

MANISTEE CITY BROWNFIELD REDEVELOPMENT AUTHORITY

Meeting of June 7, 2016
2 pm - Council Chambers, City Hall, 70 Maple Street,
Manistee, Michigan

AGENDA

I Call to Order

II Roll Call

III Approval of Agenda

At this time the Brownfield Redevelopment Authority can take action to approve the June 7, 2016 agenda.

IV Approval of Minutes

At this time Brownfield Redevelopment Authority can take action to approve the February 9, 2016 meeting minutes.

V Public Hearing

VI Financial Reports

Approval of Invoices

At this time the Brownfield Redevelopment Authority will review the summary of paid invoices.

Financial Statements

Finance Director Ed Bradford will give a financial status update on the Brownfield Redevelopment Authority Funds.

VII New Business

Review of Responsibilities – South Washington Area Redevelopment Project

Staff will review the responsibilities of the City of Manistee Brownfield Redevelopment Authority as detailed in the Development Agreement for the South Washington Area Redevelopment Project

Project Updates

Staff will update the Brownfield Redevelopment Authority on the status of current projects.

VIII Old Business

Oath of Office/Section 6 Conflict of Interest

Annually the Brownfield Redevelopment Authority members will take an Oath of Office and agree to abide by Section 6 Conflict of Interest of the By-Laws of the City of Manistee Brownfield Redevelopment Authority.

At this time the members of the Brownfield Redevelopment Authority who were not in attendance at the January meeting will take their Oath of Office and agree to abide by Section 6 Conflict of Interest of the By-Laws of the City of Manistee Brownfield Redevelopment Authority.

IX Public Comments and Communications

At this time the Chair will ask if there are any public comments.

X Correspondence

At this time the Chair will ask if any correspondence has been received to be read into the record.

XI Staff Reports

At this time the Chair will ask Staff for their report.

XII Members Discussion

At this time the Chair will ask members of the Brownfield Redevelopment Authority if they have any items they want to discuss.

XIII Adjournment



MEMORANDUM

Planning & Zoning
231.398.2805
Fax 231.723-1546
www.manisteemi.gov

TO: Brownfield Redevelopment Authority Directors

FROM: Denise Blakeslee, Planning & Zoning Administrator

DATE: June 2, 2016

RE: June Meeting

The next meeting of the Brownfield Redevelopment Authority Meeting will be on Tuesday, June 7, 2016.

Staff will review the responsibilities of the City of Manistee Brownfield Redevelopment Authority as detailed in the Development Agreement for the South Washington Area Redevelopment Project. A copy of the agreement is enclosed minus the attachments. Binders have been prepared for each member that contains copies relating to the project and will be handed out at the meeting.

If you are unable to attend the meeting please call me at 398.2805.

MANISTEE CITY BROWNFIELD REDEVELOPMENT AUTHORITY

70 Maple Street
Manistee, MI 49660

MEETING MINUTES

February 9, 2016

A meeting of the Manistee City Brownfield Redevelopment Authority was held on February 9, 2016 at 2pm in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

Meeting was called to order at 2:10 pm by Vice-Chair Steve Brower

ROLL CALL

Members Present: Steve Brower, Dave Carlson, Donald Kuk, Marlene McBride, Clinton McKinven-Copus,

Members Absent: W. Frank Beaver (excused), Jeffrey Stege (excused)

Others: T. Eftaxiadis (Consultant for River Parc), Ed Bradford (BRA Administrator), Denise Blakeslee (BRA Recording Secretary) and others

APPROVAL OF AGENDA

Motion by Don Kuk, seconded by Marlene McBride that the agenda be approved as prepared.

With a Voice Vote this motion passed unanimously.

APPROVAL OF MINUTES

Motion by Don Kuk, seconded by Dave Carlson that the minutes of the July 28, 2015 Brownfield Redevelopment Authority Meeting be approved as prepared.

With a Voice Vote this motion passed unanimously.

There was not a quorum at the October 27, 2015 Meeting.

PUBLIC HEARING

None

FINANCIAL REPORTS

Approval of Invoices – Members reviewed the summary of paid invoices.

VENDOR NAME	DATE	INVOICE NUMBER	INVOICE AMOUNT	SERVICE DESCRIPTION
Eftaxiadis Consulting Inc.	7/10/15	CMBRA-1506	\$1,445.00	Consulting Services
Eftaxiadis Consulting Inc.	8/5/15	CMBRA-1507	\$1,275.00	Consulting Services
Fibertec Environmental Service	9/1/15	INV69045-01	\$1,239.00	Lighthouse Park – Metal
Fibertec Environmental Service	9/1/15	INV69228-01	\$ 294.00	Lighthouse Park - Metal
Compliance Inc	9/1/15	46486	\$2,560.25	Lighthouse Park Materials
Fibertec Environmental Service	9/2/15	INV69045-02	\$ 210.00	Hexavalent Chromium Solid
Fibertec Environmental Service	9/10/15	INV69045-03	\$ 284.00	SPLP As – Lighthouse Park
Eftaxiadis Consulting Inc.	10/1/15	CMBRA-1509	\$2,247.50	Consulting Services
Fibertec Environmental Service	10/13/15	INV70013-01	\$ 168.00	Percent Moisture, Metal Analysis
Eftaxiadis Consulting Inc.	11/9/15	CMBRA-1510	\$1,593.75	Consulting, Environmental Services
TOTAL:			\$11,316.50	

MOTION by Don Kuk, seconded by Marlene McBride to approve previously paid invoices.

With a Voice Vote this motion passed unanimously

Chair Clinton McKinven-Copus entered the meeting.

BRA Financing

Finance Director Ed Bradford reviewed the Balance Sheet and Revenue/Expenditure Report with the Directors (attached).

MOTION by Don Kuk, seconded by Marlene McBride to approve the Balance Sheet and Revenue/Expenditure Report.

With a Voice Vote this motion passed unanimously

NEW BUSINESS

Director Brower informed the Authority that he has a conflict of interest since his employer is financing a portion of the project. Director Brower will not participate in any discussion and will be abstaining from voting for all items relating to the South Washington Area Redevelopment Project.

Development Agreement – South Washington Area Redevelopment Project

A Development Agreement between the BRA, City of Manistee and private developer has been drafted regarding the South Washington Area Redevelopment Project. As one of the parties in the agreement the BRA needs to discuss and act on the agreement.

Ed Bradford, Finance Director – Reviewed in detail the Agreement with the directors, and noted minor changes had been made to the agreement since the directors received their copies. This is a three party agreement between the Brownfield Redevelopment Authority, City of Manistee and Private Developer. This is a complex agreement, therefore he detailed the sections of the document, clarified the ownership of the properties/developer, eligible redevelopment activities, stages of the project, financial obligations by the developer and City, insurance requirements, and responsibilities of the City, Developer and BRA.

