

WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY REIMBURSEMENT AGREEMENT

This Agreement (the "Agreement") dated July 11, 2013 is entered between the WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY (the "Authority"), an authority established pursuant to Act 381 of 1996, as amended ("Act 381"), whose address is 110 N. Fourth Avenue, P.O. Box 8645, Ann Arbor, Michigan 48107-8645 and 544 Detroit Street, LLC (the "Developer"), a Michigan Limited Liability Company, whose address is 471 Rock Creek Drive, Ann Arbor, Michigan 48104.

RECITALS

- A. Pursuant to Act 381, as amended, the Authority has prepared a Combined Brownfield Plan for the Eligible Property below that was duly approved by the Washtenaw County Board of Commissioners with concurrence from the City of Ann Arbor:
 - a. Located at 544 Detroit Street
 - b. Located in Ann Arbor, Washtenaw County, Michigan
 - c. Tax Identification Number 09-09-29-118-010 (the "Property"),
 - d. Legal Description provided in Exhibit B
- B. The Developer plans to redevelop the Property as follows:
 - a. The proposed redevelopment (the "Improvements") is a 3-story, flatiron-style, commercial and residential building with an approximately 1,600 square-foot footprint. The first floor will consist of office space and covered parking. The second and third floors will each be a single condominium.
 - b. This will occur through the Developer incurring costs eligible for reimbursement with Tax Increment Revenues (TIR).
 - c. The Improvement are expected to create approximately 25 temporary construction jobs and 4 new full time (or full time equivalent) jobs, increase the tax base within the County, and otherwise enhance the economic vitality and quality of life within Washtenaw County.
- C. The Developer will conduct Eligible Activities and incur eligible costs pursuant to the approved Combined Brownfield Plan, Act 381, and according to the terms of this Agreement.
- D. Act 381 permits the capture and use of the real and personal property tax revenues generated from the increase in value of the Eligible Property to pay or reimburse the costs of Eligible Activities.

- E. Act 381 permits the use of TIR to support the payment of interest on unreimbursed Eligible Costs.
- F. The Authority has incurred and will incur Administrative Costs for its operations and the preparation, approval, and administration of the Combined Brownfield Plan, for which it seeks reimbursement from TIR.
- G. The Authority intends to fund the Local Site Remediation Revolving Fund (LSRRF) after the Developer Reimbursement period.
- H. In accordance with Act 381, the Combined Brownfield Plan, and this Agreement, the parties desire to use TIR generated from an increase in the taxable value of the Property resulting from its Improvements to reimburse the Developer for actual expenses and interest for approved Eligible Activities, the Authority for its Administrative Costs, and to fund the LSRRF.
- I. The parties are entering into this Agreement to establish the terms, conditions and procedures for the reimbursement from TIR.

TERMS AND CONDITIONS

Pursuant to the Recitals of this Agreement, the parties agree with each other as follows:

1. Definitions All terms included in this agreement are defined through Exhibit A “Definitions”
2. The Combined Brownfield Plan – The Combined Brownfield Plan, which may be amended from time to time, shall be the Plan in effect at the time that Eligible Activities are conducted and Eligible Costs are incurred as required by Act 381. To the extent provisions of the Combined Brownfield Plan conflict with this Agreement, the terms and conditions of this Agreement control. To the extent provisions of the Combined Brownfield Plan or this Agreement conflict with Act 381, Act 381 shall control.
3. Term of Agreement – In accordance with the Combined Brownfield Plan, the Authority shall capture the Tax Increment Revenues (TIR) generated by the Improvements on the Property to reimburse for Eligible Costs until the earlier of (i) the date that all the Eligible Costs are fully reimbursed under this Agreement; or (ii) 30 years after the date the Authority begins to capture Tax Increment Revenues under the Combined Brownfield Plan. If this Agreement ends before the reimbursement of all Eligible Costs, the last payment by the Authority shall be the summer and winter taxes distributed during the final year of the Agreement.
4. Eligible Activities – The Eligible Activities, Eligible Costs, and use of TIR to reimburse Eligible Costs shall be as described in Tables 1 and 2 in the Combined Brownfield Plan.
5. Reimbursement Source – During the term of this Agreement, the Authority shall capture, as provided in the Combined Brownfield Plan and allowed by Act 381, those TIR, which are levied from both Local Taxes and Taxes for School Operating Purposes on the Property, and any new personal

