



# CITY COUNCIL MEETING AGENDA

September 19, 2019

Marc D. Tall, Mayor  
Ronald J. Beauchamp, Mayor Pro Tem  
Ralph B. Blasier, Council Member  
Michael R. Sattem, Council Member  
Peggy O'Connell, Council Member

Patrick S. Jordan, City Manager  
Phil DeMay, City Clerk  
John Bergman, City Attorney

City Council Chambers located at: City Hall – 410 Ludington Street – Room C101 – Escanaba MI 49829

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items with an asterisk (\*) are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event, the item will be removed from the General Order of Business and considered in its normal sequence on the Agenda.

## Regular Meeting

Thursday, September 19, 2019, at 7:00 p.m.

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – September 5, 2019

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS

UNFINISHED BUSINESS

NEW BUSINESS

**1. Approval – Purchase of Bottomlands-Parcel Adjacent to Chamber Building.**

**Explanation:** Administration is seeking Council approval to purchase the .62 acres of bottomlands adjacent to the Chamber building for \$15,900.

**2. Discussion/Ratification – Purchase, Sale and Development Agreement with Proxima.**

**Explanation:** Council will hold a discussion/ratification of Purchase, Sale and Development Agreement with the Proxima Group for the Jail and Waterfront properties jointly owned by Delta County and the City of Escanaba.

**3. Approval – Purchase Agreement/Land Contract with Proxima for Adjacent Properties.**

**Explanation:** Administration is seeking Council approval of a Purchase Agreement/Land Contract with Proxima for Adjacent Properties. Article X "ADJACENT PROPERTIES" in the Purchase, Sale and Development Agreement pertains to the old Commerce Center building, property and the contiguous property to the east. Development of this Phase will follow completion of Phase 1, the Jail and Waterfront development.

APPOINTMENTS

BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

ANNOUNCEMENTS

ADJOURNMENT

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Patrick S. Jordan', is written over a circular stamp.

Patrick S. Jordan  
City Manager

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, September 5, 2019**

The meeting was called to order by the Honorable Mayor Marc D. Tall at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Ronald J. Beauchamp, Ralph B. Blasier, Peggy O'Connell, and Michael R. Sattem

Absent: None

Also Present: City Manager Patrick S. Jordan, City Clerk Phil DeMay, Department Heads, media, and members of the public.

City Clerk DeMay led Council in the Pledge of Allegiance.

Sattem moved, O'Connell seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting minutes from August 15, 2019, and Special Meeting minutes from August 21, 2019, as submitted.

**ADJUSTMENTS TO THE AGENDA**

O'Connell moved, Beauchamp seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

**CONFLICT OF INTEREST DECLARATION** – None

**BRIEF PUBLIC COMMENT**

William A. Gasman – discussed New Business item 1 and the Recreational Marihuana Ordinance.

**PUBLIC HEARINGS**

**PH-1 Second Reading of Ordinance No. 1213, - An Ordinance To Amend Chapter V Dog Ordinance as Codified Under the Code of Ordinances.**

Administration requested the City Council to consider approval and adoption of Ordinance No. 1213 - An Ordinance to Amend Chapter V Dog Ordinance as Codified Under the Code of Ordinances.

This being a public hearing, Mayor Tall asked if there was any public comment.

Hearing no public comment, Mayor Tall closed the public hearing.

**PH-1** “By Council Member Sattem, seconded by Council Member O’Connell;

**Resolved**, That Ordinance No. 1213, An Ordinance to Amend Chapter V Animals as Codified Under the Code of Ordinances, given its public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter.”

Herewith Ordinance No. 1213 adopted by title:

**“AN ORDINANCE TO AMEND CHAPTER V ANIMALS AS CODIFIED UNDER THE  
CODE OF ORDINANCES”**

Full text in Ordinance Record “K”.

Upon a call of the roll, the vote was as follows:

Ayes: Sattem, O’Connell, Beauchamp, Blasier, Mayor Tall  
Nays: None

**RESOLUTION DECLARED ADOPTED.”**

**UNFINISHED BUSINESS**

**UB-1 Approval – Purchase Offer of a City-Owned Residential Lot.**

Davis Zubke sent a written offer of \$8,000 to purchase the city-owned, .92 acre residential parcel on 25th Place off Old State Road.

**UB-1** Blasier moved, Beauchamp seconded, to postpone the sale of the city-owned, .92 acre residential parcel on 25th Place off Old State Road until they come back with a better offer.

Upon a call of the roll, the vote was as follows:

Ayes: None  
Nays: O’Connell, Sattem, Mayor Tall  
Abstain: Blasier, Beauchamp

**MOTION FAILED.**

**UB-1** O’Connell moved, Blasier seconded, to approve the sale of the city-owned, .92 acre residential parcel on 25th Place off Old State Road for \$10,000.

Upon a call of the roll, the vote was as follows:

Ayes: O’Connell, Blasier, Beauchamp, Sattem, Mayor Tall

Nays: None

**MOTION CARRIED.**

**NEW BUSINESS**

**NB-1 Discussion and/or Direction on Recreational Marihuana Ordinance.**

City Council discussed the current Recreational Marihuana Ordinance and whether any changes were needed.

**NB-1** Blasier moved, O’Connell seconded, to remove the sunset clause from Ordinance No. 1200 (Temporarily Prohibit Marihuana Sales in the City of Escanaba).

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Mayor Tall  
Nays: Sattem, Beauchamp  
Abstain: O’Connell

**MOTION FAILED.**

**NB-2 Approval – Lease Agreement – Community Action Agency.**

Administration sought Council approval of an annual lease agreement between the City of Escanaba and the Community Action Agency for the Senior Center activities at the Catherine Bonifas Civic Center. Under the terms of the lease, the annual lease payment and the utility costs would remain the same.

**NB-2** Beauchamp moved, Sattem seconded, **CARRIED UNANIMOUSLY**, to approve an annual lease agreement between the City of Escanaba and the Community Action Agency for the Senior Center activities at the Catherine Bonifas Civic Center.

**NB-3 Approval – Traffic Signal Design Bid – Recreation.**

As part of the North City Limits Non-Motorized Pathway Project, traffic signal design services for US-2/41, M35 (North Lincoln Road) and Danforth Road intersection was required by MDOT. Administration sought Council approval to obtain Orchard, Hiltz and McCliment, Inc. (OHM) from Hancock, Michigan, for traffic signal design services in the amount of \$12,845.10.

**NB-3** O’Connell moved, Blasier seconded, to approve to obtain Orchard, Hiltz and McCliment, Inc. (OHM) from Hancock, Michigan, for traffic signal design services in the amount of \$12,845.10.

Upon a call of the roll, the vote was as follows:

Ayes: O’Connell, Blasier, Beauchamp, Sattem, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-4 Approval – Assessor Contract.**

Administration sought Council approval of Assessor Jim McNeil’s contract.

**NB-4** Sattem moved, O’Connell seconded, to approve Assessor Jim McNeil’s contract.

Upon a call of the roll, the vote was as follows:

Ayes: Sattem, O’Connell, Beauchamp, Blasier, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-5 Approval – CIPP Storm Sewer Lining Bid – DPW/Engineering.**

Bids for the 2019 CIPP Sewer Lining Project were solicited and were opened on August 27th. Four bids were received. The bids were split into two separate bids: storm sewer (Area 1) and sanitary sewer (Areas 2-5). The storm sewer portion is on North 20th Street from 3rd Avenue North to 6th Avenue North. Administration sought Council approval of the storm sewer portion of the 2019 CIPP Sewer Lining Project bid from Tunnel Vision Pipeline Services. Since final quantities are unknown, it was requested that the bid be approved for the unit prices as bid. This was a budgeted item and is under budget as bid.

**NB-5** Sattem moved, Blasier seconded, to approve of the storm sewer portion of the 2019 CIPP Sewer Lining Project bid from Tunnel Vision Pipeline Services for the unit prices as bid.

Upon a call of the roll, the vote was as follows:

Ayes: Sattem, Blasier, Beauchamp, O’Connell, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-6 Approval – CIPP Lining of Sanitary Sewer Main. – Wastewater.**

Administration sought Council approval to hire Tunnel Vision, of Escanaba, MI, to perform the Sanitary Sewer work in areas 2, 3, 4, & 5 as outlined in the attached proposal in a sum not to exceed \$435,160.65. Money was available and allotted for this type of work within the current budget.

**NB-6** O’Connell moved, Beauchamp seconded, to approve to hire Tunnel Vision, of Escanaba, MI, to perform the Sanitary Sewer work in areas 2, 3, 4, & 5 as outlined in the attached proposal in a sum not to exceed \$435,160.65.

Upon a call of the roll, the vote was as follows:

Ayes: O’Connell, Beauchamp, Blasier, Sattem, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-7 Approval – New Dump Truck with Plow Bid – Public Works.**

Administration sought Council approval to purchase a New Dump Truck with Plow from U.P. Truck Center of Quinnesec, MI, in the amount of \$186,014. This was a budgeted item.

**NB-7** Sattem moved, O’Connell seconded, to approve to purchase a New Dump Truck with Plow from U.P. Truck Center of Quinnesec, MI, in the amount of \$186,014.

Upon a call of the roll, the vote was as follows:

Ayes: Sattem, O’Connell, Beauchamp, Blasier, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-8 Approval – Traffic Control Orders (TCO) No.996, 997, 998, 999, 1000, 1001, 1002 & 1003.**

Administration sought Council approval of TCO’s No. 996, 997, 998, 999, 1000, 1001, 1002 & 1003. Traffic Control Orders expire 90 days from the filing date unless approved by Council. On August 20, 2019 the Traffic Safety Advisory

Committee met and has recommended City Council approval of TCO No. 996-1003. The Traffic Control Orders call for the following:

**No. 996** – Move the 25 mph zone from the 1100 block of Lake Shore Drive to the 1400 block of Lake Shore Drive to reduce the speed limit proceeding through Veterans Park.

**No. 997** – Placement of additional No Parking during school hours signs on the East/West side of North 19th Street near North 13th Avenue.

**No. 998** – Placement of additional No Parking during school hours signs on the North/South side of 13th Avenue North.

**No. 999** – Placement of additional No Parking Signs during school hours on the East and West side of N 16th Street near North 1st Avenue.

**No. 1000** – Placement of additional No Parking Signs during school hours on the North and South side of 1st Avenue North near 16th Street.

**No. 1001** – Placement of additional No Parking Signs during school hours on the East and West side of South 20th Street near 7th Avenue South and 6th Avenue South.

**No. 1002** – Placement of additional No Parking Signs during school hours on the North and South side of 7th Avenue South east of 20th Street.

