

WASHTENAW COUNTY
BROWNFIELD REDEVELOPMENT AUTHORITY

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made as of December 10, 2008, between 601 Forest, LLC (the "Owner"), a Michigan limited liability company having an address 30100 Telegraph Road, Ste. 220, Bingham Farms, Michigan 48025 and the **WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY** (the "WCBRA"), a Michigan public body corporate, having the address at 110 N. Fourth Avenue, P.O. Box 8645, Ann Arbor, MI 48107-8645.

PREMISES

- A. The Owner is engaged in the development of a mixed-use housing development commonly known as 601 Forest – Green Urban Living (the "Development"), as described on the attached **Exhibit A**, to be located at 607, 609, 617 and 621 S. Forest and 1304 S. University (consisting of four parcels), Washtenaw County, as described on the attached **Exhibit B** (the "Site"). Based on the laboratory analytical results 607 & 609 S. Forest and 1304 S. University have been determined to be "facility", as defined in Part 201 of the Natural Resources and Environmental Protection Act ("NREPA"), Michigan Public Act 451 of 1994, as amended. The Site is an eligible property as defined by the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, as amended, because two parcels (607 & 609 S. Forest and 1304 S. University) have been determined to be a "facility" and the remaining parcels are adjacent to one or more parcel that is a "facility" and the development on that parcel is predicted to increase the value of that parcel.
- B. The WCBRA was formed by Washtenaw County on May 19, 1999 pursuant to Act 381, Public Acts of Michigan, 1996, as amended MCL 125.2651 et. seq. ("Act 381"), to facilitate the redevelopment of previously developed sites, consistent with the community's commitment to sustainability and its vision for the future. The Development lies within the Brownfield Redevelopment Zone adopted by the WCBRA as part of its Brownfield Redevelopment Plan, and the Site was made a part of this Plan by the 601 Forest – Green Urban Living Brownfield Redevelopment Plan Project amendment of December 3, 2008, Resolution Number 08-0248, (the "Plan", attached as **Exhibit C**).
- C. The WCBRA has determined that it would be in furtherance of its purposes and goals to capture tax increment finance revenues ("TIF Revenues") for the reimbursement of costs of certain Eligible Activities related to the Development and Site, as authorized by Act 381 and consistent with the approved Plan and the Act 381 Work Plan ("Work Plan") attached as **Exhibit D** as the same may be amended or supplemented.
- D. Pursuant to the Plan and the Work Plan, the WCBRA will capture TIF Revenues not to exceed \$10,119,689 and that are authorized by law to be captured from the levies imposed by taxing jurisdictions upon taxable property for the eligible property consistent with Act 381, as amended, and the Plan approved by the WCBRA. Upon satisfaction of the conditions expressed in this Agreement, the WCBRA will use the TIF Revenues as provided by law and as described in this Agreement.

NOW THEREFORE, In consideration of the premises and the mutual covenants and obligations contained in this Agreement, the Owner and the WCBRA hereby enter into this Agreement and covenant and agree as follows:

ARTICLE 1.

Section 1.1 Definitions. In addition to those terms defined elsewhere herein, the following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

- (a) "County" means Washtenaw County, Michigan.
- (b) "Eligible Activities" means those activities as defined by Sec. 2(m) of Act 381, Public Acts of 1996, as amended, MCL 125.2652, or approved by the Michigan Department of Environmental Quality (MDEQ) or the Michigan Economic Growth Authority (MEGA) as part of the approved Work Plan.
- (c) "Eligible Property" means the property as defined by Sec. 2(n) of Act 381, MCL 125.2652(1) for purposes of completing the Eligible Activities.
- (d) "Consultant" means any environmental or other professional firm(s) retained or hired by the Owner to conduct one or more of the Eligible Activities set forth in the Work Plan.
- (e) "Event of Default" means the failure of performance or breach by a party to carry out its obligations under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within 30 days after written notice thereof has been given by the other party. It also means any filing of bankruptcy or bankruptcy reorganization by the Owner.
- (f) "Indemnified Persons" means Washtenaw County and the WCBRA and their members, officers, agents and employees.
- (g) "LSRRF" or "Local Site Remediation Revolving Fund" means the local revolving fund established by the WCBRA pursuant to Sec. 8 of Act 381, MCL 125.2658 and funded with the capture of additional TIF Revenues estimated in the Plan pursuant to the WCBRA Local Site Remediation Revolving Fund Policy and Section 13 (5) of Act 381, MCL 125.2663.

- (h) "Maximum Cost of Eligible Activities" means the WCBRA's maximum obligation to pay for the Eligible Activities and not to exceed the amounts set forth in the approved Plan and/or Work Plan, as either may be amended or supplemented.
- (i) "MDEQ" means the Michigan Department of Environmental Quality.
- (j) "MEGA" means the Michigan Economic Growth Authority.

ARTICLE 2.

COVENANTS OF THE OWNER

Section 2.1 Completion of the Eligible Activities. The Owner shall proceed with the Eligible Activities and the obligations under this Agreement in its discretion. It shall complete the Eligible Activities in accordance with the terms of this Agreement, and in accordance with all applicable laws, regulations, codes and ordinances.

Section 2.2 Covenant to Pay Financial Obligations. To the extent TIF Revenues are available, the WCBRA shall reimburse the Owner for funds expended for Eligible Activities in accordance with the terms of this Agreement, the Plan and the Work Plan. It is anticipated that there will be sufficient TIF Revenues available to meet the obligations under this Agreement. However, if for any reason the Project does not result in sufficient TIF Revenues to satisfy such obligations, the Owner agrees and understands that it will have no claim or further recourse of any kind or nature against the WCBRA or Washtenaw County except from available TIF Revenues, and if for any reason the TIF Revenues are insufficient or non-existent, then the Owner assumes full responsibility for any such loss or cost.

Section 2.3 Payment for Administrative Fees. The WCBRA will collect a payment for administrative fees not to exceed five percent (5%) of the annual TIF Revenues. The Owner acknowledges that a payment of approximately \$354,483, divided over the length of the Plan (or 5% of the total TIF Revenues over the duration of the Plan, whichever is less), will be made to the WCBRA in order to cover administrative costs and fees, as defined in section 7(h) of Act 381, that are part of the approval of the Work Plan and any Eligible Activity on the eligible property. The payment is reimbursable from TIF Revenues under sections 13(3) and 13(16) of Act 381, the approved Work Plan and the satisfaction and performance of the terms of this Agreement. The Owner acknowledges that payment of the administrative fees will be made from TIF Revenues on a pro-rata basis, with 5% of the TIF Revenues paid to cover the administrative costs and the remaining 95% paid to the Owner as reimbursement for its Eligible Activities under the Plan. Any balance of available annual TIF Revenues shall be paid to the Owner pursuant to this Agreement and the Plan.

Section 2.4 Payment for Local Site Remediation Revolving Fund. The WCBRA will collect a payment for deposit into the LSRRF not to exceed 10% of the total of all Eligible Activities incurred pursuant to the Plan. The Owner acknowledges that the WCBRA will collect payment from TIF Revenues not to exceed the lesser of 10% of the total cost of the Eligible Activities or \$887,746. The WCBRA will collect TIF Revenues for deposit into the LSRRF after all of the Owner's Eligible Activities have been reimbursed to the developer. The TIF Revenue capture period shall not exceed one additional year after all Eligible Activities have been fully reimbursed.

Section 2.5 Indemnification of Indemnified Persons.

- (a) The Owner shall defend, indemnify and hold the Indemnified Persons harmless from any loss, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property as a result of the ownership or operation, use or maintenance of the Development from and after the date hereof. If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the Owner and the Owner shall defend such Indemnified Person with counsel selected by the Owner, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Owner and the Owner shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Owner may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its consent. The Owner shall not be liable for payment or settlement of any such claim or proceeding made without its consent.
- (b) The Owner shall indemnify the Indemnified Persons for all reasonable costs and expenses, including reasonable counsel fees, incurred in successfully enforcing or pursuing any obligation of or claim against the Owner under this Agreement or any related agreement.
- (c) The Owner shall not be required to defend, indemnify or hold harmless pursuant to this Agreement any Indemnified Person for that portion of any costs, fees, damages or other charges that result from the Indemnified Person's intentional acts, negligence or gross negligence.
- (d) The Owner shall assure that to the extent a Consultant, with which the Owner has a direct contract, undertakes any of the Eligible Activities, the contract between the Owner and the Consultant provides that Consultant provides WCBRA and the County the Indemnity provisions set forth in Sec. 6.13 of this Agreement. The Owner shall use its best efforts to have the indemnity provisions set forth in Sec. 6.13 of this Agreement included in any contracts between the Consultants and their subcontractors or subconsultants, to the extent such subcontractors or subconsultants undertake any of the Eligible Activities set forth in the Brownfield Plan.
- (e) The indemnity provisions shall survive the term of this Agreement.

