

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), hereinafter referred to as the Memorandum, entered into on the 10th day of ~~January~~ *January*, 2017, by and between **City of Kingston**, a municipal corporation with offices at 420 Broadway, Kingston, New York, (hereinafter referred to as City) and **Wright Architects PLLC**, with offices at 200 Fair Street, Kingston, New York (hereinafter referred to as Developer)

WHEREAS, the aforementioned parties desire to enter into the herein described Agreement in which they shall work together to accomplish the goals and objectives set forth; and

WHEREAS, the parties are desirous to enter an understanding, thus setting out all necessary working arrangements that both parties agree shall be necessary to complete this Project.

PURPOSE AND SCOPE

The parties intend for this Memorandum of Understanding to provide the cornerstone and structure for any and all possibly impending binding contracts which may be related to the Project.

OBJECTIVES

The parties shall endeavor to work together to develop property known as 21 North Front St. (former Uptown Parking Garage) with a minimum of 200 public parking spaces along with a combination of street level commercial, retail and dining establishment with apartments or hotel.

RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

It is the desire and the wish of the parties to this MOU Agreement that this document should not and thus shall not establish nor create any form or manner of a formal agreement, but rather an Agreement between the parties to work together whereby the Developer with the approval of the City markets and obtains investors necessary for the lease and or sale of the property in a manner consistent with the above stated objectives. Developer shall by the expiration of the term of this agreement, present a final and detailed plan for the City to formally approve or reject in writing.

TERMS OF UNDERSTANDING

The term of this Memorandum of Understanding shall be for a period of eighteen (18) months from the aforementioned effective date and may be extended upon written mutual agreement of both parties.

It is the understanding of the parties that due to the term of this agreement and the City's desire to move forward with this project bench marks are required to ensure a timely process. This process shall be in phases as follows:

Phase 1. Developer shall provide to the City, a schematic diagram within six (6) months from the date of this agreement.

Phase 2. Developer shall provide to the City proof of project financing within twelve (12) months from the date of this agreement.

Phase 3. Developer shall provide to the City a completed application for approval from the City of Kingston Planning Board for the Project within eighteen (18) months from the date of this agreement.

During each phase of the project the Developer shall agree to hold public meetings and outreach related to the project in coordination with the City of Kingston.

AMENDMENT OR CANCELLATION OF THIS MEMORANDUM

This Memorandum of Understanding may be amended or modified at any time in writing by mutual consent of both parties.

In addition, the Memorandum of Understanding may be cancelled by either party with 30 days advance written notice, with the exception being where cause for cancellation may include, but is not limited to, a material and significant breach of any of the provisions contained herein, when it may be cancelled upon delivery of written notice to the other party. The parties agree that each will be held harmless for the time and expense associated with this agreement.

GENERAL PROVISIONS

The parties acknowledge and understand that they must be able to fulfill their responsibilities under this Memorandum of Understanding in accordance with the provisions of the law and regulations that govern their activities. Nothing in the Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures. The parties assume full responsibility for their performance under the terms of this Memorandum.

If at any time either party is unable to perform their duties or responsibilities under this Memorandum of Understanding consistent with such party's statutory and regulatory mandates, the affected party shall immediately provide written notice to the other party to establish a date for resolution of the matter.

LIMITATION OF LIABILITY

The parties acknowledge and understand that the Project drawings, schemes and methods are the intellectual property of Wright Architects. This information shall not be disclosed unless disclosure is required by law or court order.

No rights or limitation of rights shall arise or be assumed between the parties as a result of the terms of this Memorandum of Understanding.

ARBITRATION/MEDIATION DISPUTE RESOLUTION

The parties to this Memorandum of Understanding agree that should any dispute arise through any aspect of this relationship, including, but not limited to, any matters, disputes or claims, the parties shall confer in good faith to promptly resolve any dispute. In the event that the parties are unable to resolve the issue or dispute between them, then the matter shall be mediated and/or arbitrated in an attempt to resolve any and all issues between the parties.

The parties agree that any claim or dispute that arises from or through this agreement, the relationship or obligations contemplated or outlined within this agreement, if not resolved through mediation, shall then go to and be resolved through final and binding arbitration. Any decision reached by the Arbitrator shall be final and binding and, if required, may be entered as a judgment in any

court having jurisdiction.

In the event that any court having jurisdiction should determine that any portion of this Agreement to be invalid or unenforceable, only that portion shall be deemed invalid and not effective, while the balance of this Agreement shall remain in full effect and enforceable. This Agreement shall be interpreted and governed by and in accordance with the Federal Arbitration Act 9 U.S.C. Section 1-16.

NOTICE

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

GOVERNING LAW

This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of New York.

SEVERABILITY CLAUSE

In the event that any provision of this Memorandum of Understanding shall be deemed to be severable or invalid, and if any term, condition, phrase, or portion of this Memorandum shall be determined to be unlawful or otherwise unenforceable, the remainder of the Memorandum shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties. If a court should find that any provision of this Memorandum to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

ASSIGNMENT

Neither party to this Memorandum of Understanding may assign or transfer the responsibilities of this agreement herein without the prior written consent of the non-assigning party for which such approval shall not be unreasonably withheld.

ENTIRE UNDERSTANDING

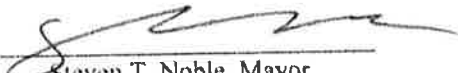
The herein contained Memorandum of Understanding constitutes the entire understanding of the parties pertaining to all matters contemplated hereunder at this time. The parties signing this MOU desire or intend that any implementing contract, license, or other agreement entered into between the parties subsequent hereto shall supersede and preempt any conflicting provision of this Memorandum of Understanding whether written or oral.

AUTHORIZATION AND EXECUTION

This Agreement shall be signed by the above named parties and shall be effective as of the date first above written.

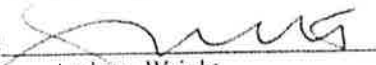
Date: 1/10/17

City of Kingston

By: 
Steven T. Noble, Mayor

Date: 1/10/17

Wright Architects, PLLC

By: 
Andrew Wright

State of New York

ss.:

County of Ulster

On this 10th day of January, 2017, before me the undersigned, a notary public in and for said State, personally appeared Steven T. Noble, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC
State of New York
No. 163567
Ulster County
Co. 1000 Exp. Sept. 30, 2017

Gant R Higgins

Notary Public

State of New York

ss.:

County of Ulster

On this 10 day of January, 2017, before me the undersigned, a notary public in and for said State, personally appeared Andrew Wright, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Angela A Christoforo

Notary Public

ANGELA A. CHRISTOFORO
Notary Public in the State of New York
Resident In and for Ulster County
Commission Expires 2/22/2018

ASSIGNMENT

This agreement is made the 1st day of June 2017 by and between **Wright Architects PLLC**, a New York Professional Limited Liability Company with offices at 200 Fair Street, Kingston, New York (hereinafter referred to as "Assignor"), and **JM Development Group, LLC**, a domestic Limited Liability Company with offices located at 2975 Route 9W, New Windsor, New York (hereinafter referred to as "Assignee").

WHEREAS, Wright Architects PLLC, the Assignor, has entered into a Memorandum of Understanding with the City of Kingston, a municipal corporation, with its offices at 420 Broadway, Kingston, New York (hereinafter referred to as "City") which said Memorandum of Understanding is dated January 10, 2017 and attached hereto, and

WHEREAS, pursuant to said Memorandum of Understanding, the Assignor has agreed to perform certain services in connection with the development of property located at 21 North Front Street in the City of Kingston, County of Ulster, and State of New York owned by the City of Kingston (hereinafter referred to as "The Premises"), and

WHEREAS, pursuant to said Memorandum of Understanding, the City has authorized the Assignor to seek and submit a plan for the development of the premises in accordance with the timetable more fully set forth in the Memorandum of Understanding, and

WHEREAS, the Assignor wishes to assign all of its right, title, and interests in the Memorandum of Understanding attached hereto to the Assignee in consideration of the payment of certain monies to Assignor and further in consideration of the mutual covenants and agreements set forth herein, and

WHEREAS, Assignee wishes to assume all of Assignors right, title, and interests in the Memorandum of Understanding attached hereto and to proceed with the development of the premises pursuant to a further agreement with the City to more fully set forth the rights and obligations of the Assignee as the developer and the City of Kingston as the owner of the premises.

NOW, THEREFORE, for value received and in further consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. Wright Architects PLLC as Assignor, hereby assigns all of its right, title, and interest in the Memorandum of Understanding attached hereto to JM Development Group, LLC, as Assignee.
2. JM Development Group, LLC, the Assignee, hereby assumes all obligations of Assignor as set forth in the Memorandum of Understanding attached hereto.
3. In consideration for this Assignment, the Assignee hereby agrees to pay to Assignor the sum of fifty thousand dollars (\$50,000) subject to the terms and conditions more fully set forth herein.
4. This Assignment, and the payments to be made by Assignee to Assignor hereunder, shall be contingent upon the parties receiving the consent from the City of Kingston to this Assignment, which said consent is required pursuant to the terms of the Memorandum of Understanding attached hereto.
5. This Assignment shall further be contingent upon the Assignee and the City of

Kingston entering into a further binding contract whereby the City agrees to retain the Assignee (or its assignees, if any) as the sole developer of The Premises and the Assignee agrees to develop The Premises. It is understood by the parties, that in order for any subsequent contract between the City of Kingston as the owner of the premises and Assignee as developer of the premises to be binding, that it must comply with all statutes, City of Kingston Charter Provisions, rules, and regulations required for and applicable to the transfer and development of municipal property, including common council and referendum approval, if required.

6. The payment in the amount of \$50,000 to be made by Assignee to Assignor shall not be due and owing to Assignor until such time as the contingencies set forth above have been met.
7. Notwithstanding the above, upon the execution of this Assignment, and consent to the Assignment having been duly received from the City of Kingston, the Assignee shall pay the sum of \$50,000 to the escrow agent to be held in escrow until such time as there has been compliance with the conditions and contingencies set forth herein. Upon the escrow agent receiving notification in writing from the Assignee that the City of Kingston and Assignee have entered into a duly binding contract for the development of the premises and that there has been full compliance with all statutory requirements necessary for the legal transfer of the premises from the City of Kingston to the Assignee, the escrow agent shall then be authorized to deliver to the Assignor the escrow funds.

The parties consent that Assignee's attorney, Robert D. Cook, shall serve as escrow agent.

8. The parties further agree, however, that in the event the contingencies set forth herein have not been met (i.e. (1) the Assignee and the City having entered into a binding agreement for the transfer of the premises from the City to the Assignee; and (2) that there has been full compliance with all statutory requirements necessary for the legal transfer of the premises from the City of Kingston to the Assignee) on or before the 31st day of December 2017 (the contingency date), then the Assignee shall have the option to extend the time period for compliance with the contingencies set forth above to December 31, 2018 upon payment from the escrow funds to Assignor in the amount of \$25,000. In order to exercise this option, Assignee must notify both Assignor and the escrow agent in writing no later than December 31, 2017, of its intent to exercise this option to extend the contingency date through December 31, 2018. Upon receipt of said written notice, the escrow agent shall be authorized to pay to Assignor from the escrow funds, the amount of \$25,000 which said payment shall be the consideration for the contingency date extension and it shall be non-refundable.

In the event, Assignee does not exercise this option to extend the contingency date on or before December 31, 2017, then this agreement shall be deemed null and void and the parties' rights and obligations under this Assignment shall be terminated. In said event, the escrow agent shall be authorized to release and return the escrow funds to Assignee.

9. If the option to extend the contingency date referenced in Paragraph 8 above is exercised by the Assignee, the parties acknowledge and consent that unless the Assignor and escrow agent shall be notified in writing on or before the 31st day of December 2018 by Assignee that the contingencies set forth above have not been met, then, the escrow agent shall be authorized to pay the balance of the escrow funds in the amount of \$25, 000 to the Assignor. If Assignee does notify both the Assignor and escrow agent in writing on or before the 31st day of December 2018, that the contingencies set forth above have not been met, then, unless otherwise extended by mutual agreement of the parties, the escrow agent shall be authorized to release and return the remaining escrow funds in the amount of \$25,000 to the Assignee.

10. This agreement shall further be contingent upon the City agreeing that if this Assignment is subsequently rendered null and void due to the failure of the contingencies set forth herein having been met, that the original Memorandum of Understanding attached hereto shall be reinstated and the time periods set forth in the Terms of Understanding shall be extended each for a period equal to the amount of time that this Assignment was in effect prior to its termination pursuant to Paragraphs 8 and 9 hereof.

11. The parties further acknowledge and agree as follows:

I. Nondisclosure of Trade Secrets and Confidential Information.

A. Assignor agrees not to disclose, duplicate, sell, reveal, divulge, publish, furnish, or communicate in any manner, either directly or indirectly, any trade secret or other confidential information of Assignee to any other person or entity unless authorized in writing to do so by Assignee.

B. Assignor further agrees not to use any trade secrets or other confidential information of Assignee for its personal gain or for purposes of others.

C. The obligations of nondisclosure and confidentiality described herein are assumed by Assignor regardless of whether the trade secret or other confidential information has been conceived, originated, discovered, or developed, in whole or in part, by Assignor or whether the trade secret or other confidential information represents Assignor's work product. If Assignor has assisted or participated in the creation, development, and/or preparation of any information that Assignee considers to be a trade secret or confidential information or has created, developed, and/or prepared such trade secret or information, Assignor assigns any rights that it may have in that trade secret or information to Assignee.

II. Definition of Trade Secrets and Confidential Information. For purposes of this agreement, the terms "trade secrets" and "confidential information" mean any knowledge, techniques, processes, or information, or any application thereof, made known or available to Assignor that Assignee treats as a trade secret or confidential, whether existing now or created in the future, including but not limited to information regarding: (i) the cost of materials and supplies; (ii) supplier lists or sources of supplies; (iii) internal business forms, orders, customer accounts, manuals, and instructional materials describing Assignee's methods of operation, including Assignee's Operations Manual; (iv) products, drawings, designs, plans, proposals, and marketing plans; (v) all concepts or ideas in, or reasonably related to, Assignee's business that have not previously been publicly released by Assignee; and (vi) any other information or property of any kind of Assignee that may be protected by law as a trade secret, confidential or proprietary. The trade secrets and other confidential information described in this agreement are the sole property of Assignee.

III. Solicitation of Employees. Assignor further agrees that it will not furnish to or for the benefit of any competitor of Assignee, or the competitor's subsidiaries, the name of any person who is employed by Assignee.

IV. Noncompetition. Assignor agrees and covenants that because of the confidential and sensitive nature of the trade secrets and other confidential information covered by this agreement and because the use of the same may in certain circumstances cause irrevocable damage to Assignee, Assignor will not, until the expiration of three (3) years after the date of this agreement engage, directly or indirectly, or through any corporations or related parties, in any business, enterprise, or employment that is directly competitive with the development of The Premises.

V. Saving Provision. Assignor agrees and stipulates that the covenants herein are fair and reasonable in light of all the facts and circumstances of the relationship between Assignor and Assignee; however, Assignor and Assignee are aware that in certain circumstances courts have refused to enforce certain agreements not to compete. Therefore, in furtherance of the provisions of the preceding paragraph, Assignor and Assignee agree that if a court or arbitrator should decline to enforce the provisions of the


preceding paragraph, that paragraph must be considered modified to restrict Assignor's competition with Assignee to the maximum extent, in both time and geography, which the court or arbitrator finds enforceable.

VI. Binding Effect. This agreement will be binding on Assignor's successors and assignees as though originally signed by these entities/people.

VII. Applicable Law. The validity of this agreement will be governed by the laws of the State of New York. If any provision of this agreement is void or unenforceable in that state, the remainder of this agreement shall be fully enforceable according to its terms.

IN WITNESS WHEREOF, the parties have executed this agreement on this __ day of June 2017.

WRIGHT ARCHITECTS PLLC

BY: 

JM DEVELOPMENT GROUP, LLC

BY: _____

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WRIGHT ARCHITECTS PLLC

BY:



JM DEVELOPMENT GROUP, LLC

BY:

