



AGENDA
CHARTER TOWNSHIP OF MERIDIAN
BROWNFIELD REDEVELOPMENT AUTHORITY
January 16, 2020 8AM

1. CALL MEETING TO ORDER
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES FROM DECEMBER 19, 2019
4. PUBLIC REMARKS
5. NEW BUSINESS
6. OLD BUSINESS
 - A. 2360 Jolly Road Brownfield Plan reimbursement agreement
 - B. New bank account resolution
7. PUBLIC REMARKS
8. ADJOURNMENT

NEXT MEETING: February 20, 2020 at 8AM

Individuals with disabilities requiring auxiliary aids or services should contact:
Principal Planner Peter Menser, 5151 Marsh Road, Okemos, MI 48864 or 517.853.4576 - Ten Day Notice is Required.
Meeting Location: 5151 Marsh Road, Okemos, MI 48864 Township Hall

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CHARTER TOWNSHIP OF MERIDIAN
BROWNFIELD REDEVELOPMENT AUTHORITY
REGULAR MEETING MINUTES

DRAFT

December 19, 2019
5151 Marsh Road, Okemos, MI 48864-1198
517-853-4560, Town Hall Room, 8:00 A.M.

PRESENT: Township Manager Frank Walsh, Vice-Chair Jeff Theuer, Joyce Van Coevering, John Matuszak, Jade Sims, Ned Jackson
ABSENT: Director Jackson
STAFF: Treasurer Phil Deschaine, Principal Planner Peter Menser
OTHER: Township brownfield consultant representative Dave Van Haaren, Township Attorney Matt Kuschel

1. **Call meeting to order**

Vice-Chair Theuer called the regular meeting to order at 8:00 a.m.

2. **Approval of Agenda**

Director Sims moved to approve the agenda as written.

Supported by Manager Walsh.

VOICE VOTE: Motion carried unanimously.

3. **Approval of Minutes**

Manager Walsh moved to approve the meeting minutes of October 17, 2019 as written.

Supported by Director Van Coevering.

VOICE VOTE: Motion carried unanimously.

4. **Public Remarks** – None

5. **New Business**

A. 2360 Jolly Road brownfield plan reimbursement agreement

Principal Planner Menser provided an introduction to the reimbursement agreement. Township Attorney Matt Kuschel described the provisions of the agreement and answered questions from the BRA. BRA discussion included the following:

- Agreement to serve both for the brownfield plan under consideration as well as template for future agreements
- Agreement establishes BRA first in line for payments from TIF
- Consideration over language related to tax appeal provision
- Belief most communities do not prohibit property owners from filing tax appeals
- Tax appeal process overview
- Understanding that tax appeals going to tax tribunal is rare situation
- Explanation of tax appeal process and related costs
- BRA preference to strike last sentence of paragraph 9 on page 4 related to tax appeal
- Township Manager preference to select alternative method of dispute resolution other than arbitration process

- Explanation as to the difference between arbitration and mediation
- BRA preference to amend Section G on page 7 to use mediation process
- Suggestion and agreement that parties in dispute first attempt to agree to mediator and only use American Arbitration Association (AAA) to select mediator if necessary
- BRA concern over term “petition” in Section G on page 12
- BRA preference to add language to limit petition to only those items described in Section 12

The BRA decided to hold off on a vote on the reimbursement agreement pending changes as to the document by the Township Attorney as discussed at the meeting. The agreement will be on the January 16, 2020 BRA agenda for action.

B. 2020 Meeting schedule

Principal Planner Menser introduced the 2020 BRA meeting schedule

C. BRA Election of Officers

Principal Planner provided an overview of the BRA bylaws as they related to the election of officers in light of the resignation of BRA Chair John Scott-Craig. The BRA decided to hold off on making any changes in BRA leadership until its meeting on January 16, 2020.

6. **Old Business**

A. New bank account resolution

Treasurer Deschaine noted the resolution to establish a new bank account for the BRA needs to be amended and said he would have it back at the BRA’s next meeting on January 16, 2020.

8. **Public Remarks** - None

9. **Adjournment**

The meeting was adjourned at 8:52 a.m.

Respectfully Submitted,

Peter Menser
Principal Planner

BROWNFIELD REIMBURSEMENT AGREEMENT

THIS BROWNFIELD REIMBURSEMENT AGREEMENT (“Agreement”) is made between 2360 Jolly Road, LLC, with its address at 2410 Woodlake Drive, Okemos, MI 48864 (collectively, “Developer”), and the MERIDIAN TOWNSHIP BROWNFIELD REDEVELOPMENT AUTHORITY (“MTBRA”), established by the Charter Township of Meridian pursuant to the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended, being MCL 125.2651 *et seq.*, (“Brownfield Act”) with its address at 5151 Marsh Road, Okemos, Michigan 48864.

RECITALS

A. The primary purpose of the MTBRA, pursuant to the Brownfield Redevelopment Financing Act, is to encourage the redevelopment of contaminated, functionally obsolete, and blighted property within the Charter Township of Meridian (“Township”) by providing financial and tax incentives, without which the redevelopment would not be economically feasible.

B. Developer is the owner and/or has control of the property commonly known as 2360 Jolly Road, Okemos, MI 48864, (“Property”), as more fully and legally described in the approved Brownfield Plan approved by MTBRA on August 15, 2019 and by the Township on October 1, 2019 pursuant to the Brownfield Act (“Plan”), attached as **Exhibit A**. The Property is included in the Brownfield Plan as a “Facility” and “Eligible Property” due to the presence on the Property of certain hazardous substances as described in the Brownfield Act, as amended, and is therefore commonly referred to as a “brownfield.”

C. Developer plans to redevelop the Property as small business space, including three commercial business spaces (the “Improvements”) as described in the Plan. The Improvements are expected to create temporary construction jobs and new full-time jobs, increase the tax base within the Township, and otherwise enhance the economic vitality and quality of life within the Township. Developer will undertake Eligible Activities as defined in the Brownfield Redevelopment Financing Act.

D. In order to make the Improvements on the Property, the Developer will incur costs associated with Eligible Activities—including Phase I and II ESA and BEA activities, due care activities, demolition activities, hazardous material survey and abatement activities, additional response activities, and preparation of Brownfield Plan—each of which will also require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The reimbursement obligations to be paid the Developer associated with the Eligible Activities, including contingencies, are estimated to be \$379,700.

E. The MTBRA plans to capture the increase in the real property taxes resulting from the redevelopment of the Property and use these funds to reimburse Developer pursuant to the Plan and the Act. Eligible Activities and the costs of any activity may be adjusted after the date the Plan is approved by the MTBRA and the Township, so long as the reimbursement does not exceed the combined total of all Eligible Activity costs to Developer in the Plan.

F. The MTBRA has incurred and will incur certain expenses in the preparation and approval of the Brownfield Plan and will incur expenses in the administration of the Brownfield Plan (the “Administrative Costs”), for which it may seek reimbursement from Tax Increment Revenues, and to fund a local site remediation revolving fund pursuant to the Brownfield Act.

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.** Unless otherwise specifically indicated, the words and phrases used in this Agreement shall have the definitions attributed to them in Section 2 of the Brownfield Redevelopment Financing Act, as of the effective date of this Agreement.

2. **The Plan.** The Brownfield Plan approved by the MTBRA and as approved by the Township Board (“Plan”) on October 1, 2019 is incorporated herein by reference. 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 the Plan control. To the extent provisions of the Plan, and any amendment to the Plan, or this Agreement conflicts with the Brownfield Redevelopment Financing Act, the Act controls.

3. **Effective Date and Term.** This Agreement is effective as of the last signature below and shall remain in effect for the duration of the Plan or until the costs of Eligible Activities, as outlined in the Plan, and all other costs and expenses are reimbursed or paid as provided for in the Plan.

4. **Tax Capture.** Pursuant to the Plan and amendments thereto, the MTBRA shall capture the Tax Increment Revenues collected from Local Taxes imposed on eligible real property and personal property for such period of time as required for paying costs of Eligible Activities to the Developer, to pay for administrative costs, to fund the local brownfield revolving fund, and any other allowed expenditure under the Plan and the Brownfield Act.

5. **Eligible Activities.** Developer shall diligently pursue all efforts necessary to complete the Eligible Activities set forth in the Plan, and as it may be amended. No activities that would otherwise be Eligible Activities, if completed after July 1, 2021 shall be considered Eligible Activities for the purposes of reimbursement under this Agreement. This deadline may be extended at the reasonable discretion of the MTBRA by written amendment of this Agreement.

6. **Reimbursement Source.** Developer shall be reimbursed its costs for Eligible Activities solely from the Tax Increment Revenues collected from Local Taxes imposed on eligible real property and personal property representing property improvements in accordance with the Plan and this Agreement.

7. **Shortfall in Captured Taxes.** The MTBRA or the Township shall not be responsible for reimbursing any costs if Tax Increment Revenues through the duration of the Plan are

insufficient to cover said costs. Developer shall not have any further recourse of any kind or nature against the Township or MTBRA but in the event that Local Taxes or Tax Increment Revenues are insufficient to reimburse all costs, the Developer assumes financial responsibility for any unreimbursed shortfall.

8. Payment of Administrative Expenses. The administrative or operating expenses of the MTBRA per the Plan shall be paid first from available Tax Increment Revenues prior to any reimbursement commencing with the first year of capture under the Plan. The MTBRA shall document actual administrative and operating expenses and the balance between documented costs and annual Tax Increment Revenues shall be transferred to reimburse the Developer for the actual costs of Eligible Activities.

9. Adjustments. If, due to an appeal of any tax assessment or reassessment of any portion of the Property or for any other reason the MTBRA is required to reimburse any Tax Increment Revenues to the Township or any other tax levying jurisdiction, the MTBRA may deduct the amount of any such reimbursement, including interest and penalties, from any amounts due and owing Developer, in the amounts, the order, and proportions of amounts due and owing as set forth in the Plan. If all amounts due Developer under this Agreement have been fully paid or the MTBRA is no longer obligated to make any further payments to the Developer, the MTBRA shall invoice Developer for the amount of such reimbursement and Developer shall pay the MTBRA such invoiced amounts within 30 days of Developer's receipt of the invoices. Amounts invoiced and paid to the MTBRA by Developer pursuant to this paragraph shall be reinstated as Eligible Activities costs for which the Developer shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement.

10. Transfer of Real Property. In the event that Developer 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 MTBRA. 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.

11. MTBRA Review. The MTBRA may exercise review of 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 will provide any authorized representative of the MTBRA access to or copies of data, reports, testing or sampling results, invoices or other such documents reasonably necessary for such review. The MTBRA, EGLE, or MEDC, shall also be given access to the Property in order to review any Eligible Activities or perform any other obligations under this Agreement. The MTBRA shall give the Developer at least 24 hours' notice, except in the case of an emergency or exigent circumstance. Except for the right to review the Developer's compliance with this Agreement, nothing in this Agreement shall be interpreted to give the MTBRA any right to exercise control over the performance of Eligible Activities by the Developer. It is expressly understood and agreed that the Developer, and its subcontractors, and sub-subcontractors are independent contractors.

12. Reimbursement Process. Developer shall only seek reimbursement for actual costs to perform the Eligible Activities, in accordance with the approved Plan.

A. Estimates Submitted Before Activities. Prior to the initiation of Eligible Activities, the Developer shall submit information to the MTBRA that includes, when applicable:

- i. Estimates of quantities and cost for remediated soil or water based on characterizations provided by the Developer's environmental consultant, engineers, or architects;
- ii. Contract cost proposals from qualified and certified contractors for the environmental and non-environmental Eligible Activities to be conducted;
- iii. A schedule of Eligible Activities and estimates of tasks, hours; and
- iv. Costs for project oversight, administration and reporting.

- B. Petition Submission Required After Activities. At any time after Developer incurs previously estimated costs for Eligible Activities, Developer may submit to the MTBRA Petitions for cost reimbursement for Eligible Activities paid by and on behalf of the Developer. All requests shall be in a form approved by MTBRA. The Petition shall identify whether the Eligible Activities are:
- i. Baseline Environmental Assessment Activities;
 - ii. Due Care Activities;
 - iii. Additional Response Activities;
 - iv. Demolition Activities;
 - v. Lead and Asbestos Abatement Activities; or
 - vi. Other Eligible Activities permitted under the Act, which shall be identified by Developer.
- C. Petition Requirements. The Petition shall describe each individual activity claimed as an Eligible Activity and the associated costs of each individual activity. The Petition shall include:
- i. How the Eligible Activities are consistent with the Plan;
 - ii. Documentation of the costs incurred sufficient to determine whether the costs incurred were for Eligible Activities;
 - iii. Lien waivers, if available;
 - iv. Proof of payment and detailed invoices for the costs incurred; and
 - v. Be signed and notarized by a duly authorized representative of Developer that the representations, facts and documentation included therein are accurate.
- D. No Guarantee. It is expressly agreed that the MTBRA makes or gives no assurance of payment to the Developer by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Plan, and that the MTBRA shall have the right to review and approve or deny reimbursement for any invoices or Petitions for Eligible Activities under this Agreement.

- E. MTBRA Review. MTBRA or its authorized committee or agent shall review a Petition within thirty (30) days after its receipt. Developer shall cooperate in MTBRA's review by providing information and documentation to supplement the Petition as deemed reasonable and necessary by MTBRA or its subcommittee or agent. Any and all line items in a Petition which are not objected to by MTBRA at its next regularly scheduled meeting after 30 days shall be approved for payment as provided for herein. MTBRA may object to some lines or items within a Petition without objecting to the entire Petition, in which case those lines or items not objected shall be considered approved.
- F. Insufficiency Determination. MTBRA may object to any Petition or any portion, line, or item of any Petition, may determine that insufficient information has been provided, may dispute any portion of any payment request or Petition, or may dispute the eligibility of any cost or activity of any Petition. MTBRA shall notify the Developer in writing of its determination and the reasons for its determination. The Developer then has thirty (30) days in which to provide supplemental information or documents in support of any costs deemed ineligible. During this thirty (30) day period, an authorized representative of the MTBRA and Developer shall, upon the request of either party, promptly meet to discuss the information, documentation, or other conditions are required for approval of the objected request.
- G. Mediation of Disputes. Any disputes relating to Petitions under paragraph 12 or Eligible Activities that cannot be resolved within 30 days thereafter shall be submitted to non-binding mediation with a mediator mutually agreed upon by the parties. If the parties cannot agree upon a mediator, then a mediator will be selected in accordance with the rules of the American Arbitration Association. However, any request for equitable, injunctive, or mandamus relief is not required to be submitted to mediation. If mediation is unsuccessful, the parties may enforce their rights through litigation in a court of competent jurisdiction.

- H. Waiver of Liens. The Developer shall also provide written proof to the MTBRA of waiver of liens by any consultant, contractors, and subcontractors performing services or providing materials for the Improvements or Eligible Activities under the Plan prior to any Tax Increment Revenue reimbursement.
- I. Litigation or Pending Litigation. The MTBRA'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 Township, or the MTBRA is a party, or threatened against the Developer, the Township, or the MTBRA 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 a material adverse effect upon the ability of the MTBRA to collect and use Tax Increment Revenues to pay the obligations; a material adverse effect upon the ability of the Developer to conduct Eligible Activities; or any other material adverse effect on the Developer's or the MTBRA's ability to comply with the obligations and terms of this Agreement, or the Plan.

13. Payment of Approved Petitions. After the taxes are captured and collected, the MTBRA shall reimburse Developer for approved costs of Eligible Activities from the Tax Increment Revenues available in accordance with this Agreement, the Plan, and the Brownfield Act less administrative and other expenses as set forth in this Agreement and the Plan. Payment is anticipated twice a year, after the summer and winter taxes are captured and collected. In the event there are insufficient funds available from Tax Increment Revenue to fully reimburse Developer for approved costs at a particular time then MTBRA's repayment obligation shall carry forward to the next period in which Tax Increment Revenues are available and repayment shall be made at that time. The MTBRA shall not be responsible for reimbursing any costs if Tax Increment Revenues are insufficient to cover said costs.

For Developer, checks shall be made payable to: 2360 Jolly Road, LLC

Delivered to the following address: 2410 Woodlake Drive, Suite 400, Okemos, Michigan 48864
By certified mail

14. Expiration of Reimbursement Obligation. The reimbursement obligation under this Agreement shall expire at the earliest of the following:

- A. Payment by MTBRA to the Developer of all amounts due to Developer under this Agreement;
- B. Expiration of the reimbursement period as defined in the Plan; or
- C. Expiration of the reimbursement period as defined in the Brownfield Act.

15. Maximum Reimbursement Amount. The amount to be reimbursed under this Agreement shall not exceed the following, whichever is less:

- A. The maximum amount of Eligible Activities in the Plan; or
- B. The maximum amount of approved costs for Eligible Activities as determined by this Agreement.

16. Delinquent Real Property Taxes. The MTBRA may withhold reimbursement of Eligible Activities or payment 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 Developer. Upon payment of all delinquent real property taxes or cure of site plan deficiencies, the MTBRA shall effectuate reimbursement of available Tax Increment Revenues for approved costs of Eligible Activities provided all other terms under this Agreement are met.

17. Tax Appeals. Developer and MTBRA have entered into the Plan and this Agreement in reliance on certain assumptions about the increase in taxable value of the Property created from the Improvements. Developer agrees that any appeal of its property tax assessments of or related to the Property will apply only to the current tax year in which the appeal is made and Developer, on behalf of itself and any current or future tenants, expressly waives any right to reimbursement for previous years' taxes. The Developer also expressly acknowledges any tax appeal may impact the MTBRA's ability to reimburse the Developer's Eligible Activities or other obligations under this Agreement and expressly waives any claim against the Authority

that result from any tax appeal filed by the Developer. Developer agrees that if there is an appeal of the tax assessments of or related to the Property whether by Developer, a current or future tenant, or any other future developer, and any resulting valuation of all or part of the Property is below the assessed value identified in the Plan during the capture for reimbursement of Eligible Activities and local brownfield revolving fund deposits requiring the MTBRA to reimburse a taxpayer for any funds paid to the Developer, Developer shall be responsible for repaying the Authority as outlined in paragraph number 9 captioned “Adjustments.”

18. Insurance. The Developer or any contractor(s) or subcontractor(s) shall purchase and maintain insurance not less than the limits set forth below. The Developer or contractor(s) and subcontractor(s) shall maintain such other insurances as it deems appropriate for its own protection.

- A. Worker’s Compensation. Worker’s Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability. 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;
 - iii. Completed Operations;
 - iv. Independent Contractors Coverage;
 - v. Broad Form General Liability Endorsement or Equivalent.
- C. Motor Vehicle. 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. Contractor’s Pollution Liability. Contractor’s Pollution Liability Insurance provided by Contractors, subcontractors and site work contractors engaging in environmental response 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 (with first party and third party coverage).

- E. Additional Insured. All policies issued or required under this Agreement or the Plan shall have an endorsement including the Charter Township of Meridian and the Meridian Township Brownfield Redevelopment Authority as additional insured.
- F. Cancellation Notice. It is understood and agreed that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change shall be sent to the MTBRA except for cancellation for non-payment of premium for which ten (10) days advanced written notice shall be given to the MTBRA.
- G. Proof of Insurance. The Developer shall make copies available to the MTBRA of certificates of insurance, declarations, and endorsements for any policy mentioned upon request. If requested, certified copies of all policies will be furnished to the MTBRA.

19. Default. Upon the occurrence of an event of default, the non-defaulting party shall give 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 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 MTBRA, in its sole discretion, determines that any cure proposed by the Developer may take more than 30 days to complete, the MTBRA may permit the Developer to complete the cure in a time and manner agreeable to the MTBRA. 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.

20. Accounting Procedures. Developer shall maintain the financial information and data used in support of the requests for reimbursement for Eligible Activities in accordance with generally accepted accounting principles consistently applied in accordance with its past practices. The MTBRA shall have access to these records during normal business hours, provided the MTBRA submits a request to the Developer to review the records with reasonable advance notice. The Developer's accounting procedures and internal financial controls shall conform to generally accepted accounting principles consistently applied in accordance with its past practices in order that the costs allowed by this Agreement can be readily ascertained and expenditures verified therefrom.

21. Permits. The Developer shall obtain and maintain all permits and licenses pertaining to the Project that are required by federal, state, or local law, and shall provide copies to the MTBRA, or allow its inspection, upon request. The Developer shall immediately advise the MTBRA of any suspension loss or surrender of any such permit or license. Nothing in this Agreement shall abrogate the effect of any local ordinance.

22. Audit of MTBRA. In addition to any other remedies provided in this Agreement, if any payment made by the MTBRA is determined by audit, the State of Michigan, or a court of appropriate jurisdiction to be improper or outside of the scope of obligations under this Agreement, or in the event of the Developer's breach or default of this Agreement, the Developer shall, at the request of the MTBRA, repay or return any monies paid by the MTBRA that are directly related to the breach, default or improper payment, within sixty (60) days of notice, given in writing by the MTBRA. Failure to remit said funds will result in a late fee penalty in the amount of an additional 10%, accrued annually from the date of notice of the outstanding balance.

23. Indemnification and Hold Harmless. The Developer indemnifies, defends and holds harmless the MTBRA, the Township, and their officers, officials, employees, and agents from all claims, liability, damages, lawsuits, settlements, costs and expenses, including without limitation reasonable attorneys' fees, that are incurred as a result of any acts, errors, omissions or negligence of the Developer, or their members, officers, directors, managers, affiliates, employees, agents, consultants, contractors or subcontractors, successors, or assigns related to its performance under this Agreement. This indemnification obligation includes any damages, amounts, costs and expenses, regardless of whether the same are in excess of any limits set forth in any policy of insurance of the Developer. The Developer hereby indemnifies the MTBRA, the Township, and any of the listed entities' officers, officials, employees and agents from all reasonable costs and expenses, including without limitation attorneys' fees, incurred in the enforcement of any obligation or claim against or by any Developer that arises out of, in connection with, or relates to this Agreement. These indemnification provisions will survive the termination of this Agreement. Nothing contained in this Agreement shall be construed or interpreted as a waiver of any immunity provided under state or federal law, which immunities

and protections afforded thereby are hereby acknowledged by the Parties to be in full force and effect.

24. 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 of Developer's rights and the MTBRA's obligations under this Agreement may be eliminated or modified accordingly.

25. Freedom of Information Act. Developer stipulates 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 MCL 15.231 *et seq.* 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.

26. Plan Modification. The Plan may be modified to the extent allowed under the Brownfield Act by mutual agreement in writing of the Parties.

27. Notices. All notices shall be given by registered or certified mail addressed to the parties at their respective addresses in this Agreement. Either party may change the address by written notice sent by registered or certified mail to the other party.

28. 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. Developer may make a collateral assignment of the Tax Increment Revenues after review of such assignment by MTBRA's legal counsel and approval of the MTBRA's administrative staff, which shall not be unreasonably withheld. A copy of any assignment shall be provided to the MTBRA within 10 days of the execution thereof.

29. **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 except as contained herein.

30. **Severability.** If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement.

31. **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.

32. **No Third Party Beneficiaries.** This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in any 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.

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

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

35. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

37. **Authorization to Sign.** The people signing on behalf of the parties to this Agreement certify by their signatures that they are duly authorized to sign this Agreement on behalf of the party they represent and that this Agreement has been authorized by the party they represent.

In witness whereof the parties have executed this agreement, by their duly authorized representatives, as of the last date set forth below.

**MERIDIAN TOWNSHIP BROWNFIELD
REDEVELOPMENT AUTHORITY**
a public body corporate

Developer

By:
Its: Chair

By:
Its: Authorized Representative

Date: _____

Date: _____