**No. 1003** – Placement of additional No Parking during school hours signs on the south side of 6th Avenue South just east and west of 20th Street.

**NB-8** Blasier moved, O'Connell seconded, **CARRIED UNANIMOUSLY**, to approve of TCO's No. 996, 997, 998, 999, 1,000, 1001, 1002 & 1003.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, O'Connell, Beauchamp, Sattem, Mayor Tall

Nays: None

**MOTION CARRIED.**

**NB-9 Approval – Fire turnout gear purchase – Public Safety.**

Escanaba Public Safety would like to purchase 32 sets of fire turnout gear from Firstdue Fire Supply for the cost of \$96,534.08 which was the lowest bid. Any grant money applied for and awarded would be put towards the cost of the turnout gear. This was included in the 2019/2020 budget.

**NB-9** O’Connell moved, Beauchamp seconded, to approve to purchase 32 sets of fire turnout gear from Firstdue Fire Supply for the cost of \$96,534.08.

Upon a call of the roll, the vote was as follows:

Ayes: O’Connell, Beauchamp, Blasier, Sattem, Mayor Tall

Nays: None

**MOTION CARRIED.**

**APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES** – None

**BOARD, COMMISSION, AND COMMITTEE REPORTS**

Council Members reviewed City Board and Commission meetings each attended since the last City Council Meeting.

**GENERAL PUBLIC COMMENT**

William Gasman discussed the marihuana ordinance.

Kelly VanGinhoven thanked the Traffic Safety Board for all their hard work. Mrs. VanGinhoven discussed her denial of a DDA Board seat.

David Zubke thanked James McNeil and Terry Flower for all their help and hardwork.

**ANNOUNCEMENTS**

- Pulling for Honor – Looking for teams to pull a FedEx truck. Money raised will go to help the Honor Flight;
- Logging Expo;
- Fur Raiser October 24, 2019 at the Island Resort and Casino. Money raised to help the Animal Shelter;
- 906 Day Friday;
- Update on the Crossing Guards positions.

Hearing no further public comment, Sattem moved the Council adjourned at 8:08 p.m.



Respectfully submitted

Phil DeMay  
City Clerk

Approved: \_\_\_\_\_  
Marc D. Tall, Mayor

DRAFT

Agenda Item: NB-1  
Date: 9-19-19

## City Council Agenda Item Request

Date: September 11, 2019

Name: Patrick Jordan

Department: Administration

Item: Purchase of Bottomlands-Parcel Adjacent to Chamber building

Meeting date requested: September 19, 2019

**Explanation for request:**

We were notified by DEQ that the purchase price for the .62 acres of bottomlands is \$15,900. Public comment period is still open and the DEQ application process needs to reach completion, but approval for payment is our next step and I'd like to get it taken care of.

**From:** "Graf, Tom (EGLE)" <GRAFT@michigan.gov>  
**To:** James McNeil <jmcneil@escanaba.org>, Patrick Jordan <pjordan@escanaba.org>  
**Date:** 09/11/2019 08:06 AM  
**Subject:** Deed Purchase Price - 0.62-acre parcel

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Gentlemen –

The purchase price for the 0.62-acres of filled Lake Michigan public trust bottomlands is \$15,900. I still need to process the application so do not send any funds at this time. Hopefully the approvals should be granted by the end of October or beginning of November. I will contact you then.

Any questions, please contact me.

Tom Graf  
Water Resources Division  
Michigan Department of Environment, Great Lakes and Energy  
P.O. Box 30458  
Lansing, MI 48909-7958  
517 284-5561

Plat of Survey of  
**Part of Filled Unpatented Lake Michigan Bottom Lands**  
**Opposite, Adjacent and Contiguous to**  
**Part of Government Lot 2 &**  
**Part of Government Lot 2 of**  
**Section 29 T.39N., R.22W.**

City of Escanaba  
 Delta County, Michigan

LITTLE BAY DE NOC  
 OF LAKE MICHIGAN

MUNICIPAL DOCK  
 PARCEL

WEST LINE OF  
 BLOCK 3

KOBASIC PARCEL

WEST LINE OF  
 MUNICIPAL DOCK PARK  
 RECORDED IN LIBER  
 209 ON PAGE 638.

NORTH  
 3RD STREET  
 (100' R/W)

170.00'  
 ALLEY (20' R/W)

TRAVERSE LINE  
 0.62  
 ACRES

100.00' 70.00' 20.00'  
 S 00°05'21" W  
 N 89°54'39" W

1.32  
 ACRES  
 TOTAL

140.00' 140.00'  
 S 00°05'21" W

0.70  
 ACRES

100.00' 368.57'  
 S 89°54'39" E

SOUTH LINE OF  
 BLOCK 3

S 64°47'20" E  
 329.76'

161.00'  
 N 00°08'41" W

NORTH R/W LINE

SW CORNER OF  
 BLOCK 3 OF ORIGINAL  
 PLAT OF ESCANABA

LUDINGTON STREET  
 (100' R/W)

SW CORNER OF  
 MUNICIPAL DOCK PARCEL  
 RECORDED IN LIBER  
 209 ON PAGE 638.

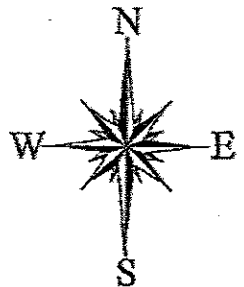
INTERSECTION OF NORTH  
 R/W LINE OF LUDINGTON S.  
 & A LINE 10.00' WEST OF  
 EAST R/W LINE OF SOUTH  
 2ND STREET EXTENDED NOR

SOUTH R/W LINE

SOUTH  
 2ND ST.

10.00'  
 N 00°08'41" W  
 1480.00' W

EAST R/W LINE  
 SOUTH 2ND STREET



SCALE: 1" = 80'

Agenda Item: NB-2  
Date: 9-19-19

## City Council Agenda Item Request

Date: September 12, 2019

Name: Patrick Jordan

Department: Administration

Item: Ratification of Purchase, Sale and Development Agreement with Proxima

Meeting date requested: September 19, 2019

**Explanation for request:**

Discussion and ratification of Purchase, Sale and Development Agreement with the Proxima Group for the Jail and Waterfront properties jointly owned by Delta County and the City of Escanaba.

## PURCHASE, SALE AND DEVELOPMENT AGREEMENT

THIS PURCHASE, SALE AND DEVELOPMENT AGREEMENT (“Agreement”), is made on or as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF ESCANABA, a municipality (“City”), and the COUNTY OF DELTA, a municipality (“County”) (City and County collectively “Municipality”) and PROXIMA MANAGEMENT GROUP L.L.C., an Indiana limited liability company (“Proxima”).

### WITNESSETH:

WHEREAS, in furtherance of the objectives of the Municipality, the Municipality is the owner of certain real property as described in Exhibit B-1 attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Municipality has been presented with a proposal to be undertaken by Proxima to develop the Property into a hotel; and

WHEREAS, Proxima is willing to cause certain Minimum Improvements to be constructed on the Property and Proxima will thereafter cause the same to be operated in accordance with this Agreement; and

WHEREAS, the Municipality is willing to provide certain incentives in consideration for Proxima’s obligations all pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Municipality believes that the development of the Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the Municipality and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

### ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Purchase, Sale and Development Agreement and all Exhibits and appendices hereto, as the same may be from time to time modified, amended or supplemented.

Municipality means the City of Escanaba and County of Delta collectively, or any successor to its functions.

Code means the Michigan Compiled Laws, 2019, as amended.

Commence Hotel Construction means to start building and improving the Property in conformity to the schedule for construction approved by the parties. Commencement Date means the date of this Agreement.

Closing means the closing of the real estate transfer of the Property to Proxima as further defined in Article IV which shall be in accordance with the Project Schedule as negotiated by the parties.

Environmental Claims means all claims for reimbursement, remediation, abatement, removal, clean up, contribution, personal injury, property damage or damage to natural resources made by any Governmental Authority or other Person arising from or in connection with the (a) presence or actual or potential spill, leak, emission, discharge or release of any Hazardous Substances over, on, in, under or from the Property, or (b) violation of any Environmental Laws with respect to the Property.

Environmental Laws means any applicable State and Federal laws which regulate (a) Hazardous Substances, pollution, contamination, radiation or the condition of any water, soil, sediment, air or other environmental media, or (b) the manufacture, generation, formulation, processing, use, treatment, handling, storage, disposal, distribution or transportation or an actual or potential spill, leak, emission, discharge, release or disposal of any Hazardous Substances, pollution, contamination or radiation into any water, soil, sediment, air or other environmental media, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (ii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (iii) the Federal Water Pollution Control Act, 33 U.S.C. § 2601 et seq., (iv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (v) the Clean Water Act, 33 U.S.C. § 1251 et seq., (vi) the Clean Air Act, 42 U.S.C. § 7401 et seq., and (vii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and similar state and local laws, as amended from time to time, and all regulations, rules and guidance issued pursuant thereto.

Environmental Liabilities means all liabilities pursuant to any Environmental Laws arising from or in connection with the ownership of the Property, demolition on the Property, excavation of the Property, or operation of the Hotel, including, without limitation, any (a) obligations to manage, control, contain, remove, remedy, respond to, clean up or abate any actual or potential spill, leak, emission, discharge or release of any Hazardous Substances, pollution, asbestos, contamination or radiation into any water, soil, sediment, air or other environmental media, whether or not located on the Property, and (b) all Liabilities with respect to the manufacture, generation, formulation, processing, use, treatment, handling, storage, disposal, distribution or transportation of any Hazardous Substances.

Funding Schedule means the funding options, methods, and requirements for funding the Project as agreed by the parties, which may include, but are not limited to, tax incentives, credits, grants, investments, refunds, discounts, loans, and other sources of funding, and attached as Exhibit F.

Hazardous Substances means any hazardous or toxic substances, materials or waste, whether in solid, semisolid, liquid or gaseous form, including, without limitation, asbestos, polychlorinated biphenyls, petroleum or petroleum by-products and any other material or substance which is defined as a "hazardous substance", "hazardous waste", "toxic waste" or "toxic substance" under any Environmental Laws.

Hotel Chain Selection means a selection of chains as agreed by the parties limited to those provided in Exhibit H: Selection of Chains.

Hotel Construction Plans means the plans, specifications, drawings and related documents reflecting the construction work to be performed by Proxima on the Property; the Hotel Construction Plans shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the Municipality as required by applicable Municipality codes.

Deed means the Warranty Deed given by the Municipality to Proxima for the Property in the form attached hereto as Exhibit G.

Minimum Improvements means the acquisition of the Property and construction of the hotel as further described in Exhibit B-2 and depicted in Exhibit B-3.

