

## **BROWNFIELD REIMBURSEMENT AGREEMENT**

THIS BROWNFIELD REIMBURSEMENT AGREEMENT (“Agreement”) is made as of the 18<sup>th</sup> day of September 2018, by and among 100 GRAND RIVER LLC, a Delaware limited liability company authorized to do business in Michigan, with offices at 540 West Madison, Suite 2500, Chicago, IL 60661 (collectively, “Owner”) 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 Abbott 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. Owner is the owner of the property commonly known as 100 to 140 W. Grand River Avenue, East Lansing, Michigan 48823 ( the “Owner’s Property”), as more fully described in the approved Amended Brownfield Plan #11, attached hereto. The Property has been determined to be “functionally obsolete,” “facility,” and “adjacent and contiguous.” The Property qualifies as an Eligible Property under Section 2 of the Brownfield Redevelopment Financing Act.

C. Owner plans to invest approximately \$102 million to redevelop the Property together with property owned by the East Lansing Downtown Development Authority (“DDA”) as a mixed-use project as described in the approved Amended Brownfield Plan #11 and a Development Agreement dated September 18, 2018 by and among Owner, the DDA, the City, and the ELBRA. Owner plans to undertake Eligible Activities as defined in the Brownfield Redevelopment Financing Act.

D. The DDA owns a certain parcel of real property in downtown East Lansing, comprising 303 Abbot Road (the “DDA Property,”; the Owner’s Property and the DDA Property are referred to collectively as the “Property”), as more fully described in the approved Amended Brownfield Plan #11, attached hereto, which it acquired for redevelopment, and which it wishes to be incorporated into the redevelopment to enhance the downtown by incorporating a mix of commercial and residential uses with improved infrastructure, roads and ways for motor vehicles, bicycles, and pedestrians and parking.

E. Owner will construct three buildings, Building A, Building C, and Building D and infrastructure improvements (“Infrastructure Improvements”) as identified on the approved site plan and in Amended Brownfield Plan #11. However, Building C is not part of the Amended Brownfield Plan #11 and not subject to tax capture.

F. The ELBRA plans to capture 100% of the increase in the real property taxes resulting from the redevelopment of the Property, except the partial retention of capture by the DDA as outlined in Schedule 3 of the Interlocal Agreement between the DDA and ELBRA, and use these funds to reimburse Owner to Amended Brownfield Plan #11 approved by ELBRA on September 6, 2018 and by the City of East Lansing on September 18, 2018 pursuant to the Brownfield Redevelopment Financing Act. Eligible activities and the costs of any activity may be adjusted after the date the Plan is approved by the ELBRA and City of East Lansing, so long as the reimbursement does not exceed the combined total of all eligible activity costs to Owner and the DDA in the amount of \$5,596,526.

G. 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;

“**Interlocal Agreement**” is the Interlocal Agreement to use Local Tax Increment Revenues for the Park District Brownfield Redevelopment Project/ Amended Brownfield Plan #11 for the City of East Lansing, between the City of East Lansing Downtown Development Authority and City of East Lansing Brownfield Redevelopment Authority, approved September 27, 2018.

“**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 Amended Brownfield Plan #11 approved by the ELBRA on September 6, 2018 (“Plan”) is attached hereto as Exhibit A and incorporated herein and as approved by resolution of the East Lansing City Council at its September 18, 2018 Council Meeting in accordance with Paragraph D, above. 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 and amendments thereto, the ELBRA shall capture 100% of the Tax Increment Revenues from the Eligible Properties, except the partial capture retained by the DDA as outlined in Schedule 3 of the Interlocal Agreement between the DDA and ELBRA, for such period of time as required for the purpose of paying costs of Eligible Activities to the Owner to cover the cost of Eligible Activities as set forth herein and allowed under Act 381.

**4. Eligible Activities**

Owner commits to diligently pursue all efforts necessary to complete the Eligible Activities set forth in Amended Brownfield Plan #11, and as it may be amended.

**5. Reimbursement Source**

Owner shall be reimbursed their 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 the Plan and this Agreement.

