CALL TO ORDER:

1:00 p.m., Portage City Hall, Conference Room 2, 7900 South Westnedge Avenue

APPROVAL OF MINUTES:

* January 27, 2017

NEW BUSINESS:

1. Election of Officers
   * Board Member Listing

2. Brownfield Redevelopment Plan Amendment No. 7, 6666 Lovers Lane.
   * Communication from Director Georgeau with attachments

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

Star (*) indicates printed material within the agenda packet.
Brownfield Redevelopment Authority

Minutes of Meeting – Tuesday, January 27, 2017

The meeting of the City of Portage Brownfield Redevelopment Authority was called to order by Vice-Chair Alburtus at 8:00 a.m. in Conference Room 1, Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan.

MEMBERS PRESENT: Eric Alburtus, Jeffrey Kalmbach, Devrim Yaman, Keith Lewandowski and Derek Debiak

MEMBERS EXCUSED: Jeffrey Monroe, Bradley Galin and Daniel Vomastek

IN ATTENDANCE: Vicki Georgeau, Community Development Director; Christopher Forth, Deputy Director; Jill VanDyken, Stryker Corporation; Rachael Grover, Kalamazoo County Department of Planning and Community Development; Joe Agostinelli, Southwest Michigan First and Chair of Kalamazoo County Brownfield Redevelopment Authority; Jill Bland, Southwest Michigan First; Jeff Hawkins, Envirologic; and David Stegink, Envirologic.

Vice-Chair Alburtus recognized past Portage Brownfield Redevelopment Authority member Robert Kelber who passed away since the last meeting of the Authority.

APPROVAL OF MINUTES: The minutes from the March 29, 2016 meeting were introduced for approval. A motion was offered by Lewandowski, seconded by Yaman to approve the minutes as submitted. The motion was approved 5-0.

BUSINESS:

1. Election of Officers. Vice-Chair Alburtus asked for officer nominations. Kalmbach offered to serve as the Chairman of the Authority; Vice-Chair Alburtus offered to continue in the capacity as the Vice-Chairman; and Debiak offered to serve as the Secretary/Treasurer. A motion was offered by Yaman, seconded by Alburtus to nominate the Kalmbach as Chairman, Alburtus as Vice-Chairman, and Debiak as Secretary/Treasurer of the Brownfield Redevelopment Authority. There being no further discussion, the motion was approved 5-0.

2. Kalamazoo County Brownfield Redevelopment Plan for Stryker Instruments. 1306 East Milham Avenue, 1700 East Milham Avenue, 6000 Portage Road, 6100 Portage Road, 6520 Portage Road, 1405 Ramona Avenue, 2221 Ramona Avenue, 2321 Ramona Avenue, and 2403 Ramona Avenue. Jill Bland explained the 4-5 year process working with Stryker Instruments officials to identify a location where certain operations can be consolidated. Bland indicated the impacts on the area, including Western Michigan University and the Kalamazoo/Battle Creek International, will be significant. Bland noted that throughout the 4-5 year evaluation process, Stryker officials emphasized commitment to the community.

Jill VanDyken, Stryker Instruments, summarized the proposed new development project. VanDyken summarized the growth that has occurred in the company and the challenges associated with operations in five separate buildings. This project will allow specific operations to be consolidated and function in one location. Up to 1,300 employees will be housed in this new facility. VanDyken summarized the exterior site improvements, exterior architectural building features and interior building operations. Yaman asked if all of the Stryker Instruments operations were relocating to this new facility. VanDyken indicated only commercial R & D operations will relocate to the new facility, not manufacturing. Operations will continue at existing facilities with the exception of staff at 6901 Portage Road. Lewandowski inquired about the facility located at 4100 East Milham. VanDyken said this existing facility will be adapted for additional manufacturing operations. Lewandowski also asked about a MDEQ air quality permit and FAA approval. Agostinelli stated an air quality permit for this facility likely won’t be needed and VanDyken noted the company is working with the FAA.
Alburnus asked about improvements to Lovers Lane. Georgeau stated she would summarize improvements to Lovers Lane as well as other information contained in the staff report dated January 20, 2017. Georgeau noted the project represents an initial investment of $130-150 million and proposes to retain 996 jobs and create approximately 105 new jobs. Georgeau briefly summarized the contamination that was identified on-site, eligible activities pursuant to PA 381 of 1996 and the tax increment financing process. Georgeau noted eligible public infrastructure activities will include a traffic signal on Portage Road, a new east-west public road and related public utilities from Portage Road to Lovers Lane, and re-alignment of the reverse curve on Lovers Lane located just north of Ramona Avenue. Due to the geometrics of the existing curve, several crashes have occurred at this location and the road project is proposed concurrent with the development project. Georgeau mentioned the Stryker Instruments has also requested a 12-year tax abatement from the City of Portage consistent with the adopted policy. Review of the brownfield plan and tax abatement application is scheduled for the February 14, 2017 City Council meeting. Finally, because the city will carry out the Lovers Lane improvements, a development agreement between the city and KCBRA will be necessary, which will also be presented to Council for approval.

Alburnus asked for an overview of the on-site contamination. Stegink noted Envirologic did not complete the initial assessment, but based on what was detected and the locations, the entire property must be treated as a contaminated site requiring due care activities. Debiak mentioned the environmental report stated lead and nitrates were found in the groundwater and asked if a source had been identified and whether they could migrate off-site. Stegink and Hawkins discussed several potential sources including spoil piles located near the southeast corner of the site, chemicals that may have been used on a past orchard/farming operation, or septic systems associated with former farmsteads. Hawkins indicated the spoil piles will be removed and with regard to the groundwater contamination, businesses and residents in the area are connected to municipal water. Although minimal remediation efforts are needed, Hawkins noted the level of on-site contamination does meet the requirements of the Brownfield Redevelopment statute. Agostinelli explained the added incentives of using the tax increment financing associated with brownfield redevelopment as compared to a local development financing authority. Debiak expressed some concern about setting a precedent involving future projects. Hawkins stated each site is reviewed and evaluated on a case-by-case basis.

There being no further discussion, a motion was offered by Alburnus, seconded by Kalmbach that the Brownfield Redevelopment Authority recommend to City Council that the resolution of support involving the KCBRA Brownfield Redevelopment Plan for 1306 East Milham Avenue, 1700 East Milham Avenue, 6000 Portage Road, 6100 Portage Road, 6520 Portage Road, 1405 Ramona Avenue, 2221 Ramona Avenue, 2321 Ramona Avenue, and 2403 Ramona Avenue be approved. The motion was approved 5-0.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT: There being no further business to come before the Authority, the meeting was adjourned at 8:48 a.m.

Respectfully submitted,

Vicki Georgeau, Director
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<td>Victoria Georgeau, Ex Officio</td>
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TO: Brownfield Redevelopment Authority

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: City of Portage Brownfield Redevelopment Plan, Plan Amendment No. 7, 6666 Lovers lane

I. INTRODUCTION:

The Brownfield Redevelopment Financing Act (PA 381 of 1996, as amended) allows a city, village, township or county to establish a Brownfield Redevelopment Program for the purposes of facilitating the reuse of contaminated, blighted or functionally obsolete properties. Pursuant to the Act, Southwest Michigan First, on behalf of the property owner, Lovers Lane Properties, LLC has approached the City of Portage and requested assistance through the City of Portage Brownfield Redevelopment Authority (PBRA) with eligible environmental, interior and exterior building demolition, site preparation activities and storm water treatment facilities at 6666 Lovers Lane. Lovers Lane Properties, LLC is requesting to utilize tax increment financing (TIF) for reimbursement of eligible expenses related to the facility.

Lovers Lane Properties, LLC proposes to invest approximately $725,000 in building/site improvements and lease the building to Comcast. Comcast will employ 25-30 new full-time equivalent employees at this location with an average annual salary of $30,000.

II. CITY OF PORTAGE BROWNFIELD REDEVELOPMENT PROGRAM

As background information for the Authority members, City of Portage Brownfield Redevelopment Program was established in 2001 with the designation of the EDC/TIFA Board as the Brownfield Redevelopment Authority and approval of the first brownfield redevelopment plan. Since 2001, six brownfield redevelopment plans have been approved by the Authority and City Council and include:

- Brownfield Plan No. 1: 129 West Centre Avenue (Portage Centre Plaza). This plan was approved in August 2001 and resulted in the construction of a multi-building retail center.
- Brownfield Plan No. 2: 901 East Milham Avenue (Milham Business Tech Park). This plan was approved by City Council in May 2003 and resulted in the construction of a new financial institution.
- Brownfield Plan No. 3: 5942 Lovers Lane (Dame & Updike LLC). This plan was approved by City Council in July 2003 and resulted in the construction of a new veterinary clinic.
- Brownfield Plan No. 4: 5311 South Westnedge Avenue (5311 South Westnedge LLC). This plan was approved by City Council in August 2003 meeting and resulted in the construction of two new restaurants.
- Brownfield Plan No. 5: The Trade Center, 750 Trade Centre Way (H & G LLC). This Plan was approved by City Council in August 2003 and helped to facility construction of a first class, four-story office building.
- Brownfield Plan No. 6: 8019, 8037 and 8043 Portage Road (Centreport Commons). This plan was approved in 2006 and the former gas station building/canopy have been removed, underground utilities installed and private drives constructed. Following installation of the infrastructure, no buildings have been constructed due, in part, to the poor economic conditions that followed.
The first five brownfield plans involved only a Michigan business tax credit from the State of Michigan. However, this tax has since been eliminated and the credit is no longer available. Treystar Holdings, LLC (Centreport Commons project) was the first applicant to request and be approved for tax increment financing. Since no buildings have been constructed, no tax increment has been captured and the five-year tax capture period has expired.

In addition to the six individual plans included in the City of Portage Brownfield Plan, the city has also supported three additional Brownfield Redevelopment Plans coordinated by the Kalamazoo County Brownfield Redevelopment Authority. These three additional Brownfield redevelopment projects are located at 9008 Portage Road, 5825/5901 Willoughby Drive and 1941 Stryker Way.

The City of Portage adopted a Brownfield Redevelopment Policy in 2006, which was amended in 2019 to incorporate the establishment of a Local Brownfield Revolving Fund (LBRF). Over time, funds will accumulate in the LBRF that will be available to assist with the upfront costs of creating a Brownfield Redevelopment Plan amendment as well as other eligible activities as appropriate. The policy was also amended to allow the City Manager to review and approve the initial application instead of City Council.

The Brownfield Redevelopment Program is an important economic redevelopment tool to facilitate the successful reuse of contaminated, blighted and/or functionally obsolete properties, further improve the environment and/or properties, increase the local tax base/economy and create new job opportunities or retain existing. In addition to economic benefits, redeveloping brownfields encourages the reuse of commercial, industrial and residential properties in urban areas where public infrastructure is already in place.

II. PROPOSED BROWNFIELD REDEVELOPMENT PLAN

Attached is a copy of the 6666 Lovers Lane Brownfield Plan prepared by Southwest Michigan First. The subject property is 2.48 acres in size and improved with a 10,050 square foot vacant building built in 1980 and associated off-street parking lot. Redevelopment of the property and relocation of Comcast to the site will result in the creation of 25-30 new jobs with an average annual salary of $30,000. Redevelopment of the property will also result in a significant improvement in the appearance of the building, parking lot and storm water collection/disposal system.

The site is a contaminated eligible "facility" due to the presence of soil and groundwater contamination. Eligible activities associated with the site remediation efforts proposed to be funded through state and local tax reimbursement include the following:

**Department of Environment, Great Lakes and Energy (EGLE) Eligible Activities**

- Phase 1, Phase 2 and Baseline Environmental Assessment
- Due Care Plan

**Local Tax Capture Only Activities**

- Demolition: Interior and exterior building and removal of concrete and asphalt off-street parking lot.
- Infrastructure improvements: Construction of a storm water management system consistent with City of Portage requirements.
- Site Preparation: Engineering, surveying, clearing/grubbing, soil erosion control, cut/fill and land balancing.
- Brownfield Plan Preparation

Because the City of Portage is designated as a “qualified local unit of government,” capture of local and school tax dollars may be used for site/building demolition, among others. As shown in Table 1 in the Brownfield Plan, the estimated cost to complete all eligible activities including contingencies is $182,903. Consistent with the Brownfield Redevelopment Policy for small scale projects, capture of tax increment revenue is limited to 15 years. In addition, the Brownfield Plan proposes to capture $7,912 for Authority administrative cost, $3,826 for the State Brownfield Redevelopment Fund as required by PA 381 and $66,485 for the Local Brownfield Revolving Fund. Capture of tax increment revenue for the LBRF involves an additional five years after the 15-year developer reimbursement period.

Based on the level of investment being made by Lovers Lane Properties, LLC, the increase in taxable value available for capture is approximately $313,000 in the first year to $393,205 in year 20. Based on the proposed 20 years of tax capture (including five years for the LBRF), the tax increment available for capture by all entities is $233,141. Of the $182,903 in eligible expenses, Lovers Lane Properties, LLC will receive $151,769 in reimbursement for eligible activities and building/site expenses (refer to Table 3, Reimbursement Schedule).

Table 2 shows the estimated foregone tax revenue for each taxing jurisdiction during the duration of the brownfield plan. During this time period, the City of Portage will forego approximately $79,156. After reimbursement of eligible activities and LBRF captures are complete, the tax revenue is distributed to all taxing jurisdictions in the traditional manner.

IV. RECOMMENDATION:

The Brownfield Redevelopment Plan Amendment No. 7, 6666 Lovers Lane, has been reviewed in the context of the 2019 Brownfield Redevelopment Incentive Policy. Approval of the Plan will facilitate redevelopment of a facility that is currently vacant and blighted. Based on the foregoing, staff advises that the Brownfield Redevelopment Authority recommend to City Council that the attached resolution of support be approved for tax capture in the amount of $233,141 for not more than 20 years (including five additional years of tax capture for the LBRF).

The redevelopment of the property is consistent with City of Portage land use and environmental objectives and will provide additional tax base growth and related economic benefits to the community.

Attachment: 2019 Brownfield Redevelopment Policy
          6666 Lovers Lane vicinity map
          6666 Lovers Lane Brownfield Redevelopment Plan
          Resolution
ACT 381 BROWNFIELD PLAN

6666 Lovers Lane Redevelopment
6666 Lovers Lane
Kalamazoo County, City of Portage
City of Portage Brownfield Redevelopment Authority

6/19/2019

Prepared by
Southwest Michigan First
261 E. Kalamazoo Ave, Suite 200
Kalamazoo, MI 49007

Approved by the Brownfield Redevelopment Authority on ______________________

Approved by the Portage City Council on ______________________
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Attachment C  BEA Acknowledgement Letter
Attachment D  Soil Sampling Map
Attachment E  Site Plan
ACT 381 BROWNFIELD PLAN

1.0 INTRODUCTION

1.1 Proposed Redevelopment and Future Use for Each Eligible Property
The proposed redevelopment consists of a single 2.48 acre parcel which contains a long vacant and blighted 10,050 square foot industrial building in the City of Portage, which is a qualified local governmental unit ("QLGU"). The project will involve the selective interior demolition of most of the non-structural portions of the building to facilitate the construction of new single tenant class A office and warehousing space within the building. Approximately 6,000 square feet of the building will be used for office, while the balance will be utilized for warehousing and distribution. A proposed site plan is included as Attachment E to this brownfield plan. The proposed tenant for the facility, Comcast, is anticipated to bring approximately 25-30 new full-time equivalent jobs paying an average wage of $30,000.

The total capital investment on the project is expected to be approximately $725,000. Construction on the project is planned to begin in the 3rd quarter of 2019 and will be completed by December 31, 2019.

1.2 Eligible Property Information

Basis of Eligibility
A Phase I and limited Phase II environmental site assessment ("ESA") was completed by Stoltz Environmental Solutions, Inc ("SES") in October 2016. Five soil samples and four groundwater samples were collected from the property and submitted for laboratory analysis. A soil sampling map is included as Attachment D. Based on the results of the laboratory analysis, soil at the property is impacted with arsenic and selenium, and the groundwater at the property is impacted with arsenic and lead at concentrations in excess of the most stringent applicable Michigan Department of Environmental Quality ("MDEQ"), now known as the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), Generic Residential Cleanup Criteria (GRCC).

Based on the findings of SES’s Limited Phase II ESA, the Property is a “Facility” as defined by Part 201. Verification of Facility status is contained in Attachment C.

Location and Legal Description
6666 Lovers Lane Parcel ID: 00010-370-0 2.48 Acres
Portage, MI 49002

Legal Description:
SEC 10-3-11 COM EW1/4LI 1333.9 FT W OF E1/4 POST TH S PAR E LI 804 FT FOR
2.0 Information Required by Section 13(2) of the Statute

2.1 Description of Costs to Be Paid for With Tax Increment Revenues
Tax increment revenues will be used to reimburse Lovers Land Properties, LLC ("Developer") for the cost of eligible activities as authorized by the Brownfield Redevelopment Financing Act (Act 381). Only statutorily approved EGLE environmental eligible activities will be reimbursed with local and school tax increment revenues ("TIR"). The remaining eligible activities will be reimbursed with local TIR only.

The total cost of eligible activities including contingency are anticipated to be $182,903. Authority administrative costs are anticipated to be $7,912. Funding to the State Brownfield Redevelopment Fund is anticipated to be $3,826. Capitalization of the Local Brownfield Revolving Fund is estimated to be $66,485. The estimated cost of all eligible activities under this plan are summarized in Table 1.

Environmental Activities
Department specific activities considered under this plan include a Phase I & Phase II Environmental Site Assessment ("ESA"), a Baseline Environmental Assessment ("BEA") and a Due Care Plan.

Non Environmental Activities
Because the City of Portage is a QLGU, additional non-environmental costs ("Michigan Strategic Fund ("MSF") Eligible Activities") can be reimbursed through a brownfield plan. This plan will provide for reimbursement of eligible demolition; lead, asbestos & mold abatement, site preparation and/or infrastructure improvements.

Authority Expenses
Actual eligible costs incurred by the City of Portage Brownfield Redevelopment Authority (PBRA) are included in this plan as an eligible expense. These expenses will be reimbursed with local tax increment revenues only.

2.2 Summary of Eligible Activities

2.2.1 Phase I & Phase II ESA, BEA and Due Care Plan
A Phase I and limited Phase II ESA was completed by SES in October 2017. The total cost for these services was $11,700. This is a cost statutorily approved for reimbursement with school taxes.

2.2.2 Demolition
Demolition activities include selective interior demolition to remove existing build-out in addition to the existing mechanical and electrical systems. It will also include exterior site demolition of existing concrete and asphalt to facilitate the redevelopment of the building. The total cost of demolition is estimated to be $59,025.

2.2.3 Infrastructure Improvements
Infrastructure improvement activities will include the construction of an urban stormwater management system which will prevent the direct runoff of stormwater into Portage Creek. Costs under this category will include the excavation and construction of a stormwater collection basin and associated collection structures and piping. The total cost of these infrastructure improvement is anticipated to be $26,300.

2.2.4 Site Preparation
Site Preparation activities are expected to include Geotechnical Engineering, Surveying, Staking, Clearing & Grubbing, Cut & Fill, Land Balancing, Temporary Soil Erosion Control and Temporary site control. The cost of site preparation activities is estimated to be $58,330.

2.2.5 Contingency
A 15% contingency is included to account for any unanticipated costs that may be encountered while conducting the eligible activities. The contingency is $21,548.

2.2.6 Brownfield Plan Preparation
The cost to prepare the Brownfield Plan is anticipated to be $6,000.

2.2.7 Local Brownfield Revolving Fund
The Authority intends to capture school and non-school tax increments for deposit in the local brownfield revolving fund for a full five years. This capture is estimated to be $66,485.

2.3 Estimate of Captured Taxable Value and Tax Increment Revenues
An estimate of the captured taxable value for this redevelopment by year is depicted in Table 2. This plan captures all available TIR, including real and personal property TIR.

2.4 Method of Financing and Description of Advances Made by the Municipality
The eligible activities will be financed by the developer and reimbursed as outlined in this plan and accompanying development agreement. No advances from the City are anticipated at this time.
2.5 Maximum Amount of Note or Bonded Indebtedness
No note or bonded indebtedness for this project is anticipated at this time. Therefore, this section is not applicable.

2.6 Duration of Brownfield Plan
The duration of this plan is estimated to be 20 years consistent with current city policy which limits the duration of developer reimbursement to 15 years, plus five full years of capture to the Local Brownfield Revolving Fund. It is estimated that the redevelopment of the property will be completed in 2019 and that full recapture of eligible costs and eligible administrative costs of the authority through TIR will not occur within the first 15 years of reimbursement. Capture of TIR is expected to begin in 2020, however could be delayed for up to 5 years after the approval of this plan as permitted by Act 381. In no event shall capture extend beyond 30 year as required by Act 381. An analysis showing the reimbursement schedule is attached as Table 3.

2.7 Estimated Impact of Tax Increment Financing on Revenues of Taxing Jurisdictions
An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions is illustrated in detail within Table 2.

2.8 Legal Description, Property Map, Statement of Qualifying Characteristics and Personal Property
The property consists of a single parcel which is 2.48 acres in size and is located at 6666 Lovers Lane (Parcel Identification Number 00010-370-O). A legal description of the property along with a scaled map showing eligible property dimensions, is attached as Figure 1.

The parcel is considered “eligible property” due to the presence of contaminants, specifically arsenic, selenium and lead at concentrations in excess of the most stringent applicable MDEQ GRCC. Therefore, the property is a “Facility” as defined by Part 201.

Taxable personal property, if any, is included in this plan.

2.9 Estimates of Residents and Displacement of Individuals/Families
No persons reside at the property therefore this section is not applicable.

2.10 Plan for Relocation of Displaced Persons
No persons reside at the property thus none will be displaced. Therefore, this section is not applicable.

2.11 Provisions for Relocation Costs
No persons reside at the property thus none will be displaced. Therefore, this section is not applicable.

2.12 Strategy for Compliance with Michigan’s Relocation Assistance Law
No persons reside at the property thus none will be displaced. Therefore, this section is not applicable.

2.13 **Other Material that the Authority or Governing Body Considers Pertinent**
None.
Legal Description:

SEC 10-3-11 COM EW1/4LI 1333.9 FT W OF E1/4 POST TH S PAR E LI 804 FT FOR BEG; SD PT BEING CTR LOVERS LANE TH CONT S PAR E LI SD SEC ALG CTR LOVERS LANE 150 FT TH W PAR EW1/4 LI TO ELY BANK PORTAGE CREEK TH NLY ALG ELY BANK SD CREEK TO PT 804 FT S OF EW1/4 LI TH E PAR EW1/4 LI TO POB.
Table 1

Eligible Activity Costs
### EGLE Eligible Activities Costs and Schedule

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### Local Only Eligible Activities Costs and Schedule

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<td>$1,500</td>
<td>Summer 2019</td>
</tr>
<tr>
<td>Oversight and Project Management</td>
<td>$3,000</td>
<td>Summer 2019</td>
</tr>
<tr>
<td><strong>Subtotal – Infrastructure</strong></td>
<td><strong>$26,300</strong></td>
<td></td>
</tr>
<tr>
<td>Site Preparation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Geotechnical Engineering &amp; Surveying</td>
<td>$5,500</td>
<td>Summer 2019</td>
</tr>
<tr>
<td>Surveying &amp; Staking</td>
<td>$2,500</td>
<td>Summer 2019</td>
</tr>
<tr>
<td>Clearing and Grubbing</td>
<td>$2,500</td>
<td>Summer 2019</td>
</tr>
<tr>
<td>Temporary Soil Erosion Control</td>
<td>$5,000</td>
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</tr>
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<td>Temporary Site Control</td>
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<td>Cut &amp; Fill</td>
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<tr>
<td>Oversight and project management</td>
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<tr>
<td><strong>Sub-Total – Site Prep</strong></td>
<td><strong>$58,330</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Local Only Eligible Activities Sub-Total</strong></td>
<td><strong>$143,655</strong></td>
<td></td>
</tr>
<tr>
<td>Contingency (15%)</td>
<td>$21,548</td>
<td></td>
</tr>
<tr>
<td>Brownfield Plan Preparation</td>
<td>$6,000</td>
<td></td>
</tr>
<tr>
<td><strong>Local Only Eligible Activities Total Costs</strong></td>
<td><strong>$171,203</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Combined EGLE &amp; Local Only Eligible Activities Total Costs</strong></td>
<td><strong>$182,903</strong></td>
<td></td>
</tr>
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Table 2

Tax Capture Schedule
<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Budgeted</td>
<td>$72,630</td>
<td>$72,500</td>
<td>$72,500</td>
<td>$72,450</td>
<td>$72,450</td>
<td>$72,400</td>
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</tbody>
</table>

**School Operating Tax:**

|-------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|-------|

**Local Operating:**

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</tr>
</thead>
<tbody>
<tr>
<td>Budgeted</td>
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<td>$25,437</td>
<td>$25,592</td>
<td>$25,747</td>
<td>$25,902</td>
<td>$26,057</td>
<td>$26,212</td>
<td>$26,367</td>
<td>$26,522</td>
<td>$26,677</td>
<td>$26,832</td>
<td>$26,987</td>
<td>$27,142</td>
<td>$27,297</td>
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<td>$27,607</td>
<td>$27,762</td>
<td>$27,917</td>
<td>$28,072</td>
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</table>

**Non-Capital Millage:**

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</thead>
<tbody>
<tr>
<td>Budgeted</td>
<td>$3,092</td>
<td>$3,079</td>
<td>$3,066</td>
<td>$3,053</td>
<td>$3,040</td>
<td>$3,027</td>
<td>$3,014</td>
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<td>$2,988</td>
<td>$2,975</td>
<td>$2,962</td>
<td>$2,949</td>
<td>$2,936</td>
<td>$2,923</td>
<td>$2,910</td>
<td>$2,897</td>
<td>$2,884</td>
<td>$2,871</td>
<td>$2,858</td>
</tr>
</tbody>
</table>

**Total Tax Increment Revenue:**

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Budgeted</td>
<td>$40,205</td>
<td>$40,205</td>
<td>$40,205</td>
<td>$40,205</td>
<td>$40,205</td>
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<td>$40,205</td>
<td>$40,205</td>
<td>$40,205</td>
<td>$40,205</td>
</tr>
</tbody>
</table>

**Forecast:**

- Annual property tax increase, if any, will be captured however is not contemplated in this table.
Table 3

Reimbursement Schedule
## Tax Increment Revenue Reimbursement Allocation Table

**Date:** June 18, 2019

**Location:** Porto, Michigan

### Estimated Total Years of Flow: 30

<table>
<thead>
<tr>
<th>Year</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>2034</th>
<th>2035</th>
<th>2036</th>
<th>2037</th>
<th>2038</th>
<th>2039</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local TIF Available for Reimbursement</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
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<td>$8,087</td>
<td>$8,087</td>
<td>$8,087</td>
<td>$164,454</td>
<td></td>
</tr>
</tbody>
</table>

**DEVELOPER**

### DEVELOPER Reimbursement Balance

<table>
<thead>
<tr>
<th>Year</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>2034</th>
<th>2035</th>
<th>2036</th>
<th>2037</th>
<th>2038</th>
<th>2039</th>
<th>TOTAL</th>
</tr>
</thead>
</table>

### SUMMARY

- **Estimated Capture:** $233,343
- **Administrative Fees:** $7,612
- **State Brownfield Reimbursement Fund:** $3,424
- **Local Brownfield Reimbursement Fund:** $8,087

**Notes:**

- **Up to five years of capture for URF Deposits after eligible activities are reimbursed. May be taken from DRE & Local TIF only.**

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**June 2017**
Attachment A

Brownfield Plan Resolutions
CITY OF PORTAGE, COUNTY OF KALAMAZOO

RESOLUTION APPROVING AN AMENDED BROWNFIELD REDEVELOPMENT PLAN
BY ADDING BROWNFIELD PLAN NO. 7
FOR THE CITY OF PORTAGE PURSUANT TO AND
IN ACCORDANCE WITH THE PROVISIONS OF ACT 381
OF THE PUBLIC ACTS OF THE STATE OF MICHIGAN 1996,
AS AMENDED

At a regular meeting of the City Council of the City of Portage, Kalamazoo County, Michigan, held at the City Hall, on the _____ day of _____________, 2019, at 7:00 p.m.

PRESENT: __________________________________________

ABSENT: __________________________________________

Resolution offered by Councilmember ___________________________ and
seconded by Councilmember ___________________________

WHEREAS, the Brownfield Redevelopment Authority (the Authority) of the City of Portage, pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the Act), has approved Brownfield Plan No. 7 (6666 Lovers Lane) pursuant to and in accordance with Section 13 of the Act as an amendment to the Brownfield Redevelopment Plan approved by the Council on September 4, 2001.

WHEREAS, the Authority has, at least ten (10) days before the meeting of the City Council at which this resolution has been considered, provided notice to and fully informed all taxing jurisdictions which are affected by the Financing Plan (the Taxing Jurisdictions) about the fiscal and economic implications of the proposed Financing Plan, and the Council has provided to the Taxing Jurisdictions a reasonable opportunity to express their views and recommendations regarding the Financing Plan and in accordance with Section 14(1) of the Act; and

WHEREAS, the Council makes the following determinations and findings:

A. The Amended Plan constitutes a public purpose under the Act;

B. The Amended Plan meets all of the requirements for a Brownfield Plan set forth in Section 13 of the Act;
C. The amount of captured taxable value estimated to result from adoption of the plan is reasonable;

D. The owner and/or developer of the property which is included in the Amended Plan shall finance all eligible activities under the Amended Plan and the Authority shall not issue any notes or bonds related to this Amended Plan.

WHEREAS, as a result of its review of the Amended Plan and upon consideration of the views and recommendations of the Taxing Jurisdictions, the Council desires to proceed with approval of the Plan.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. **Amended Plan Approved.** Pursuant to the authority vested in the City Council by the Act, and pursuant to and in accordance with the provisions of Section 14 of the Act, the Amended Plan is hereby approved in the form attached as Exhibit A to this Resolution.

2. **Severability.** Should any section, clause or phrase of this Resolution be declared by the Courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof other than the part so declared to be invalid.

3. **Repeals.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

YEAS: ________________________________________________

NAYS: ________________________________________________

ABSENT: ______________________________________________

RESOLUTION ADOPTED: _____________________________

Adam Herringa, City Clerk
STATE OF MICHIGAN      
 ) ss
COUNTY OF KALAMAZOO   

I, the undersigned duly qualified and acting City Clerk of the City of Portage, Kalamazoo County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council of said City, held on the ___ day of ____________, 2019, the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereto affixed my official signature this ___ day of ____________, 2019.

________________________________________________________________________
Adam Herringa, City Clerk

Prepared by:
Randall L. Brown
Portage City Attorney
1662 East Centre Avenue
Portage, Michigan 49002

Approved as to Form:
Date: 7/16/2019
By: 
City Attorney
Attachment B

Reimbursement Agreement
BROWNFIELD REIMBURSEMENT AGREEMENT

This BROWNFIELD REIMBURSEMENT AGREEMENT ("Agreement") is made this ___ day of ____, 2019, by and between Lovers Lane Properties LLC, a Michigan ______, with offices at 519 Ada Drive SE; Suite 202, Ada, Michigan 49301 (the "Developer"), and the City of Portage Brownfield Redevelopment Authority (the "AUTHORITY"), established by the City of Portage with its office at 7900 S. Westnedge Avenue, Portage, MI 49002.

RECATALS

A. The Authority was created by the City of Portage (the "City") pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of Michigan of 1996 as amended ("Act 381"), and, pursuant to Act 381, the Authority has prepared a Brownfield Plan which was duly approved by the City Council of the City (the "Brownfield Plan").

B. The Developer owns property in the City addressed as 6666 Lovers Lane, City of Portage, County of Kalamazoo, Michigan and which is legally described in the attached Exhibit A and which is included in the Brownfield Plan as being a “facility” as defined in Act 381 (the "Property").

C. Act 381 permits the use of the real and personal property tax revenues generated from the increase in value (the "the Increment") to brownfield sites constituting Eligible Property is under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs in conducting Eligible Activities and, unless Developer is a liable party for the site contamination, permits the reimbursement to Developer of Eligible Costs it has incurred.

D. The Developer has plans to improve the Property for office and warehouse uses (the "Project") which includes certain Eligible Activities at the Property at an estimated cost of One Hundred Eighty-Two Thousand Nine Hundred Three Dollars ($182,903.00). These activities are all described in the City of Portage Brownfield Redevelopment Authority Brownfield Plan for the Project dated June 19, 2019 (the "Brownfield Amendment"), attached as Exhibit B. The Eligible Activities will have the effect of assisting in the redevelopment of the Property, maintaining and increasing employment within the City, increasing tax base within the City and otherwise enhancing the economic vitality and quality of life in the City.

E. Act 381 permits the use of the real property tax revenues generated from the incremental increase in property value of a redeveloped brownfield site constituting an “eligible property” under Act 381 to which the Authority is entitled to receive to pay or to reimburse the payment of costs of conducting activities that meet the requirements under Act 381 of “Eligible Activities”.

F. By undertaking Eligible Activities on the Property, the Developer will incur (i) costs of performing the Eligible Activities and (ii) costs in connection with the preparation of the Brownfield Plan.

G. In accordance with Act 381, the parties desire to use the property tax revenues that are generated from an increase in the taxable value of the Property resulting from its redevelopment to which the Authority is entitled to receive (the “Tax Increment Revenues”) to reimburse the Developer for the Eligible Costs.
H. Whereas, the Developer intends to construct and develop all phases necessary to complete the Project using its best efforts to obtain financing for said improvements and the AUTHORITY, subject to the terms, conditions, and limitations contained herein, intends, pursuant to the Brownfield Plan, to reimburse the Developer for the certain costs of Eligible Activities.

I. The parties are entering into this Agreement to establish the terms and procedure for such reimbursement.

**AGREEMENTS**

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

1. **Definitions.** Capitalized terms shall have those definitions provided under Act 381 unless otherwise provided by this Agreement or unless inconsistent with the context in which the term is used.

2. **The Plans.** The AUTHORITY has approved the Brownfield Plan and the Developer hereby also approves the Brownfield Plan. To the extent provisions of the Brownfield Plan and any subsequent amendments conflict with this Agreement, and as it may be amended, the terms and conditions of this Agreement control. To the extent provisions of the Brownfield Plan and any subsequent amendments or this Agreement conflicts with the Brownfield Act, as amended, Act 381 controls.

3. **Construction of Project.** The Developer acknowledges and represents, and the AUTHORITY and the City agree, that the Developer shall, at its own cost, have the sole right and responsibility to develop, construct and complete the development of the Project as determined by the Developer, in accordance with site plans and permits approved by the City, and the Developer shall pay for the development, construction, completion and maintenance of the Eligible Activities and Eligible Investments specified in the Brownfield Plan, subject to the Developer’s Repayment Obligation (defined herein). For the purposes of this Agreement, “construction” or “construct” or similar terms shall include the acquisition, placement and/or installation of business personal property by the Developer within the Property. All development improvements performed by the Developer on the Project shall comply, in all respects, with all of the City’s regulations including, but not limited to, zoning ordinances and building code, as well as all applicable federal, state, city, local and municipal rules, regulations and laws.

4. **Submission of Plans and Permit Applications.** The Developer shall submit all required plans and applications required by the City and its engineers for the Project and the Developer shall, at its own cost, obtain all required permits and approvals and shall pay all applicable fees, and the Developer shall develop and construct the Project in accordance with the approved site plan identified in the Brownfield Plan. The Developer may modify and amend its site plan at any time and from time to time provided City approvals are obtained and provided that all improvements called for by such modifications and amendments shall not alter the “Eligible Property” as defined and used in the Brownfield Act. If such modifications would cause a material change in the scope or nature of the Project, or would increase the costs of the Eligible Activities by 10% or more,
such modifications shall be subject to the approval of the AUTHORITY, which approval shall not unreasonably be withheld.

5. **Construction of Certain Improvements by the Developer.** The Developer will use reasonable commercial efforts to develop and construct certain of the Eligible Activities described in the Brownfield Plan, as it may be amended by the AUTHORITY. Promptly after completion of construction of the Project and upon request of the Developer, the AUTHORITY and the City shall execute and deliver to the Developer a Certificate of Completion (the "Certificate of Completion"). When issued, the Certificate of Completion, except for any items to be completed or corrected as set forth therein, shall be a conclusive determination by the AUTHORITY and City of their satisfaction with respect to the obligations of the Developer and their satisfaction that the construction of the Project has been completed in accordance with the provisions of this Agreement.

6. **AUTHORITY Costs and Expenses.** All legal and consulting fees, and other expenses incurred by the AUTHORITY (including administrative and operating costs as described in Section 14 hereof) in connection with the Brownfield Plan, this Agreement or the Project, other than reimbursement to the Developer for approved expenses of Eligible Activities, shall be reimbursable annually to the AUTHORITY from the Tax Increment Revenues in an amount not to exceed 5% of available TIR.

7. **Builders Risk Insurance Prior to Completion.** Prior to completion of the construction of the Project as certified by the AUTHORITY and City, the Developer shall keep in force at all times Builder’s Completed Value Risk Insurance, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of the work performed and equipment, supplies and materials furnished for the Project. Such insurance policies shall be issued by a company satisfactory to the AUTHORITY and City. All such policies shall contain a provision that the same will not be cancelled or modified without thirty (30) day prior written notice to the AUTHORITY and the City.

8. **Insurance Proceeds.** If all or any part of the Project is damaged or destroyed, the insurance proceeds resulting from such damage or destruction shall be used by Developer for the cost of restoring or rebuilding the Project. The Project shall be restored or rebuilt substantially in accordance with the construction plans provided by Developer and approved by the AUTHORITY and City and shall be of at least equal value and substantially the same character as prior to the damage or destruction.

9. **Rights of Inspection.** During construction of the Project, the City’s and AUTHORITY’s designees shall have the right at any time and from time to time to enter upon the Project for purposes of inspection. Such inspection by the City and AUTHORITY of the Project shall not be construed as a representation by the AUTHORITY or the City that there has been compliance with the site plan or that the Project will be, or are, free of faulty materials or workmanship, or a waiver of any right, the AUTHORITY, the City or any other party may have against Developer or any other party for non-compliance with the site plan and the terms of this Agreement.
10. **Implementation of Construction and Utility Maintenance Easements.** The parties shall all coordinate together and use their best efforts to establish all construction access maintenance and utility service easements designated in the Brownfield Plan or as more particularly defined in site plans and engineering plans pertaining to the Project.

11. **Source of Tax Increment Revenues.**

   a. All millages, unless otherwise excluded or exempt from capture pursuant to the Brownfield Act, will be captured by the AUTHORITY, and the TIR generated by such capture shall be available to the AUTHORITY for purposes of the Brownfield Plan and to make the reimbursement payments required under this Agreement.

   b. The AUTHORITY shall not be required by this Agreement to use School TIR for any purpose other than reimbursement payments to the AUTHORITY and Developer for Eligible Activities that are part of a Work Plan approved by the Michigan Strategic Fund ("MSF") or the EGLE. Except, however, this Agreement shall not prohibit the AUTHORITY, in its sole discretion, from capturing or using any School TIR attributable to the Eligible Property for any purpose authorized by the Brownfield Act without the approval of the MSF or EGLE.

12. ** Determination of Eligible Activities Qualified for Reimbursement.**

   a. All costs of Eligible Activities attributable to the Property for which the Developer seeks reimbursement from Tax Increment Revenues shall satisfy each of the following applicable qualifications:

   i. The Eligible Activity and the cost of the Eligible Activity is included in the Brownfield Plan approved by the AUTHORITY or any amendment or supplement thereto approved by the AUTHORITY, and the Eligible Activity is conducted in accordance with the terms of the Brownfield Plan, this Agreement, and all applicable state and federal laws and regulations.

   ii. The Eligible Activity may consist of Phase 1 environmental assessment activities if approved by the AUTHORITY.

   iii. The Eligible Activity has not occurred more than 5 years after the effective date of this Agreement.

   iv. For any Eligible Activity that occurs after the effective date of this Agreement and is qualified as an Eligible Activity under Section 2(1)(i), (ii) or (iii) of Act 381, the Eligible Activity and the cost of such Eligible Activity is specifically included in the Brownfield Plan.

   v. The cost of the Eligible Activity is payable from Tax Increment Revenues only after reimbursement to AUTHORITY of the AUTHORITY'S Administrative and Operating Costs as set forth
in Sections 6 and 14.

b. Developer understands and agrees that any reimbursement of the Developer by or on behalf of the AUTHORITY of any expenses for approved activities shall be only for "Eligible Activities" as defined in the Act 381, and the Brownfield Plan and for which reimbursement is authorized under this Agreement. It is further understood and agreed that any reimbursement to or on behalf of the Developer shall only occur to the extent that Tax Increment Revenues are generated from the Property and those Tax Increment Revenues are available under Act 381 and this Agreement for the making of reimbursements to the Developer.

c. The Developer shall copy or provide the AUTHORITY with all correspondence and materials or documents provided to EGLE that are related to the Project or Eligible Activities on the Property.

d. Pursuant to the Brownfield Plan, the AUTHORITY shall capture the Tax Increment Revenues generated from real and personal property taxes allowed by law on the eligible property beginning 2020 and continuing, unless eliminated or otherwise modified by this Agreement, the total which shall not exceed One Hundred Eight-Two Thousand Nine Hundred Three Dollars ($182,903.00) but no later than 2034. This Agreement shall terminate the earlier of the date when all reimbursements required under this Agreement have been made or the Brownfield Plan has expired.

13. **AUTHORITY Reimbursement Payments to Developer.**

a. From time to time, but not more frequently than quarter-annually without approval of the AUTHORITY, the Developer may submit to the AUTHORITY a certification of costs of Eligible Activities paid or incurred for reimbursement in accordance with this Agreement and the Brownfield Plan. Such certification shall include a narrative of the approved activities performed and an explanation of why such activities qualify for reimbursement under this Agreement, a representation and warranty of the Developer that all activities for which reimbursement is sought qualify as Eligible Activities under Act 381, copies of all documents or reports for whose preparation payment is requested, a copy of invoices for the work described in such certification, and any substantiating documentation for such invoices that is requested by the AUTHORITY.

b. Within sixty (60) days of its receipt of such statement and supporting invoices, the AUTHORITY shall review the submission to confirm that such activities qualify for reimbursement under this Agreement and the Brownfield Plan and advise the Developer in writing if any activities do not so qualify including the specific reasons why the AUTHORITY believes that such activities do not so qualify.

c. Subject to Section 14 below, to the extent that such submission is approved by the AUTHORITY Board, the AUTHORITY shall thereafter cause the Developer to be paid the amounts approved within forty-five (45) days, but only to the extent that Tax Increment Revenues attributable to the Property.
If sufficient Tax Increment Revenues attributable to the Property are not available at the time such submission is approved and payment is due, the approved amount shall be paid from Tax Increment Revenues attributable to the Property that are next received by the Authority and that are not otherwise allowed to be used for purposes permitted by Section 14 below.

d. To the extent that any portion of such submission is not approved, any authorized representative of the AUTHORITY and the Developer shall, within fourteen (14) days upon the request of either party, meet promptly to discuss the reasons the submission was not approved and the conditions pursuant to which the Developer can obtain approval of such disallowed request.

e. The Developer shall notify the AUTHORITY of completion of the Eligible Activities for which reimbursement may be sought under this Agreement from Tax Increment Revenues. Within 90 days after the earlier of the date of completion of the Eligible Activities for which reimbursement may be sought from Tax Increment Revenues under this Agreement or 5 years after the effective date of this Agreement, the Developer shall provide the AUTHORITY with a final certification of costs of Eligible Activities. Within 90 days after the date of completion of activities for which reimbursement may be sought, the Developer shall provide the AUTHORITY with a final certification of costs eligible for such reimbursement.

f. No interest or other charge shall accrue or attach to any reimbursement payment agreed to by AUTHORITY under this Agreement.

g. The AUTHORITY shall have no obligation to reimburse the Developer for Eligible Costs for Tax Increment Revenue captured and received by the AUTHORITY after 2034. This Agreement is limited to Tax Increment Revenue captured and received by the AUTHORITY for tax years 2020-2034.

14. AUTHORITY Administrative and Operating Costs.

a. The AUTHORITY may retain funds to pay administrative and operating costs of the AUTHORITY from the annual Tax Increment Revenues attributable to the Property. The amount the AUTHORITY may retain shall not exceed the actual administrative operating costs or the amounts permitted by Act 381, and for funding of the Local Site Remediation Revolving Fund to the extent permitted by applicable law and the Brownfield Plan. In no event shall the AUTHORITY retain more than 5% of the available Tax Increment Revenues in any given year.

b. The amount retained pursuant to this Section 14 may be generated only from Tax Increment Revenues attributable to the levies of Local Taxes upon the Property.

c. All amounts captured by the AUTHORITY that exceed the 5% limitation on administrative expense reimbursement shall be redistributed for reimbursement to the Developer to pay for Eligible Activities as authorized by the Brownfield Plan.
d. The AUTHORITY may retain the amount permitted by this Section 14 prior to making any reimbursement under Section 13 to the Developer. To the extent Tax Increment Revenues are not available from levies of Local Taxes for any year in an amount sufficient to make the reimbursement under this Section 14 for that year, the shortfall may be reimbursed from any subsequent years' Tax Increment Revenues attributable to the Property after reimbursements required under this Section 14 and Section 13 are made for the year in question.

15. **Prohibitions Against Assignment and Transfer of Project Prior to Issuance of Certificate of Completion.**

a. Until issuance of the Certificate of Completion pursuant to Section 5 of this Agreement, the Developer will not: (i) assign, sell or transfer its interest in the Property and/or the Project or any part thereof or any interest therein, except for utility easements; or (ii) assign this Agreement, without in each case the prior written consent of the City and the AUTHORITY, which consent will not unreasonably be withheld. Any such assignment shall be an "Approved Assignment." The City and the AUTHORITY shall give their consents if:

(i) the Developer demonstrates, subject to reasonable review by the City and the AUTHORITY, that the assignee has the ability and financial stature to fulfill the obligations assigned by the Developer; and

(ii) the assignee assumes unconditionally in writing all of Developer's past, present and future obligations assigned by the Developer. In the event the assignee fails to perform all of the obligations assigned by the Developer, the Developer shall retain the obligation to perform all remaining unperformed obligations previously assigned.

b. This Section relates only to the development of the Project and shall not be construed or interpreted as imposing any restrictions on the use, transfer or sale of any other Property.

16. **Waiver of Right to Contest.** Developer hereby agrees that it shall neither protest to the Board of Review nor file a petition with the Michigan Tax Tribunal or any court or administrative body challenging the assessment or valuation of any real or personal property with respect to the Property relating to any tax year during which this Agreement is in effect. In the event that Developer takes such action challenging the assessment or valuation of any real or personal property with respect to the Property, Developer shall immediately be indebted to and obligated to refund to the AUTHORITY any and all reimbursements paid to the Developer under this Agreement and Developer shall be immediately ineligible to receive any further reimbursements under this Agreement. The AUTHORITY right for reimbursement and collection against Developer under this section may be enforced in a court of competent jurisdiction. No sanctions hereunder will accrue to Developer in the event it files an action in the Michigan Tax Tribunal with respect to the Property in order to correct a clerical error of the Assessor such as an error in addition or subtraction.
17. **Municipal Representatives not Personally Liable.** No AUTHORITY Board Member, City Council member or any other official, employee, agent, consultant, advisor, attorney or representative of the AUTHORITY or City shall be personally liable to Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

18. **Release and Indemnification.** The parties agree as follows:

   a. Developer releases from and covenants and agrees that the AUTHORITY and the City and their governing body members, officers, employees, agents, consultants, advisors, attorneys and representatives shall not be liable for, and Developer agrees to indemnify, defend and hold harmless the officers, employees, agents, consultants, advisors, attorneys and representatives thereof against any losses, demands, claims, actions, causes of assessments, suits, judgments, damages, liabilities, penalties, costs and expenses (including without limitation the fees and expenses of attorneys and other consultants) which are asserted against, or are imposed upon or incurred by the AUTHORITY or the City or an above-listed person and which are resulting from, relating to, or arising out of any of the following:

   i. any defect in the design or construction of the Project, or the negligence or willful misconduct of Developer, its agents or independent interests in connection with the construction of the Project;

   ii. The capture and use of Tax Increment Revenues, including any order, ruling, or instruction to repay or refund the State of Michigan or any other taxing jurisdiction for any levy captured as Tax Increment Revenues and paid to Developer as a reimbursement payment under this Agreement made in excess of the amount of Tax Increment Revenues the AUTHORITY is determined by the State, any agency thereof or by a court to be allowed by law to use for such reimbursement;

   iii. Any act or omission of the Developer with respect to the conduct of a baseline environmental assessment, due care activity or additional response or remedial activity for the Property, including any failure by the Developer to take any affirmative action to prevent the release of a hazardous substance or any other contaminant or the exacerbation of an existing environmental condition;

   iv. Any release of a hazardous substance or any other contaminant on the Property or an exacerbation of an existing environmental condition, any adverse effects on the environment, or any violation of any state or federal environmental law or regulation caused or due to act by the Developer or in any way related to the Property;

   v. The Eligible Activities for the Property; or
vi. The operation of the business of the Developer or tenant on the Property.

b. Notwithstanding anything herein to the contrary, neither the AUTHORITY nor City shall be liable to Developer for damages arising in any way from this Agreement, or any other obligation or agreement made in connection therewith or from any breach thereof, or arising from a declaration or a final judgment by a court of competent jurisdiction that all or any portion of the Brownfield Act is unconstitutional or that the Brownfield Plan in whole or in part are invalid.

c. All covenants, stipulations, promises, agreements and obligations of Developer contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Developer and not of any member, director, officer, agent, servant or employee of Developer in their individual capacities.

d. Subject to subsection (e) below, the AUTHORITY may, at its discretion and without consent of the Developer, set-off any amount owing to the Developer under this Agreement to satisfy any indemnification obligation of the Developer under this Section.

e. Prior to set-off of any amount owing to the Developer to satisfy any indemnification obligation of the Developer under this Section, the Developer shall be provided an opportunity to address the AUTHORITY and the AUTHORITY shall determine that the exercise of the rights of set-off provided under subsection (d) is necessary to protect the interests of the AUTHORITY.

19. Environmental. Developer warrants and represents as follows:

a. Developer agrees to comply in all material respects with all environmental laws and regulations applicable to the Project, and further agrees, except as is in compliance with applicable laws, not to knowingly place or dispose of, or knowingly cause to be placed or disposed of, any toxic or hazardous substances (as defined in subsection (d) below) ("Hazardous Substances") on any parcel located within the Project, and not knowingly manufacture, store, use, treat or dispose of such substances, or permit any manufacturing, storage, use, treatment or disposal of any Hazardous Substances on the Project.

b. "Hazardous Substances" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, asbestos or related materials defined in: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); (2) the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.); (3) the Resource Conservation and Recovery Act, as amended (41 U.S.C. Section 9601, et seq.); (4) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; or (5) Michigan’s Natural Resources and Environmental Protection Act, as amended (M.C.L.
324.101 et seq.), including any regulations adopted or publications promulgated pursuant to the above-referenced statutes, or as otherwise defined, classified, characterized, listed or identified by any other federal, state or local governmental law, ordinance, rule or regulation.

c. No portion of the funds or benefits received by Developer pursuant to this Agreement or otherwise received by Developer in connection with Act 381 and the Project shall operate or be used to subsidize response activities that would benefit a liable party at the Property, under the standards of the Michigan Natural Resources and Environmental Protection Act or other similar federal law, or otherwise relieve such a liable party of such obligation.

20. **Representations of the AUTHORITY and the City.** The AUTHORITY represents and warrants that:

a. **Organization and Authority.** It: (i) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement; and (ii) has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute its legal, valid and binding obligation of it, enforceable in accordance with its terms, subject to applicable insolvency laws.

b. **No Defaults or Violations of Law.** The execution and delivery of this Agreement will not conflict with or result in a breach of any of the terms of, or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which it is a party or by which it is bound or any charter, or any of the rules or regulations applicable to it, subject to applicable insolvency laws.

c. **Pending Litigation.** No litigation, proceedings or investigations are pending or, to the knowledge of it is threatened against it, except claims which if adversely determined will not, in the opinion of its counsel, materially and adversely affect the financial condition or operations of it. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of it, threatened against it seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement by it or which would in any manner challenge or adversely affect its existence or powers to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by it of the terms and provisions of this Agreement.

21. **Representations, Warranties and Agreements of Developer.** Developer represents, warrants and agrees that:

a. **Organization and Authority.** It: (i) is duly organized under the laws of the state of its incorporation or organization, and is authorized to do business in and is in good standing under the laws of the State of Michigan; (ii) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement; and (iii) has been authorized by all
necessary corporate or member action to execute and deliver this Agreement, enforceable in accordance with its terms, subject to applicable insolvency laws.

b. **No Defaults or Violations of Law.** The execution and delivery of this Agreement by it will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which it is a party or by which it is bound or its respective articles of incorporation, bylaws, articles of organization, operating agreement, or any of the rules or regulations applicable to it of any court or other governmental body, subject to applicable insolvency laws.

c. **Pending Litigation.** No litigation, proceedings or investigations are pending or, to its knowledge, threatened against it, except claims that if adversely determined will not, in the opinion of its counsel, materially and adversely affect its financial condition or its operations. In addition, no litigation, proceedings or investigations are pending or, to its knowledge, threatened against it seeking to restrain, enjoin or in any way limit its approval and delivery of this Agreement or which would in any manner challenge or adversely affect its entity existence or powers to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by it of the terms and provisions of this Agreement.

d. **Power and Authority.** Developer possesses all necessary power and authority to fully implement and carry out all foreseeable obligations and duties imposed upon it under this Agreement.

e. **Not Liable Party.** With respect to the Property, Developer is not a party liable under section 20126 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20126.

f. **Eligible Property.** The Project qualifies as Eligible Property under Act 381.

**22. Unavoidable Delays (Force Majeure).** Each party shall diligently perform its respective duties as set forth herein. However, notwithstanding anything to the contrary in this Agreement, no party shall be deemed to be in default in the performance of such duties including failure to complete any obligations by specific deadline dates, if and so long as nonperformance of such duty shall be directly caused by fire or other casualty, national emergency, condemnations, enemy action, civil commotion, labor disputes, strikes, lockouts, war or national defense preemptions, acts of God, action or non-action by public utilities or of local city, state or federal governments, changes in law, litigation, environmental conditions on the Project not discovered during any due diligence period or any other similar cause beyond the reasonable control of such party (herein referred to as an "Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the time period of such Unavoidable Delay; provided, however, that the party unable to perform (the "Non-Performing Party") shall provide written notice to the other party to which duty is owed within ten (10) days
after notice to such Non-Performing Party of its failure to perform or within ten (10) days after the Non-Performing Party otherwise becomes aware that an Unavoidable Delay with respect to one of its duties has occurred or will likely occur, whichever shall first occur, of the existence and nature of such Unavoidable Delay. Thereafter, the Non-Performing Party shall, from time to time, keep the other party to which such duty is owed reasonably informed of all developments concerning the Unavoidable Delay and the nonperformance of such duty or duties.

23. **Default and Remedies.** The parties agree that the following shall be events of default ("Events of Default") with respect to this Agreement:

   a. If any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or

   b. Breach by a party of any material covenant, warranty or obligation set forth in this Agreement.

   c. With respect the AUTHORITY, the enactment by the AUTHORITY of any rule or regulation which prevents or prohibits the AUTHORITY from presently or prospectively performing any covenant, condition or agreement contained herein.

24. **Remedies of Default: Reinstatement of Rights.**

   a. In the case of an Event of Default by a party hereto or any successors to such party, such party or successor shall, upon written notice from the aggrieved party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice. If, in such case action is not taken, or not diligently pursued, or if the Event of Default shall not be cured or remedied within a reasonable time, beyond such sixty (60) day period the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceedings to compel specific performance by the party in default of its obligations. In case a party hereto shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the parties hereto shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of each party shall continue as though no such proceedings had been taken.

   b. In the event the Developer does not cure the Event of Default within 60 days, this Agreement will be considered terminated on the 61st day after the written notice of an Event of Default was delivered. Upon the effective date of the termination of this Agreement, the AUTHORITY shall have no further obligation under this Agreement to make any payments to the Developer in reimbursement of any costs of Eligible Activities incurred or to
be incurred by the Developer. In lieu of termination, the AUTHORITY may seek to enforce and compel performance with the terms of this Agreement in a court of competent jurisdiction by specific performance or mandatory injunction and may pursue any other remedy that may be available to it in law or equity.

25. **No Waiver by Delay.** Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that each party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a non-defaulting party under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by a non-defaulting party.

26. **Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by a party with respect to the performance, nor the manner of time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of any other party.

27. **Legislative Authorization.** This Agreement is governed by and subject to the restrictions set forth in the Brownfield Act, as amended, and the Michigan General Property Tax Act. In the event that there is legislation enacted in the future which restricts or adversely affects the amount of Tax Increment Revenues capturable, Eligible Properties, or Eligible Activities relating to already approved plans, then any Developer’s rights and the AUTHORITY’s obligations under this Agreement shall be eliminated or modified accordingly.

28. **Freedom of Information Act.** Developer stipulates that all requests and documentation submitted by them shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.231 et seq. of the Michigan Compiled Laws and no claim of trade secrets or other privilege or exception to the Freedom of Information Act will be claimed by it in relation to this Agreement, requests for reimbursement and supporting documentation.

29. **Plan Modification** The Brownfield Plan may only be modified to the extent allowed under the Brownfield Act by mutual agreement in writing of the AUTHORITY and the City.
30. **Notices.** All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown below their respective signatures to this agreement. Either party may change the address by written notice sent by registered or certified mail to the other party.

31. **Entire Agreement** This agreement supersedes all agreements previously made among the parties relating to the subject matter, if any. There are no other understandings or agreements between them concerning the subject matter contained herein.

32. **Non-Waiver, Time of the Essence** No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein. Time is of the essence.

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

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

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

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

In witness whereof the parties have executed this agreement by their duly authorized representatives on the day and date first herein above written.

**City of Portage Brownfield Redevelopment Authority**

Date: ______________, 20__

By:
Its Chairperson

Date: ______________, 20__

By:
Its Secretary/Treasurer
EXHIBIT A

[Insert description of the eligible property]
EXHIBIT B

[Insert Brownfield Plan]
EXHIBIT C

[Insert Work Plan]
Attachment C

BEA Acknowledgement Letter
Hi Joe,

Based on information presented in the BEA for the site, the property meets the definition of a facility under Part 201 due to the presence of arsenic and selenium in soil, and arsenic and lead in groundwater, at concentrations exceeding one or more of the State’s generic cleanup criteria.

If you have any other questions or need additional information, just let me know.

Thanks,

David L. Harn, Jr.
Assistant District Supervisor
Remediation and Redevelopment Division — Kalamazoo District Office
Michigan Department of Environment, Great Lakes, and Energy
7953 Adobe Road
Kalamazoo, MI 49009

Office/Cell: 517.897.0881
Fax: 269.567.9440
Email: harnd@michigan.gov

Hi David-

Following up on our conversation Monday – can you assist with a facility verification for this project?

Thanks!

Joe Agostinelli | partner
Hi Mike!

I am working with the owner on a proposed brownfield plan for a redevelopment of 6666 Lovers Lane in Portage. My understanding is that a BEA was completed in 2016 for the current owner, Lovers Lane Properties, LLC. As I prepare the brownfield plan for submission to the Portage BRA, I am looking to see if the DEQ can provide verification that the site is a facility.

From a brownfield perspective, I anticipate this will be a relatively small project (less than $100,000 of TIF), and will not be pursuing an Act 381 work plan.

Thanks in advance for your help!

Regards,

Joe Agostinelli | partner

southwest michigan first
street 261 East Kalamazoo Avenue | Suite 200 | Kalamazoo, MI 49007
mail P.O. Box 50827 | Kalamazoo, MI 49005-0827
p 269.553.9588 | c 269.567.0669
jagostinelli@southwestmichiganfirst.com
Attachment D

Soil Sampling Map
### SOIL ANALYSES DETECTED IN EXCESS OF LABORATORY MDLs (UDPGG)

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### GROUNDWATER ANALYTES DETECTED IN EXCESS OF MDLs (UGA)

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**SOIL PROBE LOCATION DIAGRAM**

**DRAWN:** TNS

**DATE:** 9/30/2016

**SCALE:** 1" = 100' H./V

**PROJECT:** 16-693

**FIGURE:** 2

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**LEGEND**

- **SP 9** = SOIL PROBE/AUGER LOCATION (SES 2016)
Attachment E

Site Plan