

## MAINTENANCE AGREEMENT

This agreement (this "Agreement") is made and entered into this 31 day of May 20 19  , by and between the City of Detroit, a Michigan municipal corporation, acting by and through its Department of Public Works (the "City"), and Petit Bateau LLC, a Limited Liability company ("Owner") whose address is 421 East Ferry, Detroit, MI 48202.

NOW THEREFORE, for valuable consideration, including the covenants and undertaking herein contained, it is mutually agreed as follows:

- 1. Purpose of Agreement:** Owner holds title to a certain building described in Exhibit A attached hereto (the "Building"). City owns certain property adjacent to the Building. Inasmuch as persons entering or exiting from the Building may use the City-owned property, and/or to the extent that certain services benefiting the Building (for example, water and sewer) are located in the City-owned property, Owner has agreed to improve and maintain a portion of City-owned property in the location (the "Maintenance Area") and manner detailed in the plan attached as Exhibit B for the Term, as defined herein.
- 2. Financial Responsibility:** It is understood that during the Term, all physical improvements and repairs to the Maintenance Area, as set forth herein, shall be at the sole cost and expense of Owner, subject to any express limitations set forth in this Agreement.
- 3. Indemnification and Hold Harmless:** Owner hereby agrees to indemnify, defend and hold the City harmless from all loss, costs, expense, actions, claims of action, damages and liability (including attorneys' fees and costs) for injury to or death of any person or persons and for the damage to or destruction of property caused by Owner's actions or omissions in the course of or resulting from the maintenance activities contemplated by this Agreement.
- 4. Insurance:** Owner covenants and agrees, at its sole cost and expense, to maintain or cause to be maintained for the mutual benefit of it and the City comprehensive general liability insurance on an occurrence form against claims for bodily injuries (including, but not limited to, death) or property damage (including, but not limited to, destruction) at any time occurring in the course of or resulting from work carried out by Owner upon, in or about the Maintenance Area, at combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be cancelled or materially modified without prior written notice by certified mail to the City to the attention of City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226; Attention: Risk Management Division. Said coverage may

be evidenced by a certificate of insurance issued upon so-called "blanket" coverage, or by either a certificate or the original of an insurance policy effecting such coverage. The insurance shall be primary and any such insurance or self-insurance maintained by the City shall be secondary and non-contributory and excess. Owner shall be responsible for payment of all deductibles relating to such insurance. The provisions requiring Owner to carry or cause to be carried such insurance shall not be constructed as waiving or restricting the liability of Owner under this Agreement.

5. **Term:** The term of this Agreement (the "Term") shall commence on the date of this Agreement and continue for five (5) years thereafter unless terminated or extended pursuant to the following:
  - a. The City may terminate this Agreement prior to the end of the Term in the event the City has designed and has committed to implement a uniform scheme for the improvement of an area of City-owned property that encompasses the Maintenance Area and other adjacent City-owned property. The aforesaid may include widening of streets or sidewalks and relocation of water or sewer facilities.
  - b. Owner may terminate this Agreement prior to the end of the Term if it sells or ground leases the Building or grants a mortgage lien or security interest in the Building or portion thereof.
  - c. In the event a party elects to terminate this Agreement pursuant to Sections 5(a) or 5(b) above, such party shall deliver to the other party written notice of such election at least thirty (30) days prior to the date on which termination shall be effective.
  - d. Following the five-year expiration (but not the early termination) of this Agreement, this Agreement shall automatically continue on month to month basis subject to final termination by either party upon delivery of at least thirty (30) days' written notice to the other party.
6. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
7. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Any amendment to or modification of this Agreement shall be of no force or effect unless it is in writing and signed by an authorized signatory for each of the parties.
8. **Successors and Assigns:** This Agreement is for the exclusive benefit of the parties stated herein and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person. Notwithstanding the aforesaid, Owner shall have the right, without requiring the City's consent to assign this Agreement to any purchaser of the Building or any affiliate of Owner; provided that if Owner assigns this Agreement to any unaffiliated third party purchaser of the Building, Owner shall notify the City in

writing no later than thirty (30) days after such assignment, and the City may, by written notice to Owner within forty-five (45) days after receiving such notice from Owner (subject to reasonable extension due to City Council recess), terminate this Agreement. Unless terminated as provided above, this Agreement shall be binding upon the parties' successors and assigns.

**9. Improvement Changes:** Any changes to the Maintenance Area, except as contemplated by this Agreement, are subject to the prior approval of the City. Owner shall not install or construct in the Maintenance Area any structure, fixture, furniture, or equipment (including but not limited to signs, lighting, fixtures, shades, canopies, or awnings) as may obstruct or in any way encroach upon the Maintenance Area except as set forth in Exhibit B or otherwise properly permitted by the City.

**10. Rights of City:** The parties understand that this Agreement in no way limits the property rights of the City with regard to the Maintenance Area.

**11. Certain Maintenance Obligations of Owner:** During the Term, Owner shall be responsible for the improvement and maintenance activities set forth on Exhibit B.

IN WITNESS WHEREOF, the City and the Owner, by and through their authorized officers and representatives, have executed this Agreement as follows:

Petit Bateau LLC

a Limited Liability company

BY: 

PRINT NAME: Julie BATEAU

ITS: \_\_\_\_\_

(Duly Authorized Representative)

CITY OF DETROIT, through its Department of Public Works - City Engineering Division

BY: 

PRINT NAME: Richard Doherty

ITS: City Engineer

**Exhibit A**

**BUILDING DESCRIPTION**

**[TO BE COMPLETED AND REPLACED]**

**Exhibit B**

**Maintenance Area and Plan for Improvements; Any Related Maintenance Responsibilities.**

**[TO BE COMPLETED AND REPLACED AS APPLICABLE TO EACH PROJECT]**

## Project Definition:

The Frederick Street development is one that speaks to the rich elements of its surrounding environment. With its proximity to Peck Park, the Detroit Institute of Arts, the College for Creative Studies, and the vibrant energy of Midtown. Nailah LLC, the developer, would like to construct a mixed-use project on the property with 71 residential units, consisting of 39 apartment units above first floor commercial space totaling approximately 3200 sf with additional space allocated for at grade parking: 20 units that will be comprised of self-parked townhomes, and the remaining 12 units will be provided as part of a 3 story apartment building located on the site's western most parcel. The buildings will range from 3 to 5 stories in height and will fill the block from Beaubien Street to St. Antoine Street.

The Frederick Street site provides an ideal opportunity for development of mixed use residential and multi-family residential units. Taking into consideration the rich historical architecture of the adjacent properties as well as the increasingly energized Midtown neighborhood, this new development takes the opportunity to fuse the old with the new, offering traditional and contemporary features which both complement each other, as well as their surroundings.

At the site's eastern edge is an apartment building that proposes the development's highest density. The apartment building features ground-floor live/work units, with ground floor retail to offer neighborhood conveniences. Above, several residential apartments will comprise the upper floors. This mixed-use residential typology supports a contemporary architectural approach which serves as the site's physical anchor.

Moving west along Frederick Street toward Peck Park, the pace gradually softens as the architecture becomes less dense, defining an edge along Frederick Street with a series of stacked-unit multi-family townhomes. The architectural approach to the townhomes varies as it moves along Frederick Street by combining traditional architectural gestures, such as gables and porches, with contemporary materials and massing. These modulating units serve as the link between old and new, a street-wall frontage that celebrates the diversity of the surrounding neighborhood through architectural language.

On the site's western edge, a 12-unit apartment building overlooks Peck Park and, as a result, encompasses an intimate design through more traditional architectural values that will complement the adjacent natural landscape.

The opportunity for a diverse, mixed use settlement is supported by the site's surrounding amenities. Architecturally, the development takes care to complement the jewels of the neighborhood through the craftsmanship of its own new and rich character. The approach to blend diversity in architectural style and density creates a new development that adds to the energy of its context and contributes to adding desirable residential choices in Detroit.