

**COMMUNITY BENEFITS PROVISION AGREEMENT
FOR
TIER 1 DEVELOPMENT PROJECTS**

This Community Benefits Provision ("Provision") is entered into as of the 7th of February, 2018 ("Effective Date"), by and between the CITY OF DETROIT, a Michigan municipal corporation acting through its Planning and Development Department ("CITY"), and Herman Kiefer Development, LLC, a Michigan limited liability company (together with its successors and assigns, "DEVELOPER" or "HKD"). The CITY and the DEVELOPER may each be referred to herein as a "Party" or collectively as the "Parties" to this Provision, as applicable.

RECITALS

Whereas, (i) the CITY and the DEVELOPER have executed a Master Agreement to Purchase and Develop Land, dated May 25, 2016, a memorandum of which is recorded in the land records of the Register of Deeds of Wayne County, Michigan as Liber ____, Folio ____ (as amended, restated or supplemented from time to time, the "Development Agreement"), regarding the development of certain property located at the former Herman Kiefer Hospital and the former Hutchins and Crosman schools in Detroit, Michigan, as further described on Schedule A attached hereto (the "HK Property") pursuant to which the DEVELOPER has agreed to activate and redevelop the HK Property and (ii) as contemplated by the Development Agreement, the DEVELOPER and the Detroit Land Bank Authority (the "DLBA") have entered into that certain First Option to Purchase Property and Agreement for Maintenance of Property, dated as of July 5, 2017 (as amended, restated or supplemented from time to time, the "Land Bank Agreement"; and together with the Development Agreement, collectively, the "Development Agreements"), pursuant to which DEVELOPER has rights to acquire certain additional parcels of land surrounding the HK Property (the "DLBA Property"; and together with the HK Property, collectively, the "Property") on the terms and conditions set forth therein. The DEVELOPER's plans to acquire, redevelop and/or activate the Property in accordance with the Development Agreements shall be collectively referred to herein as the "Project".

Whereas, the DEVELOPER has submitted to the CITY an application for the abatement of certain city taxes pertaining to its development of the Project.

Whereas, under City of Detroit Ordinance No. 35-16 ("Ordinance"), codified in Chapter 14, Article XII of the Detroit City Code ("Code"), which became effective on November 29, 2016, certain development projects referred to therein as "Tier 1 Development Projects" are subject to certain community engagement procedures as set forth in the Ordinance.

Whereas, according to the tax abatement application submitted by the DEVELOPER to the CITY, the Project is expected (i) to require an aggregate investment of at least **Seventy-Five Million** dollars (\$75,000,000) and (ii) to involve the abatement of certain city taxes with an estimated value greater than **One Million** dollars (\$1,000,000.00) and as a result, the Project constitutes a "Tier 1 Development Project" within the meaning of the Ordinance.

Whereas, in consideration of the foregoing, prior to the Effective Date, a Neighborhood Advisory Council ("NAC") was formed, the CITY and the DEVELOPER completed the community engagement process with the NAC and the CITY prepared a community benefits report with respect to the Project (the "Report"), all in accordance with Section 14-12-3 of the Code and in satisfaction of the conditions thereof.

NOW THEREFORE, the CITY and DEVELOPER hereby agree as follows:

Section 1: Addressing Community Impacts. The DEVELOPER understands that through the community engagement process set forth in the Ordinance, the NAC raised certain concerns regarding the Project's anticipated impact on the community, all of which are itemized in the Report. The DEVELOPER acknowledges these concerns and, in consideration of the foregoing, agrees to implement the following:

A. Neighborhood Stabilization. HKD will lead the redevelopment and rehabilitation of the land and buildings on the Property by completing the following:

1. HKD shall board up (as necessary), secure and maintain the existing improvements located on the HK Property (including, without limitation, the Hutchins school building and the Crosman school building) in accordance with the Development Agreements;

2. HKD shall board up (as necessary), secure and maintain any vacant DLBA residential structures located on the DLBA Property acquired by HKD in accordance with the Land Bank Agreement;

3. HKD shall partner with, or otherwise contract with one or more Detroit-based non-profit organizations, community development corporations, or residents to rehabilitate not less than 20% of the improved lots of the DLBA Property which HKD has elected to rehabilitate in accordance with the Land Bank Agreement; and

4. HKD shall implement a general maintenance plan and/or land stewardship plan for any portion of the DLBA Property acquired by HKD in accordance with the Land Bank Agreement.

