



AGENDA
CHARTER TOWNSHIP OF MERIDIAN
BROWNFIELD REDEVELOPMENT AUTHORITY
October 17, 2019 8AM

1. CALL MEETING TO ORDER
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES FROM AUGUST 15, 2019
4. PUBLIC REMARKS
5. NEW BUSINESS
 - A. Elevation at Okemos Pointe Brownfield Plan reimbursement agreement
 - B. New bank account resolution
6. OLD BUSINESS
 - A. 2360 Jolly Road brownfield plan update
7. PUBLIC REMARKS
8. ADJOURNMENT

NEXT MEETING: Thursday, November 21, 2019 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

August 15, 2019

5151 Marsh Road, Okemos, MI 48864-1198

517-853-4560, Town Hall Room, 8:00 A.M.

PRESENT: Chairperson John Scott-Craig, Vice-Chair Jeff Theuer, Joyce Van Coevering (via telephone), John Matuszak, Jade Sims, Ned Jackson
ABSENT: Township Manager Frank Walsh
STAFF: Director of Community Planning & Development Mark Kieselbach, Economic Development Director Chris Buck, Treasurer Phil Deschaine, Assistant to the Treasurer Mary Ann Groop, Principal Planner Peter Menser
OTHER: Township brownfield consultant representative J.P. Buckingham

1. **Call meeting to order**

Chairperson Scott-Craig called the regular meeting to order at 8:03 a.m.

2. **Approval of Agenda**

Vice-Chair Theuer moved to approve the agenda as written.

Supported by Director Matuszak.

VOICE VOTE: Motion carried unanimously.

3. **Approval of Minutes**

Director Sims moved to approve the meeting minutes of July 18, 2019 as written.

Supported by Director Matuszak.

VOICE VOTE: Motion carried unanimously.

4. **Public Remarks** – None

5. **New Business**

A. Village of Okemos brownfield introduction

Consultant on the project Eric Helzer provided an introduction to the financing for the Village of Okemos project. His presentation included the following:

- Overview of different financial tools and resources to fund the project
- Preference by development team to seek grants for remediation and demolition
- Project has received EGLE grant for environmental clean up
- Financing divided between DDA and Brownfield TIF
- Traditional financing not often available for environmental cleanup activities
- Shortfall in revenue to support infrastructure improvements
- Michigan Strategic Fund used to address shortfall
- Application is planned for the Meridian Redevelopment Fund
- Current work on site being funded by EGLE
- Contamination on site mostly chlorinated solvents and petroleum
- Private infrastructure funded by DDA TIF

- Project addressing issues related to aged infrastructure
- Project will exhaust all grants/loans prior to TIF financing
- Brownfield plan expected late 2019
- TIF funds used 1st to payback loan then to payback TIF

B. Environmental contamination process discussion

Janet Michaluk from ELGE took questions from the BRA regarding the process used to test and verify contamination and cleanup activities funded using the brownfield TIF process. BRA discussion included the following:

- Contamination identified by historical research and on-site testing
- Testing samples taken to labs certified/accredited at the state and national level
- Samples verified at lab with multiple tests
- Due diligence and baseline environmental assessments provide some protection for buyers, in most cases
- If previous owner or party is liable for contamination and viable to pay they may be required to do so
- Brownfield program is intended to cleanup properties for benefit of entire community
- Individual residences are typically not eligible for TIF funding

6. **Old Business**

A. 2360 Jolly Road brownfield plan

Township Brownfield Consultant J.P. Buckingham from Triterra provided an overview of the revisions made to the brownfield plan. Consultant for the applicant Eric Helzer summarized the reasons behind the changes, which stemmed from a meeting with the Township Assessor.

Motion by Director Matuszak to recommend approval of the 2360 Jolly Road brownfield plan.

Supported by Vice-Chair Theuer.

VOICE VOTE: Motion approved unanimously.

B. Elevation at Okemos Pointe Brownfield Plan Amendment Update

Principal Planner Peter Menser updated the BRA on the brownfield plan, which was approved by the Township Board at its meeting on August 8, 2019. The next step in the process is to develop a reimbursement agreement for consideration by the BRA.

8. **Public Remarks**

Treasurer Phil Deschaine thanked the members of the BRA for their efforts and service and voiced his continued support for brownfields as a valuable tool for the community.

Environmental Commission Chairperson Bill McConnell made a comment noting that wetland use permit criteria includes criteria related to public/private needs and interest and appreciates the ongoing discussion regarding those items in the context of brownfields.

9. **Adjournment** – The meeting was adjourned at 9:00 a.m.

Respectfully Submitted,

Peter Menser
Principal Planner

BROWNFIELD REIMBURSEMENT AGREEMENT – PLAN AMENDMENT NO 1

THIS AGREEMENT (the “Agreement”) is entered into by and between the **MERIDIAN TOWNSHIP BROWNFIELD REDEVELOPMENT AUTHORITY** (the “Authority”), an authority established pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of Michigan of 1996, as amended, being MCL 125.2651 et seq. (hereinafter referred to as “Act 381”), whose address is 5151 Marsh Road, Okemos, Michigan 48864; and **OKEMOS POINTE, LLC**, whose address is 2422 Jolly Rd., Suite 200, Okemos, Michigan 48864 (“Okemos Pointe”), **OKEMOS POINTE I, LLC**, whose address is 2422 Jolly Rd., Suite 200, Okemos, Michigan 48864 (“Okemos Pointe I”), **OKEMOS POINTE II, LLC**, whose address is 2422 Jolly Rd., Suite 200, Okemos, Michigan 48864 (“Okemos Pointe II”), and **OKEMOS POINTE III, LLC**, whose address is 2422 Jolly Rd., Suite 200, Okemos, Michigan 48864 (“Okemos Pointe III”) (Okemos Pointe, LLC, Okemos Pointe, LLC I, II, & III are individually and severally referred to as “Developer”).

RECITALS

A. Pursuant to Act 381, the Authority prepared a Brownfield Plan that was duly approved by the Township Board of the Charter Township of Meridian.

B. Pursuant to Act 381, the Authority prepared a Brownfield Plan Amendment No. 1 that was discussed and recommended for approval to the Township Board on June 20, 2019.

C. The Township Board held a public hearing on the Plan Amendment on July 23, 2019 and duly approved the Plan Amendment on August 8, 2019.

D. The Developer owns six parcels of property in the Charter Township of Meridian, Michigan, legally described in the Elevation at Okemos Pointe Brownfield Redevelopment Plan Amendment No. 1 and as of the date of that plan bearing Tax ID numbers 33-02-02-33-376-010,

33-02-02-33-353-015, 33-02-02-33-329-002, 33-02-02-33-376-011, 33-02-02-33-33-376-012, and 33-02-02-33-329-100. 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 Plan, as amended, and is therefore commonly referred to as a “brownfield.”

E. The Developer plans to redevelop the Property, for a new mixed use planned unit development (the “Improvements”). 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.

F. Act 381 permits the use of the real and personal property tax revenues generated from the increase in value to brownfield sites constituting Eligible Property under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs of conducting activities that meet the requirements under Act 381 of “Eligible Activities” and, unless the property owner or developer is a “liable party” for the site contamination, permits the reimbursement to the property owner or developer of “Eligible Costs” incurred by the property owner or developer.

G. 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, lead and asbestos survey and abatement activities, additional response activities, and preparation of Brownfield Plan and Act 381 Work Plan—each of which will also require the services of various contractors, engineers, environmental consultants, attorneys and other professionals (the “Eligible Costs”). The Eligible Costs, including contingencies, are estimated to be \$5,898,251.

H. In accordance with Act 381 and the Brownfield Plan, the parties desire to use the Tax Increment Revenues that are generated from an increase in the taxable value of the Property resulting from its development to reimburse the Developer for Eligible Costs.

I. The parties are entering into this Agreement to establish the procedure for the reimbursement from Tax Increment Revenues under Act 381.

J. The Authority has incurred and will incur certain expenses in the preparation and approval of the Brownfield Plan and Act 381 Work Plan (the “Eligible Costs”) and will incur expenses in the administration of the Brownfield Plan (the “Administrative Costs”), for which it may seek reimbursement from Tax Increment Revenues (as defined below).

NOW, THEREFORE, the parties agree with each other as follows:

1. **Definitions**

“Additional Response Activities” are defined by Section 2(a) of Act 381;

“Baseline Environmental Assessment Activities” is defined by Section 2(d) of Act 381;

“Brownfield Plan” is defined by Section 2(g) of Act 381;

“Due Care Activities” is defined by Section 2(l) of Act 381;

“Eligible Activities” is defined by Section 2(n) of Act 381;

“Eligible Property” is defined by Section 2(o) of Act 381;

“Facility” is defined by Section 2(q) of Act 381;

“Local Taxes” is defined by Section 2(y) of Act 381;

“Tax Increment Revenues” is defined by Section 2(ii) of Act 381.

2. **The Plan**

The Elevation at Okemos Pointe Brownfield Redevelopment Plan Amendment No. 1 (the “Plan”) is attached as Exhibit B and incorporated herein. To the extent provisions of the Plan

conflict with this Agreement, the terms and conditions of this Agreement control. To the extent provisions of the Plan or this Agreement conflicts with Act 381, Act 381 controls.

3. **Term of Agreement**

Pursuant to the Plan, the Authority shall capture the Tax Increment Revenues generated from Local Taxes imposed on the Property until all approved activities in the Plan are reimbursed as outlined in the Plan.

4. **Eligible Activities**

Before the date of this Agreement, the Developer may have initiated activities that may be submitted with a Request for Cost Reimbursement for Eligible Activities. The Authority shall reimburse the Developer for Eligible Costs that were incurred before this Agreement if permitted under Act 381 and approved by the Authority. The Developer shall diligently pursue completion of the Eligible Activities set forth in the Plan. Pursuant to Section 3 of the Plan, Eligible Costs shall include such costs incurred at any time prior to and after adoption of the Plan. Approved and authorized reimbursements under the original reimbursement as assigned to and accepted by the Authority remain valid eligible activities and valid reimbursements, if permitted under Act 381.

5. **Reimbursement Source**

During the term of this Agreement, the Authority shall capture the Tax Increment Revenues collected from Local Taxes imposed on the Property (including both real and personal property) and use those Tax Increment Revenues to reimburse the Developer's Eligible Costs according to this Agreement. Such reimbursement must be derived from the capture of Tax Increment Revenues only, and all expenses shall be submitted to the Authority pursuant to the terms and conditions of this Agreement.

6. **Allocation of Captured Taxes**

- A. Local captured Tax Increment Revenues in an amount identified in the Brownfield Plan will be first allocated for any Authority Administrative and Operating Expenses for work plan review and approval costs incurred by the Authority. The Authority shall document actual Administrative and Operating Expenses and the balance between actual costs and annual allocation shall be transferred to reimburse the Developer for the actual costs of Eligible Activities.
- B. The balance of local captured Tax Increment Revenues will be allocated for reimbursement of actual costs of Eligible Activities by the Developer.

7. **Reimbursement Process**

- A. Prior to the initiation of Eligible Activities, the Developer shall submit information to the Authority that includes, when applicable:
- 1) estimates of quantities and cost for remediated soil or water based on characterizations provided by the Developer's environmental consultant, engineers, or architects;
 - 2) contract cost proposals from qualified and certified contractors for the environmental and non-environmental Eligible Activities to be conducted;
 - 3) a schedule of Eligible Activities and estimates of tasks, hours; and
 - 4) costs for project oversight, administration and reporting. Administrative review and approval or denial of the activities will be provided within two (2) weeks of submittal.

- B. **Administrative Agent.** Okemos Pointe, Okemos Pointe I, Okemos Pointe II, and Okemos Pointe III, each individual developer irrevocably appoint, delegate, and assign **Okemos Point II** as its **Administrative Agent** authorized to submit Petitions to the Authority for reimbursements of Eligible Costs under this Agreement. The Authority shall only accept Petitions and requests for cost reimbursement from the Administrative Agent. Petitions solely and individually submitted by Okemos Pointe, Okemos Pointe I, and Okemos Pointe III shall be rejected by the Authority.
- C. **Indemnification.** The Developer shall indemnify, defend and hold harmless the Authority, the Township, and their officers, employees, and agents from all claims, damages, lawsuits, costs and expenses, including reasonable attorney fees, incurred as a result of any acts, omissions or negligence of the Administrative Agent or its employees, agents, consultants, contractors or subcontractors related to its performance under this Agreement. This indemnification includes any and all damages, costs and expenses in excess of those covered by any insurance of the Administrative Agent. The Administrative Agent and Developer shall indemnify the Authority, the Township, and any and all of the listed entities officers, employees and agents from any and all costs and expenses, including actual attorney fees, incurred in the enforcement or defense of any obligation or claim against or by the Developer or Administrative Agent for any conduct of the Administrative Agent. These indemnification provisions will survive the termination of this Agreement. By entering this Agreement, neither party waives any immunity provided under state or federal law.

D. At any time after a Developer incurs Eligible Costs, the Administrative Agent, as authorized in this Agreement, may submit to the Authority Requests for Cost Reimbursement for Eligible Activities paid by and on behalf of the Developer. These requests shall be in the form attached as Exhibit C (“Petition”). The Petition shall identify whether the Eligible Activities are:

- 1) Baseline Environmental Assessment Activities;
- 2) Due Care Activities;
- 3) Additional Response Activities;
- 4) Demolition Activities;
- 5) Lead and Asbestos Abatement Activities; or
- 6) Eligible Activities permitted under Section 2(n)(viii) of Act 381

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 and detailed invoices for the costs incurred by the Developer sufficient to determine whether the costs incurred were for Eligible Activities. The Administrative Agent and Developer shall also provide written proof to the Authority of waiver of liens by the environmental consultant, contractors and subcontractors performing services or providing materials for the Improvements under the Plan prior to any Tax Increment Revenue reimbursement. The Petition shall be signed by a duly authorized representative of Developer and a duly authorized representative of Administrative Agent and the representations, facts and documentation included therein shall be sworn to as accurate in the presence of a notary. The parties agree that Administrative

Agent shall only seek reimbursement for its actual costs to perform the Eligible Activities, in accordance with the approved Plan.

- E. The Authority shall review a Petition within thirty (30) days after receiving the Petition. The Administrative Agent shall cooperate in the Authority's review by providing information and documentation to supplement the Petition as-deemed reasonable and necessary by the Authority. If the Authority determines that insufficient information has been provided, disputes any portion of any payment request or disputes the eligibility of any costs of any payment request, it shall notify the Administrative Agent in writing of its determination and the reasons for its determination. If the Authority determines that any portion of a payment request is inaccurate or is not for Eligible Costs, it shall notify the Administrative Agent in writing of its determination and the reasons for its determination. The Administrative Agent then has thirty (30) days in which to provide supplemental information or documents in support of any costs deemed ineligible by the Authority. During this thirty (30) day period, an authorized representative of the Authority and Administrative Agent shall, upon the request of either party, promptly meet to discuss the conditions pursuant to which Administrative Agent can obtain approval of such disallowed request. The Administrative Agent may include an authorized representative of the Developer. Any and all line items in a payment request which are not objected to by the Authority shall be processed for payment by the Authority as provided herein, notwithstanding that the Authority shall have objected to other line items in such payment request.

- F. In the event an unresolved dispute with respect to such approval remains for thirty (30) days, the parties agree to submit the dispute to the full Board of the Authority for review. In doing so, the Administrative Agent shall provide the Authority a written response to the Authority's decision and the reasons given by the Authority. Thereafter, except as otherwise agreed to in writing by the Administrative Agent and the Authority, the full Authority Board shall make a decision on the eligibility of the disputed cost and inform the Administrative Agent in writing of its final determination. If the Authority's rejection is not resolved or cured within thirty (30) days of the full Authority Board's final written determination, there is no obligation to pay the portion of the Petition rejected until the parties have mutually agreed to payment in writing through an agreed upon alternative dispute mediation process or there is a final judgment or order of a court of competent jurisdiction directing payment.
- G. It is expressly agreed that the Authority makes or gives no assurance of payment to the Administrative Agent or Developer by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Plan or Work Plan, and that the Authority shall have the right to review and approve or deny reimbursement for any invoices for Eligible Activities based on the reasonableness of services performed by any consultant or contractor under this Agreement.
- H. Once the Authority determines that Eligible Costs are Certified Eligible Costs, it shall pay to the Administrative Agent the amounts for which submissions have been made pursuant to this Agreement, the Plan, and Act 381. The Authority shall only be

obligated to reimburse the Administrative Agent to the extent Tax Increment Revenue is available to reimburse such costs.

I. The reimbursement obligation under this Agreement shall expire at the earliest of the following:

- 1) payment by the Authority to the Administrative Agent of all amounts due the Administrative Agent or Developer under this Agreement;
- 2) expiration of the reimbursement period as defined in the Plan; or
- 3) expiration of the reimbursement period as defined in Act 381.

J. The amount to be reimbursed under this Agreement shall not exceed the following:

- 1) The maximum amount of Eligible Costs in the Plan; and
- 2) the maximum amount of Certified Eligible Costs as determined by this Agreement.

K. Twice a year, after the summer and winter taxes are captured and collected on the Property, the Authority shall pay approved Eligible Costs to the Administrative Agent from the Tax Increment Revenues captured in accordance with the Plan and this Agreement, specifically Paragraphs 5 and 6 above, to the extent that taxes have been captured and are available in that fiscal year. No reimbursement shall be paid to the Administrative Agent during any period of time that the Administrative Agent, Developer, or any tenant of Developer, is delinquent in the payment of real or personal property taxes on the Property.

L. If there are insufficient funds available from Tax Increment Revenues captured at any time under the Plan and this Agreement to pay all the Developer's unreimbursed Eligible Costs, the Authority is not required to reimburse the Administrative Agent or

Developer from any other source. The Authority shall, however, make additional reimbursement payments toward the Administrative Agent's remaining unreimbursed Eligible Costs according to this Agreement as Tax Increment Revenues become available under the Plan and this Agreement.

M. It is anticipated that there will be sufficient available Tax Increment Revenues to meet the reimbursement requests submitted to the Authority under this Agreement. However, notwithstanding anything in this Agreement to the contrary, if for any reason the Improvements do not result in sufficient revenues to satisfy the Authority's reimbursement obligations, Administrative Agent and Developer agree that it will not have any further recourse of any kind or nature against Meridian Charter Township or the Authority. Subject to Developer's right to request an amendment to the Plan Amendment or Act 381 Work Plan, in the event the captured tax revenues are insufficient, the Administrative Agent and Developer assume financial responsibility for any unreimbursed shortfall.

N. The Authority's reimbursement obligations under this Agreement are contingent on the requirement that there shall be no action, suit, proceeding or investigation pending before any court, public board or body to which the Administrative Agent, Developer, the Township, or the Authority is a party, or threatened against the Administrative Agent, Developer, the Township, or the Authority contesting the validity or binding effect of this Agreement or the validity of the Plan or which could result in an adverse decision which would have one or more of the following effects:

- 1) a material adverse effect upon the ability of the Authority to collect and use Tax Increments to pay the obligations;

- 2) a material adverse effect upon the ability of the Developer to conduct Eligible Activities; or
- 3) any other material adverse effect on the Developer's or the Authority's ability to comply with the obligations and terms of this Agreement, or the Brownfield or Work Plan.

O. The Authority shall reimburse the Administrative Agent for Eligible Costs as follows:

Checks shall be payable to:	Okemos Pointe II, LLC
Delivered to the following address:	2422 Jolly Rd., Suite 200 Okemos, MI 48864 By certified mail

8. **Assignment by Okemos Pointe, LLC.**

Okemos Pointe undertook certain activities, Due Care Activities, Eligible Activities, and incurred certain other Eligible Costs under the original November 1, 2016 Brownfield Plan for the Elevation at Okemos Pointe ("Original Plan"). Okemos Pointe now assigns any and all its rights, benefits, or claims for any and all reimbursements arising out of those activities under the Original Plan and the Plan to Okemos Pointe II. Okemos Pointe II accepts the assignment. Okemos Pointe II may submit and collect any reimbursement permitted under the Original Plan, the Plan, this Agreement, or as otherwise permitted under Act 381.

9. **Assignment by Okemos Pointe I, LLC.**

Okemos Pointe undertook certain activities, Due Care Activities, Eligible Activities, and incurred certain other Eligible Costs under the original November 1, 2016 Brownfield Plan for the Elevation at Okemos Pointe ("Original Plan"). Okemos Pointe now assigns any and all its rights, benefits, or claims for any and all reimbursements arising out of those activities under the Original Plan and the Plan to Okemos Pointe II. Okemos Pointe II accepts the assignment.

Okemos Pointe II may submit and collect any reimbursement permitted under the Original Plan, the Plan, this Agreement, or as otherwise permitted under Act 381.

10. **Default**

- A. Upon the occurrence of an event of default, the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party, and the defaulting party shall have 30 days to cure the default. If the default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement, or, at the election of such non-defaulting party, may obtain any form of relief permitted under this Agreement, and any applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance of a court of competent jurisdiction. If the Authority, in its sole discretion, determines that any cure proposed by the Developer may take more than 30 days to complete, the Authority may permit the Developer to complete the cure in a time and manner agreeable to the Authority. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon default.
- B. In addition to any other remedies provided in this Agreement, if any payment made by the Authority 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 Authority, repay or return any monies paid by the Authority that are directly related to the breach, default or improper payment, within sixty (60) days of notice, given in writing by the Authority. 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.

11. Authority Oversight

The Authority may exercise oversight 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 Authority access to or copies of data, reports, testing or sampling results, invoices or other such documents reasonably necessary for such oversight. The Authority, MDEQ, 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 Authority shall give the Developer at least 24 hours' notice, except in the case of an emergency or exigent circumstance. Except for the right to oversee the Developer's compliance with this Agreement, nothing in this Agreement shall be interpreted to give the Authority any right to exercise control over the performance of Eligible Activities by the Developer. It is expressly understood and agreed that the Developer, and its subcontractors, and sub-subcontractors are independent contractors.

12. 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 and practices. The Authority shall have access to these records during normal business hours, provided the Authority 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 practices in order that the costs allowed by this Agreement can be readily ascertained and expenditures verified therefrom.

13. **Property Tax Valuation and Appeal**

The Developer expressly waives its rights to appeal property tax assessments under State law. The Developer expressly waives any right to reimbursement for previous year's taxes.

14. **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 Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit.

Coverage shall include the following:

- 1) Contractual Liability;
- 2) Products;
- 3) Completed Operations;
- 4) Independent Contractors Coverage;
- 5) Broad Form General Liability Endorsement or Equivalent.

C. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

- D. 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 - The Commercial General Liability Insurance, Motor Vehicle Liability Insurance, Professional Liability Insurance, and Auto Pollution Liability Insurance, as described above, 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 Authority.
- G. Proof of Insurance - The Developer shall make available copies of certificates of insurance for each of the policies mentioned above to the Authority upon request. If so requested certified copies of all policies will be furnished.

15. **Indemnification**

The Administrative Agent and Developer shall indemnify, defend and hold harmless the Authority, the Township, and their officers, employees, and agents from all claims, damages, lawsuits, costs and expenses, including reasonable attorney fees, incurred as a result of any acts, omissions or negligence of the Developer or its employees, agents, consultants, contractors or subcontractors related to its performance under this Agreement. This indemnification includes any damages, costs and expenses in excess of those covered by any insurance of the Developer.

The Developer shall indemnify the Authority, the Township, and any of the listed entities officers, employees and agents from all reasonable costs and expenses, including reasonable attorney fees, incurred in the enforcement of any obligation or claim against the Developer under this Agreement. These indemnification provisions will survive the termination of this Agreement. By entering this Agreement, neither party waives any immunity provided under state or federal law.

16. Plan Modification

The Plan and this Agreement may be modified to the extent allowed under Act 381 by mutual agreement of the Parties affected by the modification. This Agreement rescinds and replaces the original reimbursement agreement between Developer and the Ingham County Brownfield Redevelopment Authority, which was assigned to the Authority.

17. Legislative Authorization

This Agreement is governed by and subject to the restrictions set forth in Act 381. In the event that there is legislation enacted in the future which alters or affects the amount of Tax Increment Revenues subject to capture, Eligible Properties, or Eligible Activities, then the Developer's rights and the Authority's obligations under this Agreement may be modified accordingly by agreement of the parties.

18. Invalid/Unenforceable Provisions

- A. The Parties agree to revise the Agreement within thirty (30) days written notice from the Authority, if required by changes in circumstances imposed by changes in the law through judicial interpretation, legislative action or changes in interpretation of the law by a department of the State of Michigan, including, without limitation, the Department of Treasury or MDEQ.

B. 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. Where the deletion of the invalid or unenforceable clause or provision would- result in the illegality and or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the clause or provision was rendered invalid or unenforceable, unless the provision is changed by mutual agreement under subsection A of this paragraph.

19. **Nondiscrimination**

The Developer, as required by law, shall not discriminate against a person to be served or 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, gender identity, sexual orientation, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. The Developer shall adhere to all applicable Federal, State and local laws, ordinances, rules, regulations and policies prohibiting discrimination, including, but not limited to, the following:

- A. The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, being MCL 37.2101 *et seq.*
- B. The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, being MCL 37.1101 *et seq.*

C. Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended (29 USC §701 *et seq*), and regulations promulgated thereunder.

D. The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327, as amended (42 US §12101 *et seq*), and regulations promulgated thereunder.

Breach of this paragraph shall be regarded as a material breach of this Agreement. In the event the Developer is found not to be in compliance with this paragraph, the Township may terminate this Agreement effective as of the date of delivery of written notification to the Developer.

20. **Freedom of Information Act**

Developer stipulates that all Petitions and documentation submitted by Developer shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended, 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 Petitioners as it relates to this Agreement, Petitions for Reimbursement and supporting documentation.

21. **Notices**

All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Either party may change the address by written notice sent by registered or certified mail to the other party.

22. **Assignment**

The interest of any party under this Agreement shall not be assignable without the other parties' written consent, which shall not be unreasonably withheld, except for an assignment by the Developer for purposes of securing financing for the Project, which shall not require the prior consent of the Authority. A copy of any assignment shall be provided to the Authority within 10 days of the execution thereof.

23. **Non-Waiver**

No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein,

24. **Headings**

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

25. **Governing Law**

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

26. **No Third Party Beneficiaries**

This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Consultant, Contractors, Subcontractors or any third parties. This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

27. **Binding Effect**

The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

28. **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 Authority, or allow its inspection, upon request. The Developer shall immediately advise the Authority of any suspension loss or surrender of any such permit or license.

29. Compliance with the Law

The Developer shall administer the program and provide all the services to be performed under this Agreement in complete compliance with all applicable Federal, State and local laws, ordinances, rules and regulations. Nothing in this Agreement shall abrogate the effect of any local ordinance.

30. Entire Agreement

This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

31. 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.

32. Certification of Authority to Sign Agreement

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.

The parties have executed this Agreement as of the last date set forth below.

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

By: John Scott-Craig

Its: Chair

Date: _____

OKEMOS POINTE, LLC

OKEMOS POINTE I, LLC

OKEMOS POINTE II, LLC

OKEMOS POINTE III, LLC

By: Pat Smith
Its: Authorized Representative

Date: _____

DRAFT

RESOLUTION OF MERIDIAN TOWNSHIP BROWNFIELD REDEVELOPMENT AUTHORITY
AUTHORITY TO OPEN A MTBRA ACCOUNT

At a regular meeting of the Meridian Brownfield Redevelopment Authority, Ingham County, Michigan, held at the Meridian Municipal Building, in said Township on the 17th day of October, 2019 at 8:00 a.m., Local Time.

PRESENT:

ABSENT:

The following resolution was offered by Board Member _____ and supported by _____.

RESOLVED, Independent Bank, ("Bank") is hereby designated a depository of Meridian Township Brownfield Redevelopment Authority (MTBRA) and that funds deposited therein may be withdrawn upon checks or other instruments of MTBRA.

RESOLVED FURTHER, all checks, drafts, notes, withdrawals or orders drawn against said funds shall be signed by any two of the following: _____
_____.

RESOLVED FURTHER, _____, _____, is authorized to make verbal telephone requests upon the Bank for the purchase of investments (by use of the Personal Identification Number assigned to him if required by the Bank) and in the case of his/her inability to exercise this function, any two of the following may issue written instructions to the Bank for the purchase of investments: _____; _____, _____ and _____.

RESOLVED FURTHER, the Bank is hereby authorized and directed to honor any withdrawals and to pay any checks and other instruments drawn against said funds, to the order of any two of the above named officials signing and/or countersigning such instruments.

RESOLVED FURTHER, the above designated officers are hereby authorized to execute, on behalf of the MTBRA, signature cards, or other documents, containing the rules and regulations of the Bank and the conditions under which deposits are accepted, and to agree on behalf of the MTBRA to those rules, regulations, and conditions as amended.

RESOLVED FURTHER, the Township Clerk shall certify to the Bank the names, of those holding the offices or positions listed above and shall thereafter as changes in those offices may occur, immediately certify to the Bank a revised list of officers who are authorized to act in accordance with this resolution. Bank may rely on such certifications and shall be indemnified by the MTBRA from and against any claims, expenses, or losses resulting from honoring the signature of any officer so certified, or from refusing to honor any signature not so certified. These resolutions shall remain in force until written notice to the contrary shall have been received by the Bank, but receipt of such notice shall not affect any prior action taken by the Bank in reliance on this resolution or any certification made in connection herewith.

AUTHORIZED BY THE ABOVE RESOLUTIONS:

NAME and TITLE, SIGNATURE _____ FACSIMILE SIGNATURE (if used)

STATE OF MICHIGAN)

)ss

COUNTY OF INGHAM)

I, Brett Dreyfus, the duly qualified Township Clerk, Charter Township of Meridian, Ingham County, Michigan, DO HEREBY CERTIFY that the above name, title and signatures are the officers of the Meridian Township Brownfield Redevelopment Authority.

Brett Dreyfus, Township Clerk
Meridian Charter Township