Beebie, Lisa

From:	Plattsburgh Citizens Coalition <plattsburghcitizencoalition@gmail.com>
Sent:	Monday, April 6, 2020 9:55 AM
To:	cityinfo@plattsburghcitygov.com; McMahon, Joe; Beebie, Lisa; Parrotte, Sylvia
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Subject:	Zoning Board of Appeals Comment 4/6/2020 - 1 - Letter from Attorney Matt Fuller
Attachments:	PCC_ZBA Ltr 432020.pdf

MEYER, FULLER & STOCKWELL
PLLC ATTORNEYS AT LAW

LAKE GEORGE
TITLE AGENCY

April 3, 2020

City of Plattsburgh Zoning Board of Appeals
c/o Ron Nolland, Chairman
City of Plattsburgh Planning Board
c/o Jim Abdallah, Chairman
City Hall
41 City Hall Place
Plattsburgh, New York 12901

Re: Prime Plattsburgh, LLC Special Use Permit Application

Dear Mr. Nolland, Mr. Abdallah, ZBA and Planning Board members:

Our firm is been retained by the Plattsburgh Citizens Coalition, Inc., a not for profit coalition and its members, of concerned citizens, property owners, and business owners in the City of Plattsburgh relative to the City's proposed development plans with Prime Plattsburgh, LLC. We understand that a ZBA public hearing has been noticed for the Prime Plattsburgh, LLC application for April 6, 2020. We also understand that applications are pending before the Planning Board. We offer the following comments:

1. Open Meetings Law: We note that given the Covid-19 outbreak, Governor Cuomo on March 13, 2020 issued Executive Order 202.1 which, in part, suspended Article 7 of the Public Officers Law, commonly known as the Open Meetings Law. This Executive Order has subsequently been extended and modified through to and including Executive Order 202.13 (as of March 30, 2020). However, what neither Article 7 of the Public Officers Law, nor Governor Cuomo's do, is address public hearings.

It is our belief that the ZBA is holding this public hearing solely under the guidance provided after Governor Cuomo's Executive Order 202.1 which permitted meetings to be held without

public attendance. That order, however, did not address public hearings. Public hearings continue to require active public input, that is, input during the actual meeting either through mechanisms such as "Zoom" or other similar participation level remote meetings. The procedure adopted by the City of Plattsburgh does not satisfy this law.

In addition, the City's procedure appears to ignore Executive Order 202.10 (March 23, 2020, copy attached) which states clearly "Non-essential gatherings of any size for any reason (e.g. parties, celebrations or other social events) are canceled or postponed at this time." With due respect, and particularly given the level of public interest in this project, this project is under no definition "essential". Indeed, it covers literally none of the essential categories covered by New York State Empire State Development at https://esd.ny.gov/guidance-executive-order-2026. [Last accessed 4-1-2020]

What is the reality, however, is that this scheduling of this hearing during this COvid-19 pandemic is a blatant attempt to push a controversial project through with as little public participation as possible. Indeed, it is quite clear that the City's public hearing procedures were perhaps adopted with this exact project in mind.

The ZBA and Planning Board are NOT obligated to follow the City's adopted hearing protocol. The ZBA and Planning Board are well within their respective powers to table this matter until Governor Cuomo lifts the pending prohibition against in person meetings. This matter is the largest project in recent history in the City of Plattsburgh. For this to be rushed through when the public is actually prohibited from appearing in person, for a project that is clearly not essential, is in and of itself an abuse of discretion and irrational. We ask the ZBA and Planning Board to table this matter until the pending prohibition against in person meetings is lifted.

As an update, subsequent to the draft of this letter, we received the correspondence issued by the City by email from the "Mayor's Office" of April 3, 2020 at 12:10pm. Notwithstanding that letter, and the Q&A attached thereto, government meetings are and should be limited to matters that are essential, no different than "essential businesses" are limited to those portions of business that are essential. **The fact is that this Durkee Street project is not essential**. That is

the entire point missed by the meeting guidance, the meeting procedures, and the statement issued by the Mayor's office of this day. Not every government function is essential. Were this a project for a hospital, or a health care center, or a production facility for PPE, the facts would be different, and a reviewing this project would be warranted.

2. Applicant: The applicant is not the "City of Plattsburgh" as noted on the applications. In reviewing the "Development Agreement" between the City of Plattsburgh and Prime Plattsburgh, LLC dated March 29, 2019 (hereinafter the "Agreement"), the pending applications before the ZBA and Planning Board are flawed as a matter of law. A copy of this Agreement is enclosed.

Pursuant to Section 4 of the Agreement titled "Permitting", Prime is the applicant, not the City of Plattsburgh. See Section 4(a)- "*Prime and its agents shall prepare and submit all necessary municipal, state and federal permit applications required for the approval of the Durkee Development and shall present such applications to the applicable governmental authorities.*" Indeed, the SEQRA EAF form in the ZBA's materials note Prime Plattsburgh, LLC as the applicant, not the City. Prime has submitted no such application.

Moreover, not cited in any application materials is the authority or ability of the City of Plattsburgh as a municipal entity to even make this application. In this regard, we believe that City staff time used in pursuing an application that by written agreement is required to be submitted by a private business entity is actually an unconstitutional gift of public resources. While there are contractual obligations that a city may enter into, this Agreement specifically states that Prime, not the City, is to be completing and submitting the applications for this project. Thus, taxpayer dollars cannot be spent as they are now.

Lastly, on this point, the ZBA and Planning Board have to ask: How can the ZBA or Planning Board possibly receive unbiased support from the very community development and code enforcement staff that is bringing this application? Pursuant to General City Law §81-a, and indeed City of Plattsburgh Zoning Law §360-56[C]: "*Assistance to the Boards. Such Boards shall have the authority to call upon any department, agency or employee of the City for such assistance as shall be deemed necessary and as shall be authorized by the legislative body. Such*

department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance." You cannot possibly rely on that assistance of those providing the assistance are the applicant!

The City of Plattsburgh cannot be the applicant as note above, and this needs to be remedied.

3. Waterfront development: We are enclosing our letter to the Common Council of September 9, 2019. To date, this letter has not been answered. However, this same legal issue presents itself to the ZBA and Planning Board. As proposed, the project application will include the alienation of waterfront property. We point you to the full content of our letter as if fully set forth herein. The ZBA and Planning Board are without power to approve any project that would alienate waterfront property.

4. SEQRA: The EAF submitted by the City is shockingly incomplete for a project of this magnitude. Little to no thought or consideration was put into this document. The following questions were not even answered in Part I of the EAF: C.1., C.2.c, C.3.c., D.1.c., D.1.d., D.1.e (incomplete), D.1.h., D.2.a., D.2.b., D.2.e. (incomplete), D.2.f., D.2.g., D.2.h., D.2.i., D.2.j., D.2.o., D.2.p., D.2.q., D.2.s., D.2.t., E.1.b. (incomplete), E.1.c. E.1.e., E.1.f., E.1.g., E.1.h. (incomplete), E.2.h (incorrect- the project site does include a river), E.2.q., and E.3.b..

In addition, we note the City's response at EAF question D.D.2.e.ii.: The City notes that this project will discharge to the Saranac River. The legality of this discharge needs to be researched. We do not believe that the City can legally create a point source discharge from this new project directly to the Saranac River.

Lastly, the underlying facts upon which the SEQRA findings has changed. Indeed, just this week it was reported that a record 6.6 million Americans filed for unemployment. The recession created by the Covid-19 pandemic cannot be ignored, and the underlying need for this project as well as the finances upon which it is based must be reviewed. In short, no board of the City can ignore the economic realities of the current environment.

5. Conflict: We believe the City's corporation counsel has a conflict of interest. The Corporation Counsel's allegiance is to the Common Council. The ZBA's and Planning Board's obligations are to review the pending PUD, site plan, subdivision, special use permit and variance applications. Thus, where questions of law are before the ZBA and Planning Board, or indeed even procedure, the ZBA and Planning Board cannot reasonably rely on the advice of counsel that is beholding to the Common Council, as again, corporation counsel's goal is to further the interests of the Common Council. Indeed, this letter raises significant, valid legal issues that the ZBA and Planning Board needs to address on their own- not in reliance on the Common Council. To the extent that you have legal questions on this matter, you need your own attorney.

Thank you.

Sincerely,

Matthew F. Fuller, Esq.
mfuller@meyerfuller.com

cc: Plattsburgh Citizens Coalition, Inc.

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is by and between the **CITY OF PLATTSBURGH**, a New York municipal corporation located in Clinton County, New York (the "City") and **PRIME PLATTSBURGH, LLC,** a New York limited liability company with a place of business in Cohoes, New York ("Prime"), and is made and entered into as of the date of execution by the last party to execute this Agreement (the "Effective Date").

Background

1. Prime is a development company with experience and expertise in the design, development and management of mixed-use development projects.

2. The City is the owner of the so-called "Durkee Street Property". This site consists of two separate properties: 40 Bridge Street and 22 Durkee Street. Combined, the footprint of these properties totals approximately 4.3 acres. A portion of the Durkee Street Property is a leased parcel of approximately 1.3 acres on the southern end of the property (the "Leased Parcel"). This leased site contains a three-story office building and a two-level parking structure. It is leased by Investors Corporation of Vermont ("ICV") and shall not be part of the mixed-use development project. The intent of the City is to merge the 40 Bridge Street with the parcel located at 22 Durkee Street and subdivide the Leased Parcel as well as any lands located to the South of Broad Street which may be associated with the 22 Durkee Street property (the "Merger and Subdivision"). Upon completion of these steps, there shall remain an approximately 3.4-acre parcel bordered to the South by the Leased Parcel, to the North by Bridge Street, to the West by Durkee Street, and to the East by the Saranac River (the "Project Site").

3. New York State ("NYS") awarded the City $10 million in grant funding through Governor Andrew Cuomo's Downtown Revitalization Initiative ("DRI") to implement catalytic investment projects in downtown Plattsburgh as part of a longer-term strategy to attract additional public and private investment for revitalization. The Durkee Street redevelopment project is the centerpiece of Plattsburgh's DRI revitalization effort and NYS allocated $4.3 million towards its implementation that can be used as funding for infrastructure improvements, construction, and gap financing.

4. The City DRI's associated Streetscape Improvements and Riverfront Access projects will complement and support redevelopment of the Project Site, which may include improvements on Durkee and Bridge Streets as well as riverfront improvements bordering the Project Site (collectively, "the City's Other DRI Projects").