B. Workforce Development. HKD will work with the City to maximize the employment of Detroit-based contractors and local residents. HKD expects to open an on-site resource center where local residents will be able to learn more about training and job opportunities related to the Project. HKD expects to continue to work with a local instructor to create a skilled trades training program for local residents. HKD will continue to work with the Mayor's Office to create youth employment opportunities and training and job opportunities related to the Project.

C. Site Programming. HKD will make good faith efforts to redevelop the HK Property with a focus on uses that contribute positively to the neighborhood and the City. This may include, but is not limited to the following:

1. Preservation of historically designated buildings located on the HK Property (except as may be necessary for the preservation of public health, safety, and welfare); and

2. Activation of the HK Property by means of establishing, installing, and developing educational, cultural and recreational facilities, recruiting and retaining commercial tenants and forming programming for community-accessible workshops, food truck rallies and movie screenings.

D. Recreational Facilities. Prior to the Effective Date, HKD began to restore existing recreational amenities on the HK Property and will make good faith efforts to continue to do so, including by performing an initial clean-up of the Hutchins playground, basketball and tennis courts and by restoring the Hutchins field for community sports and recreational use.

E. Community Engagement. HKD has been actively engaging with the community for input and will continue to do so throughout the Project. HKD intends on meeting quarterly with local stakeholders and residents to provide project updates and to receive feedback and ideas about programming and events.

Section 2: Continued Community Engagement. The DEVELOPER acknowledges and understands that pursuant to Section 14-12-3(D)(3) of the Code, the City is obligated to facilitate at least one (1) meeting annually between the DEVELOPER and the NAC. The CITY will facilitate, and the DEVELOPER shall attend, such meetings on an annual basis for a period of two (2) years following the Effective Date of this Provision. The purpose of such meetings will be to discuss anticipated or actual impacts of the Project on the community and to coordinate the implementation of the DEVELOPER's efforts to address such impacts in accordance with the Ordinance.

Section 3: Compliance Reports. During the term of this Provision, within thirty (30) days following written demand from the CITY, the DEVELOPER shall submit to the CITY a compliance report, which shall summarize the DEVELOPER's progress in achieving the goals set forth in Section 1 of this Provision; provided, that, in no event shall the CITY request a compliance report more than once per calendar year.

Section 4: Meetings. Upon request by either Party, the Parties will meet at their mutual convenience, whether in person or by video conference, telephone, or other convenient means, to review any aspect of this Provision and each Party's rights and obligations hereunder.

Section 5 – Recordkeeping and Reporting. Each Party will maintain information pertinent to its activities under this Provision for at least two (2) years following the expiration or earlier termination of this Provision in accordance with Section 11 hereof.

Section 6 – No Third Party Beneficiary. Except as provided for herein, this Provision is for the sole benefit of the Parties hereto and nothing herein, express or implied, shall give or be construed to give to any person or entity, other than the Parties hereto, any legal or equitable rights hereunder.

Section 7 – Compliance with Laws. Each Party acknowledges that it is individually responsible for maintaining compliance in all respects with all applicable federal, state, and local laws, rules, regulations, and orders having the binding effect of law (collectively, “Applicable Laws”). Neither Party will be responsible for ensuring the other Party’s compliance with Applicable Laws at any time, unless so required under Applicable Laws.

Section 8 – Non-Discrimination. The DEVELOPER shall, in addressing community impacts as set forth in Section 1 herein, refrain from refusing, restricting, withholding, or denying any accommodations, services, privileges, advantages or facilities or otherwise discriminating, whether directly or indirectly, on the basis of race, color, ethnicity, national origin, religious beliefs or practices, age, disability, pregnancy, marital status, parental status, military status, employment or educational status, gender, sex, sexual orientation, gender identity or expression, or any other protected or designated classification, in accordance with Chapter 27 of the Detroit City Code and other Applicable Laws.

Section 9: Community Reporting. The Parties acknowledge and understand that pursuant to Section 14-12-3(f)(4) of the Code, members of the community may report to the NAC allegations of the DEVELOPER’s failure to comply with this Provision. Community members can submit such allegations to the CITY by personal delivery with receipt obtained or by registered or certified first-class mail with return receipt requested at the following address:

City of Detroit Planning & Development Department
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 808
Detroit, MI 48226
Attention: Maurice Cox, Director

The CITY will forward all such allegations from community members to the NAC for the Project, which may report such allegations to the Enforcement Committee (as defined in the Ordinance) in accordance with Section 14-12-3(f) of the Code.