Mortgage means any mortgage or security agreement in which Proxima has granted a mortgage or other security interest in the Property, or any portion or parcel thereof, or any improvements constructed thereon.

Net Proceeds means any proceeds paid by an insurer to Proxima under a policy or policies of insurance required to be provided and maintained by Proxima, as the case may be, pursuant to Article VI of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Phase I means the first phase of development and operations on the Property and in the Municipality as detailed in this Agreement and its Exhibits.

Pre-Construction Work means preparation of plans and specifications, due diligence, pursuit of Municipality entitlements and approvals, debt and equity capital and Hotel Chain Selection and application, title and survey review, environmental studies, availability of utilities, geotechnical work and similar activities prior to the Developer actually Commencing Hotel Construction.

Project means the construction and operation of the Minimum Improvements on the Property as described in this Agreement.

Project Schedule means an outline of project expectations with an estimated timeline of actions for completion of Phase I, to be agreed upon by the parties and attached as Exhibit E.

Property means the parcel of land as provided in Exhibit B-1.

Property Purchase Price means the price for the purchase and sale of the Property set forth in Exhibit A.

Proxima means Proxima Management L.L.C., and its permitted successors and assigns.

Phase I Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit C and hereby made a part of this Agreement.

State means the State of Michigan.

Termination Date means the date of termination of this Agreement, as established in Section 13.8 of this Agreement.



Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, failure of funding to be fulfilled in a timely manner, litigation commenced by third parties, or the acts of any federal, State or local governmental unit, including that of the Municipality.

## ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the Municipality. The Municipality makes the following representations and warranties:

- a. The Municipality is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.
- b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Municipality is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.
- c. The Property is currently zoned to allow the construction and operation of the Minimum Improvements and is not precluded from the ability to obtain liquor licenses for the hotel, restaurants and bars located therein.
- d. There are no actions, suits or proceedings pending or threatened against or affecting the Municipality in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the Property or which in any manner raises any questions affecting the validity of the Agreement or the Municipality's ability to perform its obligations under this Agreement.
- e. Subject to the prior satisfaction of the conditions precedent set forth herein, the Municipality will use commercially reasonable efforts to facilitate Proxima and execute all documents necessary to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.
- f. The Municipality has not received any notice from any local, State or federal official that the activities of Proxima with respect to the Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which Proxima has previously been notified in writing). The Municipality is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Property, and the Municipality is not currently aware of any violation of any local, State or federal environmental

law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

g. The Municipality will cooperate fully with Proxima in resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements.

Section 2.2. Representations and Warranties of Proxima. Proxima makes the following representations and warranties:

a. Proxima Management L.L.C. is a Indiana limited liability company duly organized and validly existing under the laws of the State of Indiana, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed and delivered by Proxima and, assuming due authorization, execution and delivery by the Municipality, is in full force and effect and is a valid and legally binding instrument of Proxima enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the governing documents of Proxima or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Proxima is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits or proceedings pending or threatened against or affecting Proxima in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Proxima or which in any manner raises any questions affecting the validity of the Agreement or Proxima's ability to perform its obligations under this Agreement.

e. Subject to the prior satisfaction of the conditions precedent set forth herein, Proxima will cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement, and all local, State, and federal laws and regulations.

f. Subject to the prior satisfaction of the conditions precedent set forth herein, Proxima will use commercially reasonable efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

### ARTICLE III. CONDITIONS PRECEDENT TO AGREEMENT

Section 3.1. Conditions Precedent to Agreement during Pre-Construction Work. It is recognized and agreed that the ability of the Proxima to perform the obligations described in this Agreement, is subject to each of the following conditions precedent:

- a. The representations and warranties made by the Municipality in Section 2.1 shall be true and correct as of each action in the Project Schedule and Funding Schedule and with the same force and effect as if made at such date;
- b. The completion and satisfaction of certain separate Municipality Council actions and all required legal proceedings to approve any funding for Pre-Construction Work as identified in the Funding Schedule;
- c. The Municipality is in material compliance with all of the terms of this Agreement; and
- d. There has not been a substantial change for the worse in the financial resources and ability of the Municipality which change(s) make it likely, in the reasonable judgment of Proxima, that the Municipality will be unable to fulfill its covenants and obligations under this Agreement;

Section 3.2. Conditions Precedent to Proceeding upon Commencing Hotel Construction. After Pre-Construction Work and the approvals and obligations of Proxima associated with same, it is recognized and agreed that the ability of Proxima to perform the obligations described in this Agreement is subject to, each of the following conditions precedent:

- a. The Municipality shall have approved all applicable zoning, subdivision, or platting of the Property necessary for development and construction of the Minimum Improvements;
- b. Proxima shall have furnished the Municipality with evidence, in a form satisfactory to the Municipality, that Proxima has contractual commitments for construction of the Minimum Improvements;
- c. Proxima shall have furnished the Municipality with evidence, in a form satisfactory to the Municipality, that Proxima has commitments (such as loan commitments, letters of intent or signed term sheets) from its lenders and investors, for funds that are sufficient to complete the construction of the Minimum Improvements; and
- d. Municipality agrees to transfer the Property to Proxima in a condition where it may be financed, except as provided in Section 4.12. Environmental Matters.

### ARTICLE IV. TRANSFER OF PROPERTY TO PROXIMA

Section 4.1. Conditions Precedent to Transfer. The Municipality's obligation to transfer title and possession of the Property to Proxima at the Closing, and Proxima's obligation to pay the Property Purchase Price, shall be subject to satisfaction of the following conditions precedent:

- a. The Parties negotiating in good faith to provide all necessary easements, such as utility easements, over and through the Property, including without limitation, easements as provided in Exhibit I;

- b. The Property will be in compliance with all applicable zoning, subdivision, or platting of the Property necessary for development and construction of the Minimum Improvements; and
- c. The Parties are in material compliance with all of the terms of this Agreement.

Section 4.2. Transfer of Property. For the Property Purchase Price (as provided in Exhibit A) or similar and other consideration including the obligations being assumed by Proxima hereunder, the Municipality agrees to sell, and Proxima agrees to purchase, the Property, together with all improvements thereon, subject to easements and appurtenant servient estates and any zoning and other ordinances. Such transfer shall occur under the terms and conditions of this Agreement and following all process required by the Municipality and State law.

Section 4.3. Property Purchase Price. The purchase price for the Property shall be as stated in Exhibit A or similar and other consideration (the "Property Purchase Price"). Proxima shall pay the Property Purchase Price to the Municipality by check or wire transfer at the Closing (subject to prorations, reductions and credits as provided below).

Section 4.4. Real Estate Taxes and Special Assessments.

- a. The Property is currently tax-exempt while owned by the Municipality. Proxima shall be responsible for all taxes post-Closing, if any; and
- b. All special assessments, if any, assessed post-Closing shall be paid by the party specified in the Funding Schedule.

Section 4.5. Right of Reversion. Notwithstanding anything herein to the contrary, and as additional security for Proxima's obligation to Commence Hotel Construction, the Deed conveying the Property to Proxima shall contain a right of reversion in all of the Property ("Municipality's Reversionary Right" or "Reversionary Right"), which may be exercised by the Municipality if the following conditions occur:

- a. Proxima does not Commence Hotel Construction within the time period set forth in the Project Schedule;
- b. An Event of Default has occurred by Proxima, which is not cured within the time period allowed by Section 12; or
- c. In the event Proxima is unable to obtain an approval of financing sufficient to cover the Property Purchase Price and Minimum Improvements.

If any of the above conditions occur, then the County and City shall both automatically have the Municipality's Reversionary Right to reacquire title to the Property that each respectively contributed, as defined in Exhibit B-1. To exercise the Municipality's Reversionary Right described herein, both the County and City must provide written notice to Proxima (or its permitted successors, assigns or transferees) within sixty (60) days of Proxima's failure under this Agreement, but in any event prior to Proxima satisfying the conditions set forth in Section 4.5, and record such notice with the County Recorder of deeds, in which case the title to the Property shall automatically revert to the County and City, respectively, as of the date of the

recording of the notice. Upon requests from the County and City, Proxima shall take all reasonable steps to ensure the County and City acquire marketable title to the Property through its exercise of its rights under this Section within ninety (90) days of each Municipality's demand, including without limitation, the execution of appropriate deeds and other documents. This Section shall survive the Closing.

Notwithstanding anything to the contrary herein, the Municipality's Reversionary Right with respect to the Property shall terminate and be of no further force and effect if and when Proxima (or its permitted successors, assigns or transferees) has Cominenced Hotel Construction on the Property. Both the County and City agree to execute any documents reasonably requested by Proxima or its lender to evidence any whole or partial termination of the Municipality's Reversionary Right as set forth herein.

Section 4.6. Risk of Loss and Insurance on Property. The Municipality shall bear the risk of loss or damage to the Property prior to the Closing. The Municipality agrees to maintain existing insurance, if any, and Proxima may purchase additional insurance. In the event of substantial damage or destruction prior to the Closing, the parties may agree to allow the Municipality to use insurance proceeds to rebuild the Property such that this Agreement shall continue, otherwise Proxima may elect to terminate this Agreement. Except as provided in this Agreement, Proxima shall bear the risk of loss or damage to the Property after the Closing.

Section 4.8. Possession; Closing. Upon the obligations of each party hereunder being met, including the execution of all documents required hereunder, the Closing shall take place in accordance with the Project Schedule. This purchase shall be considered "Closed" upon the delivery to Proxima of a duly executed warranty deed for the Property in the form of deed attached hereto as Exhibit G. All parties and individual signatories hereto further agree to make, execute and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 4.9. Fixtures. Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached.

Section 4.10. Abstract and Title. The Municipality shall provide an abstract for the Property, continued through a date no more than forty-five (45) days prior to the Closing, and deliver it to Proxima for examination, which shall become the property of Proxima upon the Closing. It shall show marketable title in the Municipality in conformity with this Agreement, State law, and the title standards of the State and this Agreement. The Municipality shall make reasonable efforts to promptly perfect title.

Section 4.11. Survey and Platting. Municipality shall be responsible for any survey or platting work necessary to perfect a title defect or convey the Property to Proxima. Both City and County shall coordinate with each other and the State in order to transfer the Property to Proxima for the single Property Purchase Price and free and clear of any lien or encumbrances or reversions other than expressly agreed upon in this Agreement.