Motion by Don Kuk, seconded by Marlene McBride to approve the South Washington Area Redevelopment Project Development Agreement with the changes discussed.

With a Roll Call vote this motion passed 4 to 0 with Director Brower abstaining

Yes:	Kuk, McBride, Carlson, McKinven-Copus
No:	None
Abstained:	Brower

Act 381 Work Plan – South Washington Area Redevelopment Project Area

The Act 381 Work Plan for the South Washington Area Redevelopment Project had been drafted to secure approval by the State of Michigan for the BRA to capture state tax increments for use on the South Washington Area Redevelopment Project. The BRA needs to discuss and act on the Plan.

T. Eftaxiadis, consultant for the Developer, reviewed the Act 381 Work Plan with the Directors. He reviewed each section. It was noted that the document has Draft 2015 on the front, but the copy the directors received had included updates thru February 5, 2016. The word DRAFT will be removed from the document and it will be dated the date of adoption by the Authority. The plan is formatted using the template required under Act 381 and the guidelines by the state. A correction of a typographical error on Table 1 will be made.

Motion by Don Kuk, seconded by Dave Carlson to approve the submittal of the Act 31 Work Plan for the South Washington Redevelopment Project to the State of Michigan (MEDC & MDEQ) with corrections and authorize BRA Administrator to submit the plan.

With a Roll Call vote this motion passed 4 to 0 with Director Brower abstaining

Yes:	Kuk, McBride, Carlson, McKinven-Copus
No:	None
Abstained:	Brower

BRA Responsibilities - South Washington Area Redevelopment Project

Ed Bradford spoke that the Brownfield is responsible for approving budgets and invoices for the project and will need to hold more meetings.

Election of Officers

According to the By-Laws of the Manistee Brownfield Redevelopment Authority the election of officers is held at their annual meeting in January.

Chair

At this time the meeting was turned over to Ed Bradford who asked for nominations for the Position of Chair.

Don Kuk, seconded by Steve Brower nominated Clinton McKinven-Copus for the position of Chair

There being no other nominations, nominations were closed.

With a unanimous voice vote, Clinton McKinven-Copus was elected Chair of the Brownfield Redevelopment Authority for 2016

Vice-Chair

Chair McKinven-Copus asked for nominations for the Position of Vice-Chair.

Steve Brower, seconded by Marlene McBride nominated Don Kuk for the position of Vice-Chair

There being no other nominations, nominations were closed.

With a unanimous voice vote, Don Kuk was elected Vice - Chair of the Brownfield Redevelopment Authority for 2016.

Secretary

Chair McKinven-Copus asked for nominations for the Position of Secretary.

Don Kuk, seconded by Steve Brower nominated Marlene McBride for the position of Secretary

There being no other nominations, nominations were closed.

With a unanimous voice vote, Marlene McBride was elected Secretary of the Brownfield Redevelopment Authority for 2016.

Appointment of a Recording Secretary 2016

Once Elected the Secretary may appoint a Recording Secretary to handle the administrative functions of the office.

Marlene McBride appointed Denise Blakeslee to act as the Recording Secretary for the Brownfield Redevelopment Authority for the year 2016.

By Law Review

According to the By-Laws of the City of Manistee Brownfield Redevelopment Authority the commission shall annually review their By-Laws at the regularly scheduled meeting in January. Members received copies of the By-Laws in their meeting packets. No Changes were made to the By-Laws.

Project Update

Ed Bradford spoke to the Directors about the Joslin Cove development through a Manistee County Brownfield Plan, and how the developer is looking to move forward with the project.

Ed Bradford noted that this is the first year that the 334 River Street project will generate tax increments to be captured by the BRA; the Administrator will work with the developer on submitting invoices for eligible expenses. T. Eftaxiadis gave the Directors the history on the Joslin Cove project. He also spoke of a potential request for redevelopment assistance for a former gas station on River Street.

Oath of Office/Section 6 Conflict of Interest - Annually the Brownfield Redevelopment Authority members will take an Oath of Office and agree to abide by Section 6 Conflict of Interest of the By-Laws of the City of Manistee Brownfield Redevelopment Authority.

Denise Blakeslee administered the Oath of Office and agreement to abide by Section 6 Conflict of Interest of the By-Laws of the City of Manistee Brownfield Redevelopment Authority to Ed Bradford, Finance Director and Steve Brower, Dave Carlson, Don Kuk, Marlene McBride, and Clinton McKinven-Copus.

OLD BUSINESS

Schedule Meeting Dates 2016

There was not a quorum at the October 27, 2015 Brownfield Redevelopment Authority Meeting. The Authority needs to schedule the remainder of their meetings for 2016. The By-Laws require that quarterly meetings be held in January, April, July, and October. The Directors discussed the need to hold additional meetings in 2016 due to the responsibilities for the North Washington Area Redevelopment Project. Staff recommends changing the meetings to the first Tuesday of the Month starting in April.

MOTION by Steve Brower, seconded by Don Kuk that the City of Manistee Brownfield Redevelopment Authority Schedule their meetings for the first Tuesday of the Month starting on April 5, 2016 as follows:

April 5, 2016	May 3, 2016	June 7, 2016	July 5, 2016	August 2, 2016
September 6, 2016	October 4, 2016	November 1, 2016	December 6, 2016	

With a voice vote motion passed unanimously.

PUBLIC COMMENTS AND COMMUNICATIONS

None

CORRESPONDENCE

None

STAFF REPORTS

None

MEMBERS DISCUSSION

Director McBride spoke about the Senior Centers interest in purchasing the former Armory and an Open House they are holding on February 18th.

The next regular meeting of the Brownfield Redevelopment Authority will be held on April 5, 2016.

ADJOURNMENT

Motion by Don Kuk, seconded by Marlene McBride that the meeting be adjourned. MOTION PASSED UNANIMOUSLY.

