

BROWNFIELD REIMBURSEMENT AGREEMENT

THIS BROWNFIELD REIMBURSEMENT AGREEMENT (“Agreement”) is made _____, 2015, between and among City Center Two Project, L.L.C., a Michigan limited liability company, having an address at 1427 W. Saginaw St., Suite 150, East Lansing, Michigan 48823, (“Petitioner”) and the City of East Lansing Brownfield Redevelopment Authority (“ELBRA”), established by the City of East Lansing pursuant to Michigan Public Act 381 of 1996, as amended (“Brownfield Redevelopment Financing Act”) with its office at 410 Abbot Road, East Lansing, Michigan 48823.

RECITALS

A. The primary purpose of the ELBRA, pursuant to the Brownfield Redevelopment Financing Act, is to encourage the redevelopment of contaminated, functionally obsolete, and blighted property within the City of East Lansing by providing financial and tax incentives, without which the redevelopment would not be economically feasible.

B. The Petitioner is the owner of the property commonly known as the Park District redevelopment (“Property”), as more fully described in Exhibit A, the approved Brownfield Plan #19 attached hereto. The Property has been determined to be “functionally obsolete” and qualifies as an Eligible Property under Section 2 of the Brownfield Redevelopment Financing Act.

C. The Petitioner plans to invest approximately \$89M to redevelop the Property into a mixed-use commercial and residential project. The Petitioner plans to undertake Eligible Activities as defined in the Brownfield Redevelopment Financing Act.

D. The ELBRA plans to capture the increase in the real property taxes resulting from the redevelopment of the Property and use these funds to reimburse the Petitioner pursuant to its Brownfield Redevelopment Plan No. 19 approved by ELBRA on _____, 2015 and by the City of East Lansing on _____, 2015 pursuant to the Brownfield Redevelopment Financing Act.

E. 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

“Additional Response Activities” are defined by Section 2(a) of the Brownfield Redevelopment Financing Authority Act;

“Baseline Environmental Assessment Activities” are defined by Section 2(d) of the Brownfield Redevelopment Financing Act;

“City” means the City of East Lansing;

“Brownfield Redevelopment Financing Act” or **“Act 381”** means Act No. 381 of the Public Acts of 1996, as amended, MCLA 125.2651 et seq.

“Brownfield Plan” or **“Plan”** are defined by Section 2(g) of the Brownfield Redevelopment Authority Act;

“Due Care Activities” are defined by Section 2(k) of the Brownfield Redevelopment Financing Act;

“Eligible Activities” are defined by Section 2(m) of the Brownfield Redevelopment Financing Act;

“Eligible Property” or **“Property”** is described by Section 2(n) of the Brownfield Redevelopment Financing Act;

“Tax Increment Revenues” are defined by Section 2(ee) of the Brownfield Redevelopment Financing Act;

“Taxes Levied for School Operating Purposes” are defined by Section 2(gg) of the Brownfield Redevelopment Financing Act.

2. The Plan

The Brownfield Redevelopment Plan #19 approved by the ELBRA on _____, 2015 (“Plan”) and as approved by resolution of the East Lansing City Council at its _____, 2015 Council Meeting, is attached hereto as Exhibit A and incorporated herein. To the extent provisions of the Plan and any subsequent amendment conflict with this Agreement, and as it may be amended, the terms and conditions of this Agreement control. To the extent provisions of the Plan, and any amendment to the Plan, or this Agreement conflicts with the Brownfield Redevelopment Financing Act, Act 381 controls.

3. Tax Capture

Pursuant to the Plan, the ELBRA shall capture 100% of the Tax Increment Revenues from the Eligible Properties for such period of time not to exceed 25 years as required for the purpose of paying costs of Eligible Activities to the Petitioner or to the maximum extent necessary to cover the cost of Eligible Activities and allowed under Act 381.

4. Eligible Activities

The Petitioner commits to diligently pursue all efforts necessary to complete the Eligible Activities set forth in BRA Plan #19, and as it may be amended. No activities that would otherwise be Eligible Activities, if completed after December 31, 2017 shall be considered Eligible Activities for the purposes of reimbursement under this Agreement. This deadline may

be extended at the reasonable discretion of the ELBRA. Such extension to be effective shall be in writing.