Section 4.12. Environmental Matters.

a. Subject to Section 4.12(b), at the Closing, Municipality shall transfer the Property to Proxima in compliance with all Environmental Laws and free from all Environmental Claims and Environmental Liabilities. Municipality shall reimburse Proxima or pay for all costs associated with phase of environmental studies, as stated in the Funding Schedule. Municipality shall provide to Proxima and record all documents required by law reflecting that to the best of the Municipality's knowledge, without inquiry or investigation, there are no known (1) wells; (2) solid waste disposal sites; (3) Hazardous Substances; (4) underground storage tanks; or (5) private sewage disposal systems located on the Property.

b. Proxima shall purchase "AS-IS" the ownership and liabilities, including but not limited to, environmental conditions, of the former jail building located on the Property as further described in Exhibit B-4 ("Former Jail Building"); however the purchase of the Former Jail Building, and acceptance of ownership and liabilities thereto, by Proxima is contingent on Proxima's ability to obtain a financing commitment from the Municipality or the State or other governmental agency sufficient to satisfy all costs and liabilities related to and associated with the Former Jail Building, including but not limited to, the Environmental Phases, demolition of the Former Jail Building, risk assessment and insurance for current and future liabilities of any Environmental Liabilities or Hazardous Substances, and other such costs and expenses for the protection of Proxima, its affiliates, assigns, subcontractors, employees, any other agents, and any third-parties. Ownership of the Former Jail Building is subject to Section 4.5 regarding the City and County Right of Reversion.

Except as provided in this Section 4.12(b), Municipality agrees to indemnify, release, defend and hold harmless Proxima for all Environmental Claims and Environmental Liabilities, and damages, costs, and attorneys' fees relating to the Property that arise after the date of the Closing (which parties agree in the Funding Schedule), as well as enforcement of the indemnification. This Section shall survive the Closing.

Section 4.13. Certification. Proxima and Municipality each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

Section 4.14. Easement Agreement. At the Closing, Proxima shall enter into the Easement Agreement attached hereto as Exhibit I (the "Easement Agreement") for the benefit of the Municipality. The size, location and legal description of the Easement Parcel (as that term is

defined in the Easement Agreement) shall be mutually agreed upon by the parties prior to Closing. All survey costs, engineering costs, consultant fees, application fees, permits fees, as well as the installation and perpetual maintenance of improvements constructed within Easement Parcel for the benefit and use of the Municipality shall be paid for by the Municipality, as required pursuant to the Easement Agreement.

#### ARTICLE V. CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 5.1. Construction of Minimum Improvements. Subject to satisfaction of the conditions precedent set forth herein, Proxima agrees that it will cause the Minimum Improvements to be constructed on the Property in conformance with the Hotel Construction Plans submitted to the Municipality. Proxima agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Hotel Construction Plans. Proxima shall prepare the hotel budget and subject to the other provisions hereof, shall have total and sole approval rights over the inclusion of line items and the amounts thereof. To the best of Proxima's ability, Construction of the Minimum Improvements shall commence and be completed reasonably within the time limits set forth in the Project Schedule and in accordance with the Hotel Construction Plans.

Section 5.2. Hotel Construction Plans. Proxima shall cause the Hotel Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by the Municipality as provided in this Section 5.2. The Hotel Construction Plans shall be in conformity with this Agreement and all applicable federal, State and local laws and regulations. The Municipality shall approve the Hotel Construction Plans in writing if: (i) the Hotel Construction Plans conform to the terms and conditions of this Agreement; (ii) the Hotel Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations, and Municipality permit requirements; (iii) the Hotel Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (iv) no Event of Default under the terms of this Agreement has occurred; provided, however, that any such approval of the Hotel Construction Plans pursuant to this Section 5.2 shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the Municipality with respect to any building, fire, zoning or other ordinances or regulations of the Municipality, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Hotel Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the Municipality for the Property and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Hotel Construction Plans, if such site plans are approved by the building official.

Approval of the Hotel Construction Plans by the Municipality shall not relieve Proxima of any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State and local laws, ordinances and regulations.

Section 5.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Proxima shall cause construction of the Minimum Improvements to be undertaken and completed: (i) in accordance with the Project Schedule; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements shall be in conformity with the Hotel Construction Plans approved by the building official or any amendments thereto as may be approved by the building official.

Proxima agrees that it shall permit designated representatives of the Municipality, upon reasonable written notice, to enter upon the Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

Section 5.4. Phase I Certificate of Completion. Upon written request of Proxima after issuance of an occupancy permit for the Minimum Improvements, the Municipality will furnish Proxima with a Phase I Certificate of Completion for the Minimum Improvements in recordable form, in substantially the form set forth in Exhibit C attached hereto. Such Phase I Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement solely with respect to the obligations of Proxima to construct the Minimum Improvements.

The Phase I Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property at the expense of the party as specified in the Funding Schedule. If the Municipality shall refuse or fail to provide a Phase I Certificate of Completion in accordance with the provisions of this Section 5.4, the Municipality shall, within ten (10) calendar days after written request by Proxima, provide Proxima with a written statement indicating in adequate detail in what respects Proxima has failed to complete the applicable portion of the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts will be necessary, in the reasonable opinion of the Municipality, for Proxima to take or perform in order to obtain such Phase I Certificate of Completion.

## ARTICLE VI. INSURANCE ON MINIMUM IMPROVEMENTS

### Section 6.1. Insurance Requirements.

a. Proxima will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and at the request of the Municipality, furnish the Municipality with the declaration page of policy on):

i. Builder's risk insurance, written on the so-called "Builder's Risk- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance)



with limits against bodily injury and property damage of the minimum amounts required by a lender for each occurrence. The Municipality shall be named as an additional insured for the Municipality's liability or loss arising out of or in any way associated with the project and arising out of any act, error, or omission of Proxima, its directors, officers, shareholders, contractors, and subcontractors or anyone else for whose acts the Municipality may be held responsible (with coverage to the Municipality at least as broad as that which is provided to Proxima and not lessened or avoided by endorsement).

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, if required by the funding acquired by Funding Schedule, then Proxima shall maintain or cause to be maintained, at its cost and expense (and at the request of the Municipality, furnish the Municipality with the declaration page of policy on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the value of the Minimum Improvements.

ii. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Property, in the minimum amount as required by a lender for each occurrence and for each year.

iii. Such other insurance, including workers' compensation insurance respecting all employees of Proxima, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Proxima may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article VI to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Proxima, which are authorized under the laws of the State to assume the risks covered thereby. Unless otherwise provided in this Article VI, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to Municipality at least ten (10) days before the cancellation or modification becomes effective. In lieu of separate policies, Proxima may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein.

## ARTICLE VII. FURTHER COVENANTS

Section 7.1. Maintenance of Properties. Proxima will maintain, preserve, and keep its properties within the Municipality (whether owned in fee or a leasehold interest), including but not limited

to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions pursuant to applicable law and in its reasonable discretion.

Section 7.2. Maintenance of Records. Proxima will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Proxima and relating to the Minimum Improvements in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and Proxima will provide reasonable protection against loss or damage to such books of record and account.

Section 7.3. Compliance with Laws. Proxima will comply with all State, federal and local laws, rules and regulations relating to the Property and Minimum Improvements.

Section 7.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Proxima shall not discriminate against any applicant, employee or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Proxima shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 7.5. Available Information. Prior to issuance of Phase I Certificate of Completion, within thirty (30) days written request, Proxima shall provide the Municipality with copies of information requested by Municipality that are related to this Agreement so that Municipality can determine compliance with this Agreement.

Section 7.6. Employment. Proxima shall make a good faith effort to employ or cause to be employed hires local to the Municipality during the construction and operation of the Hotel.

Section 7.10. Real Property Taxes. Proxima, or its successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Property acquired and owned or leased by them and pursuant to the provisions of this Agreement. Until Proxima's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Proxima shall be responsible for all assessments and taxes, subject to agreements by the parties in the Funding Schedule.

Section 7.12. Municipality Covenants. The Municipality covenants and agrees as follows:

- a. The Municipality will in good faith timely pursue the completion and satisfaction of all Municipality actions and all required legal proceedings necessary for the Municipality to fulfill the requirements as provide in the Funding Schedule to be determined by the parties;
- b. Prior to the Closing, the Municipality will in good faith pursue final approval of its any funds or grants or tax credits or other financial incentives as soon as it is available from the State; and

c. Prior to the Closing, Municipality will in good faith work with Proxima to resolve all applicable zoning, subdivision, or platting of the Property necessary for development and construction of the Minimum Improvements.

d. For a period of no less than six (6) months after the issuance of the Phase I Certificate of Completion, and in furtherance of the financial ability to being and the successful operation of the Project and the general welfare of the Municipality, the Municipality may enact a resolution to not permit the development, construction, and/or the operation of a Hotel or Motel or other lodging competitor to Proxima EXCEPT (i) current operating Hotels or Motels or other lodgings, such as House of Ludington, located at 223 Ludington St, Escanaba, MI 49829, or (ii) current negotiations regarding development, construction, and/or the operation of a Hotel or Motel or other lodging competitor, or (iii) expansion of current operating Hotels or Motels or other lodgings. To the extent permitted within the boundaries of the county by the County, and to the extent permitted within the boundaries of the city by the City, this covenant shall apply to the geographical area that includes the area within an eight (8) miles radius of the exterior boarder of the Property on all sides. This Section 7.12(d) is subject to the maximum amount of time and geography permitted by resolution or ordinance of the City or other governing entity.

#### ARTICLE VIII. ASSIGNMENT AND TRANSFER

Section 8.1. Status of Proxima; Transfer of Substantially All Assets; Assignment. As security for the obligations of Proxima under this Agreement, Proxima represents and agrees that, prior to the Termination Date, Proxima will maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee has acquired the Property through foreclosure; or (ii) the transferee is an affiliated entity (partnership, corporation, limited liability company or individual) that assumes in writing all of the future obligations of Proxima under this Agreement with prior written notice to Municipality. In the event that Proxima wishes to assign this Agreement to an affiliated entity, Municipality agrees to execute necessary amendments or assignments of this Agreement to accommodate the assignment and to provide for the assumption of all future Proxima obligations under this Agreement.

#### ARTICLE IX. LEASED SPACE

Section 9.1. Leased Space. In contemplation and for adequate consideration provided in this Agreement, City hereby irrevocably leases Proxima the building and premise around the building located at 230 Ludington St, Escanaba, MI 49829 (the "Leased Space") during the term of this Agreement. City will continue to maintain the utilities and any liens against the Leased Space. Proxima will maintain the interior of the Leased Space as a habitable space, and will not make any major repairs, alterations, additions, or improvements to the Leased Space without the prior written consent of the City. The City shall furnish the utilities and expenses regarding liens or mortgages on the Leased Space. Proxima shall not cause any liens or mortgages to be placed on the Leased Space without prior written consent of the City. Proxima shall comply with all rules, regulations, ordinances codes and laws of all governmental authorities having jurisdiction over

the premises. Proxima shall not sublet or assign the Leased Space nor allow any other person or business to use or occupy the Leased Space without the prior written consent of the City, which consent may not be unreasonably withheld.