Section 2.6 Site Access. The Owner shall grant to WCBRA and the MDEQ or MEGA, or their designated agents, access to the Site at reasonable hours during the business week to exercise their respective duties pursuant to the terms of this Agreement. The WCBRA shall give the Owner no less than seventy-two (72) hours prior written notice of its intent to access the site unless an emergency otherwise requires immediate access. If notice cannot be given due to an emergency, the WCBRA shall give notice as is reasonable and practicable under the circumstances. Right to Site Access will continue until all obligations under the Plan, the Work Plan and this Agreement are completed and all invoices, final reports and documentation are submitted and approved.

ARTICLE 3.

CONDITIONS TO OWNER'S OBLIGATION

Section 3.1 Conditions to Owner's Obligations to Construct the Development. The obligations of Owner to complete Eligible Activities and construct the Development, as contemplated herein, are subject to the following conditions which must be satisfied by the WCBRA as required herein, except as expressly provided in this Agreement or otherwise waived by the Owner:

- (a) No action, suit or proceeding shall be pending in any court to which the Owner, County or the WCBRA is a party, which contests the validity or binding effect of this Agreement or the validity of the Plan, or Work Plan, and which could result in an adverse decision which would have one or more of the following effects:
 - (1) A material adverse effect upon the ability of the WCBRA to collect and use TIF Revenues to satisfy its obligations under this Agreement.
 - (2) A material adverse effect on the Owner's or the WCBRA's ability to comply with the obligations and terms of this Agreement, the Plan, or the Work Plan.
- (b) There shall have been no uncured Event of Default by the WCBRA .
- (c) The WCBRA shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement.

ARTICLE 4.

COVENANTS OF THE WCBRA

Section 4.1 Adoption of Work Plan Amendments. The WCBRA will submit amendments, prepared by or on behalf of the Owner, to the Work Plan as necessary in accordance with Act 381, which will provide for reimbursement to the Owner of Eligible Activity expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement, Act 381, Public Acts of 1996, as amended, Work Plan, as amended or supplemented, and approved by the WCBRA pursuant to its established and written policies and procedures, which WCBRA shall provide to Owner no later than thirty (30) days after they are adopted by WCBRA. These policies and procedures include, but are not limited to, the WCBRA's standards for local TIF Revenue eligibility.

Section 4.2 Completion of Eligible Activities. Upon the Owner's satisfactory completion of the Eligible Activities or any portion thereof which have been documented as set forth herein, the WCBRA shall reimburse the Owner subject to and in accordance with the terms set forth in this Agreement. The Owner shall have sole responsibility to pay any Consultant or other contractors or subcontractors for completion of such Eligible Activities and provide invoices and if applicable written waiver of any liens. If the Owner incurs any expenses or costs for any activities other than the Eligible Activities or the costs exceed the maximum cost of Eligible Activities as set forth in Exhibit C, as amended or supplemented, the Owner shall bear such costs without any obligation on the part of the WCBRA. If the costs of Eligible Activities set forth in Exhibit C, as amended or supplemented, are less than such maximum cost, then the Owner shall have no further right of reimbursement beyond its actual costs.

Section 4.3 WCBRA. The WCBRA will exercise oversight of the Owner and its Consultant, contractors, or subcontractors for purposes of assuring that the activities, invoices and accounting by the Owner are fair, reasonable, and constitute Eligible Activities within the meaning and scope of this Agreement, the Plan, the Work Plan and Act 381. The Owner shall provide to the WCBRA access to data, reports, sampling results, invoices, proof of payment and related documents reasonably necessary to fulfill the exercise of such oversight. It is expressly understood that WCBRA has no right to control or to exercise any control over the actual services or performance of the Eligible Activities by the Owner, its Consultants, contractors or subcontractors, except as to verification that the Owner has met the conditions and requirements of this Agreement. The parties agree that WCBRA and Washtenaw County shall have no liability for any claims arising from work done to eligible property by the Owners, their consultants, Contractors or Subcontractors arising out of this Agreement.