Meeting adjourned at 4:20 pm

MANISTEE CITY BROWNFIELD REDEVELOPMENT AUTHORITY

Denise J. Blakeslee, Recording Secretary

BALANCE SHEET

DRAFT

Page: 1
2/5/2016
10:38 am

City of Manistee

As of: 12/31/2015

Balances

Fund: 243 - BROWNFIELD REDEVELOPMENT AUTHO

Assets

001.000 Cash 20,178.17

Total Assets 20,178.17

Reserves/Balances

390.000 Fund Balance 30,049.67

398.000 Change in Fund Balance -9,871.50

Total Reserves/Balances 20,178.17

Total Liabilities & Balances 20,178.17

REVENUE/EXPENDITURE REPORT
DRAFT

City of Manistee
For the Period: 7/1/2015 to 12/31/2015

Page: 1
2/5/2016
10:39 am

	Original Bud.	Amended Bud.	YTD Actual	CURR MTH	Encumb. YTD	UnencBal	%Bud
Fund: 243 - BROWNFIELD REDEVELOPMENT AUTHO							
Expenditures							
Dept: 000							
801.000 Professional Services							
355142 07/10/2015 AP EFTAXIADIS CONSULTING LLC			1,445.00	INV#	CMBRA-1506	83703	
355143 08/05/2015 AP EFTAXIADIS CONSULTING LLC			1,275.00	INV#	CMBRA-1507	83704	
357755 09/01/2015 AP FIBERTEC ENVIRONMENTAL SERVICE			1,239.00	INV#	INV69045-01	84106	
357754 09/01/2015 AP FIBERTEC ENVIRONMENTAL SERVICE			294.00	INV#	INV69228-01	84105	
357723 09/01/2015 AP COMPLIANCE INC			2,560.25	INV#	46486	84074	
359275 09/02/2015 AP FIBERTEC ENVIRONMENTAL SERVICE			210.00	INV#	INV69045-02	84780	
359274 09/10/2015 AP FIBERTEC ENVIRONMENTAL SERVICE			284.00	INV#	INV69045-03	84779	
360173 10/01/2015 RE 2015 Accrued Payables			-1,445.00				
359264 10/01/2015 AP EFTAXIADIS CONSULTING LLC			2,247.50	INV#	CMBRA-1509	84769	
359305 10/13/2015 AP FIBERTEC ENVIRONMENTAL SERVICE			168.00	INV#	INV70013-01	84810	
361574 11/09/2015 AP EFTAXIADIS CONSULTING LLC			1,593.75	INV#	CMBRA-1510	85293	
Professional Services	0.00	0.00	9,871.50	0.00	0.00	-9,871.50	0.0
Dept: 000	0.00	0.00	9,871.50	0.00	0.00	-9,871.50	0.0
Expenditures	0.00	0.00	9,871.50	0.00	0.00	-9,871.50	0.0

CITY OF MANISTEE				
BROWNFIELD REDEVELOPMENT AUTHORITY				
SUMMARY OF INVOICES SUBMITTED FOR PAYMENT				
		REPORTING PERIOD: <u>January 1, 2016 – June 2, 2016</u>		
VENDOR NAME	DATE	INVOICE NUMBER	INVOICE AMOUNT	SERVICE DESCRIPTION
Eftaxiadis Consulting Inc.	1/18/16	CMBRA-1412	510.00	Misc. Technical Services; H&K Redevelopment Assistance; 318 River Street Redevelopment Assistance
Eftaxiadis Consulting Inc.	3/2/16	CMBRA-1602	807.50	Misc. Technical Services; H&K Redevelopment; 305 River Street Redevelopment; Joslin Cove TIF Mgmt; 334 River Street TIF Mgmt
TOTAL:			\$1,317.50	

**CITY OF MANISTEE
BROWNFIELD REDEVELOPMENT AUTHORITY
DEVELOPMENT & REIMBURSEMENT AGREEMENT**

This Development & Reimbursement Agreement is made as of this 16th day of February, 2016, between **MANISTEE INVESTMENT PARTNERS, LLC**, a Michigan limited liability company, 300 Washington Avenue, Suite 100, Grand Haven, MI 49417 (“Private Developer”), River Parc Place II, LLC, a Michigan limited liability company; and North Channel Investors, LLC, a Michigan limited liability company (collectively “Owners”) and the **CITY OF MANISTEE**, a municipal corporation, 70 Maple Street, Manistee, Michigan 49660 (“City”); and the **CITY OF MANISTEE BROWNFIELD REDEVELOPMENT AUTHORITY**, a Michigan public body corporate, 70 Maple Street, Manistee, Michigan 49660 (the “CMBRA”) (all hereafter referred to as “the parties”):

PREMISES

- A. Owner wishes to rehabilitate and redevelop the historic and/or blighted structures and associated improvements for its mixed use project commonly known as the “South Washington Area Project”, described on attached Exhibit **A** (“Owner’s Development”), to be located on the property described on attached Exhibit **B** (“Owner’s Property”)
- B. City has determined in furtherance of its public purposes that it is in its best interest to acquire, construct, upgrade and maintain certain public facilities, described on attached Exhibit **C** (the “Public Development” or “Public Facilities”) including water, sewer, utilities, streets, sidewalks, riverwalks, retaining structures, streetscapes and parking to be located on property described in attached Exhibit **D** (the “Public Developments Site”) in connection with Owner’s Development. The Public Development Site consists of the Owner’s Property (Exhibit **B**) and the City’s Property (Exhibit **E**) collectively.
- C. City has obtained, and may seek from Owner additional public easements as needed for Public Facilities as described in Exhibit **F**.
- D. City has determined for purposes of this Agreement that it will construct Public Facilities in furtherance of City’s public purpose and the public purpose promoted by the construction of the Eligible Activities of Owner’s Development.
- E. Owner and City have determined that it would be to their mutual benefit to coordinate their respective construction projects.
- F. Owner and City have determined that it would be to their mutual interest to seek Blight Elimination and Rental Rehabilitation grants from the State of Michigan to partly

finance the rehabilitation and redevelopment of the blighted and historic buildings on Owner's Property.

G. Owner and City have determined that it would be to their mutual interest to pursue short term abatement of the real property taxes for the former "North Channel Outlet" building located on Owner's Property pursuant to the Obsolete Property Rehabilitation Act, Act 146, Public Acts of 2000 ("OPRA").

H. CMBRA has been formed pursuant to Act 381, Public Acts of Michigan, 1996, MCL 125.2651 et. seq. ("Act 381") to promote the revitalization of blighted, functionally obsolete or environmentally distressed areas. CMBRA and City Council have approved a Brownfield Plan (the "Brownfield Plan", attached to as Exhibit G) that includes Owner's Development and Public Development located within Owner's Property and City's property (collectively referred to as the "Site").

I. CMBRA has determined in furtherance of its purposes and to accomplish its goals, it is in CMBRA's best interest to finance certain "eligible activities" as defined by Sec. 2 (l) of Act 381 within Eligible Property, as defined below.

J. Pursuant to the Brownfield Plan and the Act 381 Work Plan (attached as Exhibit H), CMBRA will capture and retain 100% of the tax increment revenues authorized by law to be captured from the levies imposed by taxing jurisdictions upon taxable property for the Eligible Property consistent with Act 381, as amended, and the Brownfield Plan approved by the CMBRA and City (the "Tax Increments"). Upon satisfaction of the conditions expressed in this Agreement, CMBRA will use and distribute the Tax Increment revenues as provided by law and as described in this Agreement.

