

**CITY OF**  
**PORTAGE**  
*A Place for Opportunities to Grow*

**DOWNTOWN DEVELOPMENT  
AUTHORITY**

**July 23, 2010**

**CITY OF PORTAGE  
DOWNTOWN DEVELOPMENT AUTHORITY**

**A G E N D A**

July 23, 2010

**CALL TO ORDER:**

8:00 a.m., Portage City Hall, Conference Room #1, 7900 South Westnedge Avenue

**APPROVAL OF MINUTES:**

\* June 30, 2009

**BUSINESS:**

\*1. FY 2008-09 Annual Report

- Communication from Authority Director/Community Development Director.
- Resolution approving and authorizing the transmission of the financial report on the status of the tax increment financing account.

\*2. 2003 Development Agreement and Second Amendment to Development Agreement

- Communication from Authority Director/Community Development Director

**STATEMENT OF CITIZENS:**

**ADJOURNMENT:**

**MATERIALS TRANSMITTED**

Board Member Listing

Star (\*) indicates printed material within the agenda packet.

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## DOWNTOWN DEVELOPMENT AUTHORITY

Minutes of Meeting – Tuesday, June 30, 2009

The meeting of the Downtown Development Authority (DDA) was called to order at 8:00 a.m. in Conference Room #1, at Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan.

### MEMBERS PRESENT:

Benjamin Boyer, Walter Hansen, Rich MacDonald, Matthew Milks, Jeff Chrystal and Maurice Evans

### MEMBERS EXCUSED:

James Huberty, Ronald Dunlap, Terryl Patterson

### IN ATTENDANCE:

Jeffrey M. Erickson, Director of Community Development and Christopher Forth, Deputy Director of Planning and Development Services.

Vice President Boyer chaired the meeting of the Board.

### APPROVAL OF MINUTES:

The minutes of the January 9, 2008 meeting were introduced for approval. A motion was offered by Hansen and seconded by MacDonald to approve the meeting minutes as presented. The motion was unanimously approved.

### BUSINESS:

1. FY 2006-07 and 2007-08 Annual Financial Reports.

Mr. Erickson reviewed the communication concerning the 2006-07 and 2007-08 annual reports to the City Council and State Tax Commission. Attorney Axe has prepared the resolution that approves and authorizes the transmission of the financial reports on the status of the tax increment finance plan. Attached to the resolution are appendix A and appendix B, which summarize and report the applicable annual financial information as required by statute. Mr. Erickson also reviewed the accompanying final audit page for the DDA Debt Service Fund for each fiscal year. In response to a question about the indicated jobs in the reports, it was indicated that the jobs numbers are obtained from the respective business and include full and part-time jobs. The number fluctuates depending on business cycles and the opening and closing of businesses within the DDA. The most recent captured assessed value was \$18.16 million with an estimated 1,380 jobs (FY07-08). After some brief discussion, a motion was offered by Hansen and seconded by MacDonald that the Resolution Approving and Authorizing The Transmission of The Financial Reports on The Status of The Tax Increment Financing Plan be approved. Upon a roll call vote, the motion was unanimously approved.

## 2. Downtown Development Authority Update.

Mr. Erickson reviewed the June 22<sup>nd</sup> information only update communication provided to the Board. The first item involved an update on the I-94 construction project and the reconstruction of the South Westnedge Avenue interchange that will extend from 2009 to 2011. Also, there was a significant effort to keep businesses in the corridor (and the DDA area) informed of the activities and to minimize any business impacts due to the project. The Chamber of Commerce were involved in this cooperative effort. The Board also reviewed and discussed the Downtown Development Authority 1998-2008 Level of Investment Chart that showed private investment activity by year in the DDA and included jobs and estimated market value information. Comments were offered about business locations in the DDA including the status of the vacant Rite Aid facility. The new tenant at The Trade Center (BIA) was also discussed that would be using about 30,000 square feet of floor area and involve an estimated 250 jobs over the next several years. Additional discussion ensued about the DDA boundaries that extended from Kilgore Road south the I-94 and included The Trade Center and Lowe's Home Improvement on the west and Meijer, Incorporated and Old Kilgore to the east.

Additional discussion of the I-94 project occurred. City Manager Evans summarized the federal stimulus funding and planned activities at I-94, South Westnedge, Kilgore Road, and future funding and responded to several questions about the construction project and cooperative effort with the business community.

Another meeting of the Board will be scheduled later this summer. There are reappointments and appointments that are necessary. Following this action, the routine business items such as election of officers can occur. The Board will be advised of the planned meeting and a convenient time will be coordinated.

### STATEMENT OF CITIZENS:

None.

### ADJOURNMENT:

There being no further business to come before the DDA, the meeting was adjourned at 8:45 a.m.

Respectfully submitted,

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Jeffrey M. Erickson, AICP  
Director of Community Development

**TO:** Downtown Development Authority Board of Directors

**DATE:** July 16, 2010

**FROM:** Jeffrey M. Erickson, Authority Director

**SUBJECT:** Annual Financial Reports - Recommendation

Attached find a resolution to approve and authorize transmission of the 2008-09 annual report to the State Tax Commission and to City Council per the Downtown Development Authority Act (PA 197 of 1975). This Annual Financial Report includes final audited information for each fiscal year and is attached as Appendix A to the resolution. The annual report is only transmitted after the board has the opportunity to review the applicable annual audit information for the City of Portage, which has been provided by the City of Portage Finance Director.

With regard to the annual report of activities, the three public improvement projects that were funded in 1998 with tax increment revenue are complete, as are all of the public improvement projects undertaken in 2003.

Attached is a resolution prepared by Bond Counsel Axe. The approval of the accompanying resolution by the Board of Directors is recommended.

Attachment: Resolution with Annual Financial Reports

S:\2010-2011 Department Files\Board Files\DDA BOARD\2010 07 16 JME DDA Annual Rpt memo.doc

**CITY OF PORTAGE**

At a regular meeting of the Board of the Downtown Development Authority of the City of Portage, Michigan, held on July 23, 2010, at 8:00 a.m. at the City Hall, Portage, Michigan, there were:

PRESENT:

ABSENT:

The following preamble and resolution were offered by and supported by :

**RESOLUTION APPROVING AND AUTHORIZING  
THE TRANSMISSION OF THE FINANCIAL  
REPORT ON THE STATUS OF THE TAX INCREMENT  
FINANCING PLAN**

WHEREAS, the Downtown Development Authority of the City of Portage (the "Authority") has been duly incorporated by the City of Portage (the "City") pursuant to Act No. 197 of the Public Acts of Michigan of 1975 (the "Act") and the Board of the Authority has been duly appointed and sworn into office; and

WHEREAS, the Authority is to transmit annually to the City Council of the City of Portage and the State Tax Commission a Financial Report on the Status of the Tax Increment Financing Plan which report shall include certain matters as required by Section 15 of the Act; and

WHEREAS, such material has been prepared and is attached hereto as Appendix A to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF PORTAGE, as follows:

1. The Financial Report on the Status of the Tax Increment Financing Plan attached hereto as Appendix A is approved.

2. The Director of the Authority is authorized to transmit said financial report to the City Council of the City of Portage and the State Tax Commission.

The results of a roll-call vote on the foregoing resolution were as follows:

YEAS:

NAYS:

ABSTAIN:

THE RESOLUTION WAS DECLARED ADOPTED:

SECRETARY'S CERTIFICATE

The undersigned, being the duly qualified and acting Secretary of the Board of the Downtown Development Authority of the City of Portage, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the Board at a regular meeting held on July 23, 2010, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records of the proceedings of the Board in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended), and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

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Matthew J. Milks, Secretary

**ANNUAL FINANCIAL REPORTS**

**CITY OF PORTAGE  
DOWNTOWN DEVELOPMENT AUTHORITY**

for

**FY 2008 - 2009**

Portage, Michigan

DOWNTOWN DEVELOPMENT AUTHORITY

OF

THE CITY OF PORTAGE

FY 2008-09 ANNUAL FINANCIAL REPORT

As Approved by the Authority Board

on

July 23, 2010

## INTRODUCTION

As specified in PA 197 of 1975, the Downtown Development Authority Act provides government financing methods to eliminate property value deterioration within business districts and promote economic growth in communities. Of particular interest to the City of Portage are the provisions which allow tax increment financing to undertake public improvements in business districts in order to correct and prevent deterioration and stimulate business growth.

By way of example, the City of Portage has utilized this approach to construct public improvements on West Centre Avenue and Angling Road (for the SPX Corporation, formerly Allen Testproducts). Also, Portage utilized tax increment financing to construct several important infrastructure projects to assist Pfizer, Inc. (formerly Pharmacia & Upjohn) and the Stryker Corporation with significant development projects during the early 1990's and 2000's.

With the 1998 Community Investment Initiative, the City of Portage again utilized tax increment financing to construct public improvements that revitalized the north portion of South Westnedge Avenue, between Kilgore Road and I-94. This part of South Westnedge Avenue exhibited signs of deterioration and development and redevelopment activities by the private sector were hampered by lack of access, traffic concerns and existing utility infrastructure. With tax increment financing under the Downtown Development Authority Act, tax increment revenue from tax millage levied within a downtown development authority district by the City of Portage, Portage District Library, Kalamazoo County and Kalamazoo Valley Community College was captured and used to improve public infrastructure which benefited all of Kalamazoo County, including the business sector. In the future, other public improvements could also be proposed and undertaken by the downtown development authority to further strengthen the local business sector within the district.

In 2003, additional efforts to further stimulate private sector investment were initiated and the Development Plan/Tax Increment Finance Plan was amended. These additional street, water main, signage and related public activities were included in the amended plan to promote development of additional vacant and underutilized land in the existing development area.

The purpose of the Tax Increment Financing Plan / Development Plan, per PA 197 of 1975 is to provide public improvements necessary for private sector investment. The property to which the Development Plan applies is the north portion of the South Westnedge Avenue Commercial Corridor. The area includes approximately 97 acres of land and is bounded by Kilgore Road on the north, the city of Kalamazoo wellfield to the west, I-94 to the south and the business zoning districts to the east of South Westnedge Avenue on the east.

Following are descriptions of the public improvements and activities undertaken in 1998 and in 2003. The descriptions encompass several public improvements and activities that were completed to foster private sector investment in the DDA.

1998 DDA TAX INCREMENT FINANCE PLAN / DEVELOPMENT PLAN –  
INFRASTRUCTURE IMPROVEMENT PROJECTS (COMPLETED)

<u>Public Improvements</u>	<u>Original Estimated Time Required for Completion</u>	<u>Original Estimated Cost</u>
1. Andy Avenue Extension	12 months	\$487,000
Construct a new 1400 feet long and thirty-six foot wide public street intersecting South Westnedge Avenue at the Andy Avenue signalized intersection, with necessary storm water facilities. Repave 1000 feet of DeHaan Street with intersection improvements at South Westnedge Avenue.		
2. DeHaan Drive Sanitary Sewer Relocation	12 months	\$307,000
Relocate approximately 2100 feet of existing sanitary sewer trunk main located west of DeHaan Drive to the south, paralleling the I-94 right-of-way.		
3. South Westnedge Avenue Property Acquisition	12 Months	\$850,000
Purchase the property addressed along South Westnedge Avenue and DeHaan Drive which is necessary for the extension of Andy Avenue.		

Note: Additional right-of-way and/or easements will be provided by property owners for minimal consideration in order to construct the necessary public street and to relocate the sanitary sewer.

With regard to the identified projects, the Andy Avenue extension (Market Place) and repaving of DeHaan Drive was completed in 1999. The DeHaan Drive sanitary sewer relocation was subsequently completed in 1999. Finally, after lengthy litigation concerning the acquisition of land necessary for the construction of Market Place, the acquisition was completed in 2001. Bonds were subsequently sold in 2001 in the amount of \$3,100,000 to finance street improvements of \$521,342; sanitary sewer relocation of \$292,429; and property acquisition of \$2,286,229. (Lead underwriter is Morgan Stanley Dean Witter).

2003 AMENDED DDA TAX INCREMENT FINANCE PLAN / DEVELOPMENT PLAN –  
PROPERTY ACQUISITION AND PUBLIC IMPROVEMENT PROJECTS  
(COMPLETED)

<u>Public Improvements</u>	<u>Estimated Time Required for Completion</u>	<u>Estimated Cost</u>
1. The acquisition of 5.44 acres of land for public street right-of-way and stormwater retention -	Fall 2003	\$ 909,000
2. The construction of an approximate 2200-foot long, 36-foot wide public cul-de-sac street, with pavement, curb and gutter, sidewalk, conduit for the installation of telecommunications fibre, street lighting and landscaping -	Fall 2003/Spring 2004	\$ 689,000
3. The construction of public water main from the Milham Well Field to the DDA under I-94, to be looped with public water utilities in Holiday Lane -	Fall 2003/ Spring 2004	\$ 300,000
4. To facilitate “way finding” by customers from South Westnedge and West Fork Crossing the financing and construction of identification sign at South Westnedge and orientation sign at West Fork Crossing -	Summer 2004	\$ 30,000
5. The acquisition of 2.81 acres of land in the DeHaan Drive (now Trade Centre Way) and West Fork Crossing vicinity of the DDA for stormwater or other public use –	2004	\$ 500,000
6. The annual maintenance, monitoring of the retention facility mitigation facility -	Annually (Not Bonded)	\$ 5,000 (\$100,000 over 20 yrs.)

Notes: The public right-of-way and stormwater retention area to be purchased by the City of Portage through the DDA is immediately north of I-94 (See Appendix 5, Land Purchase Project Map).

Wayfinding signs by H&G, LLC have been installed along South Westnedge Avenue and I-94. West Fork wayfinding signage by H&G, LLC is pending.

FY 2008-2009 FINANCIAL INFORMATION

The Annual Financial Report has been prepared pursuant to Section 15 (1) of PA 197 of 1975, as amended, The Downtown Development Authority Act. The Annual Report is for FY08-09 and contains the information required by the Act.

Section 15 (3) (a): THE AMOUNT AND SOURCE OF REVENUE IN THE ACCOUNT

Tax Increment Revenue	\$436,298
Interest	\$6,716

Section 15 (3) (b): THE AMOUNT IN ANY BOND RESERVE ACCOUNT

In the DDA bond reserve account there is \$342,899

Section 15 (3) (c): THE AMOUNT AND PURPOSE OF EXPENDITURES FROM THE ACCOUNT

\$383,836 was transferred to the Bond paying agent to pay debt service.

Section 15 (3) (d): THE AMOUNT OF PRINCIPAL AND INTEREST ON ANY OUTSTANDING BONDED INDEBTEDNESS

\$8,047,575 as of June 30, 2009.

Section 15 (3) (e): THE INITIAL ASSESSED VALUE OF THE PROJECT AREA

The initial value is established at \$ 12,767,600.

Section 15 (3) (f): THE CAPTURED ASSESSED VALUE RETAINED BY THE AUTHORITY

The captured value is established at \$18,644,447 for FY 2008-09.

Section 15 (3) (g): THE TAX INCREMENT REVENUES RECEIVED

The tax increment revenues received in 2008-2009 = \$436,298

Section 15 (3) (h): THE NUMBER OF JOBS CREATED AS A RESULT OF THE IMPLEMENTATION OF THE TAX INCREMENT FINANCING PLAN

It is estimated that 1,380 jobs have been created.

Section 15 (3) (i): ANY ADDITIONAL INFORMATION THE GOVERNING BODY OR THE STATE TAX COMMISSION CONSIDERS NECESSARY

Attached find page excerpts from the FY2008-09 audited financial statement for the City of Portage. This information provides supporting documentation for this financial report.

**CITY OF PORTAGE, MICHIGAN**

**Downtown Development Authority Debt Service Fund  
Schedule of Revenues, Expenditures and Changes in Fund Balance  
Budget and Actual**

**Fiscal Year Ended June 30, 2009  
With Comparative Actual Amounts for Fiscal Year Ended June 30, 2008**

	2009		Variance with	2008
	Amended Budget	Actual	Amended Budget + / (-)	Actual
<b>REVENUE:</b>				
Taxes	\$ 370,000	\$ 436,298	\$ 66,298	\$ 390,419
Interest on investments	7,000	6,716	(284)	9,411
Total revenues	<u>377,000</u>	<u>443,014</u>	<u>66,014</u>	<u>399,830</u>
<b>EXPENDITURES:</b>				
Debt Service:				
Principal	125,000	125,000	-	120,000
Interest	259,086	258,836	250	263,318
Total expenditures	<u>384,086</u>	<u>383,836</u>	<u>250</u>	<u>383,318</u>
Excess (deficiency) of revenues expenditures	<u>(7,086)</u>	<u>59,178</u>	<u>66,264</u>	<u>16,512</u>
Net change in fund balance	(7,086)	59,178	66,264	16,512
Fund balance - beginning	<u>283,721</u>	<u>283,721</u>	<u>-</u>	<u>267,209</u>
Fund balance - ending	<u>\$ 276,635</u>	<u>\$ 342,899</u>	<u>\$ 66,264</u>	<u>\$ 283,721</u>

**TO:** Downtown Development Authority Board of Directors      **DATE:** July 16, 2010  
**FROM:** Jeffrey M. Erickson, Authority Director  
**SUBJECT:** 2003 Amended Development Plan and 2003 Development Agreement / Second Amendment to Development Agreement: Recommendation

The City Administration has been working to resolve a matter that involves development within the Portage Downtown Development Authority (DDA) district in the context of the approved 2003 Amended Development Plan/Tax Increment Finance Plan and the approved 2003 Development Agreement with H&G, LLC. Discussions have been ongoing since early 2008. This communication is to advise the Board of Directors of the successful resolution of the matter in a manner that fulfills the intent and purpose of the 2003 Amended Plan and the 2003 Development Agreement and related documents.

As background information, in 2003 an additional opportunity to utilize the DDA and facilitate another public-private venture became available. As a financing mechanism, the DDA was used to accomplish public improvements and activities to facilitate additional private investment in the district. Attached are September 30, 2003 and October 27, 2003 communications to the City Council (without attachments) concerning the 2003 Amended Plan and the 2003 Development Agreement that were executed between the City of Portage and H&G, LLC, the owners of The Trade Centre tract. Also attached is Appendix E of the 2003 Development Agreement. The communications and appendix contain summary information about the planned public improvements and activities that were to be initiated and the additional private sector investments that were proposed in the DDA. All of the public improvements and public activities initially undertaken as part of the original 1998 Development Plan and as part of the 2003 Amended Plan have been completed, as reported in annual reports. Finally, as the Boardmembers know, the Trade Centre I office building project was constructed by H&G, LLC as was the Trade Centre II office building project. After the 2003 Amended Development Plan was approved, additional private investment projects were also constructed in the DDA district along South Westnedge Avenue by other developers and include the IHOP restaurant and the Mongolian Barbeque restaurant.

With regard to the discussions between the City Administration and H&G, LLC, the matter involves the second project and the land purchase referenced in the 2003 Amended Plan and the 2003 Development Agreement. The following is provided as a summary:

- A second project was required to be constructed by H&G, LLC. The project is important as the tax increment revenue from the second project is crucial to assist in the retirement of the bonds that were issued to finance the public improvements and activities. Per the terms of the 2003 Amended Plan and the 2003 Development Agreement, should H&G, LLC not begin construction of the second project in the DDA by 2008, H&G, LLC would be required to re-purchase a 2.81 acre parcel of land from the city originally acquired for potential future public use. A second project has been constructed by H&G, LLC in proximity to the DDA and additional projects were planned to be constructed by H&G, LLC in the Trade Centre area before this time. The second project that was constructed by H&G, LLC, is not located in the DDA, but is situated just west of the district boundary. Moreover, due to the severely weakened economic situation in Michigan and nationally, additional projects within the DDA planned by H&G, LLC, one of which could have become the required second project, have been delayed. The company has been actively working to develop accommodations facilities, an additional office project and other projects within The Trade Centre. With improving economic conditions and with completion of the I-94/South Westnedge Avenue interchange, which was accelerated using Federal Stimulus funding, H&G, LLC is continuing to plan these projects in the DDA district.

- The City of Portage purchased 2.81 acres of land for potential future public use at a cost of \$500,000, per the terms of the 2003 Amended Plan and the 2003 Development Agreement. The tract is located at the west boundary of the 32-acre Trade Centre area, outside the DDA district. Per the 2003 Development Agreement, the land purchase was to occur at a “mutually agreeable time in 2004,” but occurred later in 2005, which was memorialized in the First Amendment To Development Agreement and was executed on January 12, 2005. Subsequently, at the time of purchase, and as negotiated between the parties, a Memorandum of Put And Option and a Put And Option Agreement, dated August 25, 2005, were executed that required H&G, LLC to re-purchase the 2.81 acres as early as August 2010 if the city determined the parcel was not needed for public purposes.

Per the terms of the 2003 Development Agreement, the re-purchase price equals \$500,000 less the credit of the incremental tax revenue generated by the Development Parcel (excluding the Office Parcel) received by the city during the five year period from 2005 to 2009 and of the tax revenue generated by the Trade Centre II project paid to the city between 2005 and 2009. The re-purchase price equals \$206,615 after applying the credit per the terms of the Development Agreement.

For the city, funds from the parcel sale will assist with required bond payments. The 2.81 parcel is not needed for public use and is best placed on the tax roll. Given the economic conditions, potential future projects and excellent working relationship between the parties, it is the desire of H&G, LLC and the City Administration to realize additional private sector investment in the DDA district. Attached is the Second Amendment To Development Agreement that has been prepared by City Bond Counsel John Axe that formally documents the way in which the matter would be resolved, which is recommended for approval. The parties would agree:

1. The construction of Trade Centre II (950 Trade Centre Way) occurred on the Development Parcel but outside the DDA district;
2. The payment by H&G, LLC of the annual amount referenced in the 2003 Development Agreement that is equivalent to the incremental tax revenue from the Second Project and would equal 20.5881 mils will not be required;
3. Re-purchase of the 2.81 acre parcel by H&G, LLC will occur with up to four annual installment payments commencing on August 25, 2010 and delivery of the final payment no later than August 25, 2013.

The Board of Directors is requested to adopt the resolution recommending approval and authorizing transmission of a Second Amendment To Development Agreement. This resolution will then be forwarded to City Council for final action.

As an important additional issue, the Board of Directors is also advised that business meetings will be scheduled in the next several months to consider a new amendment of the Development Plan first approved in 1998 and amended in 2003. Public improvements have been programmed as part of the South Westnedge Enhancement Project (SWEPs) that was announced in 2003 and subsequently incorporated into the City of Portage Capital Improvement Program by City Council. These public improvements involve public street, water and related infrastructure improvements along South Westnedge Avenue. Public improvements involving Trade Centre Way and West Fork Crossing, local public streets in the DDA district, are also planned to facilitate the accommodations/hotel projects being proposed by H&G, LLC in The Trade Centre within the DDA district east of the Trade Centre I office project. The Board of Directors is also advised that a 2010 Development Agreement with H&G, LLC regarding the Trade Centre Way and West Fork Crossing public street improvements and private investment projects from which tax increment revenues would be captured will also be prepared.

City staff will be present at the upcoming board meeting. Approval of the attached document is recommended. Subsequent to board action, the matter will then be referred to the City Council.

Attachments: September 30, 2003 and October 27, 2003 Communications to City Council  
Appendix E, 2003 Development Agreement  
Parcel Purchase information (2.81 acre parcel map and legal description)  
Resolution with Second Amendment To Development Agreement

# CITY OF PORTAGE

# COMMUNICATION

TO: Honorable Mayor and City Council

DATE: September 30, 2003

FROM: Michael L. Stampfler, City Manager

SUBJECT: Downtown Development Authority – Information.

Attached for the information of City Council are two documents related to the above subject, which is included on the October 7, 2003 meeting agenda for consideration.

The first document is the 2003 Amended Development Plan / Amended Tax Increment Finance Plan as finalized by the City Administration in conjunction with Attorney John Axe. As indicated in the communication to the Council in the meeting agenda, a public hearing is advised to be set for November 4, 2003 at which time review of the planned project, proposed public improvements and related details associated with using tax increment financing through the Downtown Development Authority (DDA) would occur. Approval of the Amended Plan is recommended.

The second document is the Development Agreement, which has been negotiated by the City Administration, assisted by city bond counsel, and H&G LLC, the developer of the proposed approximate 20-acre Trade Center project. The principal terms contained in the Agreement are summarized below:

- Financing through the DDA using tax increment financing with tax revenue captured from Kalamazoo County, Kalamazoo Valley Community College, Portage District Library and the city.
- The purchase by the city of land for right-of-way, utilities and other public purposes at a negotiated price that does not exceed that paid by the Developer (The land cost equates to \$177,935 per acre).
- Construction of specified public improvements by the city, using standard bid proceedings.
- Terms and commitments from the Developer --
  - To construct the Trade Center project,
  - To construct one or more additional commercial/retail/hotel projects in this portion of the DDA with specified minimum taxable values, or to repurchase specified acreage from the city at the price paid by the city,
  - To not challenge specified minimum taxable values for the main and additional development projects,
  - To construct the storm drainage improvements at the Developers cost.
- Neighborhood protection during construction activities.
- Standard and mutually protective indemnification language, and other terms as recommended by the city bond counsel, including default provisions.

At the November 4, 2003 meeting, the resolution prepared by Attorney Axe to approve the Development Agreement will also be on the Council agenda for approval and it is recommended that the Agreement also be approved.

Attachments: 2003 Amended Plan  
Development Agreement

D.1

**CITY OF PORTAGE**

**COMMUNICATION**

**TO:** Honorable Mayor and City Council

**DATE:** October 27, 2003

**FROM:** Michael L. Stampfler, City Manager

**SUBJECT:** Downtown Development Authority - I-94 Trade Center project.

**ACTION RECOMMENDED:** That City Council:

1. approve the ordinance regarding the 2003 Amended Development Plan and Amended Tax Increment Financing Plan for the Development Area within the Portage Downtown Development Authority district,
2. approve the Bond Resolution for Downtown Development Limited Tax Bonds, Series 2003, in the amount of \$2.765 million,
3. approve the Resolution Approving Undertaking to Provide Continuing Disclosure by the City of Portage,
4. approve the Resolution Approving Agreement to Implement the 2003 Amended Development Plan and Amended Tax Increment Financing Plan and
5. approve the Resolution Approving the Development Agreement.

A public hearing is to be held on the proposed 2003 Amended Development Plan and Amended Tax Increment Financing Plan. This Amended Plan explains the public improvements that will be initiated to facilitate the development of 20 acres of land along I-94 owned by H&G LLC, a company formed by Joseph Gesmundo and Roger Hinman. The initial project will be an approximate 83,000 square foot "signature" office building (The Trade Center) on six acres of land, with the initial tenant of Plante & Moran, a national accounting and business service firm, occupying the third floor area. With the proposed public infrastructure improvements, development of this vacant property will be feasible: The important benefits of continued tax base growth for the City of Portage and Kalamazoo County and the creation of additional job opportunities, which were initiated in 1998 with the Community Investment Initiative, can be realized.

The original program of public improvements to encourage private sector investment within the Downtown Development Authority (DDA) along this portion of the South Westnedge Avenue commercial corridor has been very successful. The private sector investments involved the redevelopment and use of previously deteriorated, vacant and underutilized properties with successful commercial activities including Rite Aid Drug, Gander Mountain, Bennigan's Restaurant, Hooters Restaurant and the Lowe's Home Store, among others. Taken together, the \$23 million of investment by the private sector and 540 new jobs have exceeded the \$15 million of market value along with the 500 job opportunities projected in 1998 to be added to the local economy.

As explained in the 2003 Amended Plan, it is recommended that the City of Portage, again, act to promote economic expansion using the DDA. The public improvements recommended in this DDA project are:

- Acquisition of land for public purposes, including right-of-way for a public street, storm water drainage purposes and public water utilities, and
- Construction of public improvements (south extension of a public street from West Fork Crossing and related street appurtenances, public water main, fire protection, signage and related elements).

Public Act 197 of 1975 (Downtown Development Authority Act) specifies the statutory requirements that must be fulfilled to utilize tax increment revenues received through the use of this financing tool. The Act requires that City Council receive the Amended Plan, notify affected parties including local units of government and schedule a public hearing on the Amended Plan subsequent to approval by the DDA Board of Directors. On September 30, 2003, the DDA Board of Directors convened a meeting to consider the 2003 Amended Development Plan and Amended Tax Increment Financing Plan and recommended approval by City Council. Copies of the resolution approving and authorizing transmission of the Amended Plan, the text of the Amended Plan and related documents were previously provided to the Council. The DDA Board of Directors also met on October 15, 2003 and reviewed estimates of anticipated tax increment revenue and approved the agreement to implement the Amended Plan. The October 15, 2003 actions and related information from the DDA Board of Directors are attached to this communication.

John Axe, bond counsel for the city, has provided the accompanying correspondence and documents for consideration of City Council at the November 4, 2003 meeting. Subsequent to the public hearing, the ordinance approving the Amended Plan is recommended for approval. Also recommended for approval are the resolutions associated with undertaking the activities explained in the Amended Plan, including the bond resolution in the amount of \$2.765 million, the continuing disclosure resolution and the resolution approving the Development Agreement.

This DDA project has important economic benefits for Portage and Kalamazoo County involving tax base growth and employment growth: The initial project to be developed by H&G LLC has an estimated value of approximately \$13.5 million, with the Plante & Moran office element involving up to 100 new jobs. The Trade Center project is expected to generate additional growth and the development and the redevelopment of other properties in the DDA, further strengthening the tax base of the community and improving this business area, consistent with the 1998 Community Investment Initiative.

Attachments: Correspondence from Attorney John Axe, with ordinance and resolutions  
Transmittal from the DDA President with resolutions  
DDA meeting minutes, dated October 15, 2003  
DDA Vicinity Map

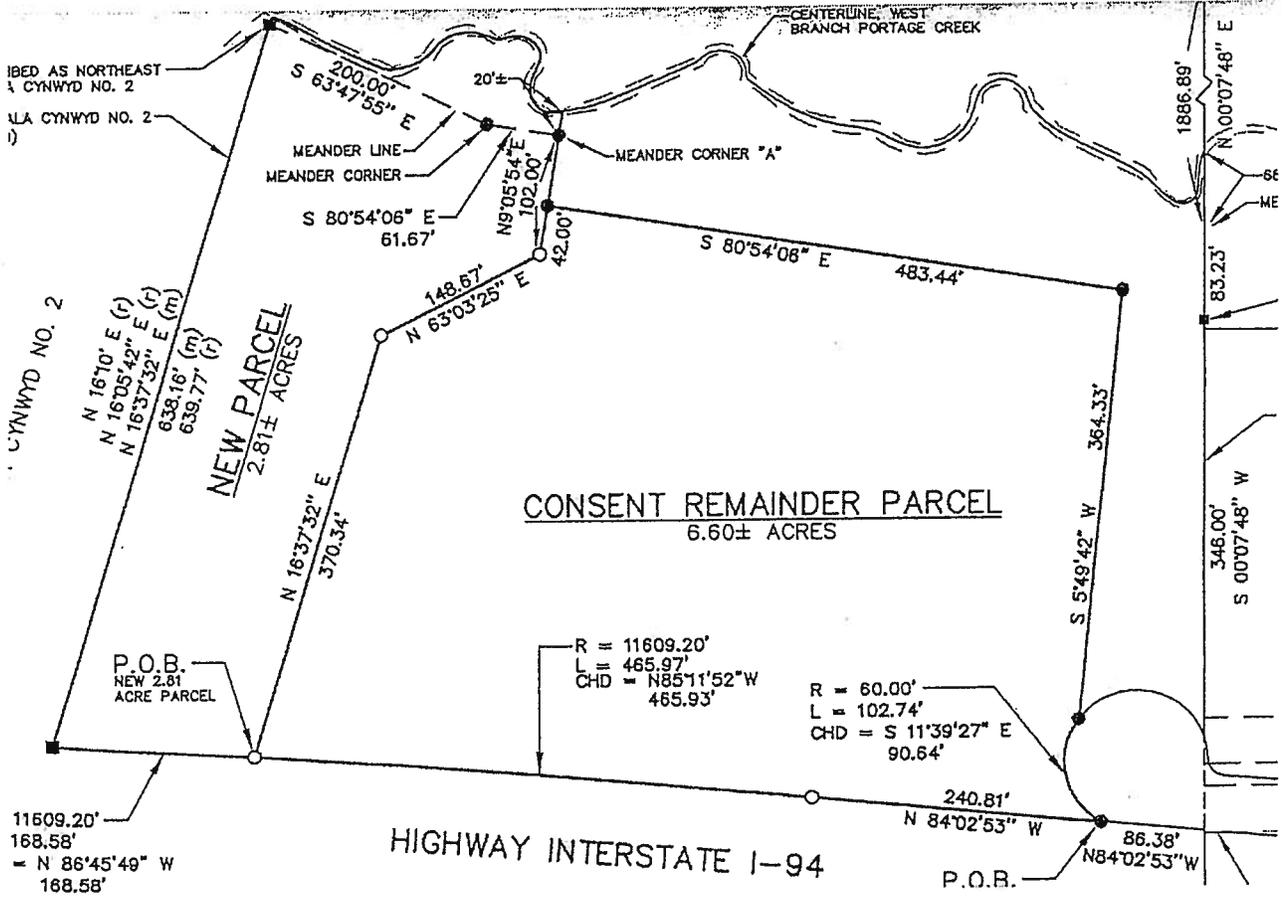
CommdevDDAMCCddplanaction102703.doc

Appendix E

COST TO BE PAID  
BY CITY OF PORTAGE

<u>Improvements</u>	<u>Estimated Time Required</u>	<u>Estimated Cost for Completion</u>
1. a. The acquisition of 5.10 acres of land for public street right-of-way and stormwater retention	Fall 2003	\$ 909,000
1. b. Developer shall construct with its funds a stormwater facility on land immediately west of the DDA boundary	Spring 2003/ Fall 2004	(no city cost)
2. The construction of an approximate 2200-foot long, 36-foot wide public cul-de-sac street, with pavement, curb and gutter, sidewalk, conduit for the installation of telecommunications fibre, street lighting and landscaping -	Fall 2003/ Spring 2004	\$689,000
3. The construction of public water main from the Milham Well Field to the DDA under I-94, to be looped with public water utilities in Holiday Lane -	Fall 2003/ Spring 2004	\$ 300,000
4. To facilitate "way finding" by customers from South Westnedge and West Fork Crossing the financing and construction of identification sign at South Westnedge and orientation sign at West Fork Crossing -	Summer 2004	\$30,000
5. The acquisition of 2.81 acres of land in the DeHaan Drive and West Fork Crossing vicinity of the DDA for stormwater or other public use -	2004	\$500,000
6. The annual maintenance, monitoring of the retention facility	Annually	\$ 5,000
mitigation facility -		(Not Bonded)
		(\$100,000 over 20 yrs.)

Appendix E costs are estimated, maximum amounts. City costs to be paid or reimbursed shall be limited to the actual approved cost for each element identified in Appendix E and shall not exceed actual approved cost regardless of the estimated, maximum amount specified in this appendix.



“Schedule A”

Land situated in the City of Portage, County of Kalamazoo, State of Michigan:

Part of the North Half of Section 4, Town 3 South, Range 11 West, City of Portage, Kalamazoo, County, Michigan described as:

Commencing at the East Quarter Post of said Section 4; thence North 00 degrees 10 minutes 32 seconds East on the East line of said Section 4 a distance of 650.43 feet to the North line of the Assessor's Plat of De Boer Homestead Acres, according to the plat thereof as recorded in Liber 14 of Plats, Page 06, Kalamazoo County records, said North line being previously referred to as the North line of the North Half of the South half of the South half of the Northeast quarter of said section 4; thence North 89 degrees 55 minutes 00 seconds West on said North Plat Line and on an extension of said North Plat line 1,051.22 feet to a point being 160.00 feet North 89 degrees 55 minutes 00 seconds West of the Northwest corner of Lot 68, said De Boer Homestead Acres; thence South parallel with the West line of said Lot 68 a distance of 132.00 feet; thence South 89 degrees 55' 00" East on an extension of the North line of De Haan Drive 160.00 feet to the Southwest corner of said Lot 68; thence South 66.00 feet to the Northwest corner of Lot 69, said De Boer Homestead Acres; thence South 89 degrees 55 minutes 00 seconds East on the South line of said De Haan Drive 122.82 feet; thence continuing South 89 degrees 55 minutes 00 seconds East 45.18 feet to a point that is 30.00 feet North 89 degrees 55 minutes 00 seconds West of the Northeast corner of Lot 71, said De Boer Homestead Acres; thence South 45.00 feet to the Northerly Limited Access Right-of-way Line of Highway 1-94; thence South 24 degrees 25 minutes 45 seconds West on said Northerly Right-of-way line 139.40 feet to a point on the South line of Lot 86, said De Boer Homestead Acres; thence South 66 degrees 52 minutes 47 seconds West on said Northerly Right-of-way line 48.22 feet to the Northeast corner of Lot 108, said De Boer Homestead Acres; thence South on the east line of said Lot 108 and on said Northerly Right-of-way line 40.00 feet to the Southeast corner of said Lot 108; thence North 89 degrees 55 minutes 00 seconds West on the South line of said Lot 108 and on said Northerly Right-of-way line 29.97 feet; thence South 58 degrees 28 minutes 33 seconds West on said Northerly Right-of-way line 158.88 feet; thence South 72 degrees 31 minutes 24 seconds West on said Northerly Right-of-way line 163.48 feet; thence North 88 degrees 37 minutes 19 seconds West on said Northerly Right-of-way line 250.80 feet; thence North 84 degrees 02 minutes 53 seconds West on said Northerly Right-of-way line 1,241.33 feet to a point on the South Line of Lot 98, said De Boer Homestead Acres; thence North 89 degrees 55 minutes 00 seconds West on the South line of said Lot 98 a distance of 21.53 feet to the North and South Quarter line of said Section 4, said point being 218.22 feet North 00 degrees 07 minutes 48 seconds East of the center of said Section 4; thence North 00 degrees 07 minutes 48 seconds East on said Quarter line 2.21 feet to the Northerly limited access Right-of-way line of Highway 1-94; thence North 84 degrees 02 minutes 53 seconds West on said Northerly Right-of-way line 327.19 feet; thence Northwesterly 465.97 feet on said Northerly Right-of-way line and on an 11,609.20 foot radius curve to the left whose cord bears North 85 degrees 11 minutes 52 seconds West 465.93 feet to the point of beginning of the land herein described; thence

Northwesterly 168.58 feet on said Northerly right-of-way line and on an 11,609.20 foot radius curve to the left whose chord bears North 86 degrees 45 minutes 49 seconds West 168.58 feet to a point on the East line of Bala Cynwyd No. 2, according to the plat thereof as recorded in Liber 32 of Plats, Page 39, Kalamazoo County records; thence North 16 degrees 37 minutes 32 seconds East on the East line of said Bala Cynwyd No. 2 a distance of 638.16 feet to a point described as the Northeast corner of Bala Cynwyd No. 2; thence South 63 degrees 47 minutes 55 seconds East on a meander line 200.00 feet to a meander corner; thence South 80 degrees 54 minutes 06 seconds East 61.67 feet to meander corner "A"; thence South 09 degrees 05 minutes 54 seconds West 102.00 feet; thence South 63 degrees 03 minutes 25 seconds West 148.67 feet; thence South 16 degrees 37 minutes 32 seconds West 370.34 feet to the point of beginning. Also all that land lying North of the Meander line, South of the centerline of the West Branch of Portage Creek, West of a line extending North 9 degrees 05 minutes 54 seconds East from the above described meander corner "A" and East of a line extending North 16 degrees 37 minutes 32 seconds East from the point described as the Northeast corner of Bala Cynwyd No. 2.

**CITY OF PORTAGE  
DOWNTOWN DEVELOPMENT AUTHORITY**

At a \_\_\_\_\_ meeting of the Board of the City of Portage Downtown Development Authority (the "Authority") held in the Portage City Hall, in the City of Portage, Michigan on \_\_\_\_\_, 2010 at \_\_:\_\_ .m. Eastern Daylight Savings Time, there were:

PRESENT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

The following preamble and resolution were offered by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**RESOLUTION RECOMMENDING AND AUTHORIZING  
TRANSMISSION OF A SECOND AMENDED DEVELOPMENT AGREEMENT  
TO THE CITY COUNCIL**

WHEREAS, the City of Portage Downtown Development Authority (the "Authority") has been duly incorporated by the City of Portage (the "City") pursuant to Act No. 197 of the Public Acts of Michigan of 1975, as amended (the "Act") and the Board of the Authority has been duly appointed and sworn into office, and

WHEREAS, the Board has received and reviewed a Second Amendment to Development Agreement (the "Agreement")

WHEREAS, this Board approves of the Agreement, a copy of which is attached to this resolution as APPENDIX A and recommends its approval by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE CITY OF PORTAGE DOWNTOWN DEVELOPMENT AUTHORITY as follows:

1. The Downtown Development Authority Board hereby recommends that the City Council approves the Second Amendment to Development Agreement (the "Agreement") in the form attached hereto as APPENDIX A.

2. The President of the Authority is authorized to transmit the Agreement to the City Council of the City of Portage.

The results of a roll-call vote on the foregoing resolution were as follows:

YES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NO: \_\_\_\_\_  
\_\_\_\_\_

ABSTAIN: \_\_\_\_\_

THE RESOLUTION WAS THEREUPON DECLARED ADOPTED.

**SECRETARY'S CERTIFICATE**

The undersigned, being the duly qualified and acting Secretary of the Board of the City of Portage Downtown Development Authority, hereby certifies that (1) the foregoing is a true and complete copy of a resolution adopted by the Board at a \_\_\_\_\_ meeting held on \_\_\_\_\_, 2010, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records of the proceedings of the Board in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended), and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

\_\_\_\_\_  
Secretary

## APPENDIX A

### SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2010, by and among the CITY OF PORTAGE, (the "City"), a Michigan Municipal Corporation, and Trade Center H, LLC, Trade Center G, LLC, tenants in common, and H & G LLC, all Michigan Limited Liability Companies, (collectively the "Developer").

#### Background

1. The parties hereto entered into a Development Agreement dated September 24, 2003, and a First Amendment to Development Agreement dated January 12, 2005, (collectively the "Development Agreement") covering a parcel of land consisting of approximately 32 acres, which is identified in the Development Agreement and described in Appendix A of the Development Agreement as the "Development Parcel".
2. On August 25, 2005, the City and the Developer entered into a Memorandum of Put and Option Agreement and a Put and Option Agreement to purchase and subsequently repurchase a certain 2.81 acres of land identified in the Development Agreement.
3. Developer and City now desire to enter into this Amendment for the purpose of amending the Development Agreement in accordance with the terms and conditions set forth herein.

#### Amendment

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt, adequacy and sufficiency of which is hereby acknowledged, the City and Developer wish to amend the Development Agreement to conform to the actual development that has occurred and to alter accordingly the responsibility of the City and the Developer with respect to past and future duties under the Development Agreement in the following manner:

1. Second Project. The parties agree that Article 3 of the Development Agreement is hereby amended, clarified and modified in the following manner:
  - A. The City and Developer agree that the Second Project, for purposes of the Development Agreement, is the four-story office building project addressed as 950 Trade Centre Way that is situated on an approximate 12 acre portion of the Development Parcel. The parties acknowledge and agree that the Second Project has been constructed on the Development Parcel but outside of the boundaries of the Downtown Development Authority district.

B. Developer agrees to pay taxes due on the Second Project as determined by the Portage City Assessor based on the taxable value annually established for real and personal property. Developer shall nonetheless have the right to challenge SEV, assessed value taxable values, or any other property tax component related to the Second Project as permitted under Michigan Law.

C. Property Taxes on Second Project. The City and Developer agree that the payment to the City of the annual amount that is referenced in Section 6.7 of the Development Agreement, which is equivalent to the incremental tax revenue from the original Second Project and would equal 20.5881 mills on a taxable value of \$3,000,000, is hereby deleted and is not required to be paid by the Developer. The parties agree that property taxes on the Second Project shall be paid in accordance with Section 1.B of this Amendment.

2. Re-Purchase of a 2.81 Acre Parcel. The Developer shall repurchase 2.81 acres of land from the City, which the City purchased from the Developer as required by Section 7.1.b of the Development Agreement. The Developer agrees to re-purchase the 2.81 acres of land from the City for the amount of \$206,615, which is based on the original purchase price less the amount of the increase in the added tax revenue generated by the Development Parcel, but excluding the amount of such increase attributable to the Office Parcel, from 2005 through 2009. Upon the payment of the complete re-purchase amount, the City agrees to transfer title thereto to the Developer.

A. The payments to the City from the Developer shall be made as follows:

a. First installment of \$56,615 due August 25, 2010.

b. Second installment of \$50,000, with interest at the rate of 3.25% (Prime Rate as stated in the Wall Street Journal, June 14, 2010 edition) computed as simple interest from August 25, 2010, due August 25, 2011.

c. Third installment of \$50,000, with interest at the rate of 3.25% computed as simple interest from August 25, 2010, due August 25, 2012.

d. Final installment of \$50,000, with interest at the rate of 3.25% computed as simple interest from August 25, 2010, due August 25, 2013.

B. Upon delivery of all of the payments set forth above, City shall convey the parcel to Developer (or its designee) by warranty deed.

C. Developer shall have the right to accelerate and/or pre-pay any payments prior to their due date. Upon delivery of all required amounts, City shall deliver title to the parcel in accordance with Section 3.4.E hereof.

3. City Parcel and Obligations of City and Developer. The parties agree that Article 7, Section 7.1.b of the Development Agreement is hereby amended, clarified and modified in the following manner:

- b. Purchase 2.81 acres of land situated in the DeHaan Drive and West Fork Crossing area, from the Developer, for stormwater or other public use. Consistent with the First Amendment to the Development Agreement, the City has purchased 2.81 acres of land situated in the DeHaan Drive and West Fork Crossing area from the Developer for stormwater or other public use. The closing on the purchase occurred on or before July 1, 2005. Consistent with the August 25, 2005 Memorandum of Put and Option Agreement and the Put and Option Agreement, the City and Developer agree that the Developer shall re-purchase the 2.81 acres of land as specified in Section 2.A through 2.C. of the Second Amendment to Development Agreement.

4. No Defaults. The parties acknowledge and agree that upon execution of, and compliance with, the terms and conditions of this Amendment, that neither party shall be in default to the other under the terms and conditions of the Development Agreement.

5. Continuation of Rights and Obligations. All terms, conditions, rights and obligations among the parties pursuant to the Development Agreement and the Put and Option Agreement shall continue in full force and effect except when inconsistent with this Amendment. In the event of an inconsistency, the terms of this Amendment shall govern.

6. Background. The Background set forth above is accurate, correct and is hereby incorporated into this Amendment.

*Signatures on following page*

IN WITNESS WHEREOF, the City and the Developer by and through their duly authorized representatives, have executed this Amendment as of the day and year first above written.

**THE CITY OF PORTAGE,  
a Municipal Corporation**

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

**H & G, LLC**  
a Michigan limited liability company

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

**TRADE CENTER G, LLC**  
a Michigan limited liability company

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

**TRADE CENTER H, LLC**  
a Michigan limited liability company

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

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SecondAmendment to Development Agreement.DOC

## **MATERIALS TRANSMITTED**

# DOWNTOWN DEVELOPMENT AUTHORITY BOARD MEMBER ROSTER

BOARD MEMBER	ADDRESS	HOME PHONE	WORK PHONE	FAX	E-MAIL	TERM EXPIRES
Terryl Patterson, President	7491 Dunross	324-3445	3291808	323-8705	<a href="mailto:tpatterson@treystar.com">tpatterson@treystar.com</a>	07/01/10
Matt Milks, Secretary	5124 Mapleridge	383-8481	323-2441 217-1907(cell)		<a href="mailto:mmilks@mcweiner.com">mmilks@mcweiner.com</a>	07/01/10
Ron Dunlap	7826 Kilburnie Ct	324-2514	616-340-2412 (Cell)		<a href="mailto:rdunlap@aol.com">rdunlap@aol.com</a>	07/01/11
Jeff Chrystal	1231 Cobblestone Lane	343-6928	207-5431 (cell)		<a href="mailto:jchrystal@signatureassociates.com">jchrystal@signatureassociates.com</a>	07/01/11
Walter Hansen	3027 Woodhams	323-1985	323-3315 599-4212(cell)	1-866-384-8548	<a href="mailto:wwrhansen@aol.com">wwrhansen@aol.com</a>	07/01/12
James Huberty, Treasurer	5347 Azalea	349-1408	349-1000		<a href="mailto:jhuberty@prudentialcallander.com">jhuberty@prudentialcallander.com</a>	07/01/12
Benjamin Boyer, Vice President	3524 East Shore Dr	329-2467			<a href="mailto:gusphupa@hotmail.com">gusphupa@hotmail.com</a>	07/01/13
Rich MacDonald	750 Trade Centre Way		342-8600		<a href="mailto:richm@hinmancompany.com">richm@hinmancompany.com</a>	07/01/13
Maurice Evans	7900 S. Westmedge Ave		329-4400	329-4506	<a href="mailto:evansm@portagemi.gov">evansm@portagemi.gov</a>	N/A
Jeffrey Erickson, ex-officio	7900 S. Westmedge Ave		329-4477	329-4506	<a href="mailto:ericksoj@portagemi.gov">ericksoj@portagemi.gov</a>	N/A