Beier Howlett
ATTORNEYS AND COUNSELORS

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June 22, 2015

Birmingham City Commission
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Market Square Lease

Dear Mayor and Commissioners:

We have negotiated with representatives of Market Square for a lease for its proposed project for the property due north of its existing location on City property. Attached you will find the proposed lease which provides for rent in the sum of Thirteen Thousand Three Hundred Fifty-six and 00/100 Dollars ($13,356) per year, payable monthly or before the first of each month in the amount of One Thousand One Hundred Thirteen and 00/100 Dollars ($1,113). In addition, it provides for the indemnification of the City and for insurance to be provided to protect the City in the event of any issues that cause potential liability to the City of Birmingham.

We recommend that the City Commission review the material, and you will find a Suggested Resolution below.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc

SUGGESTED RESOLUTION

To approve the Ground Lease between the City of Birmingham and Market Square Enterprises, LLC and to authorize the Mayor and Clerk to execute the same on behalf of the City.

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made this ____ day of _____, 2015, by and between the **CITY OF BIRMINGHAM**, a Michigan municipal corporation ("Landlord"), whose address is 151 Martin Street, Birmingham, Michigan 48012, and **MARKET SQUARE ENTERPRISES, LLC**, a Michigan limited liability company ("Tenant"), whose address is 1964 Southfield Road, Birmingham, MI, 48009.

WITNESSETH:

WHEREAS, Landlord is the owner of certain real property in the City of Birmingham, Michigan consisting of the southwest corner of the intersection of Southfield Road and Wakefield Drive; and,

WHEREAS, Landlord and Tenant desire to enter a lease for a portion of such real property;

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1 BACKGROUND

1.01 Tenant is in the process of developing parking and an outdoor patio which is intended for retail use and for public use, when the retail use is closed, which will be located on the land described in **Exhibit A** attached hereto, (the "Project"). As part of the Project, Tenant shall undertake appropriate investigation and environmental response activities;

1.02 Landlord owns Demised Premises, which consists of a small area of property located on the southwest corner of the intersection of Southfield Road and Wakefield Dr. (approximately 3898 square feet). Landlord and Tenant mutually agree that this Lease will benefit the Project and the City in several respects, including:

(a) Additional rental income and tax revenue to the City from the Demised Premises;

(b) Tenant will undertake appropriate investigation and environmental response activities for the Demised Premises and Tenant's property at its expense;

(c) Tenant will be able to rationalize the shape of the building for a more appropriate aesthetic and efficient design; and,

SECTION 2 DEMISED PREMISES AND IMPROVEMENTS THEREON

2.01 Landlord, in consideration of the rents, terms, covenants and agreements hereinafter set forth on the part of Tenant to be paid, kept and performed, grants, demises and lets to

Tenant, and Tenant hereby takes and hires from Landlord, on the terms, covenants, provisions and agreements hereinafter provided:

a certain tract/parcel of land located in the City of Birmingham, County of Oakland, State of Michigan, and described in **Exhibit "B"** attached hereto and made a part hereof (the "Demised Premises") together with the limited rights, title and interests as follows:

(a) improvements presently on, under or over the Demised Premises and those improvements hereafter erected on the Demised Premises by Tenant as specifically set forth in this Lease; and

(b) all fixtures and articles of personal property and any replacements thereof, attached to or used in connection with the use, occupation and operation of the Demised Premises, and all alterations, additions and improvements hereafter made to the Demised Premises, title to which may vest in Landlord as specifically set forth in this Lease.

To have and to hold the Demised Premises and the above limited rights and interests for and during the term hereof, unless otherwise provided for in this Lease.

SECTION 3 TERM AND DURATION; ACCESS PRIOR TO COMMENCEMENT

3.01 The term of this Lease shall commence as of the earlier of _____, or the date on which construction of the Project commences (the "Commencement Date") and shall end at midnight on the date, which is twenty (20) years after the Commencement Date (the "Initial Term"). So long as Tenant is not in breach of the Lease, the Initial Term shall automatically be extended for one (1) additional period of twenty (20) years each (respectively, the "First Renewal Term" and "Second Renewal Term" and collectively the "Renewal Terms") unless Tenant provides Landlord with written notice of its intent not to renew this Lease at least ninety (90) days prior to the expiration of the Initial Term or First Renewal Term. Landlord shall send Tenant written notice at least one hundred and twenty (120) days before the end of the Initial Term and First Renewal Term that the Lease will be automatically renewed unless terminated within the following thirty (30) days. Notwithstanding the foregoing, Landlord's failure to send said notice does not invalidate Tenant's notice requirements and automatic extensions if Tenant fails to provide notice to Landlord of its intent not to extend the Lease.

3.02 Prior to the Commencement Date, so long as Tenant is not in default under this Lease, Tenant and its authorized agents and employees shall be permitted to enter upon the Demised Premises for the purposes of performing such tests and other non-construction work as may be reasonably incidental thereto.

SECTION 4 BASE RENT

4.01 Commencing on the Commencement Date, Tenant agrees to pay to Landlord, as minimum monthly net rent the sum of Thirteen Thousand Three Hundred Fifty-six and 00/100 Dollars ($13,356) per year, payable monthly or before the first of each month in the amount of One Thousand One Hundred Thirteen and 00/100 Dollars ($1,113). Each

year, this amount shall be adjusted annually on the anniversary of the Commencement Date based on the applicable CPI pursuant to Section 4.02. However, in no event shall Tenant's rental obligations decrease.

4.02 The term "CPI" shall mean the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics for Detroit-Ann Arbor-Flint, Michigan (Base Period 1982-84=100). Rent for the second (2nd) year of the Initial Term will be determined by dividing the amount of rent for the first (1st) year of the Initial Term by the CPI published for the calendar month during which the Commencement Date occurs, and then multiplying the resulting amount by the index number for the CPI for the month ending immediately prior to the date in which rent is scheduled to be adjusted. Thereafter, rent will be adjusted every anniversary of the Commencement Date (other than adjustments made pursuant to Section 4.03 below) by dividing the then-applicable amount of rent by index number for the CPI for the month preceding the commencement of the applicable year and then multiplying the resulting amount by the index number for the CPI for the last month of the applicable year. If the CPI is no longer published, Landlord and Tenant shall substitute a mutually agreed upon inflation index which most closely follows the CPI or which has replaced the CPI. The CPI increase for each year shall not exceed three (3) per cent each year.

4.03 Unless Tenant has further obligations under any other agreements pertaining to the environmental condition of the Project, and as additional consideration, Tenant, at its sole expense, shall undertake those appropriate investigation and environmental response activities necessary to comply with due care obligations, applicable to the development and future use of the property, as may be required under Section 20107a of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the administrative rules promulgated thereunder. Specifically, Tenant shall undertake appropriate measures to prevent exacerbation of, and unacceptable human direct contact and inhalation exposures to, contaminants existing on the property at time of lease. Tenant also shall undertake reasonable precautions to prevent reasonably foreseeable acts and omissions of third parties that could result in unacceptable human exposures to, or exacerbation of, contaminants existing on the property at time of lease.

4.04 Each yearly installment of minimum net rent will be paid in advance, without any setoffs or deductions, on each and every anniversary of the Commencement Date (the "Rent Day") during the continuation of this Lease at the office of Landlord at the address first shown above, or at such other place as Landlord from time to time may designate in writing.

4.05 The terms "rent" and "rental" shall mean all net rent and other charges or sums, which may be due from Tenant to Landlord pursuant to this Lease.

4.06 This Lease shall be deemed and construed to be a "net lease" and, notwithstanding anything contained herein to the contrary, Landlord shall receive all rent due hereunder absolutely free of all charges, assessments and impositions, expenses, offsets or deductions of any kind. Landlord shall not be expected or required to make any payment or provide any service to Tenant or any other person or entity, except as otherwise

expressly set forth in this Lease. Landlord and Tenant acknowledge and agree that Tenant shall be responsible for all costs, expenses and obligations relating to the maintenance, repair, replacement, taxes and insurance for the Demised Premises during the term of this Lease and Landlord shall be indemnified by Tenant against all such costs, expenses and obligations.

4.07 Any rent or other sums payable by Tenant to Landlord under this Lease, which are not paid within ten (10) days after the same are due will be subject to a late charge of two and one-half percent (2.5%) of the amount due. Such late charges will be due and payable as additional rent on or before the next thirty (30) day installment of rent is due.

4.08 Any rent, late charges or other sums payable by Tenant to Landlord under this Lease, which are not paid within thirty (30) days after the same are due, will bear interest at a per annum rate equal to three (3) percentage points above the effective prime rate announced in the Money Rates section of the Wall Street Journal (the "Default Rate") on the date when the rent, late charges or other sums became due, but in any event not in excess of the maximum interest rate permitted by law. Such interest shall be due and payable as additional rent on or before the next thirty (30) day installment of rent is due and will accrue until paid from the date that such rent, late charges or other sums are payable under this Lease. See Section 14 regarding Tenant's defaults.

SECTION 5 USE AND OCCUPANCY

5.01 The Demised Premises may be used by Tenant for any legal purpose in connection with the development, construction and use of the Project in accordance with the approved site plan ("Site Plan") (**Exhibit C**). Landlord and Tenant acknowledge that Tenant intends to expand the proposed above ground improvements to include the air space over a portion of the Demised Premises.

SECTION 6 CONSTRUCTION OF THE PROJECT

6.01 The Project shall be constructed by Tenant in substantial accordance with the Site Plan (**Exhibit C**) approved by Landlord on April 8, 2015 as may be amended by the parties from time to time.

6.02 Tenant shall be under no obligation to construct the Project.

6.03 At all times prior to completion of the construction of the Project, Tenant shall maintain a policy of builders risk insurance covering such risks, in such amounts and with such companies as Tenant reasonably determines and subject to the reasonable approval of Landlord. Each such policy shall be non-cancelable except upon thirty (30) days' prior written notice to Landlord.

6.04 In connection with the Project, Tenant, at its sole cost and expenses, shall have the right to relocate existing utilities located on the Demised Premises (i) within the Demised Premises; or (ii) on to adjacent land owned by the Tenant. Landlord agrees to execute any and all reasonably required documents in connection with such relocation, which may be requested by any utility company.

SECTION 7 ASSIGNMENT AND SUBLETTING

7.01 Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, assign its interest in this Lease or to sublet the whole or any portion or portions of the Demised Premises, except when the assignment of the Lease is pursuant to the sale of the building. Notwithstanding the foregoing, Landlord's consent shall not be required in order for Tenant to enter leases or other agreements with third parties with respect to the improvements constructed in connection with the Project provided such leases and/or agreements do not permit such third parties to violate the terms of this Lease. Promptly after entering such a lease or other agreement, Tenant shall provide written notice thereof to Landlord.

7.02 Landlord agrees to enter into a nondisturbance agreement, in form satisfactory to Landlord, in favor of subtenants. Such nondisturbance agreements shall be executed in recordable form. Landlord covenants, agrees and warrants to execute such nondisturbance agreements within thirty (30) days after written request by Tenant therefor.

7.03 Any amendments of subleases shall not be binding on Landlord unless Landlord consents to same, which consent Landlord covenants and warrants will not be unreasonably withheld, delayed or conditioned.

SECTION 8 TAXES AND UTILITIES

8.01 As soon as possible after the execution of this Lease, Landlord shall cause the Demised Premises to become a separate tax parcel.

8.02 All taxes, including but not limited to personal property taxes and taxes imposed pursuant to P.A. 189 of 1953 (Taxation of Lessees and Users of Tax-exempt Real Property), levied against the Tenant's interest in the Demised Premises shall be paid by the Tenant before same are delinquent.

8.03 All charges for utility services rendered to the Demised Premises during the term of this Lease shall be paid by Tenant.

SECTION 9 LIABILITY INSURANCE

9.01 Tenant shall not commence work under this Lease until it has obtained the insurance required under this Section. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers reasonably acceptable to Landlord.

(a) Workers' Compensation Insurance: Tenant shall cause its contractors to procure and maintain during the life of this Lease when construction is being done on the Project. Workers' compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statues of the State of Michigan.

(b) Commercial General Liability Insurance: Tenant shall procure and maintain during the term of this Lease, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $2,000,000.00 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (i) Contractual Liability; (ii) Products and Completed Operations; (iii) Independent Contractors Coverage; (iv) Broad Form General Liability Extensions or equivalent; (v) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

(c) Motor Vehicle Liability: If Landlord uses motor vehicles at the Demised Premises then Landlord shall procure and maintain during the term of this Lease Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

(d) Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds:* The City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any coverage that may be available to the additional insured, whether any other available coverage be primary, contributing or excess.

(e) Cancellation Notice: Workers' compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012."

(f) Proof of Insurance Coverage: Tenant shall provide the Landlord at the time the Lease is returned for execution, Certificates of Insurance and/or policies, acceptable to Landlord, as listed below.

(i) Two (2) copies of Certificate of Insurance for Workers' Compensation (if then required);

(ii) Two (2) copies of Certificate of Insurance for Commercial General Liability;

(iii) Two (2) copies of Certificate of Insurance for Motor Vehicle Liability Insurance (if then required); and

(iv) If so requested, Certified Copies of all policies mentioned above will be furnished.

(g) Coverage Expiration: If any of the above coverages expire during the term of this Lease, Tenant shall deliver renewal certificate and/or policies to landlord at least ten (10) days prior to the expiration date.

9.02 Notwithstanding the foregoing, any and all insurance required to be obtained pursuant to this Section 9 may be obtained in connection with, and combined with, Tenant's insurance for the Project so long as the requirements of this Section 9 are satisfied.

SECTION 10 INDEMNITY

10.01 To the fullest extent permitted by law, Tenant and any entity or person for whom Tenant is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold Landlord harmless, including Landlord's elected and appointed officials, employees and volunteers and others working on behalf of Landlord against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and Landlord, its elected and appointed officials, employees, volunteers or others working on behalf of Landlord, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of Landlord.

SECTION 11 COMPLIANCE WITH LAWS

11.01 Tenant covenants and agrees that during the term of this Lease, and any renewals or extensions thereof, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, and requirements of the federal, state, county, city and municipal governments or any of their departments, bureaus, boards, commissions and officials thereof, with respect to the Demised Premises, the buildings and improvements thereon or hereafter erected thereon by Tenant, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against Landlord or Tenant, or both, except to the extent that Landlord has any obligations under this Lease.

SECTION 12 CASUALTY INSURANCE

12.01 Tenant covenants that it will, during the continuance of the term of this Lease, keep or cause to be kept the buildings and improvements now or hereafter located on the Demised Premises, insured by a responsible and reputable insurance company or companies against loss or damage by fire and such other hazards as are currently embraced in the standard extended coverage endorsement in this State of Michigan, and in an amount not less than eighty percent (80%) of the full insurable value of said building and improvements.

SECTION 13 DAMAGE CLAUSE

13.01 Should the whole or any part or parts of the buildings or improvements then on the Demised Premises be partially or wholly damaged or destroyed by fire or other insured casualty after the commencement of the term of this Lease, such destruction or damage shall not operate to terminate this Lease, but this Lease shall continue in full force and effect, except as otherwise provided in this Lease. Tenant, at its sole option, may elect to:

(a) restore, rebuild or repair said building and improvements so damaged or destroyed so that the said building and improvements as Tenant deems appropriate for its development or use of the Project; or

(b) clear the Demised Premises of all debris and restore same to a safe condition.

13.02 Notwithstanding the foregoing, including Tenant's discretionary election, all decisions to restore, rebuild, repair and/or clean are subject to all City and other municipality regulations pertaining to same.

SECTION 14 DEFAULT CLAUSES

14.01 If Tenant shall default in the payment of rent on any dates provided for in this Lease, and if such default shall continue for a period of thirty (30) days after receipt by Tenant of written notice of said nonpayment, or (except as otherwise provided in this Lease) in the event that Tenant shall default or fail in the performance of a material covenant or agreement on its part to be performed in this Lease and such default shall not have been cured for a period of sixty (60) days after receipt by Tenant of written notice of said default from Landlord, or if such default cannot with due diligence be cured within sixty (60) days and Tenant shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by Tenant with due diligence within sixty (60) days that the time within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence), then, and in such case, Landlord shall have the right to terminate this Lease and to recover possession of the Demised Premises by summary proceedings or by any other appropriate legal action or proceedings, and such other rights as may be available at law or in equity.

14.02 If, after the commencement of the term of this Lease, (i) Tenant then in possession of the Demised Premises shall be adjudicated bankrupt or adjudged to be insolvent; (ii) a receiver or trustee shall be appointed for the aforesaid Tenant's property and affairs; (iii) the aforesaid Tenant shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or (iv) any execution or attachment shall be issued against the aforesaid Tenant or any of the aforesaid Tenant's property whereby the Demised Premises, or any building or buildings or any improvements thereon, shall be taken or occupied or attempted to be taken or occupied by someone other than the aforesaid Tenant, except as may herein be permitted, and such adjudication, appointment,

assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded over within one hundred twenty (120) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of this Section 14 shall become effective and Landlord shall have the rights and remedies provided for herein.

14.03 Notwithstanding the foregoing, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. This agreement shall be governed by the laws of the State of Michigan and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

SECTION 15 ESTOPPEL CERTIFICATES

15.01 Landlord shall, without charge, at any time and from time to time, within thirty (30) days after request by Tenant, certify by written instrument, which Landlord shall duly execute and acknowledge in recordable form and deliver to Tenant or any mortgagees selected by Tenant, or any assignee of any mortgagee or purchaser, or any proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified by Tenant:

(a) that this Lease is unmodified and in full force and effect (or, if there has been a modification, that the same is in full force and effect as modified and stating the modification);

(b) the dates, if any, to which the basic rent impositions and other charges hereunder have been paid in advance;

(c) whether Tenant is or is not in default in the performance of any covenant, condition or agreement on Tenant's part to be performed and the nature of Tenant's default, if any, and such other pertinent information as Tenant may request.

SECTION 16 OWNERSHIP OF IMPROVEMENTS

16.01 Tenant shall own and have the right to take the depreciation deductions under the tax laws for any buildings and improvements heretofore or hereafter erected on, under or above the Demised Premises.

SECTION 17 RIGHT TO PERFORM FOR TENANT

17.01 If Tenant, or its permitted successors and assigns, shall, after reasonable notice and demand, fail to perform any covenant, condition or other obligation on its part to be performed under this Lease, the Landlord may do so on behalf of and at the cost and expense of the Tenant so failing to perform. Interest at the Default Rate and reasonable attorney's fees, if any, shall be collectible from the Tenant. Should it be determined by a court of competent jurisdiction that the expending of sums by Landlord was made necessary by Tenant's failure to perform a covenant, condition or any other obligation on Tenant's part to be performed under this Lease, in such event, and only in such event, shall such sums, at the option of Landlord, be deemed additional rent and payable as such on the next or any subsequent Rent Day.

SECTION 18 HOLDOVER

18.01 If Tenant shall holdover as a tenant after the expiration of the then existing Lease term, then such tenancy shall be deemed to be on a month-to-month basis with monthly rent payable in advance in the amount of one hundred fifty percent (150%) of the rent as in effect under this Lease.

SECTION 19 PARTIAL INVALIDITY

19.01 If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which this Lease is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 20 WRITTEN NOTICES

20.01 Whenever under the terms of this Lease a written notice is required, or whenever a written notice or communication is sent, the same shall be accomplished by Registered Mail, Return Receipt Requested, postage prepaid, addressed to the parties at the respective addresses first above written or to such other address(es) as any of the parties shall designate by written notice. All notices sent to Landlord shall be sent to the attention of the City Manager unless otherwise provided herein. A copy of all notices to Landlord shall also be sent to the City Attorney, Timothy J. Currier, at 200 E. Long Lake Road, Suite 110, Bloomfield Hills, Michigan 48304. A copy of all notices to Tenant shall also be sent to _____, at _____.

SECTION 21 BINDING ON SUCCESSORS AND ASSIGNS

21.01 Except as otherwise provided in this Lease, all covenants, agreements, provisions and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns. No modification or

termination of this Lease shall be binding unless evidenced by an agreement in writing signed by Landlord and Tenant.

SECTION 22 BROKER

22.01 Landlord and Tenant each warrant, covenant and agree with the other that no broker brought about this Lease nor was any broker involved in the negotiations leading to its consummation.

SECTION 23 NO MERGER

23.01 Notwithstanding any provision of this Lease to the contrary, if at any time or times during the term of this Lease, or any renewal or extension thereof, Landlord and Tenant shall be the same person, party or entity, Landlord's and Tenant's interests shall remain separate and distinct, and shall not be merged into one estate so as to cancel, terminate or extinguish this Lease by law or otherwise.

SECTION 24 CAPTIONS

24.01 The captions of the Sections of this instrument are solely for convenience and shall not be deemed a part of this instrument for the purposes of construing the meaning thereof or for any other purpose.

SECTION 25 SURRENDER

25.01 Upon the termination of the Lease term, Tenant shall quit and surrender the Demised Premises and all buildings and improvements thereon, in good condition and repair.

SECTION 26 QUIET ENJOYMENT

26.01 Landlord agrees, covenants and warrants that as long as Tenant faithfully performs the agreements, terms, covenants and conditions of this Lease including without limitation, Tenant's obligations to comply with all laws as set forth in Section 11, within the grace periods and extended periods for any unavoidable delays, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises for the term and extensions thereof hereby granted without molestation or disturbance by or from Landlord and free of any and all encumbrances created or suffered by Landlord.

SECTION 27 NO WAIVER

27.01 No waiver of any covenant or condition contained in this Lease, or of any breach of any such covenant or condition, shall constitute a waiver of any subsequent breach of such covenant or condition by either party, or justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition hereof of either party.

SECTION 28 INTERPRETATION

28.01 This Lease shall be construed in accordance with the laws of the State of Michigan. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number and vice versa. The neuter gender includes the masculine and the feminine.

SECTION 29 ENTIRE AGREEMENT

29.01 This Lease contains the entire agreement of the parties hereto with respect to the letting and hiring of the Demised Premises described above, and this Lease may not be amended, modified, released or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, their respective successors or assigns.

SECTION 30 SHORT FORM OR MEMORANDUM OF LEASE SUITABLE FOR RECORDING

30.01 The parties hereto covenant and agree that, at the request of either party, Landlord and Tenant will promptly execute and deliver to the requesting party a short form or Memorandum of Lease duly acknowledged and in recordable form setting forth, among other things, the names and addresses of the parties, a reference to this Lease and its date, the description of the Demised Premises, the date of the commencement and termination of this Lease, Tenant's rights to obtain financing, the right of Tenant to build, alter, repair, improve, change or demolish buildings, structures and improvements, and such other information as either party may request. The short form or Memorandum of Lease, or this Lease, may be recorded by either Landlord or Tenant. Landlord and Tenant agree to share equally all the costs and expenses of recording said short form or Memorandum of Lease or this Lease.

SECTION 31 CHANGE IN LEGAL DESCRIPTION OF DEMISED PREMISES

31.01 The parties acknowledge and agree that it may be necessary to change the legal description of the Demised Premises in order to facilitate the efficient use of the land comprising the Project. The parties agree to use their best good faith efforts to agree upon the final legal description. The revised legal description shall be initialed by each party and substituted for **Exhibit B** on all executed counterparts of this Lease.

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

LANDLORD:

CITY OF BIRMINGHAM

_____

Stuart Sherman, Mayor

_____

Laura Pierce, Clerk

TENANT:

MARKET SQUARE ENTERPRISES, LLC, a Michigan limited liability company

By: Johnny Karmo
Name: Johnny Karmo
Its: Vice president

APPROVAL (Sec 2-289 City Code)

Joseph Valentine, City Manager
as to Substance

Mark Gerber, Director of
Finance as to Financial Obligation

Timothy J. Currier, City Attorney as to
Form

O:\Birmingham\CONTRACTS & REAL ESTATE\Contracts\Miscellaneous Contracts\2015\(TJC) 2015.03.02 Ground Lease - Market Square doc

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROJECT

T2N, R10E, Sec 35 J Lee Baker Co's Birmingham Hills Subdivision Lots 301, 302, 303, also North ½ of lot 304

Tax Parcel ID No. 1935481024

EXHIBIT "B"

LEGAL DESCRIPTION OF THE DEMISED PREMISES

[See attached]

NF
ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

LEGAL DESCRIPTION (LEASE AREA):

PART OF LOTS 301, 302, 303 AND THE NORTH 1/2 OF LOT 304 OF "J. LEE BAKER CO'S BIRMINGHAM HILLS SUBDIVISION" OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 35, TOWN 2 NORTH, RANGE 10 EAST, VILLAGE OF BIRMINGHAM (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN. AS RECORDED IN LIBER 41 OF PLATS, ON PAGE 40 OF THE OAKLAND COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 301; THENCE DUE SOUTH 8.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING DUE SOUTH 67.00 FEET; THENCE N.88°54'00"W., 100.00 FEET; THENCE DUE NORTH 62.00 FEET; THENCE S.88°54'00"E., 21.00 FEET; THENCE DUE SOUTH 52.00 FEET; THENCE S.88°54'0"E., 36.00 FEET; THENCE DUE NORTH 57.00 FEET; THENCE S.88°54'00"E., 43.00 FEET TO THE POINT OF BEGINNING.

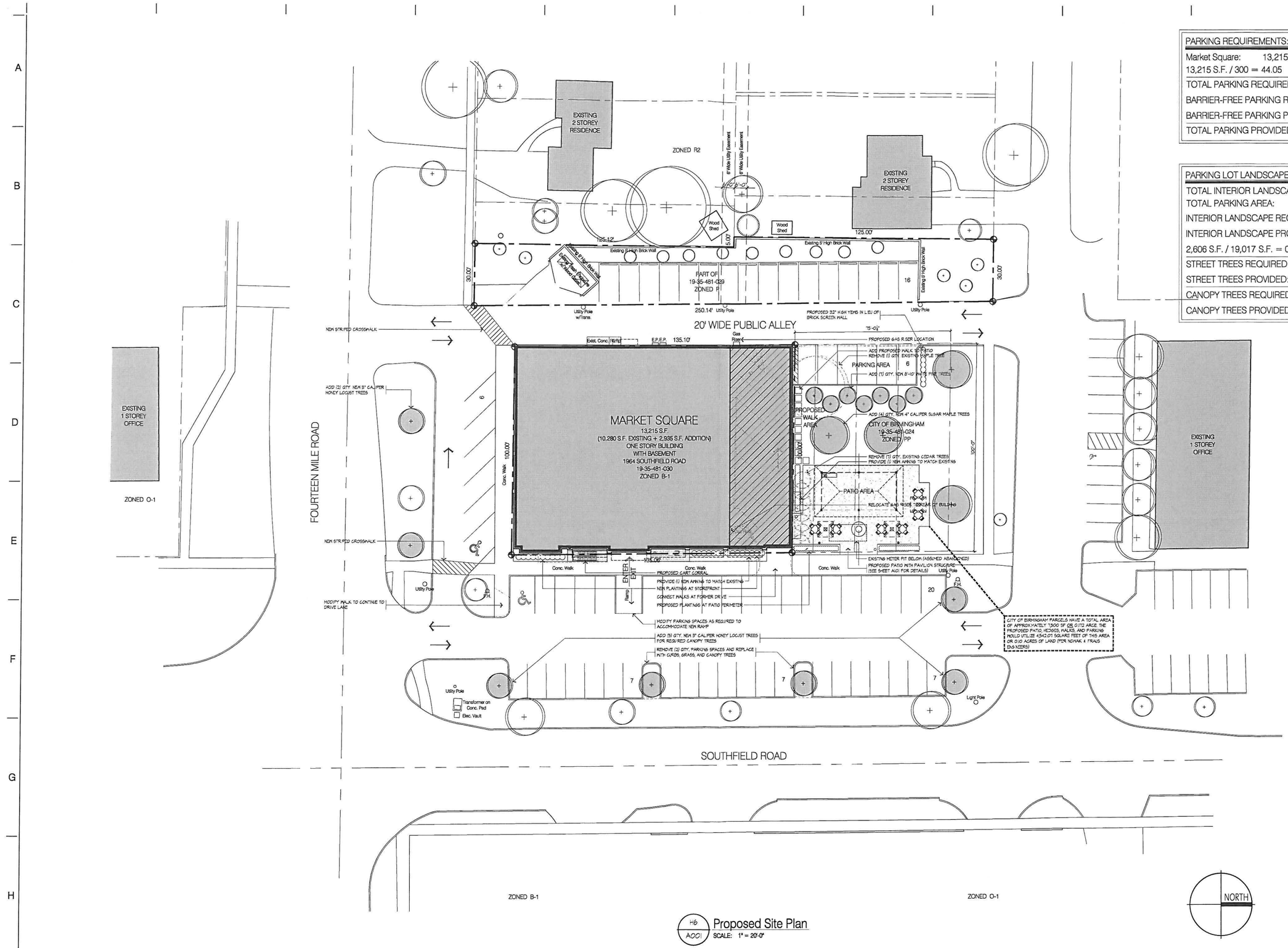
CONTAINING 4,542.07 SQUARE FEET 0.10 ACRES OF LAND.

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVENUE
PONTIAC, MI 48342-5032
WWW.NOWAKFRAUS.COM
VOICE: 248.332.7931
FAX: 248.332.8257

EXHIBIT "C"

SITE PLAN OF THE PROJECT

[to be provided]



H6 / A001 Proposed Site Plan
SCALE: 1" = 20'-0"

PARKING REQUIREMENTS:	
Market Square: 13,215 S.F.	
13,215 S.F. / 300 = 44.05	
TOTAL PARKING REQUIRED:	44 Cars
BARRIER-FREE PARKING REQUIRED:	2 Cars
BARRIER-FREE PARKING PROVIDED:	2 Cars
TOTAL PARKING PROVIDED:	69 Cars

PARKING LOT LANDSCAPE REQUIREMENTS:	
TOTAL INTERIOR LANDSCAPE AREA:	2,606 S.F.
TOTAL PARKING AREA:	19,017 S.F.
INTERIOR LANDSCAPE REQUIRED:	5%
INTERIOR LANDSCAPE PROVIDED:	
2,606 S.F. / 19,017 S.F. = 0.14 x 100 =	14%
STREET TREES REQUIRED:	Existing + 2
STREET TREES PROVIDED:	Existing + 2
CANOPY TREES REQUIRED:	6
CANOPY TREES PROVIDED:	6

SAROKI ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:

Market Square
1964 Southfield Road
Birmingham, MI

Date:	Issued For:
06-20-2014	SITE PLAN REVIEW
07-08-2014	SITE PLAN REVIEW PRESENTATION
07-30-2014	REVIEW
12-29-2014	OWNER REVIEW
01-29-2015	OWNER REVIEW
02-03-2015	REVIEW
02-23-2015	FINAL SITE PLAN REVIEW
03-25-2015	FINAL SITE PLAN REVIEW REVISED
04-01-2015	FINAL SITE PLAN REVIEW REVISED
06-08-2015	REVIEW
06-19-2015	LEASE AGREEMENT

Sheet No.:

A001

PROPOSED SITE PLAN

RECEIVED BY
JUN 24 2015
CITY CLERK'S OFFICE
CITY OF BIRMINGHAM

19 June 2015

TO: City Commissioners for the City of Birmingham, Michigan

SUBJECT: Market Square Southfield Road / Saxon retail expansion

On Tuesday, June 16th the Birmingham Farms Neighborhood Association which comprises Birmingham residents within the quadrant bounded by Saxon, Southfield Road, Lincoln and the Rouge River met to understand the plans for expansion of the retail establishment "Market Square" located at Southfield and Saxon Roads. The meeting turnout was significant in numbers and as an association we were able to discuss and agree on the following:

1) Unanimously agreed that the neighborhood association is not against the expansion of Market Square.
2) Unanimously agreed that with planned expansion the parking lot for Market Square should be modified by removing entrance/exit from residential street Wakefield and instead adding an entrance/exit from Southfield Road while also maintaining the entrance/exit on Saxon. Wakefield is a narrow, residential street which can no longer sustain cut through traffic from the Market Square parking lot and with a planned 30% expansion of Market Square this traffic problem needs to be addressed.
3) Strong consensus was reached that we do not support the City of Birmingham leasing City property designated as park land to support a private business development / construction activity which diminishes or reduces in size the park land.
4) Unanimously agreed that we do not support the construction of parking spaces on city park land to support a private business.

While the Birmingham Farms Neighborhood Association values the Market Square retail establishment as an asset to our neighborhood, it is felt that thus far in the planning process of the expansion of Market Square that consideration has not been placed on the increased traffic strain on our neighborhood nor on the protection / maintenance of the green space surrounding our neighborhood that for generations has contributed significantly to our neighborhood's character.

Respectfully submitted,

Jay R. Shell

President, Birmingham Farms Neighborhood Association

Wendy Leary Wendy Leary 1187 W. Southlawn Blvd.

Vice President, Birmingham Farms Neighborhood Association

Catherine Ticer 1199 Wakefield
Catherine Ticer

Treasurer, Birmingham Farms Neighborhood Association

Maureen Bell Field
Maureen Field
1732 Norfolk St.
Secretary, Birmingham Farms Neighborhood Association

SMR
Susan Randall

Member At Large, Birmingham Farms Neighborhood Association

Lindsay Lawrie

Member At Large, Birmingham Farms Neighborhood Association

Patrick Seeberg

Member At Large, Birmingham Farms Neighborhood Association

Other Concerned Birmingham Farms Neighborhood Residents:

Amy Falkner
1580 Latham St

Laura L. Mason
1133 Wakefield

Anne Van Dyke
988 Northlawn Blvd

James C Van Dyke
988 Northlawn Blvd

Judy Guilmet
1675 Norfolk

Chester Guilmet
1675 Norfolk

Michal Nobel
1651 LATHAM ST

John Brice
1076 NORTHLAWN

Sheila Brice
1076 Northlawn

Robert T. Benn
Kara Benn
1615 Latham St

Marci Cunningham
1240 SAXON DR

Debbie Spencer
1067 Wakefield St.

David Field
1733 Norfolk St.

DAVE SPENCER
1067 WAKEFIELD ST

THOMAS E RANDALL, JR
1220 SAXON DR

Favot
1190 Wakefield St

Brenda Seeberg
1164 Wakefield