#### ARTICLE X. LAND CONTRACT FOR ADJACENT PROPERTIES

Section 10.1. Land Contract for Adjacent Properties. Proxima shall purchase and develop the Municipality's right, title, and fee simple interest in properties adjacent to the Property owned by the Municipalities between the water's edge and Ludington Street and between the water's edge and 3rd street ("Adjacent Property(ies)") pursuant to the terms of a land contract as provided in Exhibit J: Land Contract for Adjacent Property, incorporated herein ("Land Contract"). In the event that there is a conflict between the Land Contract and this Agreement, this Agreement shall prevail.

#### ARTICLE XI. INDEMNIFICATION

Section 11.1. Release and Indemnification Covenants. Each party as an Indemnifying Party agrees to protect and defend the other parties as the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any material breach of any agreement or condition of this Agreement by the Indemnifying Party; or (ii) any negligence, willful misrepresentation, willful or wanton misconduct, or any unlawful act by the Indemnifying Party; or (iii) negligence of the Indemnifying Party.

#### ARTICLE XII. DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement by a party ("Defaulting Party"):

- a. Subject to Unavoidable Delay, failure of either party to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement or the Project Schedule or the Funding Schedule;
- b. The holder of any Mortgage on the Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;
- c. Either party:
  - i. files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or
  - ii. admits in writing its inability to pay its debts generally as they become due; or

iii. is adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the bankrupt or insolvent party as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the bankrupt or insolvent party, or part thereof, shall be appointed in any proceedings brought against the bankrupt or insolvent party, and shall not be discharged within ninety (90) days after such appointment, or if the bankrupt or insolvent party shall consent to or acquiesce in such appointment; or

d. Any representation or warranty made by a party in this Agreement or in any written statement or certificate furnished by a party pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any demonstrably material respect on or as of the date of the issuance or making thereof.

The occurrence of any of the foregoing events shall constitute an "Event of Default" hereunder only after a party has given forty-five (45) days' written notice to the Defaulting Party of the default, but only if the default has not been cured to the reasonable satisfaction of the other parties within said forty-five (45) days, or if the default cannot be reasonably cured within forty-five (45) days and the Defaulting Party does not provide assurances reasonably satisfactory to the other parties that the default will be cured as soon as reasonably possible.

Section 12.2. Remedies on Default. Whenever any Event of Default referred to in Section 12.1 of this Agreement occurs and is continuing following the cure period set forth above, the other parties may take any one or more of the following actions against the Defaulting Party:

- a. The party may suspend its performance under this Agreement until it receives assurances from the Defaulting Party, deemed adequate by the receiving party, that the Defaulting Party will cure the default and continue its performance under this Agreement;
- b. The Defaulting Party may terminate this Agreement; or
- c. The other parties may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Defaulting Party, as the case may be, under this Agreement.

Section 12.3. No Remedy Exclusive. No remedy herein is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 12.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be

limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 12.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Each party hereto shall pay for their respective legal, administrative, and other costs incurred in connection with the negotiation, drafting, and authorization of this Agreement; and

b. Whenever any Event of Default occurs and either party shall employ attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Defaulting Party, the Defaulting Party agrees that it shall, on demand therefor, pay to the other parties the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the other parties in connection therewith.

ARTICLE XIII. GENERAL PROVISIONS

Section 13.1. Conflict of Interest. Municipality represents and warrants that, to their best knowledge and belief after due inquiry, no officer or employee of the party, or their designees or agents, nor any consultant or member of the governing body of the Municipality, and no other public official of the Municipality who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 13.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address of the parties as provided in Exhibit A.

Section 13.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 13.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 13.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Michigan.

Section 13.6. Entire Agreement. This Agreement and the Exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. However, all parties understand and agree this Agreement and Exhibits hereto shall be further contemplated,

negotiated, and amended by the parties in subsequent writings signed by all parties hereto, which email may suffice.

Section 13.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 13.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after the Termination Date as stated in the Project Schedule, unless terminated earlier under the provisions of this Agreement.

Section 13.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the parties by virtue hereof. The Municipality shall pay for all costs of recording.

Section 13.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed and delivered in its name by a duly authorized officer or representative.

PROXIMA:  
PROXIMA MANAGEMENT L.L.C.,  
an Indiana limited liability company ("Proxima")

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

CITY:  
CITY OF ESCANABA, a municipality ("City")

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

COUNTY  
COUNTY OF DELTA, a municipality ("County")

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



**SCHEDULE OF EXHIBITS**

EXHIBIT A: TERMS OF AGREEMENT

EXHIBIT B-1: LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B-2: DESCRIPTION OF MINIMUM IMPROVEMENTS

EXHIBIT B-3: SITE PLANS, FLOOR PLANS, AND RENDERINGS OF MINIMUM IMPROVEMENTS (Representative only; see Hotel Construction Plans for specifics)

EXHIBIT B-4: FORMER JAIL BUILDING

EXHIBIT C: PHASE I CERTIFICATE OF COMPLETION

EXHIBIT D: MEMORANDUM OF AGREEMENT

EXHIBIT E: FUNDING SCHEDULE

EXHIBIT F: PROJECT SCHEDULE

EXHIBIT G: WARRANTY CLAIM DEED FOR PROPERTY

EXHIBIT H: SELECTION OF CHAINS

EXHIBIT I: EASEMENT AGREEMENT

EXHIBIT J: PURCHASE, SALE, AND DEVELOPMENT OF ADJACENT PROPERTY TERMS

EXHIBIT A: TERMS OF AGREEMENT

**Property Address:** 111 North 3rd Street, Escanaba, Michigan 49829

**Property Purchase Price:** \$ 23,000.00 plus reasonable expenses associated therewith

**Address for Notice:**

PROXIMA MANAGEMENT GROUP L.L.C. ("Proxima")

CITY OF ESCANABA ("City")

COUNTY OF DELTA ("County")

**EXHIBIT B-1: LEGAL DESCRIPTION OF PROPERTY**

(the exact legal description shall be determined after all necessary surveys, public approvals and negotiations with the developer, but is expected to be some portion of the description set forth in this Exhibit)

EXHIBIT B-2: DESCRIPTION OF MINIMUM IMPROVEMENTS

Minimum Improvements means the construction of a

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EXHIBIT B-3: SITE PLANS, FLOOR PLANS, AND RENDERINGS OF MINIMUM IMPROVEMENTS (Representative only; see Hotel Construction Plans for specifics)

EXHIBIT B-4: FORMER JAIL BUILDING

EXHIBIT C: PHASE I CERTIFICATE OF COMPLETION

WHEREAS, the CITY OF ESCANABA, a municipality ("City"), and the COUNTY OF DELTA, a municipality ("County") (City and County collectively "Municipality") and PROXIMA MANAGEMENT L.L.C., an Indiana limited liability company ("Proxima") did on or about the \_\_\_\_ day of \_\_\_\_\_, 2019, make, execute and deliver, each to the other, a Purchase, Sale and Development Agreement (the "Agreement"), wherein and whereby Proxima agreed, in accordance with the terms of the Agreement to develop certain real property located within the Municipality.

The Hotel Property is described in the Agreement with legal description provided in Exhibit B-1 of the Agreement (the "Hotel Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Hotel Property, and obligated Proxima to construct certain Minimum Improvements in accordance with the Agreement (as defined therein); and

WHEREAS, Proxima has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the Municipality to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Proxima and its successors and assigns, to construct the Minimum Improvements on the Hotel Property within Phase I have been completed and performed by Proxima and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Delta County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Hotel Property for Phase I.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

[Remainder of page intentionally left blank; signature page follows]

EXHIBIT D: MEMORANDUM OF AGREEMENT

WHEREAS, the CITY OF ESCANABA, a municipality ("City"), and the COUNTY OF DELTA, a municipality ("County") (City and County collectively "Municipality") and PROXIMA MANAGEMENT L.L.C., an Indiana limited liability company ("Proxima") did on or about the \_\_\_\_ day of \_\_\_\_\_, 2019, make, execute and deliver, each to the other, a Purchase, Sale and Development Agreement (the "Agreement"), wherein and whereby Proxima agreed, in accordance with the terms of the Agreement to develop certain real property located within the Municipality.

The Hotel Property is described in the Agreement with legal description provided in Exhibit B-1 of the Agreement (the "Hotel Property"); and

WHEREAS, the Municipality and Proxima desire to record a Memorandum of Agreement referring to the Hotel Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Hotel Property and the improvements located and operated on such Hotel Property.
2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement made a part hereof by reference, and that anyone making any claim against any of said Hotel Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.
3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk.

IN WITNESS WHEREOF, the City and Proxima have executed this Memorandum of Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2019.

[Remainder of page intentionally left blank; signature page follows]



## EXHIBIT E: FUNDING SCHEDULE

This section will discuss the method and assumptions related to the Funding Schedule. In addition, the section will include the assumptions and estimated total amounts for the Funding Schedule as they are related to Project Milestones. These estimates are subject to Section 13.6, which shall be further contemplated, negotiated, and amended by the parties in subsequent writings signed by all parties hereto, which email may suffice.

### Funding Schedule Assumptions

Proxima Management Group LLC (“Proxima”) has a proven track record in structuring complicated partnerships and bring necessary capital to the table. Proxima has the financial strength to bring transactions to a successful closing; partially attributed to strong, long-standing relationships with banks, equity partners, and proven track record, as evidenced in Proxima’s extensive résumé of successfully completed projects.

Proxima understands the importance of open communication and transparency when it comes to these kinds of partnerships. As such, Proxima works closely with city officials and municipalities to ensure the key objectives and goals of all involved are met. Proxima’s financing strategy will consist of a combination of traditional lender financing, grants, loan participation, and internal equity (IE) contributed by our investors.

Proxima would procure debt financing from conventional sources (i.e. local banks or other lending institutions that have lent Proxima funding in past projects). Understanding the importance of transparency, Proxima typically shares its financial projections, including proformas, with its lending partners. Proxima would also work with the Michigan Economic Development Corporation (MEDC), United States Department of Agriculture (USDA), and Michigan Department of Environment, Great Lakes, and Energy (EGLE).

### Estimated Total Amounts

Table 1 provides the estimated amounts for the Funding Schedule as described are related to Project Milestones and the anticipated funding source. These estimates are subject to Section 13.6 of the Agreement, which shall be further contemplated, negotiated, and amended by the parties in subsequent writings signed by all parties hereto, which email may suffice.

*Table 1: Estimated costs associated with the proposal*

Project Milestone	Description	Sources	Cost (Estimated Dollars)
Acquisition of Former Jail Building	See Exhibit A	IE	See Exhibit A

Phase I: Due Diligence	Activities include top level design of site. Marketing, soil, engineering, and environmental studies to further refine the Phase I and Phase II cost estimates detailed design.	MEDC EGLE IE	\$350,000.00
Phase I: Closing	Cost to construct the hotel	MEDC EGLE USDA IE	\$13,000,000.00
Phase II: Closing	Cost to construct the lofts and commercial retail	MEDC EGLE USDA IE	\$5,000,000.00
Acquisition of Phase III property	Acquisition of adjacent property to the east	IE	TBD

**EXHIBIT F: PROJECT SCHEDULE**

The project is further decomposed into three phases: Phase I includes the demolition of the Former Jail Building and the construction of a hotel; Phase II include the development of a commercial retail space and lofts; Finally Phase III serves as a planning package for the additional adjacent land.

The time frames in the charts and graphs below are estimates based on actuals from past projects, are subject to Section 13.6 of the Agreement, which shall be further contemplated, negotiated, and amended by the parties in subsequent writings signed by all parties hereto, which email may suffice.

Phase I: This phase includes the completion of the RFQ process, the acceptance of this, the Purchase Sale and Development Agreement, the demolition of the old Former Jail Building, and the development of a hotel.

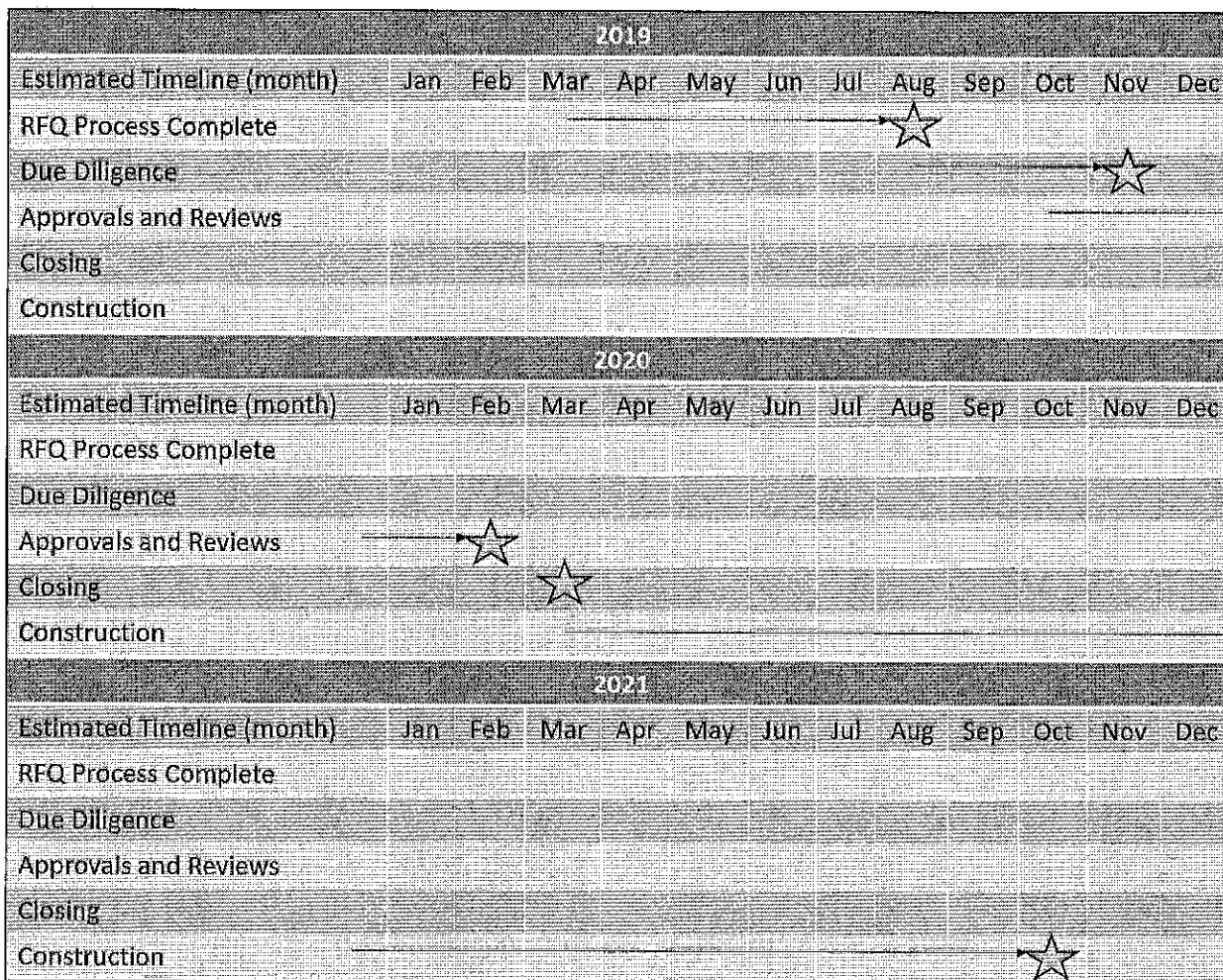


Figure 1: Estimated timeline for Phase I based on past similar projects

Table 2: Break down of the Phase I timeline with dependencies

Phase Milestone	
RFQ Process Complete	Precondition: Not applicable
	Postcondition: RFQ response selected and the Purchase Sale and Development Agreement approved by City of Escanaba and Delta County
	Estimated duration (months): 5
Due Diligence	Precondition: Predevelopment funds (MEDC, EGLE, and developer capital) allocated to fund environmental, geotechnical, and market studies. Maximum amount of time and geography under Section 7.12(d) permitted by resolution or ordinance of the City or other governing entity.
	Postcondition: Environmental liabilities understood and can be estimated. Site boundary and geological makeup understood well enough to begin design and update the financial model for project.
	Estimated duration (months): 4
Approvals and Reviews	Precondition: Due Diligence completed
	Postcondition: Design completed, and approved by municipality, hotel flag selected, and construction financing secured.
	Estimated duration (months): 5
Closing	Precondition: Approvals and Reviews complete
	Postcondition: Construction financing approved and construction fully funded
	Estimated duration (months): 1
Construction	Precondition: Closing complete
	Postcondition: Demolished Former Jail Building, and hotel built, and hotel open for business.
	Estimated duration (months): 18
Stabilized in local market	Precondition: Construction complete
	Postcondition: Financially stabilized in market
	Estimated duration (months): 36

Phase II: This phase does include the completion of the RFQ process, and does not include a due diligence milestone since it is completed in Phase I for both phases. This phase does include the development of the Lofts and commercial retail space.

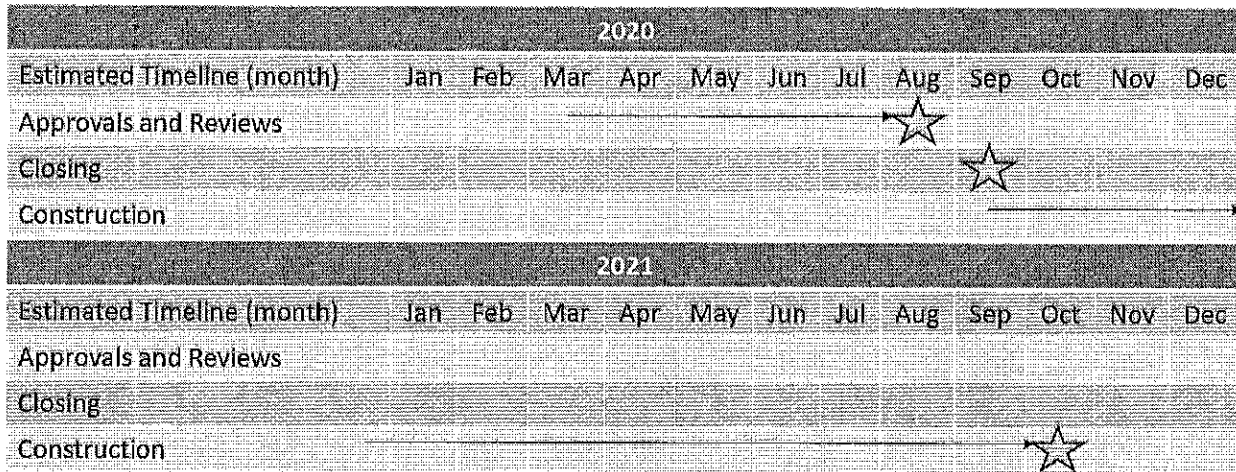


Figure 2: Estimated timeline for Phase II based on past similar projects

Table 3: Break down of the Phase II timeline with dependencies

Phase Milestone	
Approvals and Reviews	Precondition: Due Diligence completed from Phase I
	Postcondition: Design completed, approved by municipality, and construction financing secured.
	Estimated duration (months): 5
Closing	Precondition: Approvals and Reviews complete
	Postcondition: Construction financing approved and construction fully funded
	Estimated duration (months): 1
Construction	Precondition: Closing complete
	Postcondition: Lofts and Commercial retail space open for business.
	Estimated duration (months): 14
Stabilized in local market	Precondition: Construction complete
	Postcondition: Financially stabilized in market
	Estimated duration (months): 24

EXHIBIT G: WARRANTY CLAIM DEED FOR PROPERTY

*[Attached on the following page.]*

WARRANTY DEED

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, the CITY OF ESCANABA, a Michigan municipality, whose office of [insert office] address is [address of city] (“Grantor”), conveys and warrants to PROXIMA MANAGEMENT L.L.C., an Indiana limited liability company, whose address is 6101 Melton Rd., Portage, IN 46368 (“Grantee”), the real property commonly known as [address of property], in Escanaba, Delta County, Michigan, and described as follows:

(the “Premises”) for \$10 and other valuable consideration, Subject to any easements and building and use restrictions of record and the lien of taxes not yet due and payable.

Grantor grants to Grantee the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967. This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

CITY OF ESCANABA

Dated: \_\_\_\_\_

By: /s/ \_\_\_\_\_

[Typed name of authorized signer]

Its: [Title of authorized signer]

STATE OF MICHIGAN )

\_\_\_\_\_ COUNTY )

The foregoing instrument was acknowledged before me this [date] by [name of officer or agent, title of officer or agent] of [name of corporation acknowledging], a [state or place of incorporation] corporation, on behalf of the corporation.

/s/ \_\_\_\_\_

Name:

Notary public, State of Michigan, County of [county].

My commission expires [date].

[If acting in county other than county of commission: Acting in the County of [county].]

Drafted by and when recorded return to: CCSK Law, 57 Michigan Ave., ste 101, Valparaiso, IN 46383

Send subsequent tax bills to: Proxima Management Group LLC and address]

Recording Fee:

Transfer Tax:



## EXHIBIT H: SELECTION OF CHAIN

The Hotel Brand Selection by Proxima is limited to an Upscale/Upper Midscale flag from one of our preferred premium development partners (in no particular order): Intercontinental Hotel Group (IHG), Hilton, Hyatt, or Marriot.

EXHIBIT I: EASEMENT AGREEMENT

*[Attached on the following page.]*

GRANT OF EASEMENT AGREEMENT

THIS GRANT OF EASEMENT AGREEMENT (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between PROXIMA MANAGEMENT L.L.C., an Indiana limited liability company, whose address is 6101 Melton Rd., Portage, IN 46368 ("Grantor") and the CITY OF ESCANABA, a Michigan municipality, whose office of [insert office] address is [address of city] ("Grantee"),

WHEREAS, the Grantor owns the following described premises in the City of Escanaba, Delta County, Michigan (the "Grantor Parcel"):  
[Legal description]

Commonly known as:

TIN:

AND WHEREAS, the Grantee desires to obtain an easement from the Grantor, on a portion of the above described premises for the utility shed providing utilities located \_\_\_\_\_ ("Utility Shed").

AND WHEREAS, these parties desire to enter into an agreement for an easement for a Utility Shed.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. In consideration of the sale of property to the Grantor, the Grantor hereby grants, conveys and warrants to the Grantee, its successors and assigns, a temporary easement for a Utility Shed upon the following described parcel (the "Easement Parcel"):

[insert legal description]

2. Access across the Grantor Parcel for ingress and egress to and from said Easement Parcel is to be provided to the Grantee, and its designee, to allow for the inspection, maintenance, and improvement of the Utility Shed within the Easement Parcel.

3. The Grantee has the right, pursuant to this Grant of Easement, to cut, trim or remove vegetation, trees, or other natural interference within said Easement Parcel for the inspection, maintenance, replacement, removal, or improvements of the Utility Shed. All work will be performed in a workmanlike manner and in a manner which will cause the least interference with the remainder of the Easement Parcel. Upon the completion of any work by Grantee within the Easement Parcel, Grantee shall promptly remove all debris, materials, and equipment and restore the Easement Parcel to substantially the same condition as the remainder of the Easement Parcel, at Grantee's sole cost and expense.

4. The easement rights herein are expressly subject to the rights of Grantor herein including, but not limited to, the reservation by Grantor of the right to locate other utilities within the Easement Parcel and grant other easement rights within the Easement Parcel as long as the same do not unreasonably interfere with Grantee's right to maintain, repair, improve, remove, and replace the Utility Shed.

5. Grantor covenants that it is lawfully seized and possessed of the premises herein described and warrants the Grantor has a good and lawful right to grant and convey the easement described herein.

6. It is expressly understood and agreed by and between the parties hereto that the easement and rights herein granted may not be assigned by the Grantee. It is also understood that this agreement constitutes the entire terms and conditions applicable to the easement as agreed upon by the parties hereto, except as stated herein or as may be amended in writing hereafter.

7. The temporary easement granted herein will constitute a burden upon and run with the Grantor Parcel and shall be binding upon and inure to the benefit of the parties to this instrument, their heirs, personal representatives, successors, and assigns, until such time when the Grantee no longer necessitates the use of the Utility Shed. At such time when the Grantee no longer necessitates the use of the Utility Shed, this easement shall terminate and the Utility Shed shall be removed pursuant to Paragraph 3 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

EXHIBIT J: LAND CONTRACT FOR ADJACENT PROPERTY

Agenda Item: NB-3  
Date: 9-19-19

## City Council Agenda Item Request

Date: September 12, 2019

Name: Patrick Jordan

Department: Administration

Item: Purchase Agreement/Land Contract with Proxima for Adjacent Properties

Meeting date requested: September 19, 2019

### Explanation for request:

Article X "ADJACENT PROPERTIES" in the Purchase, Sale and Development Agreement pertains to the old Commerce Center building, property and the contiguous property to the east. Development of this Phase will follow completion of Phase 1, the Jail and Waterfront development.

LAND CONTRACT

BETWEEN

AND

CITY OF ESCANABA

PROXIMA MANAGEMENT  
GROUP, LLC

Herein Referred to as  
"SELLER"

Herein Referred to as  
"PURCHASER"

§1. COVENANT TO SELL:

The Seller hereby sell and agree to convey unto the Purchaser all that certain piece or parcel of land situated in the City of Escanaba, County of Delta, State of Michigan, and described as follows:

The West 100' of the South 140' of Block 3, Original Plat of Escanaba, Michigan.

(Portion of Lands in Government Lot 2)

From the SW Corner of Block 3 of the Original Plat of Escanaba as recorded in Liber "A" of Deeds on Page 74 of Delta County Records, thence measure S.89°54'39"E. along the North right-of-way line of Ludington Street and the South line of said Block 3 a distance of 100.00 feet to the Point of Beginning of the Lands herein described, thence continue S.89°54'39"E. along said South line a distance of 368.57 feet to the SW Corner of the Municipal Dock Parcel recorded in Liber 209 on Page 638 of Delta County Records, thence N.64°47'20"W. a distance of 329.76 feet to a point that is 170.00 feet East of the West line of said Block 3 and on the South right-of-way line of an existing 20.00 foot wide alley, thence N.64°47'20"W. along said South right-of-way line a distance of 70.00 feet, thence S.00°05'21"W. parallel with and 100.00 feet East of said West line of Block 3 a distance of 140.00 feet to the Point of Beginning. Containing 0.70 of an acre.

AND

(Bottom Lands Portion Adjacent & Contiguous to Government Lot 2)

From the SW Corner of Block 3 of the Original Plat of Escanaba as recorded in Liber "A" of Deeds on Page 74 of Delta County

Records, thence measure S.89°54'39"E. along the North right-of-way line of Ludington Street and the South line of said Block 3 a distance of 468.57 feet to the SW Corner of the Municipal Dock Parcel recorded in Liber 209 on Page 638 of Delta County Records and the Point of Beginning of the Lands herein described, said Point also being the Northerly extension of a line parallel with and 10.00 feet West of the East right-of-way line of South 2<sup>nd</sup> Street of said Original Plat of Escanaba and on the North right-of-way of Ludington Street, thence N.00°08'41"W. along said Northerly extended West line a distance of 161.00 feet to a traverse line a distance of 397.91 feet to a Point on the North right-of-way line of a 20.00 foot wide existing and as now constructed alley in said Block 3, said Point being 170.00 feet East of the West line of said Block 3, thence S.00°05'21"W. parallel with said West block line a distance of 20.00 feet to the South right-of-way line of said alley, thence S.64°47'20"E. a distance of 329.76 feet to the Point of Beginning. Containing 0.62 of an acre.

together with all improvements, appurtenances, tenements and hereditaments hereto, but subject to easements and restrictions of record and zoning laws and ordinances affecting the premises.

## §2. AGREEMENT TO PURCHASE:

The Purchaser agrees to purchase said premises of the Seller and to pay therefor a total amount as stated in an appraisal value of the premises less any value of improvements on the premises completed within thirty (30) days after the execution of this Agreement ("Purchase Price") (see Exhibit C for copy of the appraisal) and in lieu of paying the purchase price of the improvements located on the premise ("Chamber Building"), Purchaser shall be responsible for the demolition of the Chamber Building after the Conveyance Date. Purchaser agrees to pay the Purchase Price, the sum of which is secured by this Land Contract, together with interest on the whole sum that shall be from time to time unpaid at the rate of one and eighty-five hundredths percent (1.85%) percent per annum in the manner as follows:

The sum of Ten (\$10) Dollars at the execution of this land contract.  
The sum of One Dollar (\$1.00) will be paid upon the 1<sup>st</sup> of the month following the execution of this Agreement, and the same amount on the 1<sup>st</sup> day of each and every succeeding month thereafter until the completion of Phase 1, unless earlier paid hereunder. Within fifteen (15) days of the completion of Phase 1, the entire unpaid principal and accrued interest and all other amounts owing under this Agreement will be due and payable.

The interest shall be computed on the unpaid balance and deducted from said payment, with the remainder applied to the principal. Any payment not paid when due shall bear interest until paid.



The Purchaser shall have the right to pay larger installments than provided for in this Land Contract or to pay the whole or any part of the balance remaining unpaid hereunder at any time before the same, by the terms hereof, shall become due and payable without prepayment penalty. The Purchaser, however, in the event of sale of the premises, in a cash sale, shall pay to the Seller in full the balance then owing.

Purchaser shall have a five-day grace period from the date when any payment hereunder is due in which to make said payment without penalty.

### §3. TAXES AND ASSESSMENTS:

Real estate taxes for the present year shall be apportioned on a fiscal year basis between the Seller and Purchaser as of the Conveyance Date. Taxes and assessments for all prior years shall be paid by the Seller and taxes and assessments for subsequent years shall be paid by the Purchaser. Seller shall be responsible for and promptly pay when due all taxes and assessments of every nature that shall become a lien on said property after the date hereof, and shall do so at least ten (10) days before said taxes are due to the respective governmental unit until the Conveyance Date at which time the Purchaser shall be responsible for and promptly pay when due all taxes and assessments of every nature that shall become a lien on said property after the Conveyance Date.

### §4. INSURANCE:

¶4.01 During the continuance of this Land Contract, the Purchaser shall keep insured the buildings on said premises or which shall hereafter be placed thereon in the names of said Seller and Purchaser against loss by fire and windstorm, in such company or companies and for such amount as the Seller shall determine to be appropriate, with loss, if any, payable to the Seller and the Purchaser, as their interests may appear under this Contract.

¶4.02 In case of loss or damages the result of which said insurance proceeds are available, the Purchaser may, at his election, within sixty (60) days of said loss or damage, give to the Seller written notice of the Purchaser's election to repair or rebuild the damaged parts of the premises. If such election is made, then the insurance proceeds shall be used for such purpose. The balance of said proceeds, if any, which remain after completion of the repair or the rebuilding, or all of said insurance proceeds if the Purchaser does not elect to repair or rebuild, shall be applied first toward the satisfaction of any existing defaults under the terms of this Land Contract, and the remainder shall be used as a prepayment upon the principal balance owing hereunder, without penalty, notwithstanding other terms hereof to the contrary. No such payment to the Seller shall defer the time for payment of any remaining payments required herein. Any surplus of said proceeds in excess of the balance owing hereon shall be paid to the Purchaser.

¶4.03 The Purchaser agrees that it will cause to be made a term and condition of its insurance policy that the insurance carrier is required to give at least ten (10) days notice of cancellation of the policy to the Seller, before such cancellation shall be effective.