Section 10: Breach and Default. The failure by either Party to comply with its obligations under this Provision, which failure is not caused, directly or indirectly, by the other Party’s failure to comply with its own obligations under this Provision, will constitute a material breach by of this Provision.

- A. In the event of DEVELOPER’s material breach of this Provision, the DEVELOPER will be considered to be in default of this Provision upon the DEVELOPER’s failure to cure such breach within ninety (90) days after receipt of written notice of such breach and demand to cure same by the CITY (a “Default”); provided, however, that if the nature of DEVELOPER’s default is such that more than ninety (90) days is reasonably required for the cure of such default, then DEVELOPER will not be deemed to be in Default if DEVELOPER, with the CITY’s acknowledgment and consent, commences such cure within said 90-day period and thereafter diligently pursues such cure to completion.

In the event of a Default by DEVELOPER pursuant to Section 10(A) above, the Enforcement Committee may take such action set forth in Section 14-12-3(f) of the Ordinance. For the avoidance of doubt, no Default under this Provision shall be deemed a default under the Development Agreement or the Land Bank Agreement.

- B. In the event of the CITY's material breach of this Provision, the CITY will be considered to be in default of this Provision upon the CITY's failure to commence its cure of such breach and thereafter diligently pursue such cure to completion within ninety (90) days after written notice of such breach and demand to cure by the DEVELOPER.

Section 11: Term and Termination. This Provision will remain in effect until the completion of the DEVELOPER's satisfaction of all of the obligations under Section 1 hereof (to the extent required by the Development Agreements) or earlier termination by the Parties; provided, however, if the Development Agreement is terminated, this Provision shall automatically terminate and be of no further force and effect. The term of this Provision will be equal to the period of time necessary for both Parties to satisfy all of their respective obligations set forth in this Provision, at which time and upon written notice by either Party the term of this Provision shall terminate.

Section 12: Amendments. No amendment to this Provision will have any force or effect against the City unless it is in writing, expressly makes reference to this Provision, is fully executed by the duly authorized representative of the City and, if required, pursuant to the resolution of the Detroit City Council as approved by the Mayor of the City of Detroit, and is approved by the City of Detroit Law Department; provided, however, the Parties may make such immaterial amendments to this Provision to correct any manifest or scrivener's error or to clarify the terms of this Provision by written amendment without the resolution of the Detroit City Council, provided that the same shall not materially impact the rights or obligations of the Parties hereto.

Section 13: Notices. Notices, requests, notifications, and other communications (collectively, "Notices") related to this Provision by either Party will be given in writing, signed by an authorized representative of the Party, and personally delivered with receipt obtained, or mailed by registered or certified first-class mail, return receipt requested, addressed as follows:

If to CITY: City of Detroit Planning & Development Department
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 808
Detroit, MI 48226
Attention: Maurice Cox, Director

With a copy to:
Corporation Counsel
City of Detroit Law Department
2 Woodward Avenue, Ste 500
Detroit, MI 48226

If to DEVELOPER: Herman Kiefer Development, LLC

P.O. Box 2822
Detroit, MI 48226

All Notices shall be deemed given when hand-delivered or, if mailed, on the day of receipt. Either Party may change its future address or point of contact for the receipt of Notices at any time by giving Notice thereof to the other Party in accordance with this Section.

Section 14: Miscellaneous Terms.

