



OAKLAND
COUNTY MICHIGAN

OAKLAND COUNTY EXECUTIVE L. BROOKS PATTERSON

OAKLAND COUNTY BUILDING AUTHORITY

JAY SHAH, Chairperson
ANDY MEISNER, Vice-Chairperson &
O.C. Treasurer
DONALD SNIDER, Secretary
JAMELE HAGE
L. BROOKS PATTERSON, O.C. Executive

MINUTES
REGULAR MEETING
Wednesday, November 7, 2018

The regular meeting of the Oakland County Building Authority was called to order by *Chairman Shah* at 9:00 a.m. in the Facilities Management Conference Room of the Public Works Building (95W), Waterford, Michigan.

BUILDING AUTHORITY MEMBERS PRESENT

Jay Shah – Chairperson
Jill Robinson – Vice Chairperson and County Treasurer, designee
Donald Snider – Secretary
Doug Williams – County Executive, designee

BUILDING AUTHORITY MEMBERS ABSENT

Jamele Hage – Committee Member

OTHERS PRESENT

Jody Hall – Financial Attorney, Corp Counsel
David Timms – Outside Counsel
Shawn Phelps – Chief, Fiscal Services
Mark Williams – Accountant, Fiscal Services
Ed Joss – Manager, Facilities Management
Nan Chenoweth – Secretary, Facilities Management

APPROVAL OF AGENDA

It was moved by *Mr. Williams* and seconded by *Ms. Robinson* to approve the agenda dated November 7, 2018.

Yeas: 4 Nays: 0 Absent: 1 Motion Carried.

APPROVAL OF MINUTES

It was moved by *Mr. Williams* and seconded by *Mr. Snider* to approve the minutes dated October 10, 2018.

Yeas: 4 Nays: 0 Absent: 1 Motion Carried.

COMMENTS FROM PUBLIC

No comments from the public at this time.

MEMO FOR SETTLEMENT AGREEMENT & RELEASE FOR PHOENIX CENTER

Ms. Hall handed out copies of the Settlement Agreement and Release (see attached) for the Committee members to review and approve. Ms. Hall gave the committee members an overview of the Phoenix Center.

It was moved by *Mr. Williams* and seconded by *Ms. Robinson* to approve the Settlement Agreement and Release for the Phoenix Center.

Yeas: 4 Nays: 0 Absent: 1 Motion carried.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into effective as of the ____ day of November, 2018 (the "Effective Date"), by and among OTTAWA TOWER II, LLC, a Michigan limited liability company, and the NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST, a California pension and profit sharing trust, (individually a "Plaintiff" and collectively herein "Plaintiffs" or "Ottawa Towers"), and the CITY OF PONTIAC, a Michigan municipal corporation, ("City"), LOUIS SCHIMMEL, an individual formerly acting as the Emergency Manager of the City of Pontiac, ("Emergency Manager"), OAKLAND COUNTY ("County"), a Michigan municipal corporation, and the OAKLAND COUNTY BUILDING AUTHORITY ("Building Authority"), a Michigan building authority, (collectively herein "Defendants"). The Plaintiffs and Defendants are hereinafter individually a "Party" and collectively the "Parties."

RECITALS

A. On October 30, 1979, the City, the Pontiac Downtown Development Authority, and the Downtown Pontiac Development Company entered into a Comprehensive Development Agreement ("Development Agreement"), recorded at Liber 7770, Page 127, Oakland County Records, that required, among other obligations, that the developer construct a parking deck (the "Deck"), a plaza (the "Plaza"), and other improvements on the public sites of a certain parcel of land located in the City of Pontiac, now commonly known as the "Phoenix Center."

B. The Development Agreement provided that the City would convey certain parcels of land within the project area to the developer to develop various buildings on the private sites within the project area including, but not limited to, two office buildings that are now known as the Ottawa Towers.

C. On May 8, 1980, a Declaration of Easements ("Declaration of Easements") was executed and recorded at Liber 7788, Page 01, Oakland County Records, that created certain easements and other rights and obligations as referenced therein.

D. The Ottawa Towers office buildings are now owned by Ottawa Tower II, LLC and the North Bay Drywall, Inc. Profit Sharing Plan and Trust.