ARTICLE 5.

CONDITIONS TO WCBRA'S OBLIGATIONS

Section 5.1 Conditions to WCBRA's obligation to reimburse Eligible Activities' expenses for the Owner's Development

The obligations of the WCBRA to reimburse costs for Eligible Activities as contemplated herein shall be subject to the following conditions which must be satisfied by the Owner as required herein, except as expressly provided in this Agreement or otherwise waived in writing by the WCBRA. It is expressly agreed that the WCBRA makes or gives no assurance of payment to the Owner by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Work Plan, or as hereafter supplemented or amended, and that the WCBRA shall have the right to review and approve all written summaries of and invoices for Eligible Activities for the reasonableness of services performed by any Consultant under this Agreement. However, so long as an Eligible Activity by the Owner has been approved and is authorized by Act 381 and has been completed and approved in accordance with the following procedure and this Agreement, Owner shall be entitled to reimbursement of its Eligible Activities expenses from TIF Revenues captured from the Property.

Section 5.2 It is expressly understood and agreed that the obligations of the WCBRA to reimburse the Owner for costs for Eligible Activities is subject to the following conditions:

- (a) Approval, where necessary, by the MDEQ and/or MEGA and WCBRA of (1) the Work Plan, as amended or supplemented, or (2) of the Eligible Activity as qualifying for school tax capture; however, to the extent an Eligible Activity falls outside subparagraph 5.2 (a)(1) or (a)(2), then the Eligible Activity must be identified in the Plan and/or Work Plan, as amended, or supplemented, and approved by the WCBRA for local tax recapture to the extent authorized by Act 381 and this Agreement.
- (b) The Owner shall provide proof of ownership of the Site if applicable, and shall provide the WCBRA with a list of any potentially responsible party (PRP) for the contamination on the property, and shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement or any other agreement with WCBRA, and all preconditions to the performance of the Owner shall have been satisfied.
- (c) Owner shall provide written proof of waivers of liens by the Consultant, any contractor, and subcontractor providing services as described in this Agreement.
- (d) Owner shall pay all real estate tax obligations when due.
- (e) Upon entering into this Agreement, the Owner or its designee will present a proposed budget to the WCBRA for each stage, and/or Eligible Activity prior to execution of that activity. For activities that have commenced prior to the signing of the Agreement, the budgets for these activities still must be submitted. The budget will be submitted at each such stage of the Eligible Activities; due care 7(a) obligations; and additional response activities and, if applicable, lead and asbestos abatement, demolition, site preparation and infrastructure; and will contain detailed line item cost estimates.

- (f) The Owner shall submit invoices of its expenses and a written statement demonstrating a factual basis that it has completed any Eligible Activities to the WCBRA for review and approval, and within forty five (45) calendar days of receipt of the invoice, the WCBRA shall review and approve or reject the reasonableness of the invoice and activity as eligible, and, if approved, notify the Owner in accordance with the notice provisions set forth herein, and arrange for payment. In the event of a rejection of all or part of an invoice, the WCBRA shall notify the Owner in writing of its reasons for rejection within the forty five (45) day time period for review. If the rejection is not resolved or cured within twenty-eight (28) calendar days after the WCBRA provides notification in accordance with the terms of this Agreement, there is no obligation to pay the portion of the invoice rejected until the parties have mutually agreed to payment in writing through alternative dispute mediation process or there is a final judgment or order of a court of competent jurisdiction directing payment. All approved Eligible Activity expenses will be reimbursed to the owner twice annually with reimbursement occurring no later than thirty (30) days after receipt of the winter and summer taxes.
- (g) No action, suit or proceeding shall be pending in any court to which the Owner, County or the WCBRA is a party, which contests the validity or binding effect of this Agreement or the validity of the Plan, or Work Plan, and which could result in an adverse decision which would have one or more of the following effects:
 - (1) A material adverse effect upon the ability of the WCBRA to collect and use TIF Revenues to satisfy its obligations under this Agreement.
 - (2) A material adverse effect on the Owner's or the WCBRA's ability to comply with the obligations and terms of this Agreement, the Plan, or the Work Plan.
- (h) There shall have been no Event of Default by the Owner and no action or inaction by the Owner eventually which with the passage of time would likely become an Event of Default.
- (i) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land uses and the Development have been secured.
- (j) The Owner provides documentation to the WCBRA that it owns, leases or otherwise has the right to construct the project on the Site, and the Owner is not in material default on any contract or other agreement relating to its ownership, lease or right to construct the project on the Site.
- (k) No change in law which would have one or more of the effects described above.
- (l) Consent, where necessary, of any affected utility for relocation, burial or the activity to accomplish the Eligible Activities.
- (m) The Owner retains an Consultant, contractor, or subcontractor to advise, conduct, or complete the Eligible Activities as set forth in this Agreement.
- (n) Any TIF Revenues owed to a prior owner of the Site for Eligible Activities undertaken on the Site shall be paid to the prior owner of the Site pursuant to the policies and procedures of the WCBRA unless otherwise directed by written agreement between the prior owner and the new owner and as provided to the WCBRA. The Owner has no right to any TIF Revenues for any Eligible Activities undertaken on the property prior to its purchase of the property, except for such Eligible Activities incurred by Owner prior to its ownership of the Property or the adoption of the Plan and for which TIF Revenue may be used to reimburse Owner pursuant to the Brownfield Act.
- (o) If for any reason the Owner is unable to obtain title to the site, the WCBRA is not obligated to perform any of the terms of this Agreement.