### §5. DEFAULT IN PAYMENT OF INSURANCE PREMIUMS AND TAXES:

In the event that the Purchaser fails to make payment of any insurance premiums and/or taxes or special assessments which are required to be paid by the Purchaser herein, the Seller may, at their election, proceed as follows:

¶ 5.01 Make payment of said insurance premiums, taxes or special assessments and treat the Purchaser's failure to pay same as a default under the terms of this Land Contract, or

¶ 5.02 Make payment of said insurance premium, taxes or special assessments and to add the amount so paid to the unpaid balance of this Land Contract, or

¶ 5.03 Not make payment of any insurance premiums, taxes or special assessments and treat the Purchaser's failure to pay same as a default.

¶ 5.04 In the event that the Seller shall make payment of any insurance premiums, taxes or special assessments, the amount of such payment shall constitute a lien upon the premises and shall bear interest at the same rate of interest as the principal balance under this Land Contract shall bear.

#### §6. PROHIBITION AGAINST REMOVAL AND WASTE:

¶ 6.01 All buildings, trees or other improvements now on said premises, or hereafter made or placed thereon, shall be a part of the security for the performance of this Land Contract and may not be removed therefrom.

¶ 6.02 The Purchaser shall not commit, or suffer any other person to commit, any waste or damage to said premises or the appurtenances and shall keep the said premises and all improvements in as good condition as they are now.

¶ 6.03 The Purchaser shall not make any alterations to the buildings on the premises without the permission of the Seller, which permission shall not be unreasonably withheld.

#### §7. REMEDIES ON DEFAULT:

Should the Purchaser fail to perform any of the terms, covenants or conditions contained in this Land Contract, the Seller may:

¶ 7.01 Declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan in such case made and provided, or

¶ 7.02 Not declare the entire balance due and payable and proceed according to the common law or the statutes of the State of Michigan in such case made and provided, including, but not limited to, the right of the Seller to declare a forfeiture in consequence of the default or breach of this Land Contract, but in the event the Seller elect to proceed under this subsection, the Seller shall give the Purchaser a written notice of forfeiture specifying the default which has occurred and shall give the Purchaser a period of at least fifteen (15) days after service of such notice of forfeiture to cure the default which has occurred.

¶7.03 If prevailing in a claim of default, the Seller shall be entitled, regardless of which remedy they pursue, to be reimbursed for their reasonable attorney fees and costs.

§8. CONVEYANCE:

If the Purchaser shall, in the time and manner above specified, make all the payments herein provided for, and shall observe and perform all the conditions and agreements herein made, the Seller shall thereupon, by good and sufficient Warranty Deed, convey the said premises to the Purchaser on the conditions herein agreed upon the date of which referred to as the "Conveyance Date", provided, however, that the Warranty Deed shall be limited so as to except acts or negligence of the parties other than the Seller subsequent to the date of this Land Contract. The Purchaser agrees to accept, in full performance of this Land Contract, conveyance of a title from the Seller which shall be a "marketable title of record", as defined in Act 200 of the 1945 Public Acts of Michigan, as amended.

§9. EVIDENCE OF TITLE:

The Seller have provided to the Purchaser a commitment for title insurance insuring the title in the amount of this Contract, showing marketable title of record in the Seller. The Purchaser agrees that the costs of any abstracting of title or title insurance shall be the sole expense of the Purchaser.

§10. POSSESSION:

Possession of said premises may be taken by said Purchaser on the date hereof and retained for so long as no default is made by said Purchaser in any of the terms or conditions hereof. Seller shall continue to pay all utilities, ground maintenance, and repairs on the Premise until the Conveyance Date, except for minor maintenance inside the Chamber Building located on the premise, which shall be maintained by the Purchaser.

§11. CONTINGENCY PROVISION:

This contract for the purchase of the described premises is contingent on the Purchaser completing Phase 1 on the premise located at 111 North 3rd Street, Escanaba, Michigan 49829 as outlined in the Purchase, Sale and Development Agreement attached hereto as Exhibit B, between the parties ("Purchase, Sale and Development Agreement"). Should the Purchaser, for good cause, not be able to complete Phase 1 as described in the Purchase, Sale and Development Agreement, the Purchaser agrees to cap the property described in the Purchase, Sale and Development Agreement, with a parking lot, or other suitable land use as determined by the Purchaser, and shift focus to development of the parcels described above in this contract.

§12. ASSIGNMENT:

¶12.01 The Seller reserves the right to convey their interest in the land set forth herein and

their conveyance thereof shall not be cause for rescission.

¶12.02 Purchaser shall not assign an interest in whole, or in part, all, or any part of the premises without the prior consent of the Seller, except the Purchaser may assign their interest to an entity owned and operated by Purchaser. Consent shall not be unreasonably withheld by the Seller, unless the assignment violates any term of this contract. The consent of the Seller to any assignment does not constitute a waiver of the necessity for such consent to any assignment. This prohibition against assignment shall be construed to include a prohibition against assignment by operation of law. If this Land Contract is assigned, the Seller may collect payment from the assignee and apply the net amount collected to the Land Contract herein reserved, but no such assignment shall be deemed as a waiver of this covenant or the acceptance of the assignee, or release of Purchaser from further performance by the Purchaser under the covenants of this Land Contract to be performed by the Purchaser herein. Notwithstanding any assignment, the Purchaser shall remain fully liable on this Land Contract and shall not be released from performing any of the terms, covenants, or conditions of this Land Contract.

¶12.03 No assignment, sale or conveyance by the Purchaser shall create any liability whatsoever against the Seller until a duplicate thereof, duly witnessed, together with the residence address of such Assignee, shall be delivered to the Seller, but in the event of assignment, such notice to the Seller or acceptance of same by them or acceptance of payment made by the Assignee shall not constitute a change of parties and privity of contract and a novation between the Seller and the Assignee, and enable the Seller to maintain any suit or action for payment, specific performance, deficiency or summary proceedings for possession against the Assignee alone.

No assignment, sale or conveyance, however, shall release the Purchaser from its obligations under the provisions of this Land Contract unless the Seller so releases it in writing.

#### §13. WAIVER:

No waiver by Seller of any breach by Purchaser, or any extension of the due date of any payment hereunder, or the acceptance by the Seller of a payment after its due date, shall operate in any manner as a waiver of any breach or failure of the Purchaser thereafter occurring; and the same shall not affect the right of the Seller to accelerate the balance of the purchase price or declare a forfeiture hereunder or pursue any other remedy afforded to them by the terms of this Land Contract, or at law, by reason of any subsequent act or omission of the Purchaser.

#### §14. WARRANTIES OF PREMISES:

It is expressly understood and agreed that the premises are being sold "as is" under the present condition and state of repair without any representations, statements or warranties, express or implied, with respect to their condition. Purchaser acknowledges that it has had the right to examine said premises and to satisfy itself as to the condition thereof.

#### §15. CONSTRUCTION OF NOUNS, PRONOUNS AND GENDER:

If more than one joins in the execution hereof as Seller or Purchaser, or either be of the

feminine or masculine sex, or a corporation, the pronouns and relative words herein used shall be read as if written in plural, feminine or neuter, respectively.

§16. MISCELLANEOUS:

§16.01 The Seller may keep their personal property, as provided in Exhibit A, which is not being sold to Purchaser, on the premises until the Conveyance Date.

§17. TIME IS OF THE ESSENCE:

It is expressly understood and agreed by the parties hereto that time shall be deemed as of the very essence of this Land Contract and all stipulations and agreements herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

The parties have executed this Land Contract the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

In the Presence of:

SELLER:

\_\_\_\_\_  
City of Escanaba

PURCHASER:

\_\_\_\_\_  
Proxima Management, LLC

STATE OF MICHIGAN     )  
                                      )ss  
COUNTY OF DELTA     )

The foregoing Land Contract was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by  
XXXXX XXXXXXX.

Nastoff Bereman & Moore P.C.

STATE OF )  
 )ss  
COUNTY OF )

The foregoing Land Contract was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by  
XXXXX XXXXXX.

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

\_\_\_\_\_  
Notary Public

My commission expires:

Prepared by:  
John M. A. Bergman (P69725)  
Nastoff, Bergman, & Moore, P.C.  
504 Ludington Street  
Escanaba, Michigan, 49829  
(906) 786-1403

EXHIBIT A  
Personal Property

**EXHIBIT B**  
**Purchase, Sale, and Development Agreement**



EXHIBIT C  
Appraisal

**Plat of Survey of  
Part of Filled Unpatented Lake Michigan Bottom Lands  
Opposite, Adjacent and Contiguous to  
Part of Government Lot 2 &  
Part of Government Lot 2 of  
Section 29 T.39N., R.22W.**

City of Escanaba  
Delta County, Michigan

**LITTLE BAY DE NOC  
OF LAKE MICHIGAN**

**MUNICIPAL DOCK  
PARCEL**

WEST LINE OF  
BLOCK 3

KOBASIC PARCEL

WEST LINE OF  
MUNICIPAL DOCK PARC  
RECORDED IN LIBER  
209 ON PAGE 638.

**NORTH  
3RD STREET  
(100' R/W)**

ALLEY (20' R/W)

S 89°53'50" W 297.91'

100.00'

70.00'

S 00°05'21" W  
20.00'

TRAVERSE LINE

**0.62  
ACRES**

**1.32  
ACRES  
TOTAL**

**BOTTOM LANDS  
LOT 2**

**0.70  
ACRES**

S 00°05'21" W  
140.00'

S 00°05'21" W  
140.00'

N 00°08'41" W  
161.00'

100.00'

SOUTH LINE OF  
BLOCK 3

368.57'

NORTH R/W LINE

S 89°54'39" E

S 89°54'39" E

SW CORNER OF  
BLOCK 3 OF ORIGINAL  
PLAT OF ESCANABA

**LUDINGTON STREET  
(100' R/W)**

SW CORNER OF  
MUNICIPAL DOCK PARCEL  
RECORDED IN LIBER  
209 ON PAGE 638.

INTERSECTION OF NORTH  
R/W LINE OF LUDINGTON ST  
& A LINE 10.00' WEST OF  
EAST R/W LINE OF SOUTH  
2ND STREET EXTENDED NOR

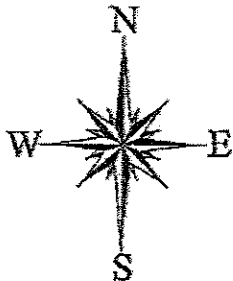
SOUTH R/W LINE

**SOUTH  
2ND ST.**

10.00'

N 00°08'41" W

EAST R/W LINE  
SOUTH 2ND STREET



SCALE: 1" = 80'