**6. Shortfall In Captured Taxes**

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

**7. 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.

**8. 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 Owner in the amounts, the order, and proportions of amounts due and owing as set forth in Amended Brownfield Plan #11. If all amounts due Owner and the DDA under this Agreement have been fully paid or the ELBRA is no longer obligated to make any further payments to the Owner, the ELBRA shall invoice Owner for the amount of such reimbursement and Owner shall pay the ELBRA such invoiced amounts within 30 days of Owner's receipt of the invoices. Amounts invoiced and paid to the ELBRA by Owner pursuant to this paragraph shall be reinstated as Eligible Activities costs for which the Owner 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 Owner to appeal any tax assessment.

**9. Transfer of Real Property**

In the event that Owner 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, on the parcel or parcels of real property that have been transferred. Such amendments will not be unreasonably withheld 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.

**10. Reimbursement Process**

(a) Beginning after the Letter of Approval has been issued and redevelopment has been substantially completed in accordance with the approved site plan, including substantial compliance with the conditions of site plan approval for Building A and Building D and the Infrastructure Improvements, Owner shall submit to the ELBRA a detailed written statement outlining the costs of Eligible Activities undertaken pursuant to the Plan ("Petition"). The request for reimbursement shall be in the form reasonably designated by the administrative staff of the ELBRA and consistent with the budget set forth in the Plan ("Approved Budget"). The Petition shall identify the Eligible Activities for Buildings A, D, and the Infrastructure Improvements consistent with the Plan. 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 Owner, and the representations, facts and documentation included therein shall be sworn to as accurate in the presence of a notary.

(b) The Petition 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 Owner. Owner and the DDA 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 in accordance with paragraph (c) below or identify in writing to Owner and/or the DDA any costs deemed ineligible for reimbursement and the basis for the determination. Owner and/or the DDA 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. Any disputes relating to this matter that cannot be resolved within 30 days thereafter shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof; provided, however, that any request for injunctive relief shall not be submitted to arbitration.

(c) After the taxes are captured and collected, the ELBRA shall pay approved costs for Eligible Activities to Owner from the taxes earmarked in accordance with the Plan and as adopted by the East Lansing City Council 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, and less DDA capture retention as outlined in Schedule 3 of the Interlocal 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 Owner for approved costs at a particular time from taxes captured from the sources identified herein for Owner, 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 repayment period to fully reimburse Owner, 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 or if the property falls out of substantial compliance with the approved site plan or any of the conditions of approval of the site plan unless lack of substantial compliance is beyond the control of Owner. 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 Owner, checks shall be made payable to the following:

100 Grand River LLC  
Att'n: David B. Nelson  
540 West Madison, Suite 2500  
Chicago, IL 60661

**11. LEED Certification**

In lieu of having the project certified at the LEED “Certified” level per the City Council’s Policy Resolution 2009-1 (Green Building Policy), the Owner shall have a design professional with LEED AP credentials demonstrate how the project meets the minimum scoring criteria as established by the U.S. Green Building Council for LEED v4 standards “Certified” level. Reimbursement may be withheld at the discretion of the ELBRA if this requirement is not met.

**12. 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 Owner’s rights and the ELBRA’s obligations under this Agreement shall be eliminated or modified accordingly.

**13. Freedom of Information Act**

Owner and the DDA stipulate that all Petitions 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, Petitions for Reimbursement and supporting documentation.

**14. 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.

**15. 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.

**16. Assignment**

This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other party, which shall not be unreasonably withheld, provided, however, the Owner may assign its interest in this Agreement to an affiliate 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 Owner or the DDA 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, as to Owner, “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 Owner, (b) owns or controls Owner or (c) is under common ownership or control with Owner. Notwithstanding any other provision of this

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

**17. 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. To the extent this provision results in the ELBRA as an indemnifying party, the amount of indemnification is governed by paragraphs 5 and 6 of this Agreement.

**18. 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.

**19. 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.

**20. Headings**

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

**21. Governing Law**

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

**22. 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.

**23. 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 effective as of the day and date first herein above written.

[signatures on following page]

**East Lansing Brownfield Redevelopment Authority**

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By: Peter Dewan  
Its: Chairperson

**100 Grand River LLC**

By: Convexity Management, LLC  
Its Manager

By \_\_\_\_\_  
David B. Nelson  
Its Vice President