed or hindered by reason of labor shortages, inability to procure materials, failure of power, permitting delays, or other reasons of a like nature not the fault of the party delayed in performing work, then performance of such act shall be excused for the period of the delay and the period equivalent to the period of such delay.

5. Unit Improvements. Each Party shall construct, at its own expense, all improvements to and for its Unit, including but not limited to Separate Utility Lines, HVAC, windows, and entrance improvements. The Developer will construct improvements to the existing parking lot at 101 W. McConnell St. with approximately 83 spaces to replace the previously planned 69 on-street spaces.

6. Condominium Common Elements Design. Upon submittal of appropriate payment applications and backup documents (including invoices), the City shall reimburse the Developer up to Twenty-Five Thousand Dollars (\$25,000) for the design of the Condominium Project, including the design of improvements and the reconfiguration of portions of the Condominium Project including for payment for the design of Common Element improvements.

7. General Requirements.

a. The Developer and the City each covenant to maintain their construction sites in a neat and orderly fashion and to keep the street, curb, and pan free from soil, mud, and other debris. Excavation spoils shall be hauled away at the time of excavation.

b. All construction activities described in this Agreement shall be performed in compliance with all applicable laws, subject to the approval of governmental authorities and agencies with jurisdiction, and be consistent with the following standards:

- i. All construction shall use new materials, and shall be performed in a good, safe, workmanlike manner.
- ii. No construction activities shall:

1. cause any unreasonable increase in the cost of constructing improvements upon the other Unit or common elements or ;
  2. unreasonably interfere with construction work being performed on the other Unit or the common elements;
  3. unreasonably interfere with the use, occupancy, or enjoyment of any part of the other Unit or the Common Elements, provided, however, that during the construction of the Common Elements, for a period not to exceed two (2) years from the date of this Agreement, neither Unit 1 nor Unit 2 may be used or occupied except for construction activities until a certificate of occupancy is issued; or
  4. cause any building, structure, or other improvements located on the other Unit or the Common Elements to be in violation of any law.
- iii. If governmental authorities and agencies with jurisdiction require modifications to the plans on which this Agreement is based, the parties shall cooperate in revising their plans.
  - iv. Construction of the Public Improvements and Common Elements under this Agreement shall begin within 3 months after issuance of acceptable clearance tests results from Tri-Terra as described in the Purchase Agreement.
  - v. Sixty (60) days prior to commencement of construction on Unit 2, the Developer shall provide to the City proof of construction financing.

8. Construction Liens. All construction activities shall be performed in a manner so as to avoid the filing of construction liens on any portion of the Units and shall conform with the following:

a. If any construction lien is filed against the Unit of one Party as a result of services performed or materials furnished to the other Party, the latter Party shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge.

b. Nothing herein shall prevent a Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence and in good faith and provided a bond or other security has been provided as required by subsection a. If such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs or other charges necessary to release such lien.

9. Separate Utility Lines. The Owner of each Unit shall, at its sole cost and expense, be responsible for the installation, maintenance, repair, replacement, relocation and removal of

all Separate Utility Lines installed in or serving its Unit, whether in the Unit, another Unit, the common elements, or public roadway. Each Party agrees that:

a. All such installation, maintenance, repair, replacement, relocation and removal shall be performed in a manner that causes no unnecessary discontinuance of any utility service to any other Unit;

b. Any and all portions of any Unit which may have been excavated, damaged or otherwise disturbed as a result of such work to benefit another Unit shall be restored to essentially the same condition as existed prior to the commencement of such work at the sole cost and expense of the Owner of the Unit benefited thereby;

c. Except as provided in the Master Deed and Bylaws as to the Association, no Party shall have access, except in an emergency, to the Public Utility Line located on another Unit without fourteen (14) days written notice to such other Unit Owner describing the need for such access, the proposed location of the work to be performed, nature of service to be provided, proposed commencement and completion dates and a contractor's certificate of insurance as required herein.

10. Commercial General Liability Insurance. Each Party shall maintain Commercial General Liability Insurance, in terms consistent with the following:

a. Each Party (as to its Unit only) shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage arising out of any one occurrence; the other Party shall be "additional insureds" under such policy as it applies to the insuring Party's Unit.

b. To the extent permitted by law, each Party shall indemnify the other from and against all claims, losses, liabilities, actions, proceedings, costs and expenses, including reasonable attorneys' fees and costs of suit ("Claims") asserted or incurred in connection with or arising from or as a result of the death of or injury to any person or loss or damage to the property of any person which shall occur on the Unit owned by the indemnifying Party, except to the extent such claims are caused by the negligence or the willful act or omission of the indemnified Party or its agents or employees.