- A. **Independent Parties.** Each Party acknowledges that the CITY and the DEVELOPER are independent of each other and do not intend, as a result of this Provision or otherwise, to become a joint venture, partners, employees, servants, agents, representatives, contractors, or any type of related business entities to one another with respect to the subject matter of this Provision.
- B. **Assignment.** This Provision sets forth Developer's intended activities to address impacts on the community by the Project in accordance with the Ordinance; notwithstanding the foregoing or anything else to the contrary set forth in this Provision, Developer may delegate or assign this Provision, or any portion thereof, either voluntarily or involuntarily, or by operation of law to the extent and in the same manner as provided for in the Development Agreements.
- C. **Force Majeure.** In the event of enforced delay in the performance by either Party of obligations under this Provision due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, civil unrest, acts of the other Party, fires, floods, epidemics, or severe weather, or economic recession for the state, Midwest region or the nation (such national recession defined as two consecutive quarters of negative growth in the Gross National Product as determined by the U.S. Bureau of Economic Analysis or other federal authority, or other definitions from the National Bureau of Economic Research for a state or regional recession), the time for performance of such obligations shall be extended for the period of the enforced delays as formally documented; provided that the Party seeking the benefit of the provisions of this Section must within ninety (90) days after the beginning of such enforced delay, have first notified the other Party in writing of the causes thereof and requested an extension for the period of the enforced delay. In the event that there is any dispute as to what constitutes such *force majeure* event, the matter shall be resolved in accordance with the provisions of Exhibit K to the Development Agreement.
- D. **Choice of Law and Venue.** The Parties acknowledge that this Provision will be governed by the laws of the State of Michigan, excluding its choice of laws rules. Any legal suit, action or proceeding arising out of this Provision will be instituted in the federal courts of the United States of America or the courts of the State of Michigan, in each case located in the City of Detroit and County of Wayne, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

- E. **Severability.** In the event that any provision in this Provision is found by a court to be impermissible or illegal, then that provision shall be stricken from the Provision and shall be replaced by a provision that is permissible and legal and by mutual agreement of the Parties comes closest to expressing the intent of the stricken provision. The remainder of the Provision shall remain in full force and effect in accordance with its original overall intent.
- F. **Counterparts.** This Provision may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one document. Each counterpart may be executed by facsimile or electronic signature, which will be deemed to be an original signature, to the extent permitted by Applicable Law.
- G. **Authority of the City.** As of the Effective Date, this Provision has (i) been fully executed by the duly authorized representative of the CITY, and if required, a resolution of the Detroit City Council (which resolution was duly approved by the Mayor of the City of Detroit) and (ii) has been approved by the City of Detroit Law Department. The CITY is authorized and obligated to perform all of its obligations pursuant to this Provision. If required pursuant to Section 12 above, any amendments or modifications must likewise be duly authorized by resolution of the City Council as approved by the Mayor, and must be approved by the Law Department to be enforceable against the CITY or DEVELOPER.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the Parties have executed this Provision as of the dates shown below,
to be effective as of the Effective Date.

CITY OF DETROIT,
a Michigan municipal corporation

By: 


Name: Maurice D. Cox

Its: Director of Planning

Date: _____

[Signatures continue on the following page.]

Herman Kiefer Development, LLC,
a Michigan limited liability company

By:  _____

Name: Ronald Castellano

Its: Authorized Signatory

Date: _____

[Signature Page to Community Benefits Provision -- Herman Kiefer]

Schedule A

Legal Description of the HK Property

(See Attached)

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PARCEL 1:

All that part of Outlot 5, of PLAT OF 1/4 SECTION 46, 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 6 of Deeds, pages 352, 353 and 354, Wayne County Records, EXCEPT that part lying within the following described parcel: Beginning at a point in the West line of Hamilton Avenue, 100 feet wide, said point being distant, North 26 degrees 34 minutes 47 seconds West, 22.87 feet from the intersection of the North line of Barbour and Rexford's Subdivision of Lots 1, 2, 3, 4, 39, 40, 41, 42, 43, 44, 45, and 46 of F.B. Hooper Subdivision of Lots 2 and 3 of 1/4 Section 46, 10,000 acre tract as recorded in Liber 24, Page 11 of Plats Wayne County Records, with the Westerly line of Hamilton Avenue, 100 feet wide; thence along the westerly line of Hamilton Avenue, 100 feet wide, North 26 degrees 34 minutes 47 seconds West, 272.47 feet to a point; thence along a line South 63 degrees 37 minutes 11 seconds West, 415.42 feet to a point; thence along a line North 26 degrees 35 minutes 54 seconds West, 88.71 feet to a point; thence along a line South 63 degrees 08 minutes 02 seconds West, 66 feet wide; thence along the Easterly line of Byron Avenue, 66 feet wide, South 26 degrees 27 minutes 51 seconds East, 355.29 feet to a point; thence along a line North 03 degrees 48 minutes 43 seconds East, 795.61 feet to the place of beginning.

ALSO

Outlot 6, of PLAT OF 1/4 SECTION 46, 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 6 of Deeds, pages 352, 353 and 354, Wayne County Records, also known as Lots 1 through 50, both inclusive and all the streets and alleys included, of HUGO H. STENDER'S SUBD'N OF OUTLOT 6, QUARTER SECTION 46, 10,000 A.T., according to the plat thereof as recorded in Liber 24 of Plats, page 26, Wayne County Records.

ALSO

Outlots 7 and 8, of PLAT OF 1/4 SECTION 46, 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 6 of Deeds, pages 352, 353 and 354, Wayne County Records, described as follows: Beginning at the Southeast corner of Lot seven (7) of the subdivision of quarter section forty six (46) of the Ten Thousand Acre Tract, so-called, according to the recorded plat thereof in Liber 6 of Deed on page 353 Wayne County Records; thence Northerly along the Easterly line of Lots Seven (7) and Eight (8) of the above subdivision said line being the center of Hamilton Boulevard a distance five hundred six (506) feet to a point; thence Westerly and parallel with the Southerly line of said Lot Seven (7) a distance of Eight Hundred Sixty one (861) feet to a point, thence Southerly and parallel with the Easterly line of Lot Seven (7) and Eight (8) aforesaid a distance of five hundred six (506) feet, thence along Southerly line of Lot Seven (7) eight hundred sixty one (861) feet to the place of beginning, EXCEPT those parts taken for the widening Hamilton Avenue and Byron Avenue.

ALSO

Lots 49 and 50, of BLACK'S ADDITION TO HIGHLAND PARK VILLAGE ON OUTLOTS 9 AND 10 ON 1/4 SECTION 46 OF THE 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 14 of Plats, page 78, Wayne County Records, EXCEPT those parts taken for widening Hamilton Avenue and Byron Avenue.

PARCEL 2:

All that part of Lots 4 and 5, of PLAT OF 1/4 SECTION 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 6 of Deeds, pages 352, 353 and 354, Wayne County Records, described as follows: Beginning at a point in the West line of Hamilton Avenue, 100 feet wide, said point being distant, North 26 degrees 34 minutes 47 seconds West, 22.87 feet from the intersection of the North line of Barbour and Rexford's Subdivision of Lots 1, 2, 3, 4, 39, 40, 41, 42, 43, 44, 45 and 46 of F.B. Hooper Subdivision of Lots 2 and 3 of 1/4 Section 46, 10,000 acre tract as recorded in Liber 24, Page 11 of Plats, Wayne County Records, with the Westerly line of Hamilton Avenue, 100 feet wide, thence along the Westerly line of Hamilton Avenue, 100 feet wide, North 26 degrees 34 minutes 47 seconds West, 272.47 feet to a point; thence along a line South 63 degrees 37 minutes 11 seconds West, 415.42 feet to a point; thence along a line North 26 degrees 35 minutes 54 seconds West, 88.71 feet to a point; thence along a line South 63 degrees 08 minutes 02 seconds West, 379.43 feet to a point on the Easterly line of Byron Avenue, 66 feet wide; thence along the Easterly line of Byron Avenue, 66 feet wide, South 26 degrees 27 minutes 51 seconds East, 355.29 feet to a point; thence along a line North 63 degrees 48 minutes 43 seconds East, 795.61 feet to the place of beginning. 10,000

PARCEL 3:

Lots 4 through 14, both inclusive, the East 22 feet of Lot 15, Lots 37 through 41, both inclusive, and the East 22 feet of Lot 36, including the vacated alleys adjacent thereto, of HAWLEY'S COLUMBIAN SUBDIVISION, OF PART OF OUTLOTS 9 AND 10 1/4 SECTION 46 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 18 of Plats, page 86, Wayne County Records.

PARCEL 4:

Lots 29 through 69, both inclusive, of BESSENGER AND MOORE'S SUB. OF PART OF QUARTER SECTION 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 22 of Plats, page 85, Wayne County Records.

ALSO

Lots 1 through 27, both inclusive, of BESSENGER AND MOORE'S BLAINE AVE. SUB'N OF LOT 16 1/4 SECTION 46, 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 24 of Plats, page 65, Wayne County Records.

ALSO

Lots 1 through 39, both inclusive, and vacated Gladstone Ave and vacated adjacent alleys of THE MIMNAUGH SUBDIVISION OF THE WEST 1/2 OF LOTS 14-15, 1/4 SECTION 46, 10,000 ACRE TRACT, according to the plat thereof as recorded in Liber 21 of Plats, page 24, Wayne County Records.

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