ARTICLE 6.

OWNER'S ENVIRONMENTAL CONSULTANT RESPONSIBILITIES

Section 6.1 Eligible Activities and Due Care Obligation. The Owner covenants that it will contract with a competent and qualified Consultant and competent and qualified Contractors who may or may not subcontract to conduct and complete the Eligible Activities set forth in this Agreement and as set forth in the Work Plan, as amended or supplemented, or the Plan, as amended or supplemented, and to meet any due care obligation under Sec. 20107a, NREPA, MCL 324.20107a and 324.20129a, in accordance with any MDEQ requirements and approval.

Section 6.2 Permits. The Consultant or Contractors shall examine all permits and licenses pertaining to the Site or Development to determine whether all permits and licenses required to be issued by any governmental authority on account of any or all of the activities on the Site or the Development have been obtained or issued and are in full force and effect, and whether the Site or the Development and the activities there are in compliance with the terms and conditions of such permits and licenses.

Section 6.3 Industry Standards. Where necessary, the Owner, Consultant, or Contractors shall perform all services and Eligible Activities under this Agreement in accordance with any applicable industry standards.

Section 6.4 Other Services Performed for Owner. It is expressly understood that WCBRA is not responsible for payment or reimbursement of any services for or expenses incurred by the Consultant and/or Owner that are not within the scope of or in accordance with all of the terms, conditions and provisions of this Agreement. 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; specifically, this Agreement shall not be construed to create any third party beneficiary contract or claim.

Section 6.5 Regulatory Liaison and Data and Reports. If applicable, Owner will make its agents available for communication services and to attend meetings with the MDEQ, MEGA and the WCBRA that concern Eligible Activities performed on the Project. If requested by the WCBRA, Owner will disclose to the WCBRA any data, reports and test results generated by the Consultant that concern the Eligible Activities performed on the Project. To the extent any of these documents are marked "confidential", such documents shall be kept confidential by the WCBRA except where prohibited by the Freedom of Information Act or other applicable law or regulation.

Section 6.6 Other Agreements. The Owner covenants that it will obtain a warranty from the Consultant or Contractor that it is not a party to any other existing or previous agreement which would adversely affect the Consultant's or Contractor's ability to perform the services with respect to the Eligible Activities.

Section 6.7 Contractors and Subcontractors. The parties agree that any Consultant, Contractor, person, firm or corporation retained by Owner to perform services related to Eligible Activities under this Agreement is not and shall not be or act as an agent or employee of the WCBRA, nor assume or create any duty, commitment or obligation on behalf of nor bind the WCBRA in any respect whatsoever.

Section 6.8 Non-Discrimination Clause. Neither the Owner, Consultant, nor any Contractors or Subcontractors shall discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation height, weight, or marital status. A breach of this provision may be regarded as a material breach of this Agreement.