5. Reimbursement Source

Except as set forth herein, the Petitioner shall be reimbursed its costs for Eligible Activities solely from the Tax Increment Revenues collected from real property taxes on the portion of the Eligible Property representing property improvements in accordance with Plan and this Agreement. The amount of Taxes Levied for School Operating Purposes is limited to the cost of Eligible Activities as approved by the Michigan Strategic Fund, Michigan Economic Development Corporation, and/or the Michigan Department of Environmental Quality.

6. Shortfall In Captured Taxes

The ELBRA and the City shall not be responsible for reimbursing any costs of Eligible Activities if Tax Increment Revenues are insufficient to cover said costs.

Payment of Administrative Expenses

The actual annual City administrative expenses per the Plan, not to exceed \$15,000 per annum, shall be paid first from available Tax Increment Revenues prior to any reimbursement commencing with the first year of capture under the Plan.

7. Adjustments

If, due to an appeal of any tax assessment or reassessment of any portion of the Property or for any other reason the ELBRA is required to reimburse any Tax Increment Revenues to the City or any other tax levying unit of government, the ELBRA may deduct the amount of any such reimbursement, including interest and penalties, from any amounts due and owing the Petitioner. If all amounts due the Petitioner under this Agreement have been fully paid or the ELBRA is no longer obligated to make any further payments to the Petitioner, the ELBRA shall invoice the Petitioner for the amount of such reimbursement and the Petitioner shall pay the ELBRA such invoiced amount within 30 days of the Petitioner's receipt of the invoice. Amounts invoiced and paid to the ELBRA by the Petitioner pursuant to this paragraph shall be reinstated as Eligible Costs for which the Petitioner shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement. Nothing in this Agreement shall limit the right of the Petitioner to appeal any tax assessment.

8. Transfer of Real Property

In the event that the Petitioner transfers ownership of all or part of the Property prior to being reimbursed in full for approved costs of Eligible Activities under the Plan, the Plan may be further amended as it relates to reimbursement of incomplete activities or other Eligible Activities that have not been approved for reimbursement as provided for herein, on the parcel or parcels of real property that have been transferred. Such amendments will not be unreasonably withheld, delayed, or conditioned by the ELBRA. Amendments to the Plan shall be subject to the limitations and procedures governing amendments to Plans set forth in the Brownfield Redevelopment Financing Act. This Agreement shall be modified to reflect any such amendments to the Plan. The parties contemplate that this Agreement will be assigned to various lenders throughout the Project and that such transfer of assignments shall be freely approved and that reasonable documentation necessary to effectuate any transfer executed by the parties.

9. Reimbursement Process

(a) The Petitioner shall submit to the ELBRA a detailed written statement outlining the costs of Eligible Activities undertaken pursuant to the Plan. The request for reimbursement shall be in the form reasonably designated by the administrative staff of the ELBRA and generally consistent with the budget set forth in the Plan (“Approved Budget”). The Petition shall identify whether the Eligible Activities are: (1) Baseline Environmental Assessment Activities; (2) Due Care Activities; or (3) Additional Response Activities. The Petition shall describe each individual activity claimed as an Eligible Activity and the associated costs of each individual activity. Documentation of the costs incurred shall be included with the Petition, including proof of payment (e.g., canceled checks or lien waivers) and detailed invoices for the costs incurred sufficient to determine whether the cost incurred were for Eligible Activities. The Petition shall be signed by a duly authorized representative of Petitioner and the representations, facts and documentation included therein shall be sworn to as accurate in the presence of a notary.

(b) Petitions shall be reviewed by the ELBRA within a reasonable time or as required under the Brownfield Redevelopment Financing Act, but in no event later than 30 days after submission by Petitioner. Petitioner shall cooperate in the review by the ELBRA by providing information and documentation to supplement the Petition as reasonably deemed necessary by the ELBRA. The ELBRA shall reimburse those Eligible Expenses set forth in the Approved Budget or identify in writing to Petitioner any costs deemed ineligible for reimbursement and the basis for the determination. Petitioner shall be given 45 days in which to provide supplemental information or documents in support of a request for cost reimbursement deemed ineligible by the ELBRA.

(c) After the taxes are captured and collected, the ELBRA shall pay approved costs for Eligible Activities to the Petitioner from the taxes earmarked in accordance with the Plan to the extent that taxes have been captured and are available in that fiscal year (less ELBRA administrative expenses per the Plan and Section 7 of this agreement) to reimburse approved costs of Eligible Activities. Reimbursement will be made at the next scheduled check processing date according to the schedule established by the City of East Lansing’s Finance Department.

(d) In the event there are insufficient funds available from taxes captured from the sources identified herein to fully reimburse the Petitioner for approved costs at a particular time from taxes captured from the sources identified herein for the Petitioner, ELBRA’s repayment obligation shall carry forward to the next period in which funds are available and repayment shall be made at that time. In the event sufficient captured taxes are not available during the 25 year repayment period to fully reimburse the Petitioner, repayment shall be made only to the extent captured property taxes are received by ELBRA.

(e) The ELBRA shall withhold reimbursement of Tax Increment Revenues if there are any delinquent real property taxes outstanding for the Property regardless of the tax year. Upon payment of all delinquent real property taxes, the ELBRA shall effectuate reimbursement of available Tax Increment Revenues for Eligible Costs provided all other terms under this agreement are met.

- (f) Reimbursement of Costs of Eligible Activities shall be effectuated:

For the Petitioner, checks shall be made payable to:
City Center Two Project, L.L.C.
1427 W. Saginaw St., Suite 150
East Lansing, MI 48823

10. Legislative Authorization

This Agreement is governed by and subject to the restrictions set forth in the Brownfield Redevelopment Financing 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 Petitioner's rights and the ELBRA's obligations under this Agreement shall be modified accordingly.

11. Freedom of Information Act

Petitioner stipulates that all Petitions and documentation submitted by it 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, Petitions for Reimbursement and supporting documentation.

12. Plan Modification

The Plan may be modified to the extent allowed under the Brownfield Redevelopment Financing Act by mutual agreement in writing of the Parties affected by the modification.

13. Notices

All notices shall be given by registered or certified mail or nationally recognized delivery service 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.

14. Assignment

This Agreement and the rights and obligations under this Agreement may be assigned or transferred by any party with the consent of the other party, which shall not be unreasonably withheld, conditioned, or delayed. Petitioner may assign its interest in this Agreement to an affiliate or joint venture partner without the prior written consent of the ELBRA, provided, any such assignee shall acknowledge to the ELBRA in writing on or prior to the effective date of such assignment its obligations upon assignment under this Agreement provided, further, that the Petitioner may make a collateral assignment of the Tax Increment Revenues after review of such assignment and consent by ELBRA's legal counsel and approval of the ELBRA's administrative staff. As used in this paragraph, "affiliate" means any corporation, company, partnership, limited liability company, trust, sole proprietorship, estate planning entity, or other entity or individual which (a) is owned or controlled by such Petitioner, (b) owns or controls the Petitioner or (c) is under common ownership or control with such Petitioner. Notwithstanding any other

provision of this Agreement, sales, transfers and/or dispositions of any beneficial ownership interest in Petitioner shall not be deemed to require approval of the ELBRA.

15. Indemnification

If any activity allowed by this Agreement is alleged or deemed illegal or impermissible by a competent agency of the State of Michigan or court of law, then the party charged with that activity and any assignee will defend, indemnify and hold harmless the other party from any claim, demand or suit for damages, costs, penalties, losses or other relief arising from that activity.

16. 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.

17. 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.

18. Headings

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

19. Governing Law

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

20. 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. Facsimile or electronic signatures shall be deemed equivalent to an original.

21. 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 in East Lansing, Michigan, by their duly authorized representatives on the day and date first herein above written.

East Lansing Brownfield Redevelopment Authority

By: William L. Mansfield

Its: Chairperson

Date: _____ . 2015

**City Center Two Project, L.L.C.
a Michigan Limited Liability Company**

By:

Its: _____

Date: _____