property. The Authority will use those TIR to reimburse Eligible Costs (including interest where applicable) in accordance with the Combined Brownfield Plan (See Exhibit C) and this Agreement. Local TIR alone shall not be used to fully reimburse any Eligible Costs unless expressly allowed by the Combined Brownfield Plan. However, if MDEQ or MSF does not approve certain eligible activities or Interest, those certain activities may be reimbursed with Local TIR to the extent that Local TIR would have been used for reimbursement in conjunction with School TIR had MDEQ and MSF actually approved the activities. Local TIR shall not be used to reimburse that portion of the costs of eligible activities or Interest for which use of School TIR is requested from either the MDEQ or Michigan Strategic Fund and then denied.

6. Allocation of Captured Taxes – Captured taxes will be allocated in the following order of priority:
 - a. Local captured taxes in an amount identified in the Combined Brownfield Plan will be first allocated for the Authority Administrative and Operating Expenses;
 - b. The balance of Local and School Operating captured taxes will be allocated for the reimbursement of actual costs of Eligible Activities incurred by the Developer and accrued interest.
 - c. After reimbursement of Developer for all eligible costs, both School Operating and Local taxes then will be allocated to fund the LSRRF pursuant to paragraph 12;
7. Eligible Costs – For those Eligible Costs for which Developer seeks reimbursement from the Authority, the Developer shall incur Eligible Costs and submit documentation to the Authority according to the instructions and guidelines provided in Exhibit E. The parties agree that Developer shall only seek reimbursement for its actual costs to perform the Eligible Activities, in accordance with the Development Agreement.
8. Interest – Interest included as an Eligible Cost will be calculated annually as simple interest on the unreimbursed balance. The Authority shall reimburse interest on the balance of the Developer’s unreimbursed Eligible Costs, as of December 31st each calendar year, at the rate of 5.0% per annum from Tax Increment Revenues, or at a rate consistent with MEDC/MDEQ guidelines at the time of approval. Interest shall begin to accrue for unreimbursed Eligible Costs on the date that the Authority certifies those Eligible Costs. Interest shall not accrue on any unreimbursed Eligible Costs during any period that the Developer is delinquent in the payment of real or personal property taxes imposed on the Property. If payment of real or personal property taxes is more than 12 months past due, all interest on the project shall be forfeit.
9. Payments – Payments to Developer shall be made as follows:
 - a. Within 90 days of its receipt of the documentation described in paragraph 7 above, the Authority, in its sole discretion, shall either certify Eligible Costs for payment or request additional information. If the Authority determines all or a portion of the requested payment is for Certified Eligible Costs, it shall process that the portion of the payment

request as provided in subparagraph (b) below. If the Authority determines that insufficient information has been provided, disputes any portion of any payment request or disputes the eligibility of any costs of any payment request, it shall notify Developer in writing of its determination and the reasons for its determination. Developer shall have 28 days to address the reasons given by the Authority and shall have an opportunity to meet with the Authority's representatives or, if the Authority Board consents, to formally meet with the Authority and be placed on a meeting agenda to discuss and resolve any remaining dispute. In doing so, Developer shall provide the Authority a written response to the Authority's decision and the reasons given by the Authority. If the parties do not resolve the dispute in such a manner, it shall be resolved as provided in Paragraph 10 below.

- b. Once the Authority determines that Eligible Costs are Certified Eligible Costs, it shall pay to Developer the amounts for which submissions have been made pursuant to paragraph 7 of this Agreement within 30 days after the Authority receives TIR from which the Certified Eligible Costs may be wholly or partially paid. The Authority shall only be obligated to reimburse Developer to the extent TIR is available to reimburse such costs.
- c. The repayment obligation under this Agreement shall expire at the earliest of the following:
 - i) payment by the Authority to Developer of all amounts due Developer under this Agreement; ii) expiration of the reimbursement period as defined in the Combined Brownfield Plan; or iii) expiration of the reimbursement period as defined in Act 381.
- d. The amount to be reimbursed under this Agreement shall not exceed the following:
 - i. The maximum amount of eligible costs and interest in the approved Combined Brownfield Plan; and
 - ii. The maximum amount of Certified Eligible Costs as determined by this Agreement.

10. Dispute As to Eligible Costs – If there is a dispute over whether a cost submitted by Developer is an Eligible Cost the dispute shall be resolved by an independent knowledgeable professional chosen by mutual agreement of the parties. If the parties are unable to agree upon a knowledgeable professional, then the County and Authority shall together choose an independent knowledgeable professional and Developer shall choose an independent knowledgeable professional to review the Authority's decision. If the two knowledgeable professionals so selected agree that costs submitted are eligible, the Developer shall be reimbursed those costs in accordance with this Agreement. If the two professionals so selected cannot agree that costs submitted are eligible, the two selected professionals shall appoint a third knowledgeable professional who shall make a final determination and Developer shall then be reimbursed those costs in accordance with this Agreement to the extent determined by the third knowledgeable professional. All fees and costs incurred by any party with respect to this paragraph, shall be the sole responsibility of the Developer. Failure of the Developer to pay any obligation incurred with respect to this paragraph shall constitute a default of this Agreement pursuant to paragraph 11.

11. Default – Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party, and the defaulting party shall have 30 days to cure the default. If the default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement, or, at the election of such non-defaulting party, may obtain any form of relief permitted under this Agreement, and any applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance of a court of competent jurisdiction. If the Authority, in its sole discretion, determines that any cure proposed by the Developer may take more than 30 days to complete, the Authority may permit the Developer to complete the cure in a time and manner agreeable to the Authority. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon default.
12. Local Site Remediation Revolving Fund – In accordance with the Combined Brownfield Plan, the Authority will fund the LSRRF using a portion of the TIR captured by the Authority after the period of reimbursement of Developer’s Eligible Costs and accrued interest, if any. The Authority will capture and deposit into the LSRRF as described in Exhibit F.
13. Authority Monitoring -- The Authority may monitor the Project for the purpose of verifying that the activities, invoices and accounting of the Developer are accurate, reasonable and constitute Eligible Activities under this Agreement. The Developer shall provide any authorized representative of the Authority access to or copies of permits, data, reports, testing, or sampling results, invoices or other such documents reasonably necessary for monitoring. The Authority, MDEQ or Michigan Strategic Fund shall also be given access to the property upon reasonable request in order to review any Eligible Activities or perform any other obligations under this Agreement. Except in the case of an emergency or exigent circumstance, the Authority shall give the Developer at least 24 hours notice of requests under this paragraph. Except for the right to monitor the Developer’s compliance with this Agreement, nothing in this Agreement shall be interpreted to give the Authority any right to exercise control over the performance of Eligible Activities or other actions by the Developer.
14. Adjustments – If, due to an appeal of any tax assessment, reassessment of any portion of the Property, abatement of any taxes, or for any other reason, the Authority is required to reimburse any TIR to any tax levying unit, then: i) the Developer shall pay the Authority the full amount required to reimburse such TIR, including interest and penalties, within 30 days of receiving any invoice from the Authority; or ii) the Authority may deduct the amount of any such reimbursement, including interest and penalties, from all subsequent payments due to the Developer until such TIR, including interest and penalties, is fully recovered. If all amounts due the Developer under this Agreement have been fully paid or the Authority is no longer obligated to make any further payments to the Developer, the Authority shall invoice the Developer for the amount of such reimbursement and the Developer shall pay the Authority such invoiced amount within thirty (30) days of the Developer’s receipt of the invoice. Amounts invoiced and paid to the Authority by the Developer pursuant to this paragraph shall not reduce Eligible Costs for which the Developer shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement.

15. Insurance – The Developer shall purchase and maintain insurance coverages as indicated at limits not less than those set forth below. The Developer shall also require each and every contractor(s) and/or subcontractor(s) engaged by the Developer to perform services pursuant to this agreement to purchase and maintain insurance coverages at the limits set forth below. Developer and its contractor(s) and/or subcontractor(s) shall name Washtenaw County and Washtenaw County Brownfield Redevelopment Authority as an additional insureds under all coverages listed below except Worker’s Compensation. The Developer shall maintain other insurance as it deems appropriate for its own protection.

- a. Worker’s Disability Compensation and Occupational Disease Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- b. Commercial General Liability Insurance on an “Occurrence Basis” with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit. Coverage shall include the following:
 - i. Contractual Liability
 - ii. Products and Completed Operations
 - iii. Independent Contractors Coverage
 - iv. Broad Form General Liability Endorsement or Equivalent
- c. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
- d. Environmental Impairment Liability Insurance shall be provided by Developer, Contractors, sub-contractors and site work contractors engaging in environmental and/or demolition activities, covering any sudden and non-sudden pollution or environmental impairment, including clean up costs and defense, with limits of liability of not less than \$1,000,000 per occurrence.
- e. All insurance coverages described above shall remain in effect at all times until completion of all eligible activities. The Developer shall deliver copies of certificates of insurance for each of the policies mentioned above to the Authority. If so requested, certified copies of all policies will be provided. It is understood and agreed that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change in any coverage shall be sent to the Authority.

16. Indemnification – The Developer shall indemnify, defend, and hold harmless, the Authority, Washtenaw County, and their officers, board members, commissioners, employees and agents from all claims, damages, lawsuits, costs and expenses, including reasonable attorney fees, incurred as a result of any acts, omissions, negligence, or gross negligence of the Developer or its employees,

agents, consultants, contractors or subcontractors related to the Project or its performance under this Agreement. This indemnification includes any damages, costs, and expenses in excess of those covered by any insurance of the Developer. The Developer shall indemnify the Authority, Washtenaw County, and any of the listed entities officers, board members, commissioners, employees and agents from all reasonable costs and expenses, including reasonable attorney fees, incurred in the enforcement of any obligation or claim against the Developer under this Agreement. These indemnification provisions will survive the termination of this Agreement. By entering this Agreement, neither party waives any immunities provided under state or federal law.

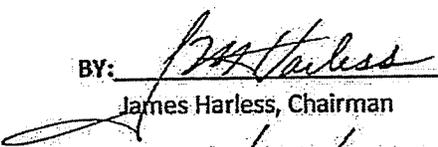
17. Freedom of Information Act – Developer understands that all communications, information, and/or documentation submitted by Developer may be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.23 to 15.24 of the Michigan Compiled Laws and no claim of trade secrets or any other privilege or exception to the Freedom of Information Act will be claimed by Petitioners as it relates to this Agreement, Petitions for Reimbursement and supporting documentation.
18. Notices – All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Either party may change the address by written notice sent by registered or certified mail to the other party.
19. Assignment – The interest of any party under this Agreement shall not be assignable without the other parties’ written consent, which shall not be unreasonable withheld, except for an assignment by the Developer for the purposes of securing financing for the Project, which shall require notice but not the prior consent of the other parties.
20. Entire Agreement – This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.
21. Non-Waiver – 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.
22. Headings – Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
23. Governing Law – This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.
24. Compliance with Applicable Law – Developer agrees to comply all applicable federal, state, and local laws, statutes, rules, regulations, ordinances, and other legal obligations of a similar effect.
25. 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.

26. No Third Party Beneficiaries – This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Consultant, Contractors, Subcontractors, or any third parties. This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.
27. Binding Effect – 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.
28. The Authority's reimbursement obligations under this Agreement are contingent on the requirement that there shall be no action, suit, proceeding or investigation pending before any court, public board or body to which the Developer, the County, the City, or the Authority is a party, or threatened against the Developer, the County, City, or the Authority contesting the validity or binding effect of this Agreement or the validity of the Plan or which could result in an adverse decision which would have one or more of the following effects:
- a. A material adverse effect upon the ability of the Authority to collect and use Tax Increments to pay the obligations;
 - b. A material adverse effect upon the ability of the Developer to conduct Eligible Activities;
 - c. Any other material adverse effect on the Developer's or the Authority's ability to comply with the obligations and terms of this Agreement, or the Brownfield or Work Plan.
29. Annual Reporting – The Developer shall report annually, by February 1, the following information to the Authority for the previous calendar year, as applicable:
- a. Number of residential units constructed or rehabilitated;
 - b. Square feet of new or rehabilitated residential, retail, commercial, or industrial space
 - c. Number of new jobs created;
 - d. For projects actively capturing TIR, amount of actual capital investment;
 - e. Any additional information deemed necessary by the Authority.