Section 6.9 Independent Contractor. The Consultant and any Contractors or Subcontractors shall perform its services under this Agreement entirely as an independent contractor, and shall not be deemed an agent, employee or legal representative of the WCBRA. WCBRA and the Consultant and any Contractor or Subcontractor shall each have and maintain complete control over all their respective employees, agents and operators. Facts or knowledge of which the Consultant or Contractor becomes aware shall not be imputed to WCBRA without communication to and receipt by managerial officials or employees of WCBRA. The Consultant or any Contractor or Subcontractor has no authority to assume or create, and will not assume or create, any commitment or obligation on behalf of the WCBRA in any respect whatsoever. Further, the Consultant or any Contractor or Subcontractor shall exercise its independent judgment for the services provided in this Agreement.

Section 6.10 Disposal of Hazardous Waste. In the event that samples or other materials are classified as "hazardous waste" under state or federal law, the Owner shall, under a manifest signed by the Owner or its agent, as the generator, have such samples transported for final disposal to a location selected by the Owner or its Consultant or Contractor. It is expressly understood that the WCBRA has no oversight or other control or authority over the Owner's obligation to properly dispose of Hazardous Waste under the terms of this paragraph.

Section 6.11 Compliance with Laws. While on the Site or Development, the Owner, the Consultant, and any Contractor or Subcontractor shall impose work orders on its employees, agents and subcontractors which are designed to assure that they comply with all applicable federal, state and local laws and regulations (including occupational safety and environmental protection statutes and regulations) in performing Eligible Activities, and shall comply with any directions of governmental agencies relating to site safety, security, traffic or other like matters.

Section 6.12 Environmental Consultant or Contractor Insurance. The Owner shall assure that the Consultant, any Contractors or Subcontractors, or any other contractors performing any part of the Eligible Activities covered by this Agreement shall obtain and maintain the following policies of insurance:

- (a) Worker's Compensation and Occupational Disease Insurance in the amounts required under the laws of the State of Michigan;
- (b) Commercial General Liability and Automobile Insurance for bodily injury, death or loss or damage to property or third persons in the minimum amount of at least \$1 million per occurrence, \$2 million aggregate, which policy shall name the WCBRA and the County as additional insured;
- (c) In reference to the Environmental Consultant, Pollution or Environmental Impairment Insurance in the amount of at least \$1 million per loss, for which policy shall name the WCBRA and the County as additional insured. The Consultants shall continue to name the WCBRA and County as additional insured for two years after the completion of Eligible Activities that are subject of this Agreement;
- (d) In reference to the Environmental Consultant, Professional Liability Insurance in the minimum amount of \$1 million per loss; and
- (e) The Owner shall furnish to WCBRA a certificate(s) of insurance evidencing such coverage no less than fourteen (14) days prior to the date upon which the Consultant, contractor or subcontractors commences work on Eligible Activities. The period of coverage shall commence with the date of performance of the first Eligible Activity. The parties agree that the owner shall provide certified copies of the insurance policies upon request of by the WCBRA. The limits of insurance shall not be construed as a limitation on the Consultant's, Contractor's, or Subcontractor's liability for damages, costs or expenses under this Agreement.

Section 6.13 Limitation of Liability.

- (a) Defend, Indemnify and Hold Harmless. Notwithstanding any other provision of this Agreement, the Owner shall obtain Consultant's agreement to defend, indemnify and hold WCBRA and the County harmless against and from all liabilities, losses, damages, costs, expenses (including attorney fees), causes of action, suits, claims and demands for judgment arising out of:
- (1) Those losses which WCBRA and the County may sustain as a result of the failure of the Consultant to comply with the provisions of this Agreement; and/or
 - (2) Those losses which result from or arise out of any acts or omissions, negligent, grossly negligent, intentional, or otherwise, of the Consultant's employees, agents, contractors, or subcontractors in the performance of the work specified in this Agreement.
- (b) Contribution. The Owner shall obtain written acknowledgment that the Consultant, any Contractor, or Subcontractor could be liable to WCBRA for all damage, loss, injury or expense to the extent Consultant, any Contractor or Subcontractor's acts or omissions arising out of the performance of Eligible Activities are actionable negligence, gross negligence, or constitute intentional misconduct; the Consultant, any Contractor, or Subcontractor shall be liable for contribution to WCBRA for any such damage, loss, injury or expense of a third party arising out of such activities, notwithstanding Sec. 20128 of the NREPA, MCL 24.20128, for releases aggravated or proximately caused by the Consultant. This paragraph shall not affect any other liabilities or remedies of the WCBRA.
- (c) Survivorship of Covenants. Any Consultant's, Contractor's, or Subcontractor's indemnity, hold harmless and release shall survive the termination of this Agreement.
- (d) The written agreement in subparagraph (a) of this section and written acknowledgment in subparagraph (b) shall be filed with the WCBRA before any work begins or before any reimbursement shall be required under the terms of this Agreement.

ARTICLE 7.

REPRESENTATIONS AND WARRANTIES

Section 7.1 Representations and Warranties of WCBRA. WCBRA represents and warrants to the Owner that:

- (a) WCBRA is a public body corporate, established pursuant to Act 381, with all necessary corporate powers pursuant to Act 381 to enter into and perform this Agreement.
- (b) The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of the WCBRA, and this Agreement constitutes a valid and binding agreement of the WCBRA enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or thereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

Section 7.2 Representations and Warranties of the Owner. The Owner represents and warrants to the WCBRA that:

- (a) The Owner is a Michigan limited liability company with power under the laws of this state to carry on its business as now being conducted and has the power and authority to consummate the transactions contemplated under this agreement by the Owner and has authorized the signatures to represent the owner under this Agreement.

- (b) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Owner, and this Agreement constitutes a valid and binding agreement of the Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- (c) Except as part of the performance and completion of Eligible Activities under the terms of this Agreement, the Owner, its Contractors, or Subcontractors shall not use the Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes and orders in connection with any use of the Site, and shall obtain all necessary permits in connection therewith.
- (d) Owner warrants that it will comply with all obligations, covenants and conditions required of it or its Consultants, Contractors and Subcontractors under the terms of this Agreement.
- (e) Owner shall comply with all of its due care obligations under Sec. 7a of Part 201 of the NREPA.
- (f) Owner has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

ARTICLE 8.

OWNER FINANCIAL ASSURANCES

Section 8.1 Insurance. The Owner shall obtain and provide proof of the following current in-force insurance:

- (a) If applicable, Worker's Compensation and Occupational Disease Insurance in the amounts required under the laws of the State of Michigan;
- (b) Commercial General Liability, including Umbrella Liability Insurance for any such underlying liability, and Automobile Insurance for bodily injury, death or loss or damage to property of third persons in the minimum amount of \$2 million per occurrence;
- (c) Washtenaw County and WCBRA shall be added as an additional insured under all coverages listed except Worker's Compensation.

The Owner shall furnish to WCBRA a certified copy of such policies no less than fourteen (14) days prior to commencing Eligible Activities under the approved Plan and the period of coverage shall commence with the date of performance of the first Eligible Activity. WCBRA will review the certified policies within 14 days of their receipt to determine if the insurance requirements have been satisfied. If the policies do not fully cover the Owner's liability, including indemnity obligations, under this Agreement, then the WCBRA reserves its right to increase the amount of other financial assurances under Article 8 of this Agreement. The limits of insurance shall not be construed as a limitation on the Owner's liability for damages, costs or expenses under this Agreement.

ARTICLE 9.

DEFAULT, REMEDIES, AND TERMINATION

Section 9.1 Remedies Upon 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 sixty (60) 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, provided, however, if the cure takes more than sixty (60) days to complete, the breaching party shall be permitted to complete the cure beyond the provided sixty (60) days if the breaching party uses good faith efforts to prosecute the cure to completion. 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.

ARTICLE 10.

MISCELLANEOUS

Section 10.1 Term. The term of this Agreement shall commence on the date first written above and shall expire upon payment in full of WCBRA's obligations under Section 2.2.

Section 10.2 Sale, Conveyance or Transfer of the Site. Up until the Owner has satisfactorily completed its Eligible Activities and performed its obligations under the terms of this Agreement, the Owner shall not sell, convey, or transfer ownership of any portion of the eligible property to another owner to carry out the purposes and goals of the Plan, or any existing Work Plan, as described in this Agreement without a mutually agreeable amendment to this Agreement. This does not prohibit the Owner from selling, conveying or transferring property (including any interest therein) or units within structures to third parties for the land uses as contemplated by the Development. This section shall not apply to: (a) assignments between governmental entities (b) assignments for financing required for the Development; (c) the establishment of another entity which shall operate the premises for the infrastructure purposes; or (d) the sale of substantially all of any member's interest in Owner.

After the Owner has completed its Eligible Activities and Eligible Investment under the Plan or the Work Plan, as they may be amended or supplemented from time-to-time, and until such time as its capture of TIF Revenues are completed under the Plan and/or the Work Plan, prior to any sale, conveyance or transfer of ownership of any portion of the eligible property, Owner shall provide written notice to any such transferee of the existence of the Plan and this Agreement. This provision shall neither apply to nor prohibit the Owner from selling, conveying or transferring property (including any interest therein) or units within structures to third parties for the land uses as contemplated by the Development.

Nothing in this Agreement shall prohibit the parties from filing a memorandum of this Agreement, outlining the general terms and conditions contained herein, with the Washtenaw County Registrar of Deeds. Filing such a memorandum shall constitute notice to any transferee as required by this section.

Section 10.3 Assignment. Neither this Agreement, nor any of the rights or obligations contained within it may be assigned or otherwise transferred by the Owner, nor shall the benefits of this Agreement inure to the benefit of any trustee in bankruptcy, receiver or creditor of the Owner, whether by operation of law or otherwise, without the prior written consent of the WCBRA, which consent will not be unreasonably withheld. Any attempt to assign or transfer this Agreement or any of its rights without such written consent shall be null and void and of no force or effect, and a breach of this Agreement. In no event shall the WCBRA be obligated to pay to any person other than Owner any TIF Revenues authorized to be captured pursuant to the Plan and/or the Work Plan unless and until such an assignment is authorized as set forth in this section.

Section 10.4 Notices. All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to WCBRA:

Brownfield Planner, Department of Planning and Environment,
Washtenaw County
Staff Support to Authority pursuant to MCL 125.2657
Washtenaw County Brownfield Redevelopment Authority
705 North Zeeb Road, P.O. Box 8645
Ann Arbor, Michigan 48107-8645

If to the Owner:

Patricia M. Fix
601 Forest, LLC
30100 Telegraph Road, Ste. 220
Bingham Farms, Michigan 48025

With a required copy to:

Kurt M. Brauer, Esq.
Warner Norcross & Judd LLP
2000 Town Center, Ste. 2700
Southfield, Michigan 48075-1318

or to such other address as such party may specify by appropriate notice.

Section 10.5 Amendment and Waiver. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

Section 10.6 Entire Agreement. This Agreement contains all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

Section 10.7 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 10.8 Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

Section 10.9 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

Section 10.10 Mutual Cooperation. Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction regarding the purposes of this Agreement. Each party to this Agreement shall execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or agreements as may be required by the Owner's lenders with respect to the Development to secure the Owner's financing from such lenders.

Section 10.11 Binding Effect. This Agreement shall be binding upon the parties hereto, and in the event of assignment under Sec. 10.3 upon their respective successors, transferees, and assigns. Owner shall provide written notice prior to transfer or assignment of Owner's interest to any subsequent purchaser and assign of the existence of this Agreement.

Section 10.12 No Waiver. No waiver by either party of any default by the other party in the performance of any portion of this Agreement shall operate or be construed as a waiver of any future default, whether like or different in character.

Section 10.13 Survival of Covenants. Except for the financial obligations, the covenants and provisions shall survive the term of this Agreement.

Section 10.14 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.

Section 10.15 Court Venue. Any court of competent jurisdiction located with Washtenaw County shall be the forum for any disputes under this Agreement.

IN WITNESS WHEREOF, the WCBRA and the Owner have cause this Agreement to be duly executed and delivered as of the date first written above.

Approved As To Form:

Curtis N. Hedger Date: 12-11-08
Curtis Hedger
Corporation Counsel

601 Forest, LLC

By: Ronald Hughes Date: _____
Ronald Hughes

Its: Manager

WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT
AUTHORITY

Attested To:

Lawrence Kestenbaum Date: 12/11/08
Lawrence Kestenbaum
County Clerk/Register

By: Rhonda McGill Date: 12/11/08
Rhonda McGill
Its: Chair