11. Miscellaneous.

a. Additional Agreements. The Parties agree to take all necessary action to enter into, execute, and deliver any and all written documents necessary to carry out the terms of this Agreement and for the joint development of the units and common elements, including, but not limited to, easements, reciprocal easements, dedication, and any other contract deemed necessary by either the Developer's or the City's counsel or by the City of St. Johns or Clinton County.

b. Breach Shall Not Permit Termination. Breach of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. This limitation shall

not affect, in any manner, any other right or remedies which the Parties may have hereunder by reason of any breach of this Agreement.

c. Captions. The captions of the Articles and paragraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction.

d. Consent. In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing, and the same may be given or refused in the sole and absolute judgment of such Party, unless otherwise expressly provided in this Agreement.

e. Benefits. Each and every provision of this Agreement to be performed by the Parties (whether affirmative or negative in nature) is intended to and shall bind each and every Party, and its successors and assigns, and shall inure to the benefit of all Parties and their respective successors in title or interest. Neither party may assign its rights under this Agreement without the prior written consent of the other party, unless to an affiliate of the Party, provided that the Party shall remain liable as to its obligations under this Agreement. Each and all of the covenants in this Agreement shall run with and against the Units and shall bind each and every other person having any fee, leasehold or other interest in any part of any Unit derived through the Parties to the extent that such part of a Unit is affected or bound by the covenants in question. Where the provisions of this Agreement specify that the Developer shall be responsible for performing a particular act or obligation, the Owner from time to time of Unit 2 shall be responsible for performance of such act or obligation and shall be entitled to reimbursement as set forth elsewhere in the Agreement. Where the provisions of this Agreement specify that the City shall be responsible for performing a particular act or obligation, the Owner from time to time of Unit 1 shall be responsible for performance of such act or obligation and shall be entitled to reimbursement as set forth elsewhere in the Agreement.

f. Governing Laws. This Agreement shall be construed in accordance with the laws of the State of Michigan and any applicable federal laws and regulations.

g. Remedies. In the event of any violation or threatened violation by a Party of any of the terms, restrictions, covenants, and conditions of this Agreement, the other Party or Parties shall have the right to enjoin such violation or threatened violation, or to seek any other remedy as allowed by law, in a court of competent jurisdiction. Prior to the commencement of any such action, except in an emergency, at least seven (7) calendar days written notice of such violation shall be given to the Party responsible for such violation or threatened violation. Any action shall be brought in the circuit or district court for Clinton County.

h. Partnership. Nothing contained in this Agreement nor any acts of the Parties shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Parties.

i. Not a Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Units or the Common Elements to the general public for

any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed. The Parties hereby reserve the right to eject or cause the ejection from their Unit or the Common Elements of any person or persons not authorized, empowered, or privileged to the use thereof; provided, however, that the parties understand that Unit 1 and the Common Elements serving Unit 1 may be used by the public, as determined by the Co-owner of Unit 1.

j. Payment on Default. If pursuant to this Agreement any Party is obligated, compelled, or elects on behalf of another Party to pay any sum of money or do any act which requires the payment of money, the Party responsible for said payment shall reimburse the paying Party for such sums within thirty (30) days of demand. All such sums shall bear simple interest from the due date for reimbursement until the date of such reimbursement at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law. In no event shall any mortgagee or any purchaser of mortgagee's interest at a foreclosure sale or by deed in lieu of foreclosure be obligated to make any payment described in this Paragraph accruing prior to the date that such mortgagee forecloses on such Unit.

k. Release. If any Party shall sell or transfer its Unit or its interest therein, it shall, except as provided in this Agreement, be released from its future obligations under this Agreement. No Unit may be sold, transferred or conveyed until all assessments owed by that Unit are paid in full. It shall be a condition precedent to the release and discharge of any grantor or assignor Party that such grantor or assignor shall give written notice to the other Parties to this Agreement of any such sale, transfer, conveyance, or assignment concurrently with or immediately following the filing for record of the instrument effecting the same. The granting Party shall remain responsible for any amounts owing or any other obligation which shall have accrued prior to such sale, transfer, conveyance, or assignment.

l. Severability. If any term, provision, or condition contained in this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the applicable portion of such term, provision, or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

m. Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

n. Waiver of Default. No waiver of any default by any Party shall be implied from any omission to take any action in respect to such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant. The consent or approval of any Party to any act or request does not render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any Party shall be deemed to be cumulative and no one right or remedy shall be exclusive of any of the other, or of any other right or remedy at law or equity

which any Party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such Party shall not impair such Party's standing to exercise any other right or remedy.

o. Amendment. This Agreement may be amended or modified only by a document executed by all Parties.

p. Notices. All notices, demands, statements, and requests ("notices") required or permitted to be given under this Agreement must be in writing delivered to the Party in conformity with the methods set forth below:

- i. All notices shall be delivered by one of the following methods of delivery:
  1. Personal service, in which event the notice shall be deemed to have been given upon actual receipt;
  2. Federal Express, UPS, or another nationally recognized overnight courier service, in which event the notice shall be deemed to have been given on the first business day after the notice is deposited with the courier service (or the next business day thereafter if the notice is deposited with the courier service on a day other than a business day);
  3. United States registered or certified mail, postage prepaid and return receipt requested, in which event the notice shall be deemed to have been given three (3) business days after the notice is deposited with the United States Postal Service;
  4. United States First Class Mail, in which case notice shall be deemed effective on the date the notice has been received by the Party to whom it was sent; and
  5. Facsimile transmission or email, in which event the notice shall be deemed to have been given upon confirmation of the facsimile transmission or email receipt, provided that the original counterpart of the notice is sent, in conformance with another provision of this Section, on the same day.
- ii. The initial addresses of the Parties shall be:

If to Developer:           101 W. Cass, LLC  
  Attn: Jeff Deehan  
  503 Mall Court, Suite 312  
  Lansing, Michigan 48912  
  jeff@dymaxiondevelopment.com



With a copy to: David E. Pierson  
McClelland & Anderson, L.L.P.  
1142 S. Washington Ave.  
Lansing, MI 48910  
dpierson@malansing.com

If to City: \_\_\_\_\_  
City of St. Johns  
100 East State Street, Suite 1100  
St. Johns, Michigan 48879  
\_\_\_\_\_

With a copy to: Michael D. Homier  
Foster Swift Collins & Smith PC  
1700 East Beltline NE, Suite 200  
Grand Rapids, Michigan 49525  
mhomier@fosterswift.com

- iii. Each Party shall have the right from time to time to change its address for notice purposes to any other address upon at least ten (10) days prior written notice to the other Parties in accordance with the provisions of this Section. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice under this Agreement.
- iv. In the event any Party to this Agreement transfers an ownership interest in all or a portion of its Unit and notifies the other Parties of the transferee and its address, the Parties agree to provide any notices required under this Agreement to said transferee(s).

q. Force Majeure. The Parties shall be excused from performing any obligation under this Agreement, except obligations to pay sums of money, in the event and so long as the performance of such obligation is prevented, delayed, retarded or hindered by the following: act of God; fire; earthquake; flood; explosion; epidemic; action of the elements; war; acts of terror; invasion; insurrection; riot; mob violence; sabotage; failure of transportation; strike; lockout; action of labor union; condemnation; requisition; law; orders of governmental, civil, military, or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, and not within the respective control of the obligated Party. A Party relying upon the provisions of this section shall give written notice to the other Party within 21 days of the occurrence of the cause upon which it relies. The provisions of this section shall not operate to excuse any person from the prompt payment of any money required by this Agreement.

r. Counterparts and Facsimile Execution. This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties, and all of which shall be construed as part of the single instrument. Execution may be by manual or electronic signature. Execution of a facsimile counterpart of this

Agreement shall be deemed execution of the original Agreement. Facsimile transmission of an executed copy or email transmission of an executed copy in pdf format of this Agreement shall constitute acceptance of this Agreement.

s. Governmental Capacity. Nothing in this Agreement obligates the City to take any action, issue any permit, or approve any matters, if the City is acting in its governmental capacity.

Signature Page Follows

IN WITNESS WHEREOF, the undersigned have executed this Development Agreement.

**101 W. Cass, LLC**, a Michigan limited liability company

**City of St. Johns**, a Michigan municipal corporation

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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