

BROWNFIELD REIMBURSEMENT AGREEMENT

This BROWNFIELD REIMBURSEMENT AGREEMENT (“Agreement”) is made this ___ day ___ of _____, 20___, by and between _____, a Michigan _____, with offices at _____ (the “Owner”), and the VAN BUREN COUNTY REDEVELOPMENT AUTHORITY (the “BRA”), established by the County of Van Buren with its office at 219 E. Paw Paw Street, Paw Paw, Michigan 49079.

RECITALS

A. Whereas, the Board of Commissioners of the County of Van Buren (the “County”) adopted a resolution creating the BRA that has the authority to exercise its powers anywhere within the boundaries of the County of Van Buren, all pursuant to Michigan Public Act 381 of 1996, as amended (“Brownfield Act” or “Act 381”).

B. Whereas, subsequent to the creation of the BRA, the members of the Board of the BRA (the “Brownfield Board”) were appointed and confirmed, all in accordance with the Brownfield Act.

C. Whereas, the primary purpose of the BRA, pursuant to the Brownfield Act, is to encourage the redevelopment of contaminated, functionally obsolete, and blighted property within the County by providing financial and tax incentives, without which the redevelopment would not be economically feasible.

D. Whereas, Owner is the owner of the property commonly known as the former _____ located at _____ in the _____ of _____, Michigan (the “Property”), as more fully described in Exhibit A attached hereto. The Property has been determined to be a “facility,” and “adjacent and contiguous.” The Property qualifies as an Eligible Property under Section 2 of the Brownfield Act.

E. Whereas, the BRA, pursuant to the powers granted to it under Section 13 of the Brownfield Act, has decided to assist the Owner in redevelopment. Owner plans to carry out a project (the "Project") as described in the approved Brownfield Redevelopment Plan as amended by _____ Plan Project amendment of _____, 20___, Resolution Number _____, (as amended, the "Brownfield Plan", attached hereto as Exhibit B). Owner plans to undertake Eligible Activities as defined in the Brownfield Act.

F. Whereas, the parties intend to authorize the Owner to utilize the provisions of the Brownfield Act to capture tax increment revenues and reimburse the Owner for Eligible Activities, as defined in the Brownfield Act, consistent with the Brownfield Plan and the Act 381 Work Plan (“Work Plan”) attached as Exhibit C.

G. Whereas, the Owner intends to construct and develop all phases necessary to complete the Project using its best efforts to obtain financing for said improvements and the

BRA, subject to the terms, conditions, and limitations contained herein, intends, pursuant to the Brownfield Plan, to reimburse the Owner for the certain costs of Eligible Activities.

H. Whereas, the parties are entering into this Agreement to specify the terms and conditions associated with the reimbursement of costs associated with the Eligible Activities.

AGREEMENTS

NOW, THEREFORE, the parties agree with each other as follows:

1. **Definitions.** Capitalized terms shall have those definitions provided under Act 381 unless otherwise provided by this Agreement or unless inconsistent with the context in which the term is used.

2. **The Plans.** The BRA has approved the Brownfield Plan and Work Plan, and the Owner hereby also approves the Brownfield Plan and Work Plan. To the extent provisions of the Brownfield Plan or Work Plan and any subsequent amendments conflict with this Agreement, and as it may be amended, the terms and conditions of this Agreement control. To the extent provisions of the Brownfield Plan or Work Plan and any subsequent amendments or this Agreement conflicts with the Brownfield Act, Act 381 controls.

3. **Construction of Project.** The Owner acknowledges and represents, and the BRA and the County agree, that the Owner shall, at its own cost, have the sole right and responsibility to develop, construct and complete the development of the Project as determined by the Owner, in accordance with site plans and permits approved by the County, and the Owner shall pay for the development, construction, completion and maintenance of the Eligible Activities and Eligible Investments specified in the Brownfield Plan, subject to the Owner's Repayment Obligation (defined herein). For the purposes of this Agreement, "construction" or "construct" or similar terms shall include the acquisition, placement and/or installation of business personal property by the Owner within the Property. All development improvements performed by the Owner on the Project shall comply, in all respects, with all of the County's regulations including, but not limited to, zoning ordinances and building code, as well as all applicable federal, state, county, local and municipal rules, regulations and laws.

4. **Submission of Plans and Permit Applications.** The Owner shall submit all required plans and applications required by the County and its engineers for the Project and the Owner shall, at its own cost, obtain all required permits and approvals and shall pay all applicable fees, and the Owner shall develop and construct the Project substantially in accordance with the construction plans and drawings and specifications identified in the Brownfield Plan and the Work Plan. The Owner has the unilateral right to modify and amend its construction plans at any time and from time to time and provided that all improvements called for by such modifications and amendments shall not alter the "Eligible Property" as defined and used in the Brownfield Act. If such modifications would cause a material change in the scope or nature of the Project, or would increase the costs of the Eligible Activities by 10% or more, such modifications shall be subject to the approval of the BRA, which approval shall not unreasonably be withheld.

5. Construction of Certain Improvements by the Owner. The Owner will use reasonable commercial efforts to develop and construct certain of the Eligible Activities described in the Brownfield Plan and Work Plan, as they may be amended by the BRA. Promptly after completion of construction of the Project and upon request of the Owner, the BRA and the County shall execute and deliver to the Owner a Certificate of Completion (the “Certificate of Completion”). When issued, the Certificate of Completion, except for any items to be completed or corrected as set forth therein, shall be a conclusive determination by the BRA and County of their satisfaction with respect to the obligations of the Owner and their satisfaction that the construction of the Project has been completed in accordance with the provisions of this Agreement.

6. BRA Costs and Expenses. All legal and consulting fees, and other expenses incurred by the BRA (including administrative and operating costs as described in Section 14 hereof) in connection with the Brownfield Plan, this Agreement or the Project, other than reimbursement to the Owner for approved expenses of Eligible Activities, shall be reimbursable to the BRA from the Tax Increment Revenues as a first priority expense.

7. Builders’ Risk Insurance Prior to Completion. Prior to completion of the construction of the Project as certified by the BRA and County, the Owner shall keep in force at all times Builder’s Completed Value Risk Insurance, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of the work performed and equipment, supplies and materials furnished for the Project. Such insurance policies shall be issued by a company satisfactory to the BRA and County. All such policies shall contain a provision that the same will not be cancelled or modified without thirty (30) day prior written notice to the BRA and the County.

8. Insurance Proceeds. If all or any part of the Project is damaged or destroyed, the insurance proceeds resulting from such damage or destruction shall be used by Owner for the cost of restoring or rebuilding the Project. The Project shall be restored or rebuilt substantially in accordance with the construction plans provided by Owner and approved by the BRA and County and shall be of at least equal value and substantially the same character as prior to the damage or destruction.

9. Rights of Inspection. During construction of the Project, the County’s and BRA’s designees shall have the right at any time and from time to time to enter upon the Project for purposes of inspection. Such inspection by the County and BRA of the Project shall not be construed as a representation by the BRA or the County that there has been compliance with the construction plans or that the Project will be, or are, free of faulty materials or workmanship, or a waiver of any right, the BRA, the County or any other party may have against Owner or any other party for non-compliance with the construction plans and the terms of this Agreement.

10. Implementation of Construction and Utility Maintenance Easements. The parties shall all coordinate together and use their best efforts to establish all construction access maintenance and utility service easements designated in the Brownfield Plan or as more particularly defined in site plans and engineering plans pertaining to the Project.

11. Source of Tax Increment Revenues.

- a. All millages, unless otherwise excluded or exempt from capture pursuant to the Brownfield Act, will be captured by the BRA, and the TIR generated by such capture shall be available to the BRA for purposes of the Brownfield Plan and to make the reimbursement payments required under this Agreement.
- b. The BRA shall not be required by this Agreement to use School TIR for any purpose other than reimbursement payments to the BRA and Owner for Eligible Activities that are part of a Work Plan approved by the Michigan Strategic Fund (“MSF”) or the MDEQ. Except, however, this Agreement shall not prohibit the BRA, in its sole discretion, from capturing or using any School TIR attributable to the Eligible Property for any purpose authorized by the Brownfield Act without the approval of the MSF or MDEQ.

12. Determination of Eligible Activities Qualified for Reimbursement.

- a. All costs of Eligible Activities attributable to the Property for which the Owner seeks reimbursement from Tax Increment Revenues shall satisfy each of the following applicable qualifications:
 - i. The Eligible Activity and the cost of the Eligible Activity is included in the Brownfield Plan approved by the BRA or any amendment or supplement thereto approved by the BRA, and the Eligible Activity is conducted in accordance with the terms of the Work Plan (if applicable), the Brownfield Plan, this Agreement, and all applicable state and federal laws and regulations.
 - ii. The Eligible Activity does not consist of Phase I environmental assessment activities.
 - iii. The Eligible Activity has not occurred either on or before the date hereof or more than 5 years after the effective date of this Agreement; provided that the BRA may in its discretion agree to reimburse the costs of Eligible Activity occurring prior to the date hereof to the extent permitted by applicable law and either the Brownfield Plan.
 - iv. For any Eligible Activity that occurs after the effective date of this Agreement and is qualified as an Eligible Activity under Section 2(I)(i), (ii) or (iii) of Act 381, the Eligible Activity and the cost of such Eligible Activity is included in an approved Work Plan or, if the MDEQ determines that it will not approve the cost of any Eligible Activity, the Eligible Activity and the cost of such Eligible Activity is specifically included in the Brownfield Plan.
 - v. The cost of the Eligible Activity is payable from a Tax Increment Revenues only after reimbursement to BRA of the BRA as set forth in Sections 6 and 14.

- b. Owner understands and agrees that any reimbursement of the Owner by or on behalf of the BRA of any expenses for approved activities shall be only for “Eligible Activities” as defined in the Act 381, and the Brownfield Plan and for which reimbursement is authorized under this Agreement. It is further understood and agreed that any reimbursement to or on behalf of the Owner shall only occur to the extent that Tax Increment Revenues are generated from the Property and those Tax Increment Revenues are available under Act 381 and this Agreement for the making of reimbursements to the Owner.
- c. The Owner agrees to pay, subject to reimbursement if included in the Brownfield Plan approved pursuant to this Agreement, all costs of preparing the Work Plan and of the review of the Work Plan by MDEQ.
- d. The Owner shall copy or provide the BRA with all correspondence and materials or documents provided to MDEQ that are related to the Project or Eligible Activities on the Property.

13. BRA Reimbursement Payments to Owner.

- a. From time to time, but not more frequently than quarter-annually without approval of the BRA, the Owner may submit to the BRA a certification of costs of Eligible Activities paid or incurred for reimbursement in accordance with this Agreement and the Brownfield Plan. Such certification shall include a narrative of the approved activities performed and an explanation of why such activities qualify for reimbursement under this Agreement, a representation and warranty of the Owner that all activities for which reimbursement is sought qualify as Eligible Activities under Act 381, copies of all documents or reports for whose preparation payment is requested, a copy of invoices for the work described in such certification, and any substantiating documentation for such invoices that is requested by the BRA.
- b. Within sixty (60) days of its receipt of such statement and supporting invoices, the BRA shall review the submission to confirm that such activities qualify for reimbursement under this Agreement and the Brownfield Plan and advise the Owner in writing if any activities do not so qualify including the specific reasons why the BRA believes that such activities do not so qualify.
- c. Subject to Section 14 below, to the extent that such submission is approved by the BRA Board, the BRA shall thereafter cause the Owner to be paid the amounts approved within forty-five (45) days, but only to the extent that Tax Increment Revenues attributable to the Property. If sufficient Tax Increment Revenues attributable to the Property are not available at the time such submission is approved and payment is due, the approved amount shall be paid from Tax Increment Revenues attributable to the Property that are next received by the Authority and that are not otherwise allowed to be used for purposes permitted by Section 14 below.

- d. To the extent that any portion of such submission is not approved, any authorized representative of the BRA and the Owner shall, within fourteen (14) days upon the request of either party, meet promptly to discuss the reasons the submission was not approved and the conditions pursuant to which the Owner can obtain approval of such disallowed request.
- e. The Owner shall notify the BRA of completion of the Eligible Activities for which reimbursement may be sought under this Agreement from Tax Increment Revenues. Within 90 days after the earlier of the date of completion of the Eligible Activities for which reimbursement may be sought from Tax Increment Revenues under this Agreement or 5 years after the effective date of this Agreement, the Owner shall provide the BRA with a final certification of costs of Eligible Activities. Within 90 days after the date of completion of activities for which reimbursement may be sought, the Owner shall provide the BRA with a final certification of costs eligible for such reimbursement.
- f. No interest or other charge shall accrue or attach to any reimbursement payment agreed to by BRA under this Agreement.

14. BRA Administrative and Operating Costs.

- a. The BRA may retain funds to pay administrative and operating costs of the BRA from the annual Tax Increment Revenues attributable to the Property. The amount the BRA may retain shall not exceed the actual administrative operating costs or the amounts permitted by Act 381, and for funding of the Local Site Remediation Revolving Fund to the extent permitted by applicable law and the Brownfield Plan.
- b. The amount retained pursuant to this Section 14 may be generated only from Tax Increment Revenues attributable to the levies of Local Taxes upon the Property.
- c. If all amounts retained by the BRA for administrative and operating expenses from the Tax Increment Revenues attributable to the levy of Local Taxes for any year exceed the actual theretofore unreimbursed administrative and operating costs of the BRA under this Agreement through said year, the excess shall be redistributed for reimbursement to the Owner to pay for Eligible Activities as authorized by the Brownfield Plan.
- d. The BRA may retain the amount permitted by this Section 14 prior to making any reimbursement under Section 13 to the Owner. To the extent Tax Increment Revenues are not available from levies of Local Taxes for any year in an amount sufficient to make the reimbursement under this Section 14 for that year, the shortfall may be reimbursed from any subsequent years' Tax Increment Revenues attributable to the Property after reimbursements required under this Section 14 and Section 13 are made for the year in question.

15. Prohibitions Against Assignment and Transfer of Project Prior to Issuance of Certificate of Completion.

- a. Until issuance of the Certificate of Completion pursuant to Section 5 of this Agreement, the Owner will not: (i) assign, sell or transfer its interest in the Property and/or the Project or any part thereof or any interest therein, except for utility easements; or (ii) assign this Agreement, without in each case the prior written consent of the County and the BRA, which consent will not unreasonably be withheld. Any such assignment shall be an "Approved Assignment." The County and the BRA shall give their consents if: (i) the Owner demonstrates, subject to reasonable review by the County and the BRA, that the assignee has the ability and financial stature to fulfill the obligations assigned by the Owner; and (ii) the assignee assumes unconditionally in writing all of Owner's past, present and future obligations assigned by the Owner. In the event the assignee fails to perform all of the obligations assigned by the Owner, the Owner shall retain the obligation to perform all remaining unperformed obligations previously assigned.
- b. This Section relates only to the development of the Project and shall not be construed or interpreted as imposing any restrictions on the use, transfer or sale of any other Property.

16. Waiver of Right to Contest. Owner hereby agrees that it shall neither protest to the Board of Review nor file a petition with the Michigan Tax Tribunal or any court or administrative body challenging the assessment or valuation of any real or personal property with respect to the Property relating to any tax year during which this Agreement is in effect, and that taking such action will constitute a material default of this Agreement. In the event that Owner takes such action challenging the assessment or valuation of any real or personal property with respect to the Property, Owner shall immediately be indebted to and obligated to refund to the BRA any and all reimbursements paid to the Owner under this Agreement and Owner shall be immediately ineligible to receive any further reimbursements under this Agreement. The BRA right for reimbursement and collection against Owner under this section may be enforced in a court of competent jurisdiction. No sanctions hereunder will accrue to Owner in the event it files an action in the Michigan Tax Tribunal with respect to the Property in order to correct a clerical error of the Assessor such as an error in addition or subtraction.