In consideration of the premises and the mutual covenants contained in this Agreement, Owner, City and CMBRA hereby enter into this Agreement and covenant and agree as follows:

ARTICLE 1

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

- a. "Act 381" means the Brownfield Redevelopment Financing Act, Act 381 of Michigan Public Acts of 1996, as amended, MCL 125.2651 et seq.
- b. "Act 381 Work Plan" or "Work Plan" means the work plan to be approved by CMBRA and attached as Exhibit H, and incorporated here by

reference, together with any subsequent amendments approved by CMBRA and MDEQ/MSF.

- c. "Agreement" means this Development Agreement.
- d. "Brownfield Plan" means the Brownfield Redevelopment Plan, as defined under Act 381, and adopted by CMBRA and City Council, and attached as Exhibit G and incorporated here by reference.
- e. "Brownfield Tax Increments" means tax increment revenues, as defined by Act 381, from all taxable real and personal property located on Eligible Property shown in the Brownfield Plan during the life of the Plan.
- f. "City" means the City of Manistee.
- g. "City Council" means the City of Manistee City Council.
- h. "CMBRA" means the City of Manistee Brownfield Redevelopment Authority, established by the City Council on June 6, 2006, or its successors.
- i. "County" means the County of Manistee, Michigan.
- j. "Eligible Activities" means those activities as defined by Sec. 2(1) of Act 381, MCL 125.2652, as amended, or approved by the Michigan Strategic Fund ("MSF") or the Michigan Department of Environmental Quality ("MDEQ") as part of the approved Act 381, including as hereafter amended or supplemented.
- k. "Eligible Property", or "Site" means the real property as defined by MCL 125.2652 as amended for purposes of completing Eligible Activities and described in Exhibit D which may be amended by the parties to reflect any transfer of land after the execution of this Agreement. Such a modification shall be by amendment of this Agreement and shall be in writing signed by the parties.
- l. "Environmental Consultant" and "Environmental Contactor" means the environmental consulting or contracting firm retained or hired by Owner or City to fulfill its obligations under this Agreement, including Eligible Activities set forth in the Act 381 Work Plan.
- m. "Event of Default" means the failure of performance or breach by a party to carry out its obligations under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within the cure period and as

provided in Article 10 below. It also means any filing of bankruptcy or bankruptcy reorganization by Owner.

- n. "Maximum Cost of Eligible Activities" means CMBRA's maximum obligation to pay for Eligible Activities and not to exceed the amounts set forth in the approved Act 381 Work Plan, as amended or supplemented
- o. "MDEQ" means the Michigan Department of Environmental Quality.
- p. "MSF" means the Michigan Strategic Fund.
- q. "MSF Work Plan" and "MDEQ Work Plan" means the work plan submitted to CMBRA by Owner and approved by CMBRA outlining Eligible Activities in the Brownfield Plan to be performed on the Site that are subject to review and approval (or already approved by) MSF and MDEQ, respectively.
- r. "NREPA" means the Natural Resources and Environmental Protection Act being Act 451 of 1994.
- s. "Owner" means, collectively, Manistee Investment Partners, LLC, a Michigan limited liability company, River Parc Place II, LLC, a Michigan limited liability company and North Channel Investors, LLC, a Michigan limited liability company, jointly and severally, 300 Washington Avenue, Suite 100, Grand Haven, MI 49417, and its successors, affiliates and permitted assigns.
- t. "Owner's Development" means Owner's site work, building construction, utilities, and equipment relating to Eligible Property as described on attached Exhibit **A** incorporated here by reference.
- u. "Owner Property" means the real property located in Manistee, Michigan, as described in attached Exhibit **B**, and made a part hereof. Owner's Property and its description may be amended by the parties to reflect any transfer of land after the execution of this Agreement. Such a modification is subject to the parties' mutual agreement and shall be by amendment of this Agreement in writing and signed by the parties.
- v. "City" means the City of Manistee, a Michigan municipal corporation.
- w. "Public Development" or "Public Facilities" means the real property and improvements described in Exhibit **C** and incorporated herein by reference.
- x. "Public Development Site" means that property described in Exhibit "D"..

- y. "City Property" means the real property located in Manistee Michigan, as described in attached Exhibit E, and made a part hereof.
- z. "Tax Increment" means tax increment revenues, as defined by Act 381, from all taxable real and personal property located on the Site during the life of the Brownfield Plan.
- aa. "Transaction Costs" means CMBRA's costs and expenses related to the authorization, execution, administration, oversight, fulfillment of CMBRA's obligations under this Agreement and as allowed by Act 381, which such items shall include, but not be limited to, direct or indirect fees and expenses incurred as a result of the application, amendments to the Brownfield Plan, approvals of the developments contemplated herein, printing costs, costs of reproducing documents, filing and recording fees, attorney fees, financial expenses, insurance fees and expenses, administration and accounting for loan proceeds and tax increments revenues, oversight and review, and all other costs, liabilities, or expenses, related to preparation and carrying out or enforcing the Plans, the Act 381 Work Plan and this Agreement, or other related agreements with Owner, if any, and any other costs, charges, expenses, and professional and attorney fees in connection with the foregoing.
- bb. "Short Street Stabilization Structure" means the portion of the stabilization retaining wall designed by the City Engineer at City's cost and subject to the terms of the easement for the same attached in Exhibit E.
- cc. "Short Street Stabilization Structure Extension" means that portion of the stabilization retaining wall designed by Owner's engineer at Owner's cost and not subject to the terms of the easement referenced in paragraph bb. above, which shall be Owner's responsibility to maintain.

Section 1.2 Number and Gender. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.

ARTICLE 2 COVENANTS OF OWNER AND PUBLIC DEVELOPER

Section 2.1 Construction of Developments. Owner may construct the Owner Development and City may construct the Public Development, respectively, for their respective projects or development, provided that each shall use proper construction standards and that each proceed with due care and diligence and commence and complete Eligible Activities and their respective developments in accordance with this Agreement, and in accordance with any applicable law, regulation, code and ordinance with respect to their Eligible Activities. The parties' obligations to comply with the time requirements

set forth in this Article are subject to the applicable party's ability to secure any governmental permits and approvals necessary for the construction of same (the "Approvals"). The parties shall, in each instance, use their best efforts to secure such Approvals on a timely basis. The phasing or staging of the construction of Owner and Public Development as it impacts the redevelopment schedule and the generation and capture of Tax Increments shall be as follows:

- (a) Owner will initiate redevelopment of the River Parc Place property, including the construction of parking facilities and Eligible Activities on this property (referred to as "Owner's Development Phase I"), within three (3) months of both the execution of this Agreement and the execution of Blight Elimination Grant No. 1 agreements between MSF and CMBRA/City, and CMBRA/City and Owner. Substantial completion of Owner's Development Phase I shall be within twelve (12) months of commencement of same, but may be extended to a total of fifteen (15) months of commencement by the mutual agreement of the parties. Owner's obligation to complete Owner's Development Phase I is subject to City's completion of City's Development Phase I described below.
- (b) Owner will initiate redevelopment of the commercial component of the North Channel Outlet property, including construction of parking facilities, and Eligible Activities on this property (referred to as "Owner's Development Phase II"), within six (6) months after completion of both Owner's Development Phase I, and execution of Blight Elimination Grant No. 2 agreements between MSF and CMBRA, and CMBRA and Owner. Substantial completion of Owner's Development Phase II shall be within nine (9) months of commencement of same, but may be extended to a total of twelve months of commencement by the mutual agreement of the parties. Owner's commencement of Owner's Development Phase II is subject to City's completion of City's Development Phase I described below and the completion of the Short Street Stabilization Structure defined below.
- (c) Subject to Owner's ability to secure bank financing for same, Owner will construct a retaining wall, at least a portion of which will be located on parcel ID 51-211-100-03, the primary purpose of which is to stabilize the City's public roadway commonly known as Short Street.. The retaining wall will be designed by the City's engineering firm (Spicer Group, Inc.) and at the City's expense, but with input from both the Owner and the City as pertains to both design specifications and specific location. The parties will grant such licenses and/or easements as are reasonably necessary to permit the construction and maintenance of same. Construction of the retaining wall shall begin within three (3) months of the execution of this Agreement. The retaining wall contemplated by this sub-paragraph (c) will be referred to hereinafter as the "Short Street Stabilization Structure". Construction shall be substantially completed within twelve (12) months of the commencement of the same. Cost of construction of the Short Street Stabilization Structure shall

be the responsibility of Owner, subject to the reimbursement provisions contained within Section 2.2.

- (d) Owner will initiate redevelopment of the residential component of the North Channel Outlet building, (referred to as “Owner’s Development Phase III”), within twelve (12) months after both completion of Owner’s Development Phase II and execution of Rental Rehabilitation grant agreements between MSHDA and City, and City and Owner. Substantial completion of Owner’s Development Phase III shall occur within twelve (12) months of commencement of same, but may be extended for an additional six (6) months upon the mutual agreement of the parties. Commencement of Owner’s Development Phase III is subject to City’s completion of City’s Public Development Phases I and II described below.
- (e) City will initiate or cause to be initiated construction necessary to supply City water to and for the benefit of the River Parc Place and North Channel Outlet buildings, and sidewalk & curb cuts on Washington Street and Fifth Avenue (referred to as “City’s Public Development Phase I”), within three (3) months of the execution of this Agreement. Construction shall be substantially complete within twelve (12) months of commencement of same, but may be extended to a total of fifteen (15) months of commencement by the mutual agreement of the parties.
- (f) City will commence construction of the Sanitary Sewer Replacement, River Walk Phase I and Pump Station Enlargement (referred to as “Public Development Phase II”) within three (3) months after Owner commences Owner’s Development Phase III. Construction of Public Development Phase II shall be substantially complete within nine (9) months of commencement of same, unless extended by the mutual agreement of the parties.
- (g) City will commence construction of the Washington Street Streetscape and the Memorial Drive Resurfacing (referred to as “Public Development Phase III”), within ten (10) years of the execution of this Agreement, subject to receipt of sufficient TIF revenues to cover the City’s cost of construction and complete reimbursement of the Owner’s TIF-eligible expenses.

Section 2.2 Covenant to Pay Financial Obligations. Owner and City will utilize their own funds for the work allocated to them in this agreement, such work including, but in no way limited to Eligible Activities. The parties hereto will receive reimbursement from CMBRA) to the extent of available Brownfield Tax Increment revenues for payment of their particular Eligible Activities in accordance with the terms of this Agreement, the Brownfield Plan, and the Act 381 Work Plan. Each party shall be entitled to reimbursement as provided in this Agreement for their particular Eligible Activities, regardless of whether any other party has performed and completed its Eligible Activities. Capture of Tax Increment revenues and Reimbursement of Eligible Activities shall be prioritized and paid as follows:

(a) First, captured Tax Increment revenues will be applied to CMBRA annual administrative costs in accordance with Attachment A to the Brownfield Plan and as allowed by law;

(b) Second, in the following order:

(1) reimburse, or set aside Tax Increments for the current and future eligible activity expenses incurred by Owner and City; and

(2) reimburse Owner by allocating 100% of the Tax Increments captured from the eligible properties to Owner until Owner's eligible activity expenses, plus the annual interest charge per Section 2.4 (g), associated with the Short Street Stabilization Structure and Short Street Stabilization Structure Extension have been reimbursed in full; and

(3) reimburse Owner and City for eligible activity expenses, plus the annual interest charge per Section 2.4 (g), by allocating 60% of the Tax Increments captured from the eligible property to Owner and 40% to City until Owner's eligible activity expenses for the redevelopment have been paid in full.

(c) Third, to reimburse or set aside tax increments captured from the eligible property (after payments have been made to the CMBRA, Owner and City as provided in subparagraphs (a) and (b) above) for remaining eligible activity expenses of the City, plus the annual interest charge per Section 2.4 (g), as described in the Brownfield Plan and Act 381 Work Plan.

It is anticipated that there will be sufficient available Tax Increment revenues to meet the eligible activities and public development expenses contemplated under this Agreement. However, if for any reason the Tax Increment revenues do not result in sufficient revenues to satisfy such obligation, Owner and City agree and understand that they will have no claim or further recourse of any kind or nature against CMBRA except from available captured Tax Increment revenues, and if for any reason the revenues are insufficient or there are none, then Owner and City assume full responsibility for any such loss or cost.

Section 2.3 Transfer of Reimbursement. In addition to City's primary Eligible Activities, City and Owner may authorize Owner, by separate written agreement approved and executed by the parties, to construct or have constructed, identified or additional Public Developer Eligible Activities; in such case Owner will transfer, as City and Owner may agree as necessary, to the City by easement or other form of conveyance the additional Public Development or Public Facility, and Owner shall receive reimbursement for the Eligible Activities expenses associated with that Public Development as provided in such separate agreement.

