

WASHTENAW COUNTY
BROWNFIELD REDEVELOPMENT AUTHORITY
AMENDED AND RESTATED
REIMBURSEMENT AGREEMENT

This Reimbursement Agreement as originally made on June 9, 2011 and as hereby amended and restated on July ____, 2013, between Packard Square LLC (the "Owner"), a Michigan Limited Liability Corporation having an address P.O. Box 7067 Bloomfield Hills, Michigan 48302 and the **WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY** (the "WCBRA"), a Michigan public body corporate, having the address at 110 N. Fourth Avenue, P.O. Box 8645, Ann Arbor, MI 48107-8645.

PREMISES

- A. The Owner is engaged in the development of a residential/commercial redevelopment commonly known as Packard Square Redevelopment Project (the "Development"), which is to be located at 2502-2568 Packard Street, Ann Arbor, Washtenaw County, MI and described on attached **Exhibit A**, to be located on the property described on attached **Exhibit B** (the "Site"). Based on the laboratory analytical results the Site has been determined to be "facility", as defined in Part 201 of the Natural Resources and Environmental Protection Act (NREPA), Michigan Public Act 451 of 1994, as amended. The Site is an eligible property as defined by the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, as amended.
- B. The WCBRA has been formed pursuant to Act 381, Public Acts of Michigan, 1996, as amended MCL 125.2651 et. seq. ("Act 381"), to facilitate the redevelopment of previously developed sites, consistent with the community's commitment to sustainability and its vision for the future. The Brownfield Plan for the Packard Square Redevelopment Project (the "Plan", attached as **Exhibit C**) was adopted by the Washtenaw County Board of Commissioners on May 18, 2011 through Resolution Number 11-0085, and Packard Square Brownfield Plan Amendment (the "Plan Amendment," attached as Exhibit E) was adopted by the Washtenaw County Board of Commissioners on July 10, 2013 through Resolution Number 13-0108.
- C. The WCBRA has determined that it would be in furtherance of its purposes and goals to capture tax increment revenues for the reimbursement of costs of certain Eligible Activities related to the Development and Site, as authorized by Act 381 and consistent with the Brownfield Plan and Plan Amendment and the Act 381 Work Plan ("Work Plan") attached as **Exhibit D** as the same may be amended or supplemented.
- D. Pursuant to the Plan, Plan Amendment, and the Work Plan, the WCBRA will capture TIF Revenues not to exceed \$5,840,558 and that are authorized by law to be captured from the levies imposed by taxing jurisdictions upon taxable property for the eligible property consistent with Act 381, as amended, and the Plan and Plan Amendment approved by the WCBRA. Upon satisfaction of the conditions expressed in this Agreement, the WCBRA will use the Tax Increment Revenues as provided by law and as described in this Agreement.

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

ARTICLE 1.

Section 1.1 Definitions. The following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

- (a) "Act 381" means the Brownfields Redevelopment Financing Act ("BRA"), Act 381 of Michigan Public Acts of 1996, as amended, MCL 125.2651 et seq.
- (b) "Work Plan" means the Act 381 Work Plan(s) approved by the MDEQ and/or the MEGA/MSF attached as **Exhibit D**, as subsequently amended or supplemented.
- (c) "Agreement" means this Reimbursement Agreement entered into between the WCBRA and the Owner.
- (d) "County" means Washtenaw County, Michigan.
- (e) "WCBRA" means the Washtenaw County Brownfield Redevelopment Authority, established by the County Board of Commissioners on May 19, 1999.
- (f) "Owner" means, Packard Square LLC.
- (g) "Development" means the site work, building construction, utilities, and equipment on the eligible property as described on attached **Exhibit A**.
- (h) "Eligible Activities" means those activities as defined by Sec. 2(m) of Act 381, Public Acts of 1996, as amended, MCL 125.2652, or approved by the Michigan Department of Environmental Quality (MDEQ) or the Michigan Economic Growth Authority (MEGA) or the Michigan Strategic Fund (MSF) as part of the approved Work Plan.
- (i) "Eligible Property" means the property as defined by Sec. 2(n) of Act 381, MCL 125.2652(1) for purposes of completing the Eligible Activities.
- (j) "Consultant" means the environmental consulting or other firm retained or hired by the Owner to fulfill assist with the Eligible Activities set forth in the Plan, the Plan Amendment, and/or Work Plan.
- (k) "Event of Default" means the failure of performance or breach by a party to carry out any of its obligations or comply with any of its warranties, representations, or conditions under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within 30 days after written notice thereof has been given by the other party. It also means any filing of bankruptcy or bankruptcy reorganization by the Owner.
- (l) "Indemnified Persons" means Washtenaw County and the WCBRA and their members, officers, agents and employees.
- (m) "Interest" is a reimbursable activity pursuant to the conditions outlined by Sec. 13 (17) of Act 381, MCL 125.2663. Interest for the purposes of this Plan means an annual calculation applied against the unpaid balance of the reimbursable Eligible Activities approved by the MDEQ and MEGA/MSF in the approved Work Plan(s). The Interest rate applied against the unpaid balance of the reimbursable MDEQ and/or MEGA/MSF approved Eligible Activities will be 5%. Once all approved Eligible Activities have been reimbursed, Interest will no longer be reimbursed.
- (n) "LSRRF" or "Local Site Remediation Revolving Fund" means the local revolving fund established by the WCBRA pursuant to Sec. 8 of Act 381, MCL 125.2658 and funded with the capture of additional TIF Revenues estimated in the Plan and Plan Amendment pursuant to the WCBRA Local Site Remediation Revolving Fund Policy and Section 13 (5) of Act 381, MCL 125.2663.

- (o) "Maximum Cost of Eligible Activities" means the WCBRA's maximum obligation to pay for the Eligible Activities and not to exceed the amounts set forth in the approved Work Plan, as amended or supplemented.
- (p) "MDEQ" means the Michigan Department of Environmental Quality.
- (q) "MEGA" means the Michigan Economic Growth Authority.
- (r) "MSF" means the Michigan Strategic Fund.
- (s) "Plan" means the Brownfield Redevelopment Plan, as defined under Act 381, and adopted May 18, 2011 as amended, and attached as **Exhibit C**.
- (t) "Plan Amendment" means the Brownfield Redevelopment Plan Amendment, as adopted July 10, 2013, and attached as Exhibit E.
- (u) "Site" means the real property located in Washtenaw County, State of Michigan, as described in attached **Exhibit B**, and made a part hereof. The Site and its description in **Exhibit B** may be amended by the parties to reflect any transfer of land after the execution of this agreement. Such a modification shall be by amendment of this agreement and shall be in writing signed by both parties.
- (v) "TIF Revenue" means Tax Increment Financing Revenue; the tax increment revenues, as defined by Sec. 2(ee) of Act 381, MCL 125.2652 from all taxable real and personal property located on the Site during the life of the Plan.

ARTICLE 2.

COVENANTS OF THE OWNER

Section 2.1 Completion of the Eligible Activities. The Owner shall proceed with the Eligible Activities and the obligations under this Agreement in its discretion. It shall proceed with due care and diligence and commence and complete the Eligible Activities in accordance with this Agreement, and in accordance with any applicable law, regulation, code and ordinance.

Section 2.2 Covenant to Pay Financial Obligations. To the extent TIF Revenues are available, the WCBRA shall reimburse the Owner for funds expended for Eligible Activities and Interest in accordance with the terms of this Agreement, the Plan, Plan Amendment, and the Work Plan. Owner agrees that it shall not be reimbursed the cost of certain "liable party" activities, defined to include demolition of the dry cleaning building and excavation and disposal of approximately 880 tons of the most contaminated soil at the Site. The parties also acknowledge and agree that the Plan Amendment modified the Plan relating to reimbursement of Eligible Activities with local only TIF Revenues. Specifically, local only TIF Revenue will be used to reimburse 100% of the cost of "Local-Only Public Infrastructure Improvements" (item 7 of the table in the Plan Amendment, estimated at \$650,000), but for any other Eligible Activities that are not approved by MEGA or the MSF, local only TIF Revenue shall be used to reimburse only the portion of the Eligible Activities that would have been reimbursed with local only TIF Revenue if MDEQ, MEGA or MSF had approved such Eligible Activities for reimbursement.

It is anticipated that there will be sufficient TIF Revenues available to meet the obligations under this Agreement. However, if for any reason the Project does not result in sufficient TIF Revenues to satisfy such obligations, the Owner agrees and understands that it will have no claim or further recourse of any kind or nature against the WCBRA and Washtenaw County except from available TIF Revenues, and if for any reason the TIF Revenues are insufficient or there are none, then the Owner assumes full responsibility for any such loss or cost.

Section 2.3 Payment for Administrative Fees. The WCBRA will collect a payment for administrative fees of \$358,222 from TIF Revenue. The Owner acknowledges that this payment will be divided over the length of the TIF, as determined by the WCBRA, in order to cover administrative costs and fees, as defined in section 7(h) of Act 381, that are part of the approval of the Plan, Plan Amendment, Work Plan and any Eligible Activity on an eligible property. The payment is a reimbursable administrative cost subject to TIF Revenue under section 13(16) and section 13(19) of Act 381, the approved Work Plan and the satisfaction and performance of the terms of this Agreement. The Owner acknowledges that payment of the administrative fees will be made from TIF Revenue first; with the balance of available annual tax increments being repaid to the Owner pursuant to this Agreement, the Plan and Plan Amendment.

Section 2.4 Payment for Local Site Remediation Revolving Fund. The WCBRA will collect a payment for deposit into the LSRRF not to exceed the available capture for two additional years after the reimbursement of all the Owner's Eligible project Activities and interest incurred pursuant to the Plan and Plan Amendment. The amount of LSRRF capture is estimated to be \$1,180,377 but will be determined by the available capture in the two additional years of capture. The TIF Revenue capture period shall not exceed 30 years or two additional years after all Eligible Activities have been fully reimbursed.

Section 2.5 Indemnification of Indemnified Persons.

- (a) The Owner shall defend, indemnify and hold the Indemnified Persons harmless from any loss, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property as a result of the ownership or operation, use or maintenance of the Development from and after the date hereof. If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the Owner and the Owner shall defend such Indemnified Person with counsel selected by the Owner, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Owner and the Owner shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Owner may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its consent. The Owner shall not be liable for payment or settlement of any such claim or proceeding made without its consent.
- (b) The Owner also shall indemnify the Indemnified Persons for all reasonable costs and expenses, including reasonable counsel fees, incurred in successfully enforcing or pursuing any obligation of or claim against the Owner under this Agreement or any related agreement. To the extent that the enforcement of such obligation or claim involves a claim against a Consultant who performs work or services under the terms or within the scope of this Agreement, the Consultant's agreement with the Owner shall be deemed to be a third party beneficiary contract in favor of the WCBRA or any Indemnified Persons.
- (c) The Owner shall assure that to the extent a Consultant provides services toward completion of any Eligible Activities, at a minimum, the Consultant shall provide to the WCBRA and the County the indemnity provisions set forth in Sec. 6.13 of this Agreement.
- (d) The indemnity provisions shall survive the term of this Agreement.

Section 2.5 Site Access. The Owner shall grant to WCBRA and the MDEQ or MEGA/MSF, or their designated agents, access to the Site to exercise their respective duties related to the purposes and pursuant to the terms of this Agreement. The WCBRA shall give the Owner 24 hours written notice of its intent to access the site whenever possible. If notice cannot be given due to an emergency or any other unforeseen circumstance, the WCBRA shall give notice as is reasonable and practicable under the

circumstances. Right to Site Access will continue until all obligations under the Plan, Plan Amendment, the Work Plan and this Agreement are completed and all invoices, final reports and documentation are submitted and approved.

ARTICLE 3.

CONDITIONS TO OWNER'S OBLIGATION

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

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

ARTICLE 4.

COVENANTS OF THE WCBRA

Section 4.1 Adoption of Work Plan Amendments. The WCBRA will submit amendments, prepared by the Owner's Consultant, to the Work Plan as necessary in accordance with Act 381, which will provide for reimbursement to the Owner of Eligible Activity expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement, Act 381, Public Acts of 1996, as amended, Work Plan, as amended or supplemented, and approved by the WCBRA pursuant to its policies and procedures. These policies and procedures include, but are not limited to, the WCBRA's standards for local TIF eligibility.

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

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

ARTICLE 5.

CONDITIONS TO WCBRA'S OBLIGATIONS

Section 5.1 Conditions to WCBRA's obligation to reimburse Eligible Activities' expenses for the Owner's Development. The obligations of the WCBRA to reimburse costs for Eligible Activities and Interest as contemplated herein shall be subject to the following conditions which must be satisfied by the Owner as required herein, except as expressly provided in this Agreement or otherwise waived in writing by the WCBRA. It is expressly agreed that the WCBRA makes or gives no assurance of payment to the Owner by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Work Plan, or as hereafter supplemented or amended, and that the WCBRA shall have the right to review and approve all written summaries of and invoices for Eligible Activities for the reasonableness of services performed by any Consultant under this Agreement. However, so long as an Eligible Activity by the Owner has been approved and is authorized by Act 381 and has been completed and approved in accordance with the following procedure and this Agreement, Owner shall be entitled to reimbursement of its Eligible Activities expenses and Interest.

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

- (a) TIF Revenue from local taxing jurisdictions (not State Education Tax Revenue) (hereafter Local TIF Revenue) alone shall not be used to fully reimburse any Eligible Costs unless expressly allowed by the Brownfield Plan or Plan Amendment. However, if MDEQ or MSF does not approve certain eligible activities or Interest, those certain activities may be reimbursed with Local TIF Revenue to the extent that Local TIF Revenue would have been used for reimbursement in conjunction with State Education Tax Revenue had MDEQ and MSF actually approved the activities. Local TIF Revenue shall not be used to reimburse that portion of the costs of eligible activities or Interest for which use of State Education Tax Revenue is requested from either the MDEQ or Michigan Strategic Fund and then denied.
- (d) The Owner shall provide proof of ownership of the Site if applicable, and shall provide the WCBRA with a list of any potentially responsible party (PRP) for the contamination on the property, and shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement or any other agreement with WCBRA, and all preconditions to the performance of the Owner shall have been satisfied.
- (e) Owner shall provide written proof of waivers of liens by the Consultant, any contractor, and subcontractor providing services as described in this Agreement.
- (f) Owner shall pay all real estate tax obligations when due. Failure to pay when due shall constitute an Event of Default pursuant to Sections 1.1 (k) and 9.1 of this Agreement.

- (e) Upon entering into this Agreement the Owner or their designee will present a budget to the WCBRA for each stage, and/or Eligible Activity prior to execution of that activity. For activities that have commenced prior to the signing of the Agreement, the budgets for these activities still must be submitted. The budget will be submitted at each such stage of the Eligible Activities; due care 7(a) obligations; and additional response activities and, if applicable, lead and asbestos abatement, demolition, site preparation and infrastructure; and will contain detailed line item cost estimates.
- (f) The Owner shall submit invoices of its expenses, proof of payment and a written statement demonstrating a factual basis that it has completed any Eligible Activities to the WCBRA within one year of completing any Eligible Activities. Eligible Activity completion documentation should be organized in a manner that demonstrates compliance with the approved Plan, Plan Amendment and Work Plan before being submitted to the WCBRA. If Eligible Activity completion documentation is submitted to the WCBRA without being organized in substantial form as the attached Eligible Activity Tracking Table, it will be returned to the Owner and will not begin the review period identified in Section 5.2(g) below. If no Eligible Activity documentation is submitted to the WCBRA after two years of a certificate of occupancy, temporary or permanent, or upon written request by the WCBRA, the WCBRA shall have the right to declare an Event of Default pursuant to Section 9.1 of this Agreement.
- (g) The Owner shall submit invoices of its expenses, proof of payment and a written statement demonstrating a factual basis that it has completed any Eligible Activities to the WCBRA for preliminary review and approval, and within 90 days of receipt of the invoice, the WCBRA shall review and approve or reject the reasonableness of the invoice and activity as eligible, and, if approved, arrange for payment. In the event of a rejection of all or part of an invoice, the WCBRA shall notify the Owner in writing of its reasons for rejection within the 90-day time period for review. If the rejection is not resolved or cured within 28 days, of the rejection determination, there is no obligation to pay the portion of the invoice rejected until the parties have mutually agreed to payment in writing through alternative dispute mediation process or there is a final judgment or order of a court of competent jurisdiction directing payment. All approved Eligible Activity expenses will be reimbursed to the owner twice annually with reimbursement occurring no later than thirty days after receipt of the winter and summer taxes.
- (h) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Owner, the County or the WCBRA is a party, or threatened against the Owner, the County or the WCBRA contesting the validity or binding effect of this Agreement or the validity of the Plan or Plan Amendment 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 WCBRA to collect and use tax increment revenues to repay its obligations under this Agreement.
 - (2) A material adverse effect on the Owner's or the WCBRA's ability to comply with the obligations and terms of this Agreement, the Plan, Plan Amendment, or the Work Plan.
 - (3) Any other material adverse effect on the Owner's or the WCBRA's ability to comply with the obligations and terms of this Agreement, the Plan, or the Plan Amendment.
- (i) There shall have been no Event of Default by the Owner and no action or inaction by the Owner eventually which with the passage of time would likely become an Event of Default.

- (j) The Owner shows it is owner of the Site or the Site is under land contract, and the Owner is not in default on any contract or other agreement relating to its ownership, development, or use of the Site.
- (k) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land uses and the Development have been secured.
- (l) No change in law which would have one or more of the effects described above.
- (m) Consent, where necessary, of any affected utility for relocation, burial or the activity to accomplish the Eligible Activities.
- (n) The Owner retains an Consultant, contractor, or subcontractor to advise, conduct, or complete the Eligible Activities as set forth in this Agreement.
- (o) Any TIF Revenues owed to a prior owner of the Site for Eligible Activities undertaken on the Site shall be paid to the prior owner of the Site pursuant to the policies and procedures of the WCBRA unless otherwise directed by written agreement between the prior owner and the new owner and as provided to the WCBRA. The Owner has no right to any TIF for any Eligible Activities undertaken on the property prior to its purchase of the property.
- (p) If for any reason the Owner is unable to obtain title to the site, the WCBRA is not obligated to perform any of the terms of this Agreement.
- (q) Interest will be calculated annually on the unpaid balance of the reimbursable Eligible Activities approved by the MDEQ and MEGA/MSF included in the approved Work Plan. The interest rate applied against the unpaid balance of the reimbursable MDEQ and MEGA/MSF approved Eligible Activities will be 5%. TIF Revenue will be used first for the payment of administration fees (refer to Section 2.3 of this Agreement), second MDEQ approved Eligible Activities and lastly Interest. Once all approved MDEQ and MEGA/MSF eligible activities have been reimbursed, Interest will no longer be calculated or reimbursed. In no event shall the cumulative amount of interest reimbursed exceed \$717,236.

ARTICLE 6.

OWNER'S ENVIRONMENTAL CONSULTANT RESPONSIBILITIES

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

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

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

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

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

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

Section 6.7 Contractors and Subcontractors. If the Owner hires a Consultant or Contractor, or retains any person, firm or corporation to perform services related to Eligible Activities under this Agreement, the Owner shall first secure the written acknowledgment from such party that such party is not and shall not be or act as an agent or employee of the WCBRA, nor assume or create any duty, commitment or obligation on behalf of nor bind the WCBRA in any respect whatsoever. A copy of such written acknowledgment shall be provided to WCBRA.

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

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

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

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

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

- (a) Worker's Compensation and Occupational Disease Insurance in the amounts required under the laws of the State of Michigan;
- (b) Commercial General Liability and Automobile Insurance for bodily injury, death or loss or damage to property or third persons in the minimum amount of at least \$1 million per occurrence, \$2 million aggregate, which policy shall name the WCBRA and the County as additional insured;
- (c) In reference to the Environmental Consultant, Pollution or Environmental Impairment Insurance in the amount of at least \$1 million per loss, for which policy shall name the WCBRA and the County as additional insured. The Consultants shall continue to name the WCBRA and County as additional insured for two years after the completion of this agreement;
- (d) In reference to the Environmental Consultant, Professional Liability Insurance in the minimum amount of \$1 million per loss; and
- (e) The Owner shall furnish to WCBRA a certificate(s) of insurance evidencing such coverage within 14 days of the date of entering into this agreement and the period of coverage shall commence with the date of performance of the first Eligible Activity. The parties agree that the owner shall provide certified copies of the insurance policies upon request of by the WCBRA. The limits of insurance shall not be construed as a limitation on the Consultant's, Contractor's, or Subcontractor's liability for damages, costs or expenses under this Agreement.

Section 6.13 Limitation of Liability.

- (a) Defend, Indemnify and Hold Harmless. Notwithstanding any other provision of this Agreement, the Owner shall obtain Consultant's agreement to defend, indemnify and hold WCBRA and the County harmless against and from all liabilities, losses, damages, costs, expenses (including attorney fees), causes of action, suits, claims and demands for judgment arising out of:
 - (1) Those losses which WCBRA and the County may sustain as a result of the failure of the Consultant to comply with the provisions of this Agreement; and/or
 - (2) Those losses which result from or arise out of any acts or omissions, negligent, grossly negligent, intentional, or otherwise, of the Consultant's employees, agents, contractors, or subcontractors in the performance of the work specified in this Agreement.
- (b) Contribution. The Owner shall obtain written acknowledgment that the Consultant, any Contractor, or Subcontractor could be liable to WCBRA for all damage, loss, injury or expense to the extent such person or entity's acts or omissions arising out of the performance of Eligible Activities are actionable negligence, gross negligence, or constitute intentional misconduct; the Consultant, any Contractor, or Subcontractor shall

be liable for contribution to WCBRA for any such damage, loss, injury or expense of a third party arising out of such activities, notwithstanding Sec. 20128 of the NREPA, MCL 24.20128, for releases aggravated or proximately caused by the Consultant. This paragraph shall not affect any other liabilities or remedies of the WCBRA.

- (c) Survivorship of Covenants. Any Consultant's, Contractor's, or Subcontractor's indemnity, hold harmless and release shall survive the termination of this Agreement.
- (d) Breach. A breach of the foregoing provisions of Sec. 6.13 at the option of WCBRA constitutes, or will result in, a breach of the Agreement.
- (e) The written agreement in subparagraph (a) of this section and written acknowledgment in subparagraph (b) shall be filed with the WCBRA before any work begins or before any reimbursement under the terms of this Agreement.

ARTICLE 7.

REPRESENTATIONS AND WARRANTIES

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

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

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

- (a) The Owner is a Michigan Limited Liability Corporation with power under the laws of such state to carry on its business as now being conducted and has the power and authority to consummate the transactions contemplated under this agreement by the Owner and has authorized the signatures to represent the owner under this Agreement.
- (b) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Owner, and this Agreement constitutes a valid and binding agreement of the Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- (c) Except as part of the performance and completion of Eligible Activities under the terms of this Agreement, the Owner, its Contractors, or Subcontractors shall not use the Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the Site, and shall obtain all necessary permits in connection therewith.

- (d) Owner warrants that it will comply with all obligations, covenants and conditions required of it or its Consultants, Contractors and Subcontractors under the terms of this Agreement.
- (e) Owner shall comply with all due care obligations under Sec. 7a of Part 201 of the NREPA.
- (f) Owner has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

ARTICLE 8.

OWNER FINANCIAL ASSURANCES

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

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

The Owner shall furnish to WCBRA a certified copy of such policies within 14 days of the date of this Agreement and the period of coverage shall commence with the date of performance of the first Eligible Activity. WCBRA will review the certified policies within 14 days of their receipt to determine if the insurance requirements have been satisfied. If the policies do not fully cover the Owner's liability, including indemnity obligations, under this Agreement, then the WCBRA reserves its right to increase the amount of other financial assurances under Article 8 of this Agreement. The limits of insurance shall not be construed as a limitation on the Owner's liability for damages, costs or expenses under this Agreement.

ARTICLE 9.

DEFAULT, REMEDIES, AND TERMINATION

Section 9.1 Remedies Upon Default. Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party, and the defaulting party shall have 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, provided, however, if the cure takes more than 30 days to complete, the breaching party shall be permitted to complete the cure beyond the provided 30 days if the breaching party uses good faith efforts to prosecute the cure to completion. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon default.

ARTICLE 10.

MISCELLANEOUS

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

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

The Owner waives the right to reimbursement for outstanding pay-as-you-go obligations, or any other reimbursement obligation of the WCBRA, to be paid through TIF captured from the portion of the Site that is sold, conveyed, or transferred unless the Owner complies with the following:

- (a) The Owner provides the prospective transferee with written notice of the Work Plan, the nature and extent of Eligible Activities performed by the Owner pursuant to the Plan and Plan Amendment, and the extent of any outstanding obligation on the Part of the WCBRA for reimbursement to the Owner for pay-as-you-go expenses from taxes to be captured from the Site.
- (b) The Owner and the transferee enter into an allocation agreement covering how the TIF Revenues collected on the Site shall be distributed between the Owner and the prospective purchaser for any outstanding obligations or future obligations for Eligible Activities on the Site.
- (c) The Owner provides the WCBRA with copies of the written notice and the allocation agreement between the Owner and the prospective transferee of the property prior to transfer of the Site.

Section 10.3 Assignment. Neither this Agreement nor any of the rights or obligations contained within it may be assigned or otherwise transferred by the Owner, nor shall the benefits of this Agreement inure to the benefit of any trustee in bankruptcy, receiver or creditor of the Owner, whether by operation of law or otherwise, without the prior written consent of the WCBRA which will not be unreasonably withheld. Any attempt to assign or transfer this Agreement or any of its rights without such written consent shall be null and void and of no force or effect, and a breach of this Agreement.

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

If to WCBRA:

Nathan Voght
Office of Community and Economic Development
Staff Support to Authority pursuant to MCL 125.2657
Washtenaw County Brownfield Redevelopment Authority
110 North Fourth Avenue, P.O. Box 8645
Ann Arbor, Michigan 48107-8645

With a courtesy copy to:
Curtis Hedger, Corporation Counsel
Washtenaw County
220 N. Main, P.O. Box 8645
Ann Arbor, MI 48107-8645

If to the Owner:

Packard Square LLC
P.O. Box 7067
Bloomfield Hills, Michigan 48302

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

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

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

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

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

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

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

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

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

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

Section 10.14 No Third Party Beneficiaries. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Consultant, Contractors, Subcontractors, or any

third parties. This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

Section 10.15 Court Venue. The Washtenaw County Circuit Court will be the forum for any disputes under this Agreement.

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

Approved As To Form:

Owner Packard Square LLC

Curtis N. Hedger
Curtis Hedger
Corporation Counsel

Date: _____

11/21/2013
11:45:00
AM

[Signature]

10/22/2013

Date: _____

CURTIS N. HEDGER
CORPORATION COUNSEL

Craig Schubiner

Its: Member

WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT
AUTHORITY

Attested To:

Lawrence Kestenbaum

11/22/2013
12:29:32 PM

Date: _____

By: _____

James Harless

Its: Chair

Date: 10/23/2013

Lawrence Kestenbaum
County Clerk/Register

Exhibits

- Exhibit A – Project Description
- Exhibit B – Legal Description
- Exhibit C – Brownfield Plan
- Exhibit D – Act 381 Work Plan
- Exhibit E – Packard Square Brownfield Plan Amendment