17. Municipal Representatives not Personally Liable. No BRA Board Member, County Commission member or any other official, employee, agent, consultant, advisor, attorney or representative of the BRA or County shall be personally liable to Owner in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

18. Release and Indemnification. The parties agree as follows:

- a. Owner releases from and covenants and agrees that the BRA and the County and their governing body members, officers, employees, agents, consultants, advisors, attorneys and representatives shall not be liable for, and Owner agrees to indemnify, defend and hold harmless the officers, employees, agents, consultants, advisors, attorneys and representatives thereof against any losses, demands, claims, actions, causes of assessments, suits, judgments, damages, liabilities, penalties, costs and expenses (including without limitation the fees and expenses

of attorneys and other consultants) which are asserted against, or are imposed upon or incurred by the BRA or the County or an above-listed person and which are resulting from, relating to, or arising out of any of the following:

- i. any defect in the design or construction of the Project, or the negligence or willful misconduct of Owner, its agents or independent interests in connection with the construction of the Project;
 - ii. The capture and use of Tax Increment Revenues, including any order, ruling, or instruction to repay or refund the State of Michigan or any other taxing jurisdiction for any levy captured as Tax Increment Revenues and paid to Owner as a reimbursement payment under this Agreement made in excess of the amount of Tax Increment Revenues the BRA is determined by the State, any agency thereof or by a court to be allowed by law to use for such reimbursement;
 - iii. Any act or omission of the Owner with respect to the conduct of a baseline environmental assessment, due care activity or additional response or remedial activity for the Property, including any failure by the Owner to take any affirmative action to prevent the release of a hazardous substance or any other contaminant or the exacerbation of an existing environmental condition;
 - iv. Any release of a hazardous substance or any other contaminant on the Property or an exacerbation of an existing environmental condition, any adverse effects on the environment, or any violation of any state or federal environmental law or regulation caused or due to act by the Owner or in any way related to the Property;
 - v. The Eligible Activities for the Property; or
 - vi. The operation of the business of the Owner on the Property.
- b. Notwithstanding anything herein to the contrary, neither the BRA nor County shall be liable to Owner for damages arising in any way from this Agreement, or any other obligation or agreement made in connection therewith or from any breach thereof, or arising from a declaration or a final judgment by a court of competent jurisdiction that all or any portion of the Brownfield Act is unconstitutional or that the Brownfield Plan in whole or in part are invalid.
 - c. All covenants, stipulations, promises, agreements and obligations of Owner contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Owner and not of any member, director, officer, agent, servant or employee of Owner in their individual capacities.
 - d. Subject to subsection (e) below, the BRA may, at its discretion and without consent of the Owner, set-off any amount owing to the Owner under this

Agreement to satisfy any indemnification obligation of the Owner under this Section.

- e. Prior to set-off of any amount owing to the Owner to satisfy any indemnification obligation of the Owner under this Section, the Owner shall be provided an opportunity to address the Board of the BRA and the Board shall determine that the exercise of the rights of set-off provided under subsection (d) is necessary to protect the interests of the BRA.

19. Environmental. Owner warrants and represents as follows:

- a. Owner agrees to comply in all material respects with all environmental laws and regulations applicable to the Project, and further agrees, except as is in compliance with applicable laws, not to knowingly place or dispose of, or knowingly cause to be placed or disposed of, any toxic or hazardous substances (as defined in subsection (d) below) ("Hazardous Substances") on any parcel located within the Project, and not knowingly manufacture, store, use, treat or dispose of such substances, or permit any manufacturing, storage, use, treatment or disposal of any Hazardous Substances on the Project.
- b. "Hazardous Substances" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, asbestos or related materials defined in: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); (2) the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.); (3) the Resource Conservation and Recovery Act, as amended (41 U.S.C. Section 9601, et seq.); (4) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; or (5) Michigan's Natural Resources and Environmental Protection Act, as amended (M.C.L. 324.101 et seq.), including any regulations adopted or publications promulgated pursuant to the above-referenced statutes, or as otherwise defined, classified, characterized, listed or identified by any other federal, state or local governmental law, ordinance, rule or regulation.
- c. No portion of the funds or benefits received by Owner pursuant to this Agreement or otherwise received by Owner in connection with Act 381 and the Project shall operate or be used to subsidize response activities that would benefit a liable party at the Property, under the standards of the Michigan Natural Resources and Environmental Protection Act or other similar federal law, or otherwise relieve such a liable party of such obligation.

20. Representations of the BRA and the County. The BRA represents and warrants that:

- a. Organization and Authority. It: (i) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement; and (ii) has been authorized by all necessary action to execute and deliver this Agreement, which

shall constitute its legal, valid and binding obligation of it, enforceable in accordance with its terms, subject to applicable insolvency laws.

- b. No Defaults or Violations of Law. The execution and delivery of this Agreement will not conflict with or result in a breach of any of the terms of, or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which it is a party or by which it is bound or any charter, or any of the rules or regulations applicable to it, subject to applicable insolvency laws.
- c. Pending Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of it is threatened against it, except claims which if adversely determined will not, in the opinion of its counsel, materially and adversely affect the financial condition or operations of it. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of it, threatened against it seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement by it or which would in any manner challenge or adversely affect its existence or powers to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by it of the terms and provisions of this Agreement.

21. Representations, Warranties and Agreements of Owner. Owner represents, warrants and agrees that:

- a. Organization and Authority. It: (i) is duly organized under the laws of the state of its incorporation or organization, and is authorized to do business in and is in good standing under the laws of the State of Michigan; (ii) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement; and (iii) has been authorized by all necessary corporate or member action to execute and deliver this Agreement, enforceable in accordance with its terms, subject to applicable insolvency laws.
- b. No Defaults or Violations of Law. The execution and delivery of this Agreement by it will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which it is a party or by which it is bound or its respective articles of incorporation, bylaws, articles of organization, operating agreement, or any of the rules or regulations applicable to it of any court or other governmental body, subject to applicable insolvency laws.
- c. Pending Litigation. No litigation, proceedings or investigations are pending or, to its knowledge, threatened against it, except claims that if adversely determined will not, in the opinion of its counsel, materially and adversely affect its financial condition or its operations. In addition, no litigation, proceedings or investigations are pending or, to its knowledge, threatened against it seeking to restrain, enjoin or in any way limit its approval and delivery of this Agreement or which would in any manner challenge or adversely affect its entity existence or powers to enter into and carry out the transactions described in or contemplated by the execution,

delivery, validity or performance by it of the terms and provisions of this Agreement.

- d. Power And Authority. Owner possesses all necessary power and authority to fully implement and carry out all foreseeable obligations and duties imposed upon it under this Agreement.
- e. Not Liable Party. With respect to the Property, Owner is not a party liable under section 20126 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20126.
- f. Eligible Property. The Project qualifies as Eligible Property under Act 381.

22. Unavoidable Delays (Force Majeure). Each party shall diligently perform its respective duties as set forth herein. However, notwithstanding anything to the contrary in this Agreement, no party shall be deemed to be in default in the performance of such duties including failure to complete any obligations by specific deadline dates, if and so long as nonperformance of such duty shall be directly caused by fire or other casualty, national emergency, condemnations, enemy action, civil commotion, labor disputes, strikes, lockouts, war or national defense preemptions, acts of God, action or non-action by public utilities or of local county, state or federal governments, changes in law, litigation, environmental conditions on the Project not discovered during any due diligence period or any other similar cause beyond the reasonable control of such party (herein referred to as an “Unavoidable Delay”), and the time limit for such performance shall be extended for a period equal to the time period of such Unavoidable Delay; provided, however, that the party unable to perform (the “Non-Performing Party”) shall provide written notice to the other party to which duty is owed within ten (10) days after notice to such Non-Performing Party of its failure to perform or within ten (10) days after the Non-Performing Party otherwise becomes aware that an Unavoidable Delay with respect to one of its duties has occurred or will likely occur, whichever shall first occur, of the existence and nature of such Unavoidable Delay. Thereafter, the Non-Performing Party shall, from time to time, keep the other party to which such duty is owed reasonably informed of all developments concerning the Unavoidable Delay and the nonperformance of such duty or duties.

23. Default and Remedies. The parties agree that the following shall be events of default (“Events of Default”) with respect to this Agreement:

- a. If any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or
- b. Breach by a party of any material covenant, warranty or obligation set forth in this Agreement.
- c. With respect to the County and the BRA, the enactment by the County or the BRA of any law, ordinance, rule or regulation which prevents or prohibits the

BRA from presently or prospectively performing any covenant, condition or agreement contained herein.

24. Remedies of Default; Reinstatement of Rights.

- a. In the case of an Event of Default by a party hereto or any successors to such party, such party or successor shall, upon written notice from the aggrieved party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice. If, in such case action is not taken, or not diligently pursued, or if the Event of Default shall not be cured or remedied within a reasonable time, beyond such sixty (60) day period the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceedings to compel specific performance by the party in default of its obligations. In case a party hereto shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the parties hereto shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of each party shall continue as though no such proceedings had been taken.
- b. In the event the Owner does not cure the Event of Default within 60 days, this Agreement will be considered terminated on the 61st day after the written notice of an Event of Default was delivered. Upon the effective date of the termination of this Agreement, the BRA shall have no further obligation under this Agreement to make any payments to the Owner in reimbursement of any costs of Eligible Activities incurred or to be incurred by the Owner. In lieu of termination, the BRA may seek to enforce and compel performance with the terms of this Agreement in a court of competent jurisdiction by specific performance or mandatory injunction and may pursue any other remedy that may be available to it in law or equity.

25. No Waiver by Delay. Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that each party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a non-defaulting party under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by a non-defaulting party.

26. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same

Event of Default by the other party. No waiver made by a party with respect to the performance, nor the manner of time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of any other party.

27. Legislative Authorization

This Agreement is governed by and subject to the restrictions set forth in the Brownfield Act and the Michigan General Property Tax Act. In the event that there is legislation enacted in the future which restricts or adversely affects the amount of Tax Increment Revenues capturable, Eligible Properties, or Eligible Activities relating to already approved plans, then any Owner's rights and the BRA's obligations under this Agreement shall be eliminated or modified accordingly.

28. Freedom of Information Act

Owner stipulates that all requests and documentation submitted by them shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.231 et seq. of the Michigan Compiled Laws and no claim of trade secrets or other privilege or exception to the Freedom of Information Act will be claimed by it in relation to this Agreement, requests for reimbursement and supporting documentation.

29. Plan Modification

The Brownfield Plan may only be modified to the extent allowed under the Brownfield Act by mutual agreement in writing of the BRA and the County.

30. Notices

All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown below their respective signatures to this agreement. Either party may change the address by written notice sent by registered or certified mail to the other party.

31. Entire Agreement

This agreement supersedes all agreements previously made among the parties relating to the subject matter, if any. There are no other understandings or agreements between them concerning the subject matter contained herein.

32. Non-Waiver, Time of the Essence

No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein. Time is of the essence.

33. Headings

Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

34. Governing Law

This agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

35. 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.

36. Binding Effect

Subject to the terms herein, the provisions of this agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties have executed this agreement by their duly authorized representatives on the day and date first herein above written.

Van Buren Brownfield Redevelopment Authority

Date: _____, 20__

By: Lisa Phillips
Its: Chairperson

Date: _____, 20__

By: Wayne Nelson
Its: Secretary/Treasurer

Date: _____, 20__

By:
Its: _____

EXHIBIT A

[Insert description of the eligible property]

EXHIBIT B

[Insert Brownfield Plan]

EXHIBIT C

[Insert Work Plan]

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