The parties have executed this Agreement on the dates set forth below.

WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY

BY:


James Harless, Chairman

Date:

7/22/2013

Attested to:

By:


Lawrence Kestenbaum, County Clerk/Register

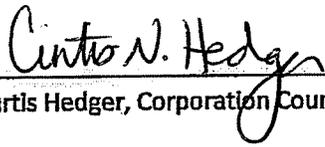
Ed Golembiewski, Chief Deputy Clerk

Date:

7/22/2013

Approved As to Form:

By:


Curtis Hedger, Corporation Counsel

DEVELOPER 544 Detroit Street LLC

BY:


PRINT NAME: DAN WILLIAMS

ITS:

MEMBER

Date:

7/19/13

Exhibits

Exhibit A – Definitions

Exhibit B – Legal Description

Exhibit C – Combined Brownfield Plan

Exhibit E – Eligible Costs Reimbursement Procedures

Exhibit F – LSRRF Schedule (optional)

EXHIBIT A - Definitions

- a. "Additional Response Activities" are defined by Section 2(a) of Act 381;
- b. "Administrative Costs," as defined in Section 13, Sub-Section 16 (a) (i).
- c. "Baseline Environmental Assessment Activities" are defined by Section 2(d) of Act 381;
- d. "Combined Brownfield Plan" is defined by Section 2(j) of Act 381 and is incorporated by reference in Exhibit C;
- e. "Certified Eligible Costs" – Those Eligible Costs which have been submitted, reviewed, and approved by the Authority.
- f. "Due Care Activities" are defined by Section 2 (l) of Act 381;
- g. "Eligible Activities" are defined by Section 2(n) of Act 381;
- h. "Eligible Costs" are those being submitted to the Authority for Certification.
- i. "Eligible Property" is defined by Section 2(o) of Act 381;
- j. "Event of Default" means the failure of performance or breach by a party to carry out any of its obligations or comply with any of its warranties, representations, or conditions under this Agreement or, with respect to a party, if any representation, omission, or warranty of such party was false when made.
- k. "Local Site Remediation Revolving Fund", "LSRRF" pursuant to Section 8 of Act 381.
- l. "Local Taxes" are defined by Section 2(y) of Act 381;
- m. "School TIR" refers to TIR attributable to Taxes Levied for School Operating Purposes, pursuant to Act 381;
- n. "Tax Increment Revenues" (TIR) are defined by Section 2(ii) of Act 381;
- o. "Taxes Levied for School Operating Purposes" is defined by Section 2(kk) of Act 381;
- p. "Work Plan" is defined by Section 2(nn) of Act 381.

EXHIBIT B – Legal Description

LOT 127 ASSESSORS PLAT NO 29

EXHIBIT C – Combined Brownfield Plan

EXHIBIT E – Eligible Costs Reimbursement Procedures

Reimbursement of Eligible Costs Certification

- a. For those Eligible Costs for which Developer seeks reimbursement from the Authority, Developer shall submit to the Authority any of the following as may be required by Authority representatives:
 - i. A written statement detailing the costs.
 - ii. A written explanation as to why reimbursement is appropriate under the Combined Brownfield Plan and this Agreement.
 - iii. Copies of invoices from the consultants, contractors, subcontractors, engineers, attorneys or others who provided such services. To verify quantities for unit price billings such invoices shall include sufficient backup information, including but not limited to, labor hours per person per billing period for professional services, detailed invoices from subcontractors and subconsultants, manifests and/or weigh tickets for disposed materials, and days used and rates for equipment and materials charges. All Eligible Costs for which certification is being sought must have occurred within 12 months prior to the date submitted.
 - iv. Copies of waivers of liens by the contractors, subcontractors, and materials suppliers, or cancelled checks demonstrating payment.
 - v. If not already submitted, copies of the contract with the contractor or supplier providing the services or supplies, for which reimbursement is sought.
 - vi. A statement from the engineer and project manager overseeing the work recommending payment.
 - vii. Any other information which may be required by state authorities or reasonably required by the Authority.

EXHIBIT F – LSRRF Schedule