Section 2.4 Reimbursement Conditions. It is expressly understood and agreed that the reimbursement by CMBRA to a party in this Agreement is subject to the following conditions applicable to that party:

- (a) Approval by MDEQ, MSF and CMBRA of the Act 381 Work Plan, as amended or supplemented.
- (b) City shall provide sufficient proof of ownership, easement or other form of conveyance, over the Public Facilities Sites, and shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement.
- (c) Owner shall pay the real and personal property taxes levied on those portions of the Owner Development that are subject to such taxes and owned by Owner on or before the date the same are payable without interest or penalty.
- (d) Adherence to the Brownfield Plan.
- (e) Owner shall provide proof of ownership of the title, easement or other property interest of the Owner Property required for eligible activities or infrastructure, if applicable, and shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement and any other agreement with CMBRA or City.
- (f) Owner and City shall provide sworn written waivers of liens by consultants, contractors, and subcontractors providing services for their respective eligible activities as described in this Agreement.
- (g) To the extent captured revenues are available, CMBRA shall pay Owner and City annual simple interest on Eligible Activity expenses as follows:
 - (1) Interest shall be paid to the City and the Owner for Eligible Activities at a rate not to exceed 5%, subject to approval by the MFS and the MDEQ.
 - (2) Interest shall be paid on eligible expenses and shall begin accruing after all of the following:
 - (i) Invoices for Eligible Activities and expense are approved by CMBRA as provided herein; and
 - (ii) Substantial completion of the Eligible Activity.
 - (3) If there is not enough Brownfield Tax Increments in any year to pay for all Eligible Activities and interest, payment of Eligible Activities shall have priority. Once an Eligible Activity is paid without interest being paid, the interest owed shall not accrue any further interest, but

accrued and unpaid interest shall be paid when Tax Increments are available.

Section 2.5 Other Developers. Other developers shall be entitled to receive Owner's Reimbursement from Tax Increment Financing revenues as set forth in this Agreement under the Brownfield Plan as designated and allocated in an agreement between Owner and such other developer and approved by CMBRA, which approval shall not be unreasonably delayed or denied.

Section 2.6 Indemnification of CMBRA and City.

(a) Owner shall be considered an independent contractor and not an agent or employee of either CMBRA or City, nor shall any agent or employee of Owner be considered an agent or employee of CMBRA or City. Owner shall remain responsible for any claims arising out of its acts or omissions for the performance of its own eligible activities as described in this Agreement as provided by law. Additionally, Owner, City and CMBRA shall not be considered engaged in a joint venture or partnership, and Owner, City and CMBRA shall be responsible for any claims arising out of their own acts or omissions during the performance of their respective eligible activities described in this Agreement as provided by law.

(b) Except for claims arising out of CMBRA or City's own acts or omissions under subparagraph (a), Owner shall defend, indemnify and hold CMBRA and City harmless from any loss, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property as a result of the ownership or operation, use or maintenance of the Owner Development from and after the date hereof. If any suit, action or proceeding is brought against CMBRA or City, CMBRA and/or City promptly shall give notice to Owner and Owner shall defend with counsel selected by Owner, but which counsel shall be reasonably satisfactory to CMBRA.. In any such proceeding, CMBRA and/or City shall cooperate with Owner and Owner shall have the right to settle, compromise, pay or defend against any such claim on behalf of CMBRA and/or City, except that Owner may not, without CMBRA and/or City's prior written consent, settle or compromise any claim if the effect of doing so would be to subject CMBRA or City to civil or criminal penalties. Owner shall not be liable for payment or settlement of any such claim or proceeding made without its consent.

(c) Owner also shall indemnify CMBRA and City for actual and reasonable costs and expenses, including actual and reasonable attorneys' fees, incurred in successfully enforcing or pursuing any obligation of or claim against Owner under this Agreement. To the extent that the enforcement of such obligation or claim involves a claim against a consultant, contractor or subcontractor who performs work or services under the terms or within the scope of this Agreement, the consultant's, contractor's or subcontractor's agreement with Owner shall be deemed to be a third party beneficiary contract in favor of CMBRA and/or City.

(d) Owner shall use its reasonable best efforts to assure that to the extent a consultant, contractor or subcontractor provides services toward completion of any Eligible Activities, at a minimum, the consultant shall provide to CMBRA and City the indemnity provisions set forth in Sec. 6.12 of this Agreement.

(e) Owner shall add CMBRA and City as additional insureds to their respective property and general liability and comprehensive liability insurance policies for the projects described and covered by this Agreement, the Brownfield Plan, as amended, or the Act 381 Plan, as amended or supplemented.

Section 2.7 Site Access. Owner as to the Developer's Property and City as to the Public Development Site, shall grant to CMBRA, City and MDEQ or MSF, or their designated agents, access to their respective properties, to exercise their respective rights related to the purposes and pursuant to the terms of this Agreement. CMBRA shall give either Owner or City, as appropriate, 24 hours written notice of its intent to access either the Site or the Public Developer Site whenever possible. If notice cannot be given due to an emergency or any other unforeseen circumstance, CMBRA shall give notice as is reasonable and practicable under the circumstances.

Section 2.8 City's Agreement to Approve Tax Abatements. City agrees to approve, in accordance with the applicable Acts, Owner's requests for real property tax abatements as follows:

(a) Effective in the first calendar year following the date of Owner's commencement of Owner's Development Phase II, City will grant municipal approval to Owner of an OPRA tax abatement request on the North Channel Outlet parcel, which abatement shall remain in effect for ten (10) years. Grant of the request of an OPRA tax abatement is subject to the approval of the Michigan State Tax Commission. The terms of any OPRA tax abatement will be in accordance with and subject to the provisions of the Michigan Obsolete Property Rehabilitation Act, MCL 125.2781 et seq.

Section 2.9 Separate Covenants and Obligations. Owner's and City's covenants and obligations to CMBRA are separate covenants solely running to and enforceable by CMBRA, MDEQ, or MSF as provided by law, and no other party, person, or entity. Unless otherwise expressly provided in this Agreement, a breach or default by Owner or City of its obligation to CMBRA shall not constitute a breach or default of the other party's obligations and covenants to CMBRA or bar enforcement of the other party's claims. Further, no third party beneficiary rights, interest, or claims are created by implied contract, operation of law, or any other means.

ARTICLE 3
CONDITIONS PRECEDENT TO OWNER'S OR CITY'S OBLIGATIONS
UNDER THIS AGREEMENT

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

- (a) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which Owner, City or CMBRA is a party, or threatened against Owner, City or CMBRA contesting the validity or binding effect of this Agreement or the validity of the Plan, which could result in an adverse decision which would have one or more of the following effects:
 - (1) A material adverse effect upon the ability of CMBRA to collect and use Tax Increments revenues to repay its obligations under this Agreement.
 - (2) A material adverse effect on Owner's, City's or CMBRA's ability to comply with the obligations and terms of this Agreement, the Brownfield Plan, or the Act 381 Work Plan.
- (b) There shall have been no Event of Default by CMBRA or City.
- (c) CMBRA and City shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement.
- (d) Approval of the Act 381 Work Plan by the MDEQ and/or MSF.

Notwithstanding anything contained in this Section 3.1 to the contrary, the Owner's obligations shall not be affected by any of the conditions described above if the cause of the occurrence is the act, or failure to act, of the Owner.