5. The City issued a Request for Proposals on October 17, 2018 ("RFP"), for a mixed-use development on the Project Site. Prime submitted a proposal in response to the RFP to develop, finance, construct and manage a mixed-use development to be built on the Project Site that is to be purchased from the City.

6. The City and Prime (collectively, the "Parties") memorialized their understandings with regard to the Project Site via a Letter of Intent dated February 22, 2019, incorporated herein and attached hereto as Exhibit "B" (the "Letter of Intent").

7. Prime intends to develop and construct a mixed-use development on the Project Site consisting of 2 buildings which will include approximately 127 +/- market rate apartments including furnished corporate apartments by ExecuStay, approximately 13,515 square feet of commercial space (retail, restaurants and/or office), approximately 7,883 square feet for Farmers' Market/civic space/

community space; approximately 233 parking spaces; and public access to the Saranac River waterfront (the "Durkee Development"). The City and Prime acknowledge and agree that the plans, including the configuration and size of the buildings, are conceptual and, to achieve the goals of each party as set forth herein, may be amended as design and permitting progress in accordance with the terms and conditions of this Agreement.

7. The City supports the Durkee Development. In order to complete the Durkee Development, the 40 Bridge Street parcel will need to be merged with the 22 Durkee Street parcel, the ICV leased parcel and other lands to the south of Broad Street will need to be subdivided from the resulting parcel, and easement rights for utilities and public access will need to be retained by the City. In addition, there will be public parking on the Project Site.

8. The City, as referenced in this document, is defined as follows:

(a) The City Common Council ("City"). The City of Plattsburgh, as the legal entity of the municipality shall be responsible for approval of the Plans, financing, and this Development Agreement and terms and conditions associated with it as outlined below. This shall also include City staff assisting the City Common Council in this capacity.

(b) The City's review boards ("City Boards"): The Planning Board and Zoning Board of Appeals, are independent bodies that will make their own evaluations of the Durkee Development and Project Site under applicable zoning requirements and the terms and conditions of this Agreement shall not be binding on these boards.

9. Prime and the City wish to formulate the necessary terms to proceed with the design, permitting, financing, construction, ownership and management of the Durkee Development.

10. Prime and the City enter into this Agreement to describe the framework for the Parties to proceed with the Durkee Development.

NOW, THEREFORE,

In consideration of the promises and the mutual covenants and agreements herein set forth, and in reliance on the representations and warranties contained herein, the Parties hereby agree as follows:

Section 1. **Prime's Due Diligence.** Prime shall have 40 days from date of execution of the Letter of Intent to complete its general due diligence of the Project Site (the "Due Diligence Period"). Due diligence will be the responsibility and at the expense of Prime and includes, without limitation, the following potential analysis:

- Review of existing City Boards, City, and NYS permitting history and analysis, and needed City, City Boards, and NYS permitting requirements,
- Review of environmental and brownfield restrictions and analysis,
- Title research and examination,
- Engineering analysis,
- Traffic analysis,
- Utility analysis,
- Geotechnical and soil boring analysis, and
- Other items as determined that need to be considered for the development of the site.

To aid in Prime's Due Diligence, the City will promptly provide Prime with any and all environmental documentation and requirements between the City and the NYS Department of Environmental Conservation on complying with the Site Management Plan in place for the Project Site and the environmental easement on the Project Site in the possession or control of the City. The City agrees to work with Prime as needed for amending NYS documents related to the Site Management Plan as may be necessary for change of use, transfer of certificate of completion, and ownership in connection with the Durkee Development. Prime understands that initial brownfield remediation work has been completed on the Property. If following any sale of the Project Site additional contamination is found during construction and further remediation is needed, such remediation shall be the responsibility of Prime. The City shall engage in reasonable efforts to assist Prime with securing potential NYS funding for this work should the need for it arise.

Prime shall provide the City with necessary information for determining utility allocation needs and connections for the Durkee Development. The City will provide Prime copies of title research, an ALTA survey completed in November of 2018, and utility easements on the Project Site. Prime's title research shall identify items that may be of issue and shall work with the City to resolve them during the Due Diligence Period.

The above Due Diligence Period, which is Prime's responsibility, shall be completed within forty (40) days after the execution of the Letter of Intent. Notwithstanding the foregoing, Prime may extend the Due Diligence Period for an additional thirty (30) days upon written notice to the City, delivered to the City no later than the close of business on the fortieth (40th) day of the initial Due Diligence Period, provided that Prime uses its best efforts to complete its due diligence within the initial forty (40) day period.

During the Due Diligence Period, the City and Prime agree to communicate regularly and express their mutual goodwill to coordinate and resolve potential obstacles.

In the event that either the City or Prime determine, for any reason, during the Due Diligence Period, that they do not wish to proceed with the Durkee Development, a written notice of termination shall be delivered to the other party no later than the close of business on the last day of the Due Diligence Period, as same may be extended. Upon such written notice, this Agreement shall terminate with each party having no further obligation or liability to the other, except such obligations and liabilities that expressly survive the termination or expiration of this Agreement.

Section 2. **Access, Prime's Responsibilities, Prime's Indemnity**

(a) From the date of the Letter of Intent through the expiration of the Due Diligence Period, Prime and its authorized agents or representatives shall be entitled to enter upon the Project Site during normal business hours upon advance notice to the City and make such reasonable, minimally invasive investigations, studies and tests including, without limitation, surveys, environmental surveys, geotechnical borings, and engineering studies as Prime deems necessary or advisable, provided, however, that, except as set forth below, Prime shall not be permitted to conduct subsurface environmental testing without City's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that it is anticipated that Prime will conduct geotechnical studies and ground penetrating radar studies at the Project Site, which shall include subsurface activities. Prior to conducting such subsurface activities, Prime will provide the City with the scope of such activities for the City's review and approval. The Project Site currently provides public parking in the City so Prime will use reasonable efforts to minimize any anticipated disruption of parking spaces or access.

(b) Prime agrees that in conducting any inspections, investigations or tests of the Project Site, Prime and its agents and representatives shall: (i) not unreasonably interfere with the operation and maintenance of the Project Site; (ii) not unreasonably disturb the tenants or occupants of adjacent properties; (iii) not damage any part of the Project Site or any personal property owned or held by

the City or any tenant or third party; (iv) not injure or otherwise cause bodily harm to the City or its respective guests, agents, invitees, contractors and employees or any tenant or their guests or invitees; (v) maintain comprehensive general liability insurance in terms and amounts reasonably acceptable to the City covering any accident arising in connection with the presence of Prime, its agents and representatives on the Project Site, and deliver a certificate of insurance verifying such coverage to the City prior to entry upon the Project Site; (vi) promptly pay when due the costs of all tests, investigations and examinations done with regard to the Project Site; (vii) not permit any liens to attach to the Project Site by reason of the exercise of Prime's rights hereunder; and (viii) fully restore the Project Site to the condition in which the same was found before any such inspection or tests were undertaken.

(c) Prime covenants and agrees to restore any damage to the Project Site resulting from the conduct of any such inspections, tests, surveys and/or studies and to save and hold the City and its successors and assigns harmless from any claim, damage, cost or expense, including reasonable attorneys' fees, for any damage to the Project Site or the property of third persons and/or adjacent property of third parties or for any personal injuries arising in whole or in part from any inspections, tests, surveys and/or studies performed by Prime or Prime's agents, employees or invitees on the Property. In no event shall the foregoing be construed to render Prime liable in connection with the presence or existence of any hazardous materials or environmental contaminants that exist on or beneath the Property and which were discovered through Prime's inspections, tests, surveys and/or studies except to the extent that any such hazardous materials or environmental contaminants were brought onto the Project Site and released by Prime or its agents. Prime's obligations hereunder shall survive the termination of this Agreement for any reason

(d) Prime shall share with the City all plans, surveys, site plans, building elevations, landscaping and lighting plans, traffic studies, engineering drawings, and all other plans, permits, applications, soil borings and tests, environmental site assessments, reports, and similar materials and products currently existing or generated for, by or on behalf of Prime in connection with the development of the Property during the term of this Agreement ("Work Product"). Prime shall provide copies and review its Work Product and proposed permit applications with the City before Prime submits them to any permit authority for the City's consent which shall not be unreasonably withheld or delayed. In the event that Prime fails to close, all Work Products, except for architectural and conceptual plans that are proprietary to Prime or Prime's architect, shall be assigned to and shall become the property of the City. The City shall provide to Prime, within five (5) days of the Effective Date, all permits, applications, environmental site assessments, reports, and similar materials and products currently existing or generated for, by or on behalf of the City in connection with the development of the Property, or which the City otherwise has in its possession, or are in the possession of the City's agents or consultants and of which the City has actual knowledge.

(e) Prime shall be solely responsible in its sole discretion for selecting the members of its development team including the architect, attorneys, general contractor, property manager, funding sources, consultants and other participants, and coordinating between them.

Section 3. **Pre-Permitting and Design**. In the event neither party provides the written notice of termination provided for in Section 2 above, the Parties shall promptly proceed with the next phase of development of the Durkee Development, the "Pre-Permitting and Design Phase" which shall consist of a ninety (90) day period commencing within fifteen (15) days following the end of the Due Diligence Period, as it may be extended. During the Pre-Permitting and Design Phase, Prime and the City will conduct the following:

(a) Design Process. Prime has engaged the services of Mackenzie Architects to complete the conceptual plan of the Durkee Development. Prime and its agents shall be responsible for preparing the preliminary design plans for the Durkee Development and Project Site, including hiring the

necessary architectural, landscape, engineering and related consultants needed to develop the plans for the permitting of the Durkee Development (the "Plans"). The Plans shall be in sufficient detail to be submitted in connection with the permit proceedings referenced below in the Permit Phase. Prime shall coordinate and communicate with the City regarding conceptual plans so as to foster and encourage City input. The City shall have access to the preliminary designs for the Plans. The City's approval of the Plans is also required, which shall not be unreasonably withheld, conditioned or delayed. The City shall notify Prime in writing of its approval or non-approval (together with detailed reasons as to such non-approval) of the Plans within fourteen (14) days of the City's receipt of the Plans.

(b) The Parties also incorporate by reference the Vision and Project Requirements as set forth in the Appendix A to the Letter of Intent, which is attached hereto as Exhibit "B".

(c) The Parties agree to incorporate energy efficient measures and green infrastructure that could work towards a LEED certification for the Durkee Development provided that such efforts and recommendations can be accommodated in a cost effective manner as determined and agreed to by the Parties.

(d) The City has engaged the services of Saratoga Associates to design the City's Other DRI Projects. Prime and City agree to work cooperatively on the Plans for the Durkee Development and the design of the City's Other DRI Projects with the objective of well-coordinated designs that benefit each.

(e) Farmers' Market. Prior to April 30, 2019, the City will make a determination regarding the viability of a farmers' market on the Project Site. In the event the City determines the farmers' market will remain on the Project Site, the Plans shall incorporate the farmers' market in a manner mutually agreeable to the Parties. In the event a farmers' market will not remain on the Project Site, as determined by the City, then the Parties will propose an alternative public amenity, public parking, or community-oriented project to be incorporated into the design of the Durkee Development to meet the City's DRI goals as outlined in the Letter of Intent. In the event the City determines that a farmers' market on the Project Site is not viable, the Parties agree to work together to relocate the existing Plattsburgh Farmers' and Crafters' Market structure off the Project Site.

(f) Merger and Subdivision. The Plans shall include all documentation reasonably required to merge the 40 Bridge Street parcel with 22 Durkee Street parcel, and then subdivide the ICV leased parcel as well as any lands to the South of Broad Street. The parcels described above are indicated on the Robert M. Sutherland P.C. ALTA SURVEY Plan for the City of Plattsburgh dated 10/16/16 and certified on 11/02/2018, herein attached at Exhibit C.

(g) Public Parking. Prime shall generate an initial draft parking plan for the Project Site and proximate public parking areas which shall be distributed to the City. The proximate public parking areas shall include any parking areas on Bridge Street and Durkee Street to be constructed as part of the City's Other DRI Projects. The plan shall detail the number of public parking spaces, the management system for these spaces, and shall also detail parking lot maintenance and liability. The portion of the parking plan which directly encumbers the Project Site shall be approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The Parties shall execute a mutually satisfactory project site parking agreement (the "Project Site Parking Agreement"). There shall be, at a minimum, 30 parking spaces designated exclusively for the public's use on the Project Site.

(h) Public Access Easements. An essential component of the Durkee Development is public access to the Saranac River waterfront. The Plans shall identify those areas identified by the City that it shall retain for public access easements over and across the Project Site and along the Saranac River.

Alternatively, by mutual agreement of the Parties, the Plans may show the property being subdivided in such as manner as shall result in the City retaining ownership of one or more of the areas that provide such public access.

(i) Utility Easements. The Durkee Development may require the relocation of the existing utility easements that encumber the Project Site. The City will work with Prime to identify and grant utility easements on the Project Site, and the Plans shall show any such easements.

(j) Project Schedule. The Parties have created a schedule for the Durkee Development (the "Project Schedule"), a copy of which is attached as Exhibit "A", that sets forth the Parties' best estimate of dates to accomplish the list of tasks delineated within said schedule, with the understanding that some dates may need to be reasonably modified during subsequent phases based on the results of the Parties' reports and investigations. In no event shall the dates set forth in the Project Schedule be considered Times is of the Essence.

(k) City Common Council Approvals. In order to proceed to the Permit Phase (as defined below), the City Common Council shall approve the Plans generated during the Pre-Permitting and Design Phase, which approval shall not be unreasonably withheld, conditioned or delayed. Any objection the City Common Council may have to the proposed design based on standards set forth in the City of Plattsburgh, New York Request for Proposals, Section IV. Vision and Project Requirements attached to the Executed Letter of Intent in Appendix A shall not be deemed unreasonable. The City shall notify Prime in writing of the approval or non-approval of the Plans by the City's Common Council (together with detailed reasons as to such non-approval) of the Plans within fourteen (14) days of the City's receipt of the Plans. In the event of non-approval of the Plans by the City's Common Council, Prime may re-submit modified Plans.

On or before the end of the Pre-Permitting and Design Phase, Prime and the City shall promptly meet to review the Project Budget (outlined in Section 5 Financing below), Project Schedule, Plans, and findings, recommendations and reports referenced above to determine whether to proceed to the next phase of development.

In the event that either the City or Prime determine, for any reason, after their review of all such data and information that they do not wish to proceed with the development of the Project, a written notice of termination shall be delivered to the other party, and upon such written notice, this Agreement shall terminate with each party having no further obligation or liability to the other except as specifically set forth on the Payment Schedule and all of Prime's Work Product, except for architectural and conceptual plans that are proprietary to Prime or Prime's architect, collected during the Pre-Permitting and Design Phase shall be assigned to, and shall become the property of the City. The decision as to whether or not to proceed to the next phase shall be made within fifteen (15) days after the end of the Pre-Permitting and Design Phase, as it may be extended.

Section 4. **Permitting** In the event neither party provides the above referenced written notice of termination as provided for in Section 3, the Parties shall promptly proceed with the next phase of development, the "Permit Phase," which shall consist of a ninety (90) day period and which shall include the following steps:

(a) Permit Applications and Process. Prime and its agents shall prepare and submit all necessary municipal, state and federal permit applications required for the approval of the Durkee Development and shall present such applications to the applicable governmental authorities. In the event that the City's Other DRI Projects require permit approvals, those permit applications shall be prepared, submitted and pursued by the City in conjunction with the Durkee Development. Each party's responsibility for the cost and expense for the engineering work and permit costs shall be set forth on the Payment Schedule. Both the City and Prime shall actively participate

during the Permit Phase and shall execute permit applications and attend informational meetings, pre-permitting meetings and public hearings, as requested. During the Permit Phase, each party shall review and approve any material permit conditions with respect to the design of the Durkee Development that would substantially or adversely affect the construction, development, cost and operation of the Project, as contemplated by this Agreement. The Parties shall undertake such reasonable efforts to ensure permits are obtained in accordance with the target dates set forth on the Project Schedule.

Prime understands that the City Boards are independent bodies that will make their own evaluations of the Durkee Development and Project Site under applicable zoning requirements and that the terms and conditions of this Agreement shall not be binding on these boards.

(b) Planned Unit Development Approval. Simultaneously with the Merger and Subdivision, Prime, with assistance from the City, will use reasonable efforts to obtain an amended Planned Unit Development ("PUD") approval for the Durkee Development on the Project Site per the process described by the City of Plattsburgh Zoning Code.

(c) SEQRA Approval. As part of the City permitting, the Parties will need to obtain SEQRA approval. The Parties agree to work together on preparing and submitting the needed applications to obtain SEQRA approval.

(d) State and Federal Approvals. Prime shall be responsible for obtaining all needed state and federal approvals for the Durkee Development. The City shall be responsible for obtaining all needed state and federal approvals for the City's Other DRI Projects. The Parties agree to work collaboratively as needed for obtaining these approvals.

Section 5. **Financing**

(a) Preliminary Financial Review. Prime shall provide updated financials, to the extent same exist, and operating proforma to City for review and approval during the Due Diligence phase.

(b) Financing. Within forty-five (45) days of receiving all final, non-appealable permits for the Durkee Development (the "Financing Phase"), Prime shall prepare, submit and use its best efforts to obtain the necessary financing for the entire Durkee Development. This shall include monies provided by NYS and awarded to the City as part of the City's DRI grant in an estimated amount of Four Million Dollars ($4,000,000.00) subject to NYS contractual obligations, private financing, and/or other sources. Prime will make all decisions on matters relating to the financing of the Durkee Development, including financial modeling and structuring, analysis of available financial incentives, and the identification and selection of, and all communications and negotiations with, financing sources. Prime will coordinate directly with NYS for the use and acquisition of DRI funds which will be used to leverage Prime's $26M investment. Prime will communicate regularly with the City with respect to the allocation, use and acquisition of DRI funds. The City will review all financing sources and associated commitments. If satisfied with the amount and format of the financing, the City shall provide Prime with a written approval of the financing plan, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall use its commercially reasonable efforts to cooperate with Prime in its efforts to obtain the financing for the Durkee Development.

(c) Real Estate Taxes/PILOT. It is the expectation of the Parties that Prime shall be responsible for payment of real estate taxes for the Durkee Development once the Project Site is conveyed to Prime. Prime intends to pursue a PILOT agreement with Clinton County Industrial Development Agency and the other taxing jurisdictions, including the City and the City of

Plattsburgh School District (the "PILOT Agreement"). Prime will apply for the PILOT Agreement during the Due Diligence Phase.

(d) Project Budget. Except as otherwise set forth herein, it is the Parties' intention that each party will pay for its own costs for the permitting, engineering, design and construction of their respective projects: the Durkee Development by Prime, and the Other DRI Projects by the City. Each party shall prepare its own budget during this phase (including any expectation of reimbursement of costs from the other party and the reasons for such reimbursement). The Parties shall work together to ensure that each project budget is as final as possible given the information available to the Parties during the Pre-Permitting and Design Phase, with the understanding that as the Durkee Development evolves, each budget may require adjustments and modifications. The Parties agree during each phase to periodically review together each party's budget, making any necessary adjustments.

(e) Payment Schedule. The Parties agree during this phase to finalize a schedule (the "Payment Schedule") that sets forth the Parties' best estimate of each party's responsibility for the costs and expenses for their respective projects based on each party's Project Budget, together with a schedule of when such payments will be due. This Payment Schedule will be subject to the Financing Phase as set forth above. It is anticipated that Prime will coordinate and engage directly with NYS regarding its use of the DRI funds. However, due to the inter-related nature of the City's Other DRI Projects, the Parties will also benefit from a Payment Schedule which clearly delineates each Parties' responsibilities for the related projects.

Section 6. **Conditions Precedent to Closing.** The Parties hereby agree to the following conditions, which must be established and satisfied prior to the Closing Date as defined in the Project Schedule:

(a) **City's Closing Conditions**. The City's obligation to close shall be subject to the satisfaction of the following conditions (the "City's Closing Conditions"): (i) Prime being in a position to initiate the Durkee Development on the Property with a start date for construction as defined in the Project Schedule (ii) the City and Prime entering into the Project Site Parking Agreement, (iii) Prime obtaining construction financing for the Durkee Development at commercially reasonable terms after good faith, diligent efforts to obtain said financing, with closing on the construction financing to occur contemporaneously with the Closing under this Agreement; (iv) Prime and the City come to agreement on items in the Pre-Permitting and Design Section above including, but not limited to, incorporation of energy efficient measures and green infrastructure as noted above, incorporation of a farmers' market or an alternate public amenity, public access easements, and utility easements; and (v) Prime obtaining all permits and approvals necessary to construct and operate the Durkee Development.

In the event City's Closing Conditions have not been satisfied on or before the Closing Date, City may, in City's sole discretion elect to: (i) terminate this Agreement by providing written notice of termination to Prime on or before the Closing Date in which case all rights and obligations of the Parties to this Agreement shall cease and terminate, except those that expressly survive the termination or expiration of this Agreement; or (ii) may waive the satisfaction of one or more of City's Closing Conditions and proceed with the sale contemplated by this Agreement.

(b) **Prime's Closing Conditions**. Prime's obligation to close shall be subject to the satisfaction of the following conditions ("Prime's Closing Conditions"): (i) Prime being in a position to initiate the Durkee Development on the Property with a start date for construction as defined in the Project Schedule, (ii) the City and Prime entering into the Project Site Parking Agreement; (iii) the City providing all of the easements described in Section 1 above; (iv) Prime obtaining all necessary financing for the Durkee Development at commercially reasonable terms after good faith, diligent efforts to obtain said financing, with closing on the construction financing to occur

contemporaneously with the Closing under this Agreement; (v) Prime obtaining a PILOT Agreement and other financial assistance from the County of Clinton Industrial Development Agency and other taxing jurisdictions, including the City and the City of Plattsburgh School District, (vi) Prime obtaining a title commitment from a national title insurance company of Prime's choice for the Project Site insuring fee simple title to the Project Site and showing the title to the Project Site to be free and clear of all liens, restrictions, charges, encumbrances, easements, covenants, conditions and other matters affecting title, with the exception of any existing NYS environmental easements, City utility easements, public access easements, and, except for those acceptable to Prime, in its sole and absolute discretion. Any title issues of record as of the end of the Due Diligence period to which Prime has not objected to by the end of the Due Diligence period are considered acceptable to Prime and are waived; (vii) the City having performed all of its obligations hereunder, and (viii) Prime obtaining all permits and approvals necessary to construct and operate the Durkee Development issued without conditions to which the City reasonably objects, and such permits, approvals and consents having become final and unappealable.

In the event Prime's Closing Conditions have not been satisfied on or before the Closing Date, Prime may, in Prime's sole discretion elect to: (i) terminate this Agreement by providing written notice of termination to City on or before the Closing Date in which case all rights and obligations of the Parties to this Agreement shall cease and terminate, except those that expressly survive the termination or expiration of this Agreement; or (ii) may waive the satisfaction of one or more of Prime's Closing Conditions and proceed with the sale contemplated by this Agreement.

Section 7. **Closing**

Purchase and Sale Phase. Within thirty (30) days of Prime obtaining all permits and approvals in final unappealable form the City's review and approval of Prime's financing plan, and the satisfaction of Prime's Closing Conditions, the Parties shall enter into a Purchase and Sale Agreement for the Project Site in a form drafted no later than April 30, 2019 (the "Purchase and Sale Agreement"). The Purchase and Sale Agreement shall include the customary terms and cost allocations for a sale of commercial property in Clinton County. The purchase price (the "Purchase Price") for the Property shall be one dollar U.S. ($1.00), the obligations contained herein, including the obligation to construct and operate the mixed-use development, and other good and valuable consideration.

Within thirty (30) days of the Parties obtaining needed municipal, NYS and federal permits for the Durkee Development and the City's Other DRI Projects, the Parties shall complete a closing. The prospective deed from the City to Prime shall include the City's retention of easements for utilities and public access. The specific easement descriptions will be provided by the City to Prime for its review and approval (and the approval of Prime's lender) and, following such approval, will be recorded in the Clinton County Clerk's Office

Section 8. **Pre-Construction Phase**. Within forty five (45) days of the Closing and as defined in the Project Schedule, Prime shall promptly proceed to the Pre-Construction and Construction Phase, which shall include the following responsibilities:

(a) City's Pre-Construction Obligations.

(i) During the Pre-Construction Phase, the City shall communicate and cooperate with Prime and its agents as Prime completes the bidding process for the contractors and subcontractors.

(b) Prime's Pre-Construction Obligations.

(i) Prime has established with the NYS Department of Labor that Prime's use of DRI funds shall not subject the Durkee Development to prevailing wage laws, but Prime will be required to use best efforts to fulfill NYS Minority and Women Owned Business Enterprise (MWBE) requirements during the bidding process for contractors and subcontractors.

(ii) Once the bidding process has been completed, Prime shall enter into a construction contract per the Plans.

(iii) The principals of Prime agree to deliver for the City's benefit a completion guaranty in a form to be negotiated and agreed upon no later than April 30, 2019 (the "Completion Guaranty"), whereby the principals for Prime guaranty Prime's obligations to construct and complete the Durkee Development in accordance with the Plans. The Completion Guaranty shall be subject to the review and approval of Prime's lender(s).

Upon completion of the Pre-Construction Phase the Parties shall proceed to the Construction Phase in accordance with Section 9 below.

Section 9. **Construction Phase**. During the Construction Phase, the Parties shall have the following responsibilities and obligations:

(a) City's Construction Obligations:

(i) Absent a written agreement with Prime to the contrary, pay all costs, expenses and fees incurred in connection with the construction of the City's Other DRI Projects.

(b) Prime's Construction Obligations:

(i) Pay all costs, expenses and fees incurred in connection with the construction of the Durkee Development.

(ii) Supervise the construction of the Durkee Development to ensure compliance with all laws and obtain all final permits and certificates of occupancy for the Durkee Development.

(iii) Ensure that the insurance requirements set forth on Exhibit D, attached hereto, are met.

The Parties acknowledge and agree that subject to construction sequencing constraints, it is the Parties' intent that the construction of the Durkee Development and the City's Other DRI Projects shall occur simultaneously, and that all reasonable efforts shall be made by both Parties to ensure that each project is substantially complete at relatively the same time.

Each party shall have the right to reasonably review and inspect the other's project during construction to ensure compliance with the Plans and approved permits.

Following substantial completion of the Durkee Development, Prime, or an equally qualified management company, shall manage the Durkee Development while same is owned by Prime.

Section 10. **Joint Obligations of the Parties**. During the term of this Agreement, the City and Prime agree as follows:

(a) To cooperate and communicate with each other on a regular basis including arranging joint meetings to address issues set forth in this Agreement and to discuss any change orders so as to permit the orderly and efficient construction and development of the Durkee Development.

(b) To perform their activities as to the Project Site in a commercially reasonable manner.

(c) To act in a manner designed to cause the Durkee Development to be placed in service by September 1, 2021 when the Certificate of Occupancy is issued as noted in the Schedule in Exhibit A.

(d) To indemnify and hold harmless the other from and against any and all costs, expenses, damages and liabilities arising out of or in connection with: (i) breach by such party of its obligations under this Agreement; and (ii) any negligent or willful activities of the party with respect to the Durkee Development, except to the extent attributable to the fault or neglect of non-indemnifying party.

Section 11. **Term**. The term of this Agreement (the "Term") shall commence on the Effective Date and, unless earlier terminated pursuant to the provisions of Section 1, 3, 13(i) (below), shall terminate on the date that the Durkee Development is substantially complete. As used herein, the Durkee Development will be deemed to be "substantially complete" when: (a) certificates of occupancy have been issued for the Durkee Development by the City; (b) a certificate of substantial completion has been issued by the architect for the Durkee Development; (c) the physical construction of the Durkee Development is complete, subject only to a minor punch list of completion items; and (d) all legal documents by and between the City and Prime finalized with regard to the use and operation of the Durkee Development.

Section 12. **Ongoing Role of the Parties**. During the Term:

(a) The City shall not encumber the Project Site with any liens or mortgages and shall not convey any easements or related interests to third parties except as contemplated in this Agreement, or enter into any leases for the Project Site, except for the leases contemplated in this Agreement, without Prime's prior written consent, not to be unreasonably withheld.

(b) The Parties shall cooperate to execute legal documents required for the Durkee Development, such as easements, licenses or other legal interests needed for the success of the Durkee Development.

(c) The Parties shall provide assistance to each other to support the success of the Durkee Development including supporting and attending permit proceedings and pre-development meetings with neighborhood groups.

Section 13. **Default/Termination**. At any time during the term of this Agreement, if either party is in default, the non-defaulting party shall be entitled to the following remedies.

(a) Except as set forth above, if either party shall fail to commence their work in accordance with the provisions of this Agreement; fail to prosecute their work to the completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in strict accordance with the Plans and the terms and conditions of the federal, state and municipal permits for the Project (including without limitation in conformance with the City's code standards and other applicable standards); fail to perform any of its obligations under this Agreement or the Plans; file a voluntary case under bankruptcy laws; be adjudged bankrupt; or fail to make prompt payments as outlined in the Payment Schedule, the non-defaulting party shall have the right, if the defaulting party shall not cure such default within thirty (30) days written notice thereof (provided, however, that if such default is not susceptible of cure, given commercially reasonable

diligence on the part of the defaulting party within such thirty (30) day period and the defaulting party during such thirty (30) day period commences curing such default and continues with diligence and continuity to cure such default, the defaulting party shall have such additional time, as shall be reasonable under the circumstances, within which to cure such default) to terminate this Agreement.

The above-described rights and remedies set forth in this Agreement are cumulative and in addition to any other rights and remedies at law or in equity. Additionally, in the event of a default by Prime, the City shall be entitled to all of Prime's Work Product, except for architectural and conceptual plans that are proprietary to Prime or Prime's architect, for the Durkee Development which shall be assigned to and become the property of the City. Neither party, however, shall be liable to the other for any consequential or indirect damages.

(b) Notwithstanding the terms of Subsection 13(i), this Agreement may be terminated under the terms set forth above in Sections 1 and 3.

Section 14. **Dispute Resolution**. The development of the Project will involve a number of future decisions among the Parties and will require ongoing cooperation and fair dealing. If a dispute arises out of or relates to this Agreement or its breach (a "Dispute"), the Parties shall endeavor to settle the Dispute first through direct discussions. In the event that such Dispute cannot be resolved within thirty (30) days after written notice to the other party thereof specifying the subject of the Dispute, the Parties hereby expressly agree to mediate the matter before an impartial mediator before proceeding with arbitration or litigation. The costs of mediation shall be shared equally between the Parties. In the event both Parties do not agree to proceed with arbitration, then either party shall have the right to have the Dispute adjudicated in court in Clinton County, New York, in which case the court shall have the authority to award costs and reasonable attorneys' fees to the substantially prevailing party.

Section 15. **Independent Contractor**. Each party is an independent actor and entity, and nothing in this Agreement shall be deemed to make either party an agent or partner of the other, or to give either party the right to bind the other in any way.

Section 16. **Force Majeure**. In the event that either party shall be delayed, hindered in or prevented from the performance of any act required hereunder, by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive state or federal governmental laws or regulations, riots, insurrection, war, terrorism, or other reason beyond its reasonable control (including the act, failure to act or default of the other party), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

Section 17. **Waiver**. The failure of either party to insist on strict performance of any of the provisions of this Agreement or to exercise any right it grants will not be construed as a relinquishment of any right or a waiver of any provision of this Agreement. No waiver of any provision or right shall be valid unless it is in writing and signed by a duly authorized representative of the party granting the waiver.

Section 18. **No Assignment**. Neither party may assign or convey this Agreement or its obligations hereunder without the other's prior written consent, except that Prime may assign this Agreement to a newly formed entity either having the same members/majority owners as Prime.

Section 19. **Governing Law**. This Agreement shall be governed and construed in accordance with the laws of the state of New York.

Section 20. **Notices**. Any notices to be given pursuant to this Agreement shall be sufficient if given by a writing deposited in the United States mails, certified mail or registered mail, return receipt requested, postage prepaid, by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, by facsimile or by email (provided that the electronic process used is reasonably secure and not easily susceptible to manipulation) addressed as follows:

If to the City:
City of Plattsburgh
Attn: Office of Community Development,
City Hall, 41 City Hall Place
Plattsburgh, NY 12901
Telephone No.: (518) 536-7510
Telecopier No.: (518) 561-7367
MillerMa@cityofplattsburgh-ny.gov

With a copy to:
Dean C. Schneller, Esq.
Law Offices of Dean C. Schneller
121 Bridge Street
Plattsburgh, NY 12901
Telephone No.: (518) 647-8877
Telecopier No.: (518) 647-8316
Dean@schnellerlaw.com

If to Prime:
Prime Plattsburgh, LLC
c/o Prime Companies
Attn: Dean Devito
621 Columbia Street
Cohoes NY 12047
Telephone No.: (518) 785-9000
ddevito@CBCPrime.net

With a copy to:
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12260
Attn: Randall S. Beach, Esq.
Telephone No.: (518) 487-7740
Telecopier No.: (518) 487-7777
rbeach@woh.com

or to such other person, address or number as the party entitled to such notice or communication shall have specified by notice to the other party given in accordance with the provisions of this Section 8. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by courier, the next day after being deposited with the courier, properly addressed and with prepaid; (iii) if sent by telecopy, when transmission has been electronically confirmed; and (iv) if sent by email, upon receipt of a read-receipt or other acknowledgment of receipt by the recipient.

Section 21. **Representations and Warranties.** As of the date hereof and as of the Closing Date, the City represents, warrants and covenants to Prime that:

(a) There are no contracts, agreements, undertakings or otherwise which would be binding on Prime or the Project Site from and after the closing other than those disclosed or of record.

(b) Except as has been disclosed to Prime, the City has not received any notice, nor is the City aware, of any violation of any ordinance, regulation, law, statute, rule, insurance requirement, or restriction relating to the Project Site.

(c) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any applicable debtor relief laws or any other litigation contemplated by or pending or threatened against the City or the Project Site.

(d) No other signatures or approvals are required to make this Agreement fully enforceable by Prime with respect to the City or the Project Site.

(e) There is no pending or threatened condemnation or similar proceeding or assessment affecting the Project Site or any part thereof, nor to the knowledge of the City is any such proceeding or assessment contemplated by any governmental authority.

(f) There is no existing lease or service, management, maintenance, repair, employment, construction or other contract or agreement currently affecting the Project Property.

The City hereby indemnifies and holds harmless Prime from and against any and all loss, expense (including, without limitation, reasonable attorney fees), penalty fees, liability, cost, claim, demand, action, cause of action and suit arising out of or in any way related to any breach of any representation or warranty of Seller in Section 21 of this Agreement.

Section 22. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 23. **Further Assurances**. The Parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement.

Section 24. **Waiver of Rule of Construction**. The Parties waive the benefit of any rule that this Agreement is to be construed against one party or the other.

Section 25. **Severability**. If a court of competent jurisdiction determines that any portion of this Agreement is illegal, unenforceable or invalid, then that portion shall be considered to be removed from this Agreement, the remainder shall remain in full force and effect, and the Parties shall cooperate to modify the Agreement to cause it to conform to the original language of the Agreement to the extent consistent with the finding of the court.

Section 26. **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties relating to its subject matter, and supersedes all prior representations, understandings and agreements, written or oral, express or implied. The Agreement can be modified only by written agreement executed by authorized representatives of each party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties, as evidenced by the signature of their Duly Authorized Agents, do hereby execute this Agreement this 29th day of March, 2019.

IN PRESENCE OF:

Witness

CITY OF PLATTSBURGH

By: _____
Colin Read, Mayor

IN PRESENCE OF:

Witness

PRIME PLATTSBURGH, LLC

By: _____ -Member
Duly Authorized Agent

STATE OF NEW YORK
COUNTY OF CLINTON

On this 29 day of March, 2019, personally appeared COLIN READ, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed as the Mayor of the City of Plattsburgh.

SYLVIA PARROTTE
Notary Public, State of New York
No. 01PA6304470
Qualified in Clinton County
Commission Expires May 27, 2022

STATE OF NEW YORK
COUNTY OF Albany

On this 1 day of APRIL, 2019, personally appeared _____, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed as the duly authorized member of Prime Plattsburgh, LLC.

DANIELLE KOONCE
Notary Public - State of New York
NO. 01KO6229404
Qualified in Albany County
My Commission Expires 10/22

Exhibit "A"

Project Schedule

Durkee Development - Schedule
Development Agreement Exhibit "A"

The Parties shall develop a schedule for the proposed project that anticipates construction of needed utility realignments and adjustments for the proposed project based on the following outline. This schedule assumes no extensions.

February 21, 2019	Execution of the Letter of Intent.
March 31, 2019	Prime's Completion of Due Diligence Work.
April 1, 2019	Execution of the Development Agreement.
April 30, 2019	Draft Purchase and Sale Agreement; Negotiated Completion Guaranty complete.
May 21, 2019	City approves Prime's proposed Project conceptual design prior to obtaining permits.
November 30, 2019	Prime obtains needed municipal, NYS and federal permits for proposed project. City obtains needed municipal, NYS and federal permits for the other DRI projects.
December 30, 2019	Closing on sale of property.
January 30, 2020	Prime to break ground on construction of proposed project.
May 1, 2020	City to break ground on construction of other DRI projects.
September 1, 2021	Prime to complete building 1 of proposed project, Certificate of Occupancy issued.
February 28, 2022	Prime to complete building 2 of proposed project, Certificate of Occupancy issued.

Exhibit "B"

Executed Letter of Intent

Letter of Intent
By and Between the City of Plattsburgh, New York and Prime Companies, LLC.

February 21, 2019

This non-binding Letter of Intent (LOI) sets forth the basic terms, conditions and process upon which Purchaser and Seller will enter into a Development Agreement for the Property described below.

Background

New York State (NYS) awarded the City of Plattsburgh $10 million in grant funding through Governor Andrew Cuomo's Downtown Revitalization Initiative (DRI) to implement 10 catalytic investment projects in downtown Plattsburgh as part of a longer-term strategy to attract additional public and private investment for revitalization. The Durkee Street Site (Project Site) is the centerpiece of Plattsburgh's DRI revitalization effort and NYS allocated $4.3 million towards its implementation that could include public infrastructure and gap financing. The DRI's Streetscape Improvements and Riverfront Access projects will complement and support the Project Site redevelopment, which will include improvements on Durkee and Bridge Streets, and Saranac River riverfront improvements bordering the Project site.

The City of Plattsburgh, New York (the "City") issued a Request for Proposals on October 17, 2018 ("RFP"), for a mixed-use development on several City owned parcels of land approximately 3.4 acres in size located on Durkee Street and bordering the Saranac River in downtown Plattsburgh. Prime Companies, LLC ("Prime Companies") submitted a proposal in response to the RFP to develop, finance, construct and manage a mixed-use development to be built on the Project Site that is to be purchased from the City. The City's Common Council subsequently authorized negotiation of both a LOI and a Development Agreement ("DA") based on Prime Companies' proposal.

The City and Prime Companies (collectively, the "Parties") wish to memorialize their understandings with regard to the Project in this LOI, which shall also form the basis for the drafting of a DA.

Seller: The City of Plattsburgh, New York

Purchaser: An entity to be formed through Prime Companies, LLC.

Property: The Project Site consists of two separate properties: 40 Bridge Street and 22 Durkee Street and is approximately 4.38 acres combined. A portion of this is a leased parcel of approximately 1.3 acres on the southern end of the Project Site that contains a three-story office building and a two-level parking structure (the "Leased Property"), which is not part of the Property. Access to the Property is from Durkee Street and Bridge Street. Seller shall be responsible for the subdivision of the Leased Property from the Property and the merger of 40 Bridge Street and 22 Durkee Street, both of which may be part of the permitting for the Project.

Purchase Price: The purchase price (the "Purchase Price") for the Property shall be one dollar U.S. ($1.00), the obligations contained herein, including the obligation to construct and operate the mixed-use development, and other good and valuable consideration. The Purchase Price shall be paid at Closing.

Project Development: Purchaser intends to develop and construct a mixed-use development consisting of 2 buildings consisting of approximately 127 +/- market rate apartments (exact number of units TBD) including furnished corporate apartments by ExecuStay, approximately 13,515 square feet of commercial space (retail, restaurants and/or office), approximately 7,883 square feet for Farmers' Market/civic space; approximately 233 parking spaces; and public access to the Saranac River waterfront. Seller and Purchaser acknowledge and agree that the plans, including the configuration and size of the buildings, are conceptual and, to achieve the goals of each party, may be amended as design and permitting progress. The proposed Project may be phased with building 1 to start construction first and building 2 to begin construction approximately 6 months later.

DRI Funding: Seller has $4 million remaining of their DRI awarded funding to be used towards a public – private partnership to support public infrastructure investments and provide vertical development gap financing to incentivize development on the Project Site. Purchaser and Seller, in consultation with NYS Empire State Development (ESD), shall work to determine how best to allocate the DRI funds to this Project. The final determination of the use of the DRI funding for the Project will be outlined in the DA.

Seller and Purchaser shall work with ESD and the NYS Department of State (DOS) to determine which specific elements will be covered by other DRI funded projects bordering the Project Site: Streetscape Improvements for Durkee and Bridge Streets, and Riverfront Access for the Saranac River ("Seller's other DRI projects"). The final determination of the specifics of the work to be covered by the other DRI funded projects will be outlined in the DA.

Due Diligence: Purchaser shall have 40 days from the date both Parties have executed this LOI for completing general due diligence of the Property. Due diligence will include, but not be limited to,

- Existing City and NYS permitting history and analysis, and needed City and NYS permitting requirements,
- Environmental studies and brownfield restrictions and analysis,
- Title research and examination,
- Engineering analysis,
- Traffic analysis,
- Utility analysis,
- Geotechnical and soil boring analysis, and
- Other items as determined that, in Purchaser's sole discretion, need to be considered for the development of the site.

Purchaser may extend the due diligence for an additional thirty (30) days upon written notice to Seller, delivered to Seller no later than the close of business on the fortieth (40th) day of the initial due diligence period, provided that Purchaser uses its best efforts to complete its due diligence within the initial forty (40) day period.

Seller will provide Purchaser with any and all environmental documentation pertaining to the Property and requirements between the City and the NYS Department of Environmental Conservation on complying with the Site Management Plan and the environmental easement on the Project Site. Seller agrees to work with Purchaser as needed for amending NYS documents related to the Site Management Plan as may be necessary, for change of use, transfer of certificate of completion, and ownership. Purchaser understands that initial brownfield remediation work has been completed on the Property. If during construction, additional contamination is found and further remediation is needed, it shall be the responsibility of the Purchaser. The Seller will assist the Purchaser in efforts to secure potential NYS funding for this work.

The Purchaser shall provide the Seller with necessary information for determining utility allocation needs and connections for the proposed project. The Seller will provide the Purchaser needed information for utility easements on the Property as outlined in the Schedule below.

Seller will provide Purchaser with title research prepared by the City's attorney and an ALTA survey completed in October 2018.

Open Issues; The following open issues will involve negotiations between the Purchaser and Seller prior to execution of the DA.

Farmer's Market / Public Amenities: The Seller will work with the Purchaser to determine whether the Farmer's Market remains within the Purchaser's proposed project, and if so, how it will be physically laid out, designed and operated prior to beginning construction. Seller shall determine the logistics of the Farmer's Market utilizing space within the proposed project prior to execution of the DA. The Seller shall work with the Purchaser to determine what will be the public amenities proposed for the Property and how they will be managed.

Public Parking: Purchaser will work with the Seller to determine the specific number of parking spaces to be available for public use. When agreement on the number of parking spaces is reached, the Seller and Purchaser shall draft a parking agreement that will be referenced in the DA.

Public Access: Purchaser shall provide public access to the Saranac River riverfront through the Property. Purchaser will work with the Seller on the locations and management/ maintenance of the public access.

Coordination with Streetscape and Riverfront Access Projects: Both parties acknowledge that Seller's other DRI projects need to progress during the same timeframe as the Purchaser's proposed project. Purchaser shall coordinate with Seller on design drawings and construction schedules for the Purchaser's proposed project and the Seller's other DRI projects to begin concurrently.

Purchaser shall be responsible for construction of the Purchaser's proposed project. It is currently contemplated that Purchaser may also construct Seller's other DRI projects under terms to be negotiated. In which event, Seller and Purchaser agree to negotiate a construction agreement addressing reimbursement for construction costs associated with Seller's other DRI projects, construction management, and oversight prior to commencing construction for the Purchaser's proposed project and the Seller's other DRI projects.

Permitting: Purchaser understands and acknowledges that the City as a permitting authority is separate and distinct from the City as Seller of the real estate. Seller makes no representation to Purchaser with respect to compliance of the proposed project with any applicable regulations, including, but not limited to, local zoning ordinances. Except as otherwise set forth herein, Purchaser will be required to apply for and obtain all permits that would be

required regardless of the City being the Seller. Purchaser and Seller shall work cooperatively throughout the design and permit process and make changes as needed. Purchaser shall receive design approval from the City as Seller of the real estate prior to applying for any permits, which approval shall not be unreasonably withheld, conditioned or delayed. Any objection the City may have to the proposed design based on standards set forth in the City of Plattsburgh, New York Request for Proposals, Section IV. Vision and Project Requirements attached in Appendix A shall not be deemed unreasonable.

The parties agree that it may be most efficient to seek permits for the Purchaser's project and the Seller's other DRI projects as a single permit process. Purchaser may assume lead responsibility for all permitting, with Seller's cooperation and support as necessary and appropriate. Seller is responsible for providing designs and any design changes for the Seller's other DRI projects to Purchaser in a timely manner to facilitate permitting. It is anticipated that the proposed project will apply for approvals as a Planned Unit Development (PUD) and subdivision as a single permit process. It is currently contemplated that the PUD will be configured as follows:

- the former Highway Oil site will be merged by the Seller with the larger Durkee parking lot.
- the parking lot south of Broad Street will be subdivided by the Seller such that it may be part of the PUD.
- The portion of the site currently leased to ICV will be a separate lot, through subdivision obtained by Seller, which may be within the PUD.
- Boundary adjustments with the abutting public rights-of-way will be made as needed to keep the streets, associated parking and sidewalks within the public rights-of-way.
- Subject to further review by the parties, the area with public riverfront improvements may also be subdivided with ownership being retained by the Seller.

Purchaser's Financing: Purchaser shall be responsible for obtaining all necessary public and/or private financing for the Purchaser's proposed project. This will include the DRI funding and may include a PILOT agreement and other public support.

Purchaser's Financial Obligations: As part of Purchaser's and Seller's negotiation for a definitive DA, the parties agree to Purchaser's financial obligations to Seller as follows:

a. Purchaser's costs – provided Purchaser's proposed project has been found through due diligence to be suitable, in Purchaser's sole discretion, for Purchaser's intended purposes on financial terms typical for the industry, and has not been denied necessary permits,

Purchaser agrees to use best efforts to obtain necessary funding to cover the costs associated with the proposed project.

b. Purchaser's construction of its project – Purchaser shall be responsible for construction of Purchaser's proposed project.

Purchaser's Contingencies: Purchaser's obligation to purchase the Property and construct the proposed project will be contingent upon satisfaction of the following contingencies prior to closing:

a. Funding: Purchaser securing necessary funding for the proposed project, which is to include the DRI funding as negotiated above.

b. Purchaser's Permits and Approvals: Purchaser obtaining all necessary, final and non-appealable City, NYS, and federal permits and approvals for the Purchaser's proposed project and, if applicable, the Seller's other DRI projects in final form not subject to appeal, containing terms and conditions reasonably acceptable to Seller and Purchaser.

c. Seller's Permits and Approvals: Seller obtaining final, non-appealable subdivision and merger approvals as may be combined in a single permit process with the Purchaser's Permits it is responsible for in accordance with this LOI.

d. Developer Agreement: Purchaser shall have executed a DA with Seller to purchase the Property, construct buildings and site improvements for Purchaser and Seller's use, provide public amenities and a public access easement to the Saranac River riverfront, provide a negotiated number of public parking spaces, provide needed easements for public utility access, and, if warranted, lease a portion of one building to Seller for operation of a farmer's market

e. Due Diligence: Purchaser's satisfaction, in Purchaser's sole discretion, with its due diligence studies conducted in accordance with the terms of this LOI. Failure to object by the end of the Due Diligence period shall constitute satisfaction with this contingency.

Seller's Contingencies: Seller's obligation to sell the Property will be contingent upon satisfaction of the following contingencies prior to closing:

a. Developer Agreement: Seller shall have executed a DA with the Purchaser to purchase the Property, construct buildings and site improvements for Purchaser and Seller's use, provide public amenities and a public access easement to the Saranac River riverfront, provide a negotiated number of public parking spaces, provide needed easements for public utility access, and, if warranted, lease a portion of one building to Seller for operation of a farmer's market.

b. Purchaser's Funding: Reasonable evidence of full funding commitments for the Purchaser to purchase the Property and pay for the construction of all phases of the proposed project.

c. Permits and Approvals: Purchaser has obtained all required federal, NYS, and municipal permits and approvals for Purchaser's proposed project and, if applicable, Seller's other DRI projects.

Closing: Closing to take place within 30 days of the following: obtaining all permits and approvals in final unappealable form and Purchaser obtaining all necessary financing.

Schedule: The Parties shall develop a schedule for the proposed project that anticipates construction of needed utility realignments and adjustments for the proposed project based on the following outline.

February 21, 2019	Execution of the Letter of Intent.
March 31, 2019	Purchaser's Completion of Due Diligence Work.
April 1, 2019	Execution of the DA.
June 1, 2019	Seller of real estate approves proposed Project design prior to obtaining permits.
October 31, 2019	Purchaser obtained needed municipal, NYS and federal permits for proposed project. Seller obtained needed municipal, NYS and federal permits for the other DRI projects.
November 30, 2019	Closing on sale of property.
December 1, 2019	Purchaser to break ground on construction of proposed project.

May 1, 2020	Seller to break ground on construction of other DRI projects.
May 31, 2021	Purchaser to complete building 1 of proposed project.
December 31, 2021	Purchaser to complete building 2 of proposed project.

Reversionary Rights: If Purchaser fails to commence construction within 30 days of closing or fails to make substantial construction progress for any period exceeding 2 weeks, as such breach will be set forth in the DA, all right, title, and interest in the Property would revert back to the Seller. The foregoing shall not apply in the event Purchaser is delayed or hindered in or prevented from the performance of any work because of strikes, lockouts, labor troubles, inability to procure material, failure of power, unreasonably restrictive governmental laws or regulations, riots, insurrection, war, acts of terror, any reason not in the control of Purchaser or other reason of a like nature not the fault of Purchaser.

Development Agreement: Within 14 days of full execution of this LOI, Seller shall provide a first draft of DA to Purchaser. The Parties agree to negotiate and enter into a final, executed DA no later than April 1, 2019. In the event that the Parties have not reached agreement and executed a DA by this date, this LOI shall be of no further force and effect, and the Parties shall be free to pursue other options for the Project Site.

Non-Binding: The provisions of this LOI do not constitute a binding agreement between the Parties, but instead are intended to set forth the Parties' understanding of the basic terms, conditions and process upon which a binding, definitive DA will be based. Purchaser shall not be obligated to purchase, and Seller shall not be obligated to sell the Property until the Parties have executed a binding, definitive DA. Notwithstanding these limitations, this LOI is a sincere expression of the Parties' intent to proceed. This LOI is contingent upon the approval of the City's Common Council, which approval the City shall diligently pursue.

The Parties do hereby set their signatures and seals to the Joint Letter of Intent on this 22nd day of February 2019.

Prime Companies, LLC

By: _____

Title: Member

Name: _____

City of Plattsburgh

By: _____

Title: Mayor

Name: Feb. 22, 2019 / Colin Read

Letter of Intent
By and Between the City of Plattsburgh, New York and Prime Companies, LLC.
February 21, 2019

APPENDIX A

I. VISION AND PROJECT REQUIREMENTS

- **New Buildings and Site Development:** The proposed development must consist of multi-story buildings that have mixed-uses. The City envisions residential, office, and retail uses for the Project Site. It should provide for public access to nearby amenities and should have community green space. The City's goals for the project include:
  - Include market rate residential development, Class A office space, and retail space,
  - Capitalize on local and regional initiatives focusing on food, agriculture, arts, history and tourism,
  - Serve multiple community functions,
  - Provide for physical/visual connections to Westelcom Park (across Durkee Street), the Saranac River riverfront, and the regional waterfront trail extensions, and
  - Provide community green space.

  The City will consider uses other than what has been identified above.

  The primary goal is to realize buildings and uses on the site that fit in well with the diverse urban fabric, maintain the historical look and feel of the downtown area, add to the increasing vibrancy of downtown, are economically feasible, and help contribute to a stable tax base.

  Design and Configuration:

  - The buildings and site shall be constructed of quality materials and design. The design of the buildings shall require approval of the City.

  - Maximizing lot coverage and placing the buildings in a manner that enhances pedestrian access and visual appeal from the street is highly encouraged.

  - The proposed site and building layout shall be handicap accessible, barrier free and customer oriented, providing easy pedestrian access.

- The buildings/spaces shall be designed and fit up in accordance with general standards for the use being provided and shall meet all applicable code requirements as specified and currently adopted by federal, NYS and local municipal authorities and permit grantors having jurisdiction.

- The City requires multiple stories for the buildings taking advantage of streetscape proximity and riverfront views.

- Developers are encouraged to incorporate the existing farmers' market structure into their proposals and develop it for three-season use. This could involve leaving the existing structure in its current location, relocating it to a different location on the site, or constructing a new three-season structure. The DRI funds could potentially be used for this work and could also be combined with other uses. If the developer is not able to include the farmer's market structure in their proposed plan, they should explain why.

Parking

Parking for the uses being proposed shall be provided on site as much as is reasonably possible. The proposed developer must address its parking needs on and off site for its build out. The City will cooperate with the developer in addressing parking requirements. Parking should be provided on site for residential units and commercial/office space. If a parking structure is part of the proposed development, the City may be interested in additional spaces for public use. The City will consider all proposed options. If the developer proposes a phased development, it is possible to use a portion of the existing parking lot for meeting parking needs while development is ongoing. The developer should consider parking under the buildings if feasible.

The City is working on a downtown parking plan that will include on street and off-street parking which they will be implementing over the next six months. The City is in the process of buying real property to develop into a municipal lot that will help accommodate the loss of parking from redevelopment of the Durkee parking lot. A managed parking system for the downtown area is also in the process of being implemented.

As mentioned above, the Streetscape Project is considering adding angled parking along Durkee and Bridge Streets bordering the site, which could be available for use by the development on the Project Site.

The City will work with the selected developer to identify other adjoining and nearby City-owned parking spaces/lots that may provide some of the parking for the proposed project through a development agreement to be executed between the selected developer and the City. The selected developer shall provide a calculation of the number of parking spaces that will be required to meet the needs of the uses being proposed and such number of parking spaces shall require approval of the City's Planning Board.

For additional information regarding parking, the current Code of the City of Plattsburgh may be found at the following website: http://www.cityofplattsburgh.com/DocumentCenter/View/1213/City-of-Plattsburgh-Code The section of the Code applicable to parking begins on Page 534 (25301) and ends of Page 556 (25321).

Exhibit "C"

Alta Survey Plan

Plan entitled "ALTA SURVEY Showing Certain Lands of The City of Plattsburgh, Clinton County, State of New York" prepared by Robert M. Sullivan, P.C. dated October 16, 2016 and certified November 2, 2018.

Map Notes:

1. Unauthorized alteration or addition to a survey map bearing a licensed Land Surveyor's seal is a violation of section 7209 sub-division 2 of the New York State Education Law.
2. Only copies from the original of this survey marked with an original of the Land Surveyor's embossed seal shall be considered valid true copies. (Hyde prints shall be stamped with the surveyor's life seal with an original signature)
3. Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. Said certifications shall run only to the person for whom the survey is prepared and on his behalf the title company, governmental agency, and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners.
4. Copyright 2018, Robert M. Sutherland, P.C. All rights reserved.
5. The location of sub-surface improvements are approximate and compiled from field location and mapping provided by the respective utility companies. The contractor shall confirm the location of all utilities prior to the commencement of excavation.
6. Subject to any findings of an accurate abstract of title or those discoverable by inspection.
7. All easements and right-of-ways of record as indicated in Title Insurance Commitment No. 18-Cert1812-ORT, issued by Old Republic National Title Insurance Company with an effective date of November 17, 2008, or easements and right-of-ways that are discoverable by inspection, are indicated hereon.
8. Subject to any and all right of ways and easements of record, if any.
9. North arrow and bearings based on grid north NAD 83 New York East zone 18.
10. Vertical datum based on NAVD 1988.
11. All distances shown hereon are ground distances.
12. Riparian rights, if any, have not been established as a result of this survey.
13. Building offsets, as shown on this map, are not to be used for construction purposes.
14. Missing property corners were not set as a result of this survey.

Reference Maps:

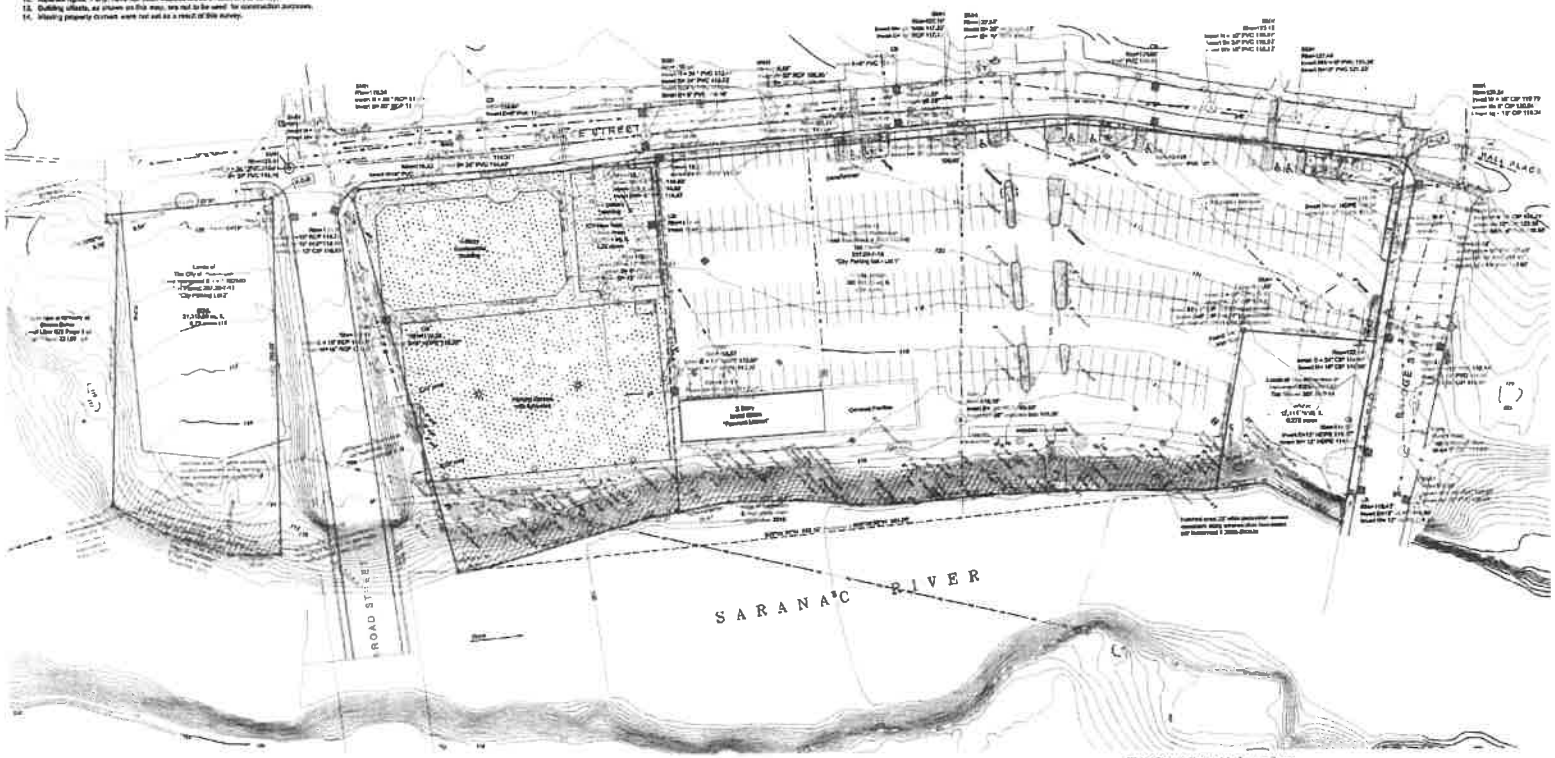
1. "Map of Lands of City of Plattsburgh 44-46 Margaret Street, Plattsburgh," prepared by Joseph A. Martine, L.S. dated September 20, 1974 and filed in the Clinton County Clerk's Office in Book A Page 61.
2. "Survey Map Showing Portions of Land(Parcels A-J) owned by City of Plattsburgh Proposed to be conveyed to City Place Associates," prepared by Jolly and Russo Land Surveyors dated September 23, 1988 and filed in Clinton County Clerk's Office in Slide 18 Page 21.
3. "Boundary Survey Portion of Lands of The City of Plattsburgh," prepared by G.T. Jade Associates, P.C. dated October 8, 2004 and on file in the office of Robert M. Sutherland, P.C.
4. "Map Showing Plattsburgh Gateway-Phase 1 Site Plan," prepared by Robert M. Sutherland, P.C. dated May 13, 2008.

Reference Deeds:

1. City Place Associates to City of Plattsburgh by deed dated February 27, 2003 and recorded on Instrument # 2003-102040 on March 12, 2003 in the Clinton County Clerk's Office.
2. Lease to CHWY, LLC to City of Plattsburgh by deed dated May 28, 2008 and recorded as Instrument # 2008-200033 on November 17, 2008 in the Clinton County Clerk's Office.
3. Richard A. Marks to City of Plattsburgh by deed dated July 8, 2014 and recorded on Instrument # 2014-200023 on July 08, 2014 in the Clinton County Clerk's Office.

Legend:

- 5/8" iron rod w/ RMS survey cap (to be set)
- Found property evidence (as described)
- Computed corner
- Fire Hydrant
- Sanitary manhole
- Drainage manhole
- Catch basin round
- Catch basin square
- Telephone pedestal
- Cable pedestal
- Water Valve
- Water shutoff
- Light pole
- Utility pole
- Sign
- Bollard
- Monitoring well
- Gas marker
- Gas meter
- Gas valve
- Electric meter
- Deciduous tree
- Coniferous tree
- Wetland
- Sanitary line
- Storm line
- Underground electric
- Underground telephone
- Underground gas
- Property line
- Adjoiner property line



Scale: 1 Inch = 40 Feet

Title Commitment Information:

No.	RECORDING REFERENCE	DESCRIPTION	STATUS ON PLAT
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

REFERENCES: OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
FILE NO. 18-CERT1812-ORT

Certification:

I hereby certify to the parties of interest listed below that this survey was prepared from deeds and maps of record and from an accurate survey performed during September and October of 2018.

The City of Plattsburgh
Old Republic Nation Title Insurance Company

Jeffrey R. Burns, L.S.
N.Y.S. License #050203

11/02/2018
Date

Tax Map Reference:

Section 20F.20 - Block F - Lot 14 & Lot 15
City of Plattsburgh
County of Clinton

No.	Revision/Issue	Date

RMS
ENGINEERS • PLANNERS • SURVEYORS
SOIL & MATERIAL TESTING
11 Washington Street, Plattsburgh, NY 12901
(518) 563-8188 • FAX (518) 563-8189

Project Name & Location

ALTA SURVEY
Showing Certain Lands of
The City Of Plattsburgh
- Shown -
City of Plattsburgh
Clinton County — State of New York

Project # 18184	Sheet SURVEY
Date 10/16/18	1
Scale 1" = 40'	
Drawn DJG	Checked J.F.B.

COPYRIGHT R. M. SUTHERLAND, P.C. - 2018

Exhibit "D"

INSURANCE AND INDEMNIFICATION REQUIREMENTS

A. Architect

During design and construction, the architect and all other design professionals shall carry professional liability assurance (E&O insurance) covering claims arising out of negligent errors or omissions in rendering or failure to render professional services, in any amount not less than $1.0 million each claim and $1.0 million annually aggregated. Coverage shall include liability arising out of a contract. If such insurance is on a claims made bases, Architect shall maintain liability coverage for not less than five years following the date of substantial completion of the Durkee Development.

B. General Contractor/Construction Manager

During construction, the GC/CM shall carry:

"All risk" Builders Risk Insurance with a limit of liability of 100% of completed value of the project, to include the interests of Prime's and the City's respective mortgagee, contractors and subcontractors involved in the project.

Workers Compensation insurance in accordance with New York State statutory requirements and Employers' Liability insurance in the amount not less than $1.0 million each occurrence, $1.0 million annual aggregate.

Owners and Contractors Protective Liability for the Durkee Development protecting the interests of the City and general contractor/construction manager, $1.0 million per occurrence.

Commercial General Liability Insurance including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability in an amount not less than $5.0 million combined single limit, per occurrence, and $5.0 million aggregated to this Project, naming the City and Prime as additional insureds.

Commercial Automobile Liability Insurance in an amount not less than $1.0 million per occurrence for bodily injury and property damage liability arising out of the operation and use of owned, hired, and non-owned vehicles and naming the City and Prime as additional insureds.

Performance Bond and Labor & Materials Payment Bond. At the option of Prime, the general contractor shall provide performance and payment bonds. If required by Prime or Prime's lender, such bonds shall be in amount equal to 100% of the contract sum or an amount to be determined based on its lender's requirements.

C. Proof of Insurance

Companies authorized to do business in the State of New York and rated no less than "A-" by the latest edition of Best's Insurance Guide, published by Alfred M. Best Co. or equivalent, shall issue all insurance policies. Certificates of Insurance shall be furnished prior to the award of the contract. Certificates shall clearly indicate the coverage type, insurance amount, and additional insured status as noted above. The Certificates must provide that in the event of any material change or cancellation of the policies, each party will be given thirty (30) days' notice thereof. Each party will review the insurance coverage every 3 years and each party will update its coverage over the term of the ground lease (in the event the legal structure is for a ground lease), or over the term of the mortgage (in the event the legal structure is for a fee title conveyance) as required by the City as an operating expense.

MEYER, FULLER & STOCKWELL
PLLC ATTORNEYS AT LAW

LAKE GEORGE
TITLE AGENCY

September 5, 2019

City of Plattsburgh Common Council
c/o Hon. Colin L. Read
City Hall
41 City Hall Place
Plattsburgh, New York 12901

Re: City of Plattsburgh Downtown Area Improvement Projects Draft Generic Environmental Impact Statement (DGEIS) Draft Scoping Document Comments

Dear Mayor Read and City of Plattsburgh Common Council:

Our firm is been retained by the Plattsburgh Citizens Coalition, Inc., a not for profit coalition and its members, of concerned citizens, property owners, and business owners in the City of Plattsburgh relative to the City's proposed development plans with Prime Plattsburgh, LLC. In reviewing the "Development Agreement" between the City of Plattsburgh and Prime Plattsburgh, LLC dated March 29, 2019 (hereinafter the "Agreement"), we believe this Agreement is a nullity. The City of Plattsburgh is without power to convey the waterfront property, or any portion of it, identified in the Agreement broadly as "40 Bridge Street and 22 Durkee Street" (hereinafter the "Properties").

The Properties that are subject to the Agreement are identified by Tax Map Parcels 207.20-1-14 and 207.20-1-15. Both of these parcels lie along the Saranac River, and therefore constitute, by law, "water front" properties. The City may not legally convey these Properties.

Pursuant to New York General City Law §20(2), a city is empowered to: "***To take, purchase, hold and lease real…property within…the limits of the city;…, and to sell and convey the same, but the rights of a city in and to its water front,…streets,…avenues, parks, and all other public places, are hereby declared to be inalienable, except in the cases provided for by subdivision seven of this section***." ***Emphasis added***. In this instance, New York General City Law §20(7) included in the foregoing exception does not apply as there connection to any of the exceptions contained therein.

There is no question that this river front property, which includes the entirety of the Properties, constitutes "water front" as set forth in New York General City Law §20(2). See for example,

Gladsky v. City of Glen Cove, 164 A.D.2d 567, 2nd Dept. 1991 for a thorough discussion of this issue now posed to the City of Plattsburgh.

- As in this instance, the City of Glen Cove attempted to convey a portion of property that included "frontage on Glen Cove Creed". Id. at 567.
- The question of whether or not the property in Glen Cove, as with the property along the Saranac River here, had ever been "used, acquired or dedicated" to public purpose is irrelevant. "*While other forms of City-owned property may be converted to public use and thereby be rendered inalienable under the statute,* ***waterfront property has been expressly declared to be inalienable, regardless of the manner in which the property is used****. Although we recognize that the statutory restriction against the alienation of certain municipal property emanates, to a large extent, from the "public trust" doctrine (see, Matter of Lake George Steamboat Co. v. Blais, 30 N.Y.2d 48, 330 N.Y.S.2d 336, 281 N.E.2d 147; Brooklyn Park Commrs. v. Armstrong, 45 N.Y. 234, supra; Matter of Central Parkway, 140 Misc. 727, 729–730, 251 N.Y.S. 577; Gewirtz v. City of Long Beach, 69 Misc.2d 763, 330 N.Y.S.2d 495, aff'd 45 A.D.2d 841, 358 N.Y.S.2d 957) the Legislature did not see fit to include a public-use limitation in the statute, and we decline to engraft such a limitation in a statute which is otherwise clear and unequivocal on its face.*" Id. at 571. ***Emphasis added***. Thus, in this instance, we need not delve into whether or not the City ever "dedicated" this property to protection under the public trust doctrine. New York General City Law §20(2) preempts that decision or action.'
- The exceptions of New York General City Law §20(7) do not include alienation of water front property. See again, Gladsky: "*Nor does General City Law § 20(7), upon which the plaintiff relies, compel a contrary result. This subdivision creates a "discontinuance" exception to the statute's blanket prohibition against the alienability of public property by empowering a municipality to "lay out, establish, construct, maintain and operate markets, parks, playgrounds and public places, and upon the discontinuance thereof to sell and convey the same" (emphasis supplied).* ***Notably absent from the enumeration of the type of property which may be freely sold by a municipality upon the discontinuance of its public use is waterfront property. The reason for this absence is clear—waterfront property, as we have noted, is entitled to special protection by virtue of its geographical location rather than by virtue of its use****. Unlike a public playground, which may cease to be a playground if its use is altered,* ***waterfront property is intrinsically unique****.* ***That the discontinuance exception does not, and should not, apply to waterfront property becomes all the more compelling given the significant ecological, scenic, and aesthetic qualities inherent in it.*** "***Emphasis added.***

In addition, it is also noted that the parking lot here may very well also be protected by the public trust doctrine, in addition to the issues surrounding New York General City Law §20(2) above. See generally 10 East Realty, LLC v. Incorporated Village of Valley Stream, 49 A.D.3d 764, Second Department 2008, as well as the related 10 East Realty cases at 17 A.D.3d 474, 49 A.D.3d 770. Although the Second Department found in the case of the village in 10 East Realty that the public trust doctrine was not violated by the conveyance of a parking lot there, here, we have a bit of a different scenario. In the City of Plattsburgh, this parking lot, and indeed other similar parking lots within the downtown parking district, are held for the benefit of that parking district. Taxpayers are charged a special tax for the maintenance, repair and upkeep of those parking lots, evidencing an intention by the City of Plattsburgh to hold those public parking

spaces in public trust for this district. That is, the City cannot, absent legislative approval, remove the benefit that it has charged the City's parking district. Thus, no parking property may be alienated without addressing the underlying special taxing district.

The continuing wrong evidenced by the Agreement in violation of New York General City Law §20(2) must be reversed. The City of Plattsburgh does not possess the legal authority to enter into the Agreement.

Thank you.

Sincerely,

Matthew F. Fuller, Esq.
mfuller@meyerfuller.com

cc: Plattsburgh Citizens Coalition, Inc.