E. On July 5, 2012, the City's Emergency Manager issued Order S-221 Regarding the Approval to Request the County of Oakland to Approve the Demolition of the Phoenix Center. Thereafter, in July 2012, the Ottawa Towers commenced litigation against Defendants to prevent the demolition and to assert related claims against the Defendants (Oakland County Circuit Court Case No. 12-130331-CH, the "2012 Case"). The City and County filed counterclaims against the Ottawa Towers. On November 30, 2012, the Oakland County Circuit Court entered a preliminary injunction preventing the demolition of the Phoenix Center, among other relief. At the time the case was commenced, the Building Authority held title to the Phoenix Center. However, during the pendency of the case, the Building Authority transferred title to the Phoenix Center back to the City, and thereafter the County dismissed its counterclaim.

F. On March 28, 2014, the City filed a condemnation action against the Ottawa Towers, among others, relating to the Phoenix Center (Oakland County Case No. 14-139761-CC, the "2014 Case"). The City's condemnation action was dismissed in October 2014 by the Oakland County Circuit Court, which dismissal was thereafter affirmed upon appeal; however, the Ottawa Towers' claim for reimbursement of attorney fees and costs under MCL 213.66 remains pending. Both the 2012 Case and the 2014 Case are referred to herein as the "Litigation."

G. The Parties participated in mediation facilitated by the Hon. Gerald Rosen (retired), and the Parties agreed upon the material terms of the settlement of their disputes in the form of a Proposed Term

3.0 PAYMENTS

3.1 In consideration of the immediate discharge of all liens and encumbrances on the Phoenix Center as provided herein at Section 2.2, and the full, final and absolute release of all claims described in Section 4.0 Release and Waiver of Claims, the City shall pay Ottawa Towers II, LLC and North Bay Drywall, Inc. Profit Sharing Plan & Trust, jointly and severally, a total of Seven Million Three Hundred and Fifty Thousand Dollars and 00/100 (\$7,350,000.00), without any offset or deduction for any reason, in the manner and form as provided below:

3.1.1 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) (the "Initial Payment") shall be paid upon the execution of all settlement documents, including the Consent Judgment to be entered in Oakland County Circuit Court Case No. 12-130331-CH, with One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) paid to Ottawa Tower II, LLC, and One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) paid to North Bay Drywall, Inc. Profit Sharing Plan & Trust (Charles Stephens, Trustee).

3.1.2 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) payable, to North Bay Drywall, Inc. Profit Sharing Plan & Trust (Charles Stephens, Trustee), in five (5) annual installments of \$700,000.00 ("annual installment payment(s)"), without interest, the first annual installment shall be due on the date all settlement documents are executed. No interest shall accrue on any balance due hereunder. The City may elect to pay the balance of the remaining settlement amount in full at any time. If the City fails to make any installment payment within twenty (20) days of the date that such payment is due, then the entire remaining balance shall be due and payable immediately. Upon written notice from North Bay Drywall, Inc. Profit Sharing Plan & Trust (Charles Stephens, Trustee), or its counsel, given at least 90 days before an installment payment is due, the City shall then pay some or all of the remaining installment payments to Ottawa Tower II, LLC and/or such other payee(s) as set forth in such notice.

3.1.3 The City shall pay Plaintiffs the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) as full and final reimbursement for all attorney fees and costs incurred by Plaintiffs in the condemnation action, being Oakland Circuit Case No. 14-139761-CC. This reimbursement shall be paid with the Initial Payment in Section 3.1.1 above. Upon payment, Plaintiffs and the City shall submit to the court the Stipulated Order attached as Exhibit 1 to close the 2014 Case.

3.2 To secure all or a portion of the payments due to Plaintiffs in Section 3.1.2. above, the City reserves the right to issue its judgment bonds (the "Judgment Bonds") in an amount sufficient to pay all or a portion of the costs described in Section 3.1.2 above, plus the costs of issuance of the Judgment Bonds. The issuance of any Judgment Bonds shall not have any effect on the timing of payments due under Section 3.1.2.

3.3 The Parties acknowledge and represent that none of the other Parties, or their attorneys, have made any representations regarding the tax consequences of this Agreement. Each Party shall be solely responsible for any tax consequences resulting from the Agreement or the payments or other actions taken to effectuate its provisions. Any and all reporting or payment of taxes, if any, shall be governed by and in compliance with state and federal laws and regulations governing the same. Plaintiffs will provide the City with a completed Form W-9 for reporting of the payments to each of the Plaintiffs by the City to the Internal Revenue Service.

4.0 RELEASE AND WAIVER OF CLAIMS BY PLAINTIFFS

4.1 Other than as set forth in this Agreement, Plaintiffs hereby forever release, waive, and discharge each of the Defendants and their agents, officers, elected officials, directors, supervisors,

5.1.1 Any and all Claims actually pled or that could have been pled as part of the Litigation or any other action at law or in equity;

5.1.2 Any and all Claims of alleged past violations of any federal, state or local statute, ordinance, regulation, judicial precedent or executive order, including, but not limited to, claims of breach of contract, breach of declaration of easements, inverse condemnation, improper or illegal taking of property rights, reformation/modification of easements, slander of title, specific performance and/or any other applicable federal, state or local law, regulation, rule or ordinance of any kind;

5.1.3 Any and all Claims in tort, not limited to, any claims for innocent misrepresentation, fraudulent misrepresentation, fraud, negligence, breach of implied covenant of good faith and fair dealing, misappropriation, self-dealing, defamation, libel, slander, intentional infliction of emotional distress, for emotional distress damages, breach of fiduciary duty, business torts, and all other tort claims of any kind;

5.1.4 Any and all Claims for attorney's fees, sanctions and costs under statute, including, but not limited to MCL 213.66 and 42 USC §§ 1983 and 1988 (b) and (c), court rules or case law;

5.1.5 Any and all Claims arising under the United States Constitution or the Michigan Constitution of 1963, as amended.

5.2 Defendants acknowledge and agree that this Agreement covers all of the aforementioned claims and potential claims, which arose on or accrued from the beginning of time and through the Effective Date of this Agreement, whether known or unknown, suspected or unsuspected, matured or not matured, and that this constitutes the essential basis of this Agreement. This Release and Waiver of Claims shall be read as broadly as possible such that the Plaintiffs shall have no further obligations or liability of any sort or nature to Defendants, directly or indirectly, in the existing Litigation other than as provided in this Agreement.

6.0 MAINTENANCE, REPAIR AND IMPROVEMENTS TO THE PHOENIX CENTER AND TUNNEL

6.1 The City is the owner of the Plaza, the Deck, and the Orchard Lake Road Tunnel ("Tunnel"), subject to the existing encumbrances on title; as of the Effective Date of this Agreement.

6.2 In addition to the payments set forth in Section 3.0 of this Agreement, the City shall pay up to Six Million & 00/100 (\$6,000,000.00) dollars over a ten (10) year period beginning as of the Effective Date of this Agreement for the (i) maintenance of (the "Maintenance") and (ii) capital repair of and improvements to (the "Improvements" and together with the Maintenance, the "Work"), the Phoenix Center necessary to bring and maintain the Phoenix Center into conformance with the requirements of the International Property Maintenance Code (2015 edition), as referenced in the Michigan Building Code and the Michigan Rehabilitation Code (2015 edition)(herein "Code"). Only the portions of the Work that are Improvements may be paid for with the bond proceeds.

6.3 The Work that the City commits to make shall include all electrical, lighting, elevator and structural repairs and improvements in the north and south sections of the Deck to be completed within the first two years after the Effective Date of this Agreement as more fully detailed on **Exhibit 2** attached hereto. The Work performed by the City shall be done in a good and workmanlike manner in conformance with the Code. A detailed schedule to perform the specific work on the Phoenix Center as required by **Exhibit 2** shall be prepared by the Parties' respective engineering contractors and/or experts after meeting

date the City undertakes the sole day-to-day property management activities for the Deck, Tunnel, and Plaza as described on **Exhibit 5**; or (ii) six (6) months from the Effective Date of this Agreement. Plaintiffs shall name the City as an additional insured on its insurance policies and provide certificates of insurance to the City. This amount does not include charges for materials (such as salt, lightbulbs/fixtures, scaffolding, fuel, waste containers, etc.), permit fees, subcontractor charges (although scheduling and coordination of painting of lines for parking spaces is included, actual layout and painting will be by subcontractor as an additional cost), equipment rental or other similar non-labor expenses, or services for any activities not currently performed by Plaintiffs, all to be at 10% overhead and 10% profit. Any and all cleanup, repairs and costs of vandalism and graffiti removal shall be an extra charge; provided, however, that Plaintiffs will not perform such additional work and incur such extra charges until first providing to the City ten (10) days' prior written notice of the need therefor. Any invoices submitted by Plaintiffs to the City for the period after May 1, 2018 shall be paid in full upon execution of this Agreement. Payments to Plaintiffs for the monthly payment under this section and also the monthly payment for the electrical charges relating to the Tunnel shall be made by the City through electronic deposit to Plaintiffs' account as provided in writing to the City by Plaintiffs with Plaintiffs' invoices. Any of Plaintiffs' invoices that are not timely paid by the City within twenty days shall incur a late fee of 5% of the amount of the invoice, plus interest of 1% per month from the date due.

9.0 RIGHTS IN FOYER, CONNECTOR, AND ATRIUM CONNECTOR

The City will execute a quitclaim deed to Ottawa Tower II, LLC, for all of the City's claimed right, title and interest in or to the Atrium Connector, which is the 2-story atrium structure adjacent to the Judson Tower and located upon North Bay's property between the Judson Tower and the Phoenix Center, in the form of quitclaim deed attached as **Exhibit 6**. The City acknowledges and agrees that Plaintiffs shall have an easement for rights to ingress and egress through the Foyer and Connector as defined in the City's Counterclaim to/from the Phoenix Center to/from both of Plaintiff's office towers, and such rights are set forth in the Amended Declaration of Easements attached as **Exhibit 3**.

10.0 REVIEW OF AGREEMENT

The Parties acknowledge and agree that they have been advised of the right to consult with an attorney regarding the terms of this Agreement and their rights under this Agreement and state and federal statutes and common law. Each Party acknowledges that before signing this Agreement they have read the entire Agreement and fully understands the terms, content, and effect of the Agreement; that they have had the benefit of advice from an attorney of their choosing; and that they relied fully and completely on their own judgment and/or on the advice of their attorney in executing this Agreement.

11.0 ASSIGNMENT

Plaintiffs may, but are not obligated to, assign this Agreement, in whole or in part, upon the sale of either or both of the Towers, the sale of Ottawa Tower II, LLC, or the transfer of all, or substantially all of a Plaintiff's assets.

12.0 GOVERNING LAW

This Agreement is executed under the laws of the State of Michigan, and shall be governed by, the laws of the State of Michigan.

13.0 SEVERABILITY

19.4 The Party has not assigned or transferred any of the claims, demands, actions and rights being released by such party in this Agreement;

19.5 The Party has the full and complete authority to enter into this Agreement, to release the Claims that the Party is releasing herein, and to execute any and all documents required pursuant to this Agreement, and that this Agreement is binding upon the Party; and

19.6 The Parties have executed this Agreement as their own free act and without reliance upon any representations, warranties, or promises other than those contained in this Agreement.

20.0 NOTICES

All notices, requests or other communications required or permitted to be given hereunder shall be given in writing, and shall be deemed received (a) when hand delivered, or (b) one (1) business day after delivery to FedEx or similar overnight delivery service, when posted for next business day delivery, or (c) when received after deposit in the U.S. certified mail, return receipt requested, or (d) when sent, if sent during normal business hours by email transmission, and such transmission is promptly followed by any of the other methods for giving notice. In all cases notices shall be addressed to the parties at their respective addresses as follows or to such other address as either party hereto may designate by a notice given in accordance with this Section:

To City: The City of Pontiac
Attn: John Balint, Director of Public Works
47450 Woodward Ave.
Pontiac, MI 48342
Email: jbalint@pontiac.mi.us

With a copy to: Giarmarco, Mullins & Horton, P.C.
Attn: John Clark
Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, Michigan 48084-5280
Email: jclark@gmhlaw.com

To Ottawa Towers: OTTAWA TOWER II, LLC
Attn: Charles Stephens, Manager
715 Southpoint Blvd., Suite B
Petaluma, CA 94954-6836
Email: cstephens@northbayco.com

And:
NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST
Attn: Charles Stephens, Trustee
715 Southpoint Blvd., Suite B
Petaluma, CA 94954-6836
Email: cstephens@northbayco.com

With a copy to: Maddin Hauser Roth & Heller, PC
Attn: Steven D. Sallen, Esq.

IN WITNESS WHEREOF, the Parties acknowledge and agree that each is acting of their own free will to cause the execution of this Agreement as of the Effective Date first written above.

Plaintiff:

OTTAWA TOWER II, LLC

By: Charles R. Stephens
Its: Authorized Manager

Plaintiff:

NORTH BAY DRYWALL, INC. PROFIT
SHARING PLAN & TRUST

By: Charles R. Stephens
Its: Authorized Trustee

Defendants:

CITY OF PONTIAC, on behalf of itself and
LOUIS H. SCHIMMEL, formerly acting as the
Emergency Manager of the City

By: Deirdre Waterman
Its: Mayor, duly authorized and approved by City
Council Resolution No. ____,
approved ____, 2018

OAKLAND COUNTY

By: L. Brooks Patterson, or his designee
Its: Oakland County Executive

OAKLAND COUNTY BUILDING
AUTHORITY

By:
Its:

THOMAS J. McCARTHY (P36755)
Monaghan, P.C.
Attorneys for Defendant City of Pontiac and
Louis Schimmel
33 Bloomfield Hills Pkwy., Ste. 260
Bloomfield Hills, MI 48304
(248) 642-5770

JEROME P. PESICK (P29029)
Steinhardt Pesick & Cohen
Co-Counsel for Plaintiffs
380 N. Old Woodward, Ste. 120
Birmingham, MI 48009
(248) 646-0888

CONSENT JUDGMENT

WHEREAS, Ottawa Towers II, LLC, a Michigan Limited Liability Company, and North Bay Drywall, Inc. Profit Sharing Plan & Trust, a California Pension and Profit Sharing Trust (collectively "Plaintiffs") have entered into a Settlement Agreement with Defendants City of Pontiac, a Michigan Municipal Corporation, and Louis Schimmel, an individual acting as the Emergency Manager of the City of Pontiac, that results in a full and complete resolution of all claims pled by all Parties in this action ;

WHEREAS, the terms of the Settlement Agreement call for:

(a) Defendant City of Pontiac to pay Plaintiffs the amounts set forth therein, of which \$7,350,000 (the "Cash Settlement Amount") represents payment in consideration of the discharge of liens and encumbrances on the Phoenix Center and the payment of attorneys' fees;

(b) Defendant City of Pontiac to pay Plaintiffs the Cash Settlement Amount in the amounts, and at the times, specified in the Settlement Agreement;

(c) Plaintiffs to dismiss the above-captioned action, and waive and release all claims as set forth in the Settlement Agreement upon payment as provided therein; and

(d) A provision authorizing Defendant City of Pontiac to issue bonds pursuant to MCL §600.6097 for the purposes of paying all or a portion of the Cash Settlement Amount.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The Settlement Agreement is hereby approved;
2. Judgment is entered in favor of Plaintiffs and against Defendant City of Pontiac in the amount of \$7,350,000 (inclusive of attorney fees and all taxable or other costs);
3. This Consent Judgment constitutes a judgment under the Revised Judicature Act;

duly advised that the parties have now settled the only remaining issue in this case pursuant to the terms of a Settlement Agreement, and with the Court being otherwise advised in the premises:

IT IS HEREBY ORDERED that Defendants Renewed Motion for Reimbursement of Fees and Costs is dismissed and all claims by Defendants for attorney fees and costs under MCL 213.66 or any other applicable statute or court rule have now been satisfied.

This is a final Order that resolves the last pending claim and closes the case.

CIRCUIT COURT JUDGE

I STIPULATE TO ENTRY OF THE ABOVE ORDER:

/s/ Thomas J. McCarthy
Thomas J. McCarthy (P36755)
Attorney for Plaintiff

/s/ Michelle C. Harrell
Michelle C. Harrell (P48768)
Attorney for Defendants

THOMAS J. MCCARTHY (P36755)
MICHELLE C. RUGGIRELLO (P75202)
MATHEW T. JANE (P58396)
Attorneys for Defendant City of Pontiac and
Louis Schimmel
Monaghan, P.C.
33 Bloomfield Hills Parkway, Suite 260
Bloomfield Hills, MI 48304
(248) 642-5770

JEROME P. PESICK (P29029)
Steinhardt Pesick & Cohen
Co-Counsel for Plaintiffs
380 N. Old Woodward, Suite 120
Birmingham, MI 48009
(248) 646-0888

**STIPULATED ORDER FOR DISMISSAL WITH PREJUDICE AND
WITHOUT COSTS OR FEES AS TO DEFENDANTS COUNTY
OF OAKLAND AND OAKLAND COUNTY BUILDING
AUTHORITY ONLY**

THIS MATTER is before the court upon the stipulation of counsel for the parties and with the Court being duly advised that the parties have settled this case in its entirety, and with the Court being otherwise fully advised in the premises:

IT IS ORDERED THAT this case is dismissed in its entirety with prejudice and without costs or fees to any party as to Defendants Oakland County and Oakland County Building Authority only.

This is not a Final Order and does not resolve the last pending claim or close the case.

Circuit Court Judge

EXHIBIT 2 – SCHEDULE OF IMPROVEMENTS

- (A) The City shall pay up to Six Million (\$6,000,000) Dollars to do all Maintenance and Improvements (as such terms are defined in the Settlement Agreement) necessary to bring the Phoenix Center into conformance with the requirements of the International Property Maintenance Code (2015 edition), as referenced in the Michigan Building Code and the Michigan Rehabilitation Code (2015 edition), within the ten (10) year period after the Effective Date of this Agreement; provided, however, that:

Within thirty (30) days of the Effective Date of this Agreement, the City shall repair vandalism damage previously reported by Plaintiffs; within twenty-four (24) months of the Effective Date of this Agreement, the City shall complete all necessary electrical, lighting, elevator and serious structural repairs to the Deck in the following stages:

- 1) Maintenance and Improvements to the third (3rd) floor of the north side of the Deck which is defined as that portion of the Deck located to the north of Orchard Lake Road (“North Side”) – both electrical and structural and the Maintenance and Improvements to both of the south side elevators;
- 2) then all south side sections of the Deck, being that portion of the Deck located to the South of Orchard Lake Road (“South Side”);
- 3) then return to repair the remaining portions of the North Side of the Deck.

- (B) Notwithstanding the 24-month schedule above, if Ottawa Towers II, LLC, or any subsequent owner, leases the Judson tower (or portion thereof), the City shall, within twelve (12) months of the date that City is served written notice of such lease execution (“Notice of Lease”), complete the following Maintenance and Improvements to the Deck:

- 1) all electrical and structural Maintenance and Improvements on the south side of the Deck;
- 2) two elevators on the south side of the Deck;
- 3) make both electrical and structural Maintenance and Improvements to have the 3rd floor on the north side of the Deck ready for parking;

- (C) Commencing upon May 1, 2018, the City will reimburse Plaintiffs in advance on the first day of each month for the actual costs of providing electricity to the Deck and Tunnel (\$4,374.00 per month) to continue until such time as the City can establish and assume the costs of providing electricity to the Deck and Tunnel; all payments to be paid electronically to an account designated by Plaintiffs on or before the first day of the month. The City shall immediately upon execution of this Agreement pay any past due invoices to Plaintiffs for the period after the signing of the Term Sheet until this Agreement is signed. As soon as is feasible, the City will have the electrical power for the Deck and Tunnel placed on the City’s account with the electric provider, pay any actual costs associated with doing so, and thereafter pay the electrical charges directly.

- (D) FIRE SUPPRESSION SYSTEM: A portion of the fire suppression system for the Phoenix Center that services the secured parking area on the second floor of the Deck (near Tower I) is connected to fire pumping equipment located in the 31 Judson Tower. The City shall disconnect the fire suppression service pumping equipment from the 31 Judson Tower. There are 175 parking spaces within this secured parking area on the second floor of the Deck; the City agrees to provide 175 parking spaces within the Deck, free of charge to the owner of the 31 Judson Tower, their tenants and employees, until such time as City completes the work to disconnect/reconnect the fire suppression system as above described.

parking fees for the use of the Deck for parking. Further notwithstanding the forgoing, the Plaza located at the top level of the Deck is not for parking, except for temporary parking of service and maintenance vehicles, or specialty vehicles specifically participating in events taking place on the top Plaza level of the Deck.

2. The first complete paragraph of Section 3 of the Declaration is hereby amended and restated in its entirety, as follows:
 3. Common Walls. As used herein, the term "Common Walls" shall mean any and all common walls between the (a) Deck or Plaza and (b) the Ottawa Towers office buildings. The Owners of the respective parcels abutting any Common Wall shall have the following rights and obligations with respect to said Common Wall:
4. Section 8 of the Declaration is hereby amended and restated in its entirety, as follows:
 8. Maintenance. Each Owner shall cause the parking areas, driveways and sidewalks contained within its respective portion of the Project and any landscape areas contained therein to be continuously repaired and maintained, including cleaning, lighting, painting, landscaping, removal of debris, removal of snow and ice, making of repairs to the driveways and sidewalks, and other similar maintenance, each at their own expense.
5. The Parties represent and warrant to each other that, with the exception of this Amendment, there are no prior amendments of the Declaration to their knowledge.
6. Except as specifically amended herein, all of the terms and provisions of the Declaration are hereby ratified and affirmed. To the extent of any conflict between the Declaration and this Amendment, the terms and provisions of this Amendment shall govern and control, and any conflicting terms and provisions of the Declaration shall be deemed amended to the extent necessary not to conflict with the provisions hereof.
7. Capitalized terms used herein shall have the same meaning as used in the Declaration, unless a different or contrary meaning is expressly provided in this Amendment.
8. This Amendment shall be promptly recorded in the office of the Oakland County Register of Deeds by Ottawa.

Dated: _____, 2018

OTTAWA TOWER II, LLC, a Michigan
limited liability company

By: _____
Charles Stephens

Its: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Acknowledged before me on _____, 2018, by Charles Stephens, Manager of Ottawa
Tower II, LLC.

[SEAL]

_____, Notary Public
_____, County, Michigan
Acting in _____ County, MI
My Commission Expires: _____

Drafted by and when recorded, return to:

Steven D. Sallen, Esq.
Maddin Hauser Roth & Heller, PC
28400 Northwestern Highway, 2nd Floor
Southfield, Michigan 48034
248-827-1861

Price Index (Midwest). This parking agreement shall be freely assignable, in whole or in part, to any purchaser(s) of either or both of the Towers and binding on the City.

- (B) The City shall install a card-reader system (or the equivalent) and issue cards to Plaintiffs for the vehicles of North Bay, OTII, their tenants and employees which cards will be at no cost to North Bay, OTII, and all of their tenants and their employees of both Towers. Parking cards shall be issued to Plaintiffs immediately upon their request, with 1,183 cards being issued to Plaintiffs upon execution of this Agreement or as soon as such cards become required by the City. Upon leasing of the Judson Tower, the City shall immediately provide Plaintiffs with 618 cards. If Plaintiffs or any subsequent owners of Plaintiffs' buildings require any replacement cards in excess of 1,800, then a charge of \$10 per replacement card shall apply.
- (C) The public and visitors shall be charged market rates for use of the Deck by the City; provided however, that the State of Michigan, as Tenant, shall be allowed to validate the parking tickets of its invitees and such invitees upon presenting the validated ticket shall not be charged for parking.
- (D) A reserved parking area is hereby established, for the duration of this Agreement, on the entire south portion of the Deck (being that portion of the Deck located to the south of Orchard Lake Road) and the entire north side (being that portion of the Deck located to the north of Orchard Lake Road) of the third floor of the Deck and to be identified as parking solely for Plaintiffs (and successors and assigns), and their tenants and employees (wording and restrictions to be determined by both Plaintiffs or any successor owner(s) of the Towers). The other parking areas of the Deck shall be available and useable by Plaintiffs, their tenants and employees on a first come, first served basis. The City acknowledges that Plaintiffs may designate within the forgoing reserved parking area certain parking spaces for executive use, provided that the City shall have no obligation to enforce such executive use spaces.
- (E) The parking cards permitting free access are not assignable or transferrable by vehicle owners to any party other than Plaintiffs or Plaintiffs' tenants and their employees.
- (F) The parking card is the property of the City, and no property rights are transferred or intended to transfer to the parking card user by issuance or delivery of the parking card.
- (G) Plaintiffs agree not to resell or otherwise charge employees, visitors, or the public for the parking cards it receives under this Agreement. This provision does not apply to any provision in the lease(s) that Plaintiffs may sign with their tenants relating to any charges or rental rate(s).
- (H) This Agreement is intended to be complimentary to the Settlement Agreement and Release and Easement and, in the event of any conflict between this Agreement and those documents, those documents shall control. This Agreement may be recorded with the Oakland County Register of Deeds.

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Acknowledged before me on _____, 2018, by Dr. Deirdre Waterman, Mayor, for the City of Pontiac.

[SEAL]

_____, Notary Public
_____, County, Michigan
Acting in _____ County, MI
My Commission Expires: _____

Dated: _____, 2018

NORTH BAY DRYWALL INC. PROFIT
SHARING PLAN & TRUST, a California
Pension and Profit Sharing Trust

By: _____
Charles Stephens

Its:

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Acknowledged before me on _____, 2018, by Charles Stephens, Trustee of North Bay Drywall Inc. Profit Sharing Plan & Trust.

[SEAL]

_____, Notary Public
_____, County, Michigan
Acting in _____ County, MI
My Commission Expires: _____

Dated: _____, 2018

OTTAWA TOWER II, LLC, a Michigan
limited liability company

By: _____
Charles Stephens

Its: _____

EXHIBIT 5 – CITY'S MAINTENANCE SCHEDULE

The City's Day-to-Day Management of the Phoenix Center includes without limitation, the following activities:

(A) Deck and Tunnel Maintenance:

- 1) Lighting and lightbulbs.
- 2) Painting of lines for parking spaces.
- 3) Sweeping and trash removal.
- 4) Snow and Ice Removal (including salting).

(B) Plaza Maintenance:

- 5) Landscaping.
- 6) Trash removal.

7) Snow and ice removal (including salting) as necessary to keep drains clear.

(C) Security. For avoidance of doubt, during the period described in Section 8.0 of the Settlement Agreement, wherein Plaintiffs shall continue their services at the Phoenix Center, Plaintiff's obligations for security shall be limited to the south section of the Deck, from 7:00 am to 7:00 pm, Monday through Fridays; excluding holidays. Any additional security services requested by the City will cost extra.

(D) Snow and ice removal on short section of Saginaw Street north of Judson street, to the south entrance of the Deck, only.

EXHIBIT A – LEGAL DESCRIPTION

All real property and improvements, including but not limited to a two-story atrium and connector area adjacent to the office tower, located upon the following parcel with a common street address of 31 East Judson Street, Pontiac, Michigan, and as legally described as:

Being all or parts of the following lots and parcels in the City of Pontiac, Oakland County, Michigan, Lot numbers 1 through 8 and 14, 15 and that part of vacated Auburn Avenue of Assessor's Plat No. 130, as recorded in Liber 54A, Page 71, Oakland County Records, more particularly described as follows: Beginning at a point located Northerly 79.00 feet along the Easterly right of way line of Saginaw Street from the Northwest corner of Lot 16 of said Assessor's Plat No. 130, said point of beginning also being a point on the North right of way line of New Judson Street; thence North 14 degrees 30 minutes 01 seconds West 144.67 feet; thence North 75 degrees 27 minutes 55 seconds East 128.00 feet; thence North 14 degrees 32 minutes 05 seconds West, 2.42 feet; thence North 75 degrees 27 minutes 55 seconds East 64.00 feet; thence South 14 degrees 32 minutes 05 seconds East 2.42 feet; thence North 75 degrees 27 minutes 55 seconds East 124.91 feet; thence South 14 degrees 32 minutes 05 seconds East 181.79 feet to a point on the Northerly right of way line of Judson Street; thence along said Judson right of way line North 85 degrees 36 minutes 10 seconds West 6.48 feet to the beginning of a curve; thence along a curve to the left 214.75 feet, said curve having a radius of 648.70 feet, delta of 18 degrees 58 minutes 04 seconds, chord bearing and distance of South 84 degrees 54 minutes 44 seconds West 213.77 feet; thence South 75 degrees 25 minutes 42 seconds West 100.00 feet to point of beginning.

Together with the right to the use of the following land in accordance with a License Agreement as granted by Pontiac City Commission meeting December 4, 1979, Resolution No. 738 to Downtown Pontiac Development Company, recorded in Liber 7788, Page 142, as more clearly described, limited and defined as; A parcel of land being part of the Saginaw Street right of way adjacent to Lots 1, 2, 3 and 4 of Assessor's Plat No. 130, as recorded in Liber 54A, Page 71, Oakland County Records, more particularly described as follows: Beginning at a point located Northerly 79.00 feet along the Easterly right of way line of Saginaw Street from the Northwest corner of Lot No. 16 of Assessor's Plat No. 130, in the Northeast 1/4 of Section 32, City of Pontiac, Oakland County, Michigan, said point of beginning also being a point on the North right of way line of New Judson Street; thence North 14 degrees 30 minutes 01 seconds West 144.67 feet; thence South 75 degrees 27 minutes 55 seconds West 15.09 feet to a point; thence South 14 degrees 32 minutes 05 seconds East 144.68 feet to a point; thence North 75 degrees 25 minutes 42 seconds East 15.00 feet to the point of beginning.

Commonly known as: 31 East Judson Street, Pontiac, Michigan
Tax Parcel Identification No.: 14-32-227-002