Section 3.2 Conditions Precedent to City's Obligations to Construct the Public Development. The obligations of City to complete its Eligible Activities and construct the Public Development as contemplated herein, are subject to the following conditions precedent which must be satisfied as required herein, except as expressly provided in this Agreement or otherwise waived by the City

- (a) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which Owner or City or CMBRA is a party, or threatened against any of them contesting the Brownfield Plan or the

validity or binding effect of this Agreement, which could result in an adverse decision which would have one or more of the following effects:

- (1) A material adverse effect upon the ability of CMBRA to collect and use Tax Increments to pay the obligations under this Agreement.
 - (2) A material adverse effect on a party's ability to comply with the obligations and terms of this Agreement, the Brownfield Plan, or the Act 381 Work Plan.
- (b) There shall have been no Event of Default by CMBRA
 - (c) Owner and CMBRA shall have performed all of the terms and conditions to be performed by them pursuant to this Agreement.
 - (d) Tax Increment revenue and other needed revenue are assured from the actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources other than general tax revenues.
 - (e) Approval of the Act 381 Work Plan by the MDEQ and/or MSF.
 - (f) There has been no change in statutes or other law which would have one or more of the effects described above.
 - (g) Owner and City have executed public easement documents as needed for the Public Development.
 - (h) There has been no Event of Default by Owner.
 - (i) Proper zoning approvals for the Owner Development and the Public Development have been secured.
 - (j) The City has received the consent of any affected utility for relocation, burial or any other activity necessary to construct the Public Development.
 - (k) The Development Agreement remains in full force and effect and there is no default by Owner.

ARTICLE 4 COVENANTS OF CMBRA

Section 4.1 Adoption of Plan. CMBRA will prepare and submit the Act 381 Work Plan (and amendments as necessary) in accordance with Act 381 which will provide for

the payment of transaction costs and reimbursement to Owner and City of Owner's and City's Eligible Activity expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement, Act 381, the Brownfield Plan, and any applicable Act 381 Work Plan, and approved by CMBRA pursuant to its policies and procedures. These policies and procedures include, but are not limited to, CMBRA's standards for local tax incremental financing eligibility.

Section 4.2 Completion of Eligible Activities. Upon Owner's and City's satisfactory completion of the Eligible Activities described in the Act 381 Work Plan, as amended or supplemented, pursuant to this Agreement, and approved by MDEQ and/or MEGA and where applicable approved by CMBRA, CMBRA shall reimburse Owner and City for Eligible Activities expenses subject to and in accordance with the terms set forth in this Agreement. Owner and City shall have sole responsibility to pay the consultants or other contractors or subcontractors for completion of such Eligible Activities and provide written waiver of any liens. If Owner or City incurs any expenses or costs for any activities other than the Eligible Activities or the costs exceed the Maximum Cost of Eligible Activities as set forth in the Brownfield Plan, the Act 381 Work Plan, or approval of the CMBRA, Owner or City shall bear such costs without any obligation on the part of CMBRA. If the costs of Eligible Activities are less than the Maximum Cost of Eligible Activities, then Owner and City shall have no further right of reimbursement beyond its actual costs.

Section 4.3 CMBRA or Contract Manager Oversight. CMBRA may retain the services of a qualified contract manager to exercise oversight of Owner or City and their consultants, contractors, or subcontractors for purposes of assuring that the respective activities, invoices and accounting by Owner and City are fair, reasonable, and constitute eligible activities within the meaning and scope of this Agreement, the Brownfield Plan, the Act 381 Work Plan and Act 381. Owner and City shall provide to CMBRA and/or its Contract Manager access to data, reports, sampling results, invoices, and related documents reasonably necessary to fulfill the exercise of such oversight. It is expressly understood that CMBRA has no right to control or to exercise any control over the actual services or performance by Owner or City of their or its respective Eligible Activities, except for the purpose of assuring that Owner or City has met its or their respective and applicable conditions and requirements of this Agreement.

ARTICLE 5 CONDITIONS PRECEDENT TO CMBRA'S OBLIGATIONS

Section 5.1 Conditions Precedent to CMBRA's obligation to reimburse Eligible Activities expenses for the Owner Development and the Public Development. The obligations of CMBRA related to the reimbursement of costs to Owner or City for completion of Eligible Activities expenses as contemplated herein shall be subject to the following conditions precedent which must be satisfied by Owner or City as required herein, except as expressly provided in this Agreement or otherwise waived in writing by CMBRA. It is expressly agreed that CMBRA makes or gives no assurance of payment to

the Owner or City by the mere fact that an Eligible Activity or a dollar amount for such Eligible Activity is identified in the Act 381 Work Plan, or as hereafter supplemented or amended, and that its designated contract manager (if any) shall have the right to review and approve all written summaries of and invoices for Eligible Activities for the reasonableness of services performed by any consultant or contractor under this Agreement. However, so long as an Eligible Activity by Owner or City has been approved and is authorized by Act 381 and has been completed and approved in accordance with the following procedure and this Agreement, Owner or City, depending on which is responsible for undertaking the Eligible Activity, shall be entitled to reimbursement of their respective Eligible Activities expenses.

(a) Before commencing work on each stage of Eligible Activities and pursuant to the policies adopted by CMBRA, City or Owner will present a Project Budget for each stage or phase of its development and eligible activities to the CMBRA Director at least two weeks prior to the next regular meeting of CMBRA, if any. The Project Budget must be approved by CMBRA Board. The Project Budget will be submitted at each such stage or phase of the Eligible Activities: BEA activities; due care 7(a) obligations; and additional response activities and, if applicable, lead and asbestos abatement, demolition, site preparation and infrastructure; and will contain detailed line item cost estimates.

(b) City and Owner shall submit evidence of their expenses and a written statement affirming completion of any Eligible Activities to the CMBRA Director, for preliminary review and approval, within 30 calendar days of Owner's or City's payment of the invoice. CMBRA shall not have any obligation to reimburse any invoice that is submitted to CMBRA later than one year after the original invoice date, regardless of when payment on the invoice was made. Within 30 calendar days of receipt of the invoice, the CMBRA shall review the invoice to determine the reasonableness of the invoice and activity as eligible, and recommend approval or denial of the invoice, in part or in full, at a meeting of CMBRA. In the event of an objection to the invoice, the CMBRA Director will notify Owner or City, and Owner or City shall meet with the CMBRA Director and attempt to resolve or cure the objection prior to CMBRA Director making a recommendation at a CMBRA meeting. If CMBRA does not authorize payment on an invoice, then there shall be no obligation on CMBRA's part to pay the invoice.

(c) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which City, Owner or CMBRA is a party, or threatened against City, Owner or CMBRA contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan or which could result in an adverse decision which would have one or more of the following effects:

- (1) A material adverse effect upon CMBRA's ability to collect and use Tax Increments to pay CMCBRA's obligations under this Agreement.

- (2) A material adverse effect upon either Owner's or City's ability to conduct Eligible Activities.
 - (3) Any other material adverse effect on Owner's, City's, or CMBRA's ability to comply with the obligations and terms of this Agreement, or the Plan.
- (d) There shall have been no Event of Default by City or Owner.
- (e) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land uses and the Owner Development and Public Development, have been secured.
- (f) Owner and Public Developer have the consent of any affected utility for relocation, burial or the activity to accomplish the eligible activities.
- (g) There is no change in law that would have one or more of the effects described above.

ARTICLE 6

OWNER'S AND PUBLIC DEVELOPER'S CONTRACTOR RESPONSIBILITIES

Section 6.1 Eligible Activities and Due Care Obligation. Owner covenant to CMBRA that each will contract with competent and qualified consultants, contractors or subcontractors ("Contractors") to conduct and complete its or their respective Eligible Activities set forth in this Agreement and as set forth in the Act 381 Work Plan, as amended or supplemented, or the Brownfield Plan, as amended or supplemented, and to meet any due care obligation under MCL 324.20107a, if applicable, in accordance with any MDEQ requirements and approval.

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

Section 6.3 ASTM and Industry Standards. Owner and City shall ensure that their respective Contractors perform all services and eligible activities under this Agreement in accordance with any applicable MDEQ, *ASTM* or other industry Standards.

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

Section 6.5 Other Agreements. Owner and City each covenant that they will obtain a warranty from Contractor that it is not a party to any other existing or previous agreement or proceeding which would adversely affect Contractor's ability to perform the services with respect to the eligible activities.

Section 6.6 Contractors and Subcontractors. If Owner or City hires a Contractor or retains any other person or entity to perform services related to eligible activities under this Agreement, Owner shall first secure the written acknowledgment from such party that such party is not and shall not be or act as an agent or employee of CMBRA, nor assume or create any duty, commitment or obligation on behalf of nor bind CMBRA in any respect whatsoever. A copy of such written acknowledgment shall be provided to CMBRA.

Section 6.7 Non-Discrimination Clause. No party and no Contractor (including any party's or Contractor's employees, subcontractors or independent contractors) shall discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this provision may be regarded as a material breach of this Agreement.

Section 6.8 Independent Contractor. Contractors shall perform services under this Agreement entirely as independent contractors, and shall not be deemed agents, employees or legal representatives of CMBRA. CMBRA and Contractors shall each have and maintain complete control over all their employees, agents and operators. Facts or knowledge over which Contractor becomes aware shall not be imputed to CMBRA without communication to and receipt by managerial officials or employees of CMBRA. Contractors shall have no authority to assume or create, and will not assume or create, any commitment or obligation on behalf of CMBRA in any respect whatsoever. Further, Contractors shall exercise independent judgment for the services provided in this Agreement.

Section 6.9 Disposal of Hazardous Waste. In the event that samples or other materials contain "hazardous waste" under state or federal law, Owner or City shall, under a manifest signed by it or its agent, as the generator, have such material transported to a facility properly licensed for the disposal of hazardous waste for final disposal. It is expressly understood that CMBRA has no oversight or other control or authority over

City's or Owner's obligation to dispose properly of any hazardous waste under the terms of this Agreement.

Section 6.10 Compliance With Laws. While on Owner Site or Public Development Site; Owner, City, and Contractors shall impose work orders on their employees, agents and subcontractors which are designed to assure that they comply with all applicable federal, state and local laws and regulations (including occupational safety and environmental protection statutes and regulations) in performing services under this Agreement, and shall comply with any directions of governmental agencies relating to site safety, security, traffic or other like matters.

Section 6.11 Contractor Insurance. Owner and City shall assure that Contractors and all persons performing any part of the Eligible Activities covered by this Agreement, shall obtain and maintain the following policies of insurance:

- (a) Worker's Compensation and Occupational Disease Insurance in the amounts required under the laws of the State of Michigan;
- (b) Comprehensive General Liability and Automobile Insurance for bodily injury, death or loss or damage to property or third persons in the minimum amount of at least \$1 million per occurrence, which policy shall name CMBRA and the County as additional insured to the extent of the indemnity provided in paragraph 6.13.
- (c) Pollution or Environmental Impairment Insurance in the amount of at least \$1 million per occurrence.
- (d) Owner and City shall furnish to CMBRA a certified copy of such policies within 30 calendar days of the date of the commencement of the Eligible Activities and the period of coverage shall commence with the date of performance of the first Eligible Activity. The limits of insurance shall not be construed as a limitation on the Contractors' liability for damages, costs or expenses under this Agreement.
- (e) Upon showing of no or minimal environmental impairment risk with respect to the activities to be performed by any specific Contractor or sub-contractor, Owner or City may request in writing a reduction of the amount of coverage in subparagraph (b) to \$500,000; upon the same showing, Owner or City may also request as to a specific Contractor a waiver of the Environmental Impairment Insurance required by subparagraph (c), which waiver shall be at the sole and absolute discretion of CMBRA. CMBRA will provide written documentation in the event it approves of such a request, which shall be treated as an amendment to this Agreement effective on the date of such written approval.

Section 6.12 Contractor Indemnity Provisions.

- (a) Defend, Indemnify and Hold Harmless. Notwithstanding any other provision of this Agreement, Owner and City shall obtain Contractors' agreements to defend, indemnify and hold CMBRA harmless against and from all liabilities, losses, damages, costs, expenses (including attorney fees), causes of action, suits, claims and demands for judgment arising out of:
 - (1) Contractor's failure to comply with the provisions of this Agreement; and/or
 - (2) Any acts or omissions, negligent or otherwise, of any Contractor's employees, agents, contractors, or subcontractors in the performance of the work specified in this Agreement.
- (b) Survivorship of Covenants. Any Contractor's indemnity, hold harmless and release shall survive the termination of this Agreement.
- (c) Breach. Any breach of the provisions of this Section 6.12 may, at CMBRA's option, constitute a breach of this Agreement.
- (d) Acknowledgements Filed. The indemnity and acknowledgements required by subparagraphs (a) of this section shall be filed with CMBRA before any work begins or before any reimbursement under the terms of this Agreement.

**ARTICLE 7
COORDINATED CONSTRUCTION**

Section 7.1 Temporary Construction Easements. Owner and City shall enter into reciprocal temporary construction easements as needed and reasonable to allow for concurrent construction of the Owner Development and the Public Development.

Section 7.2 Construction Coordination. Owner and City may, upon their mutual agreement, select a professional to manage or coordinate the concurrent construction of all or portions of the Owner Development and the Public Development.

**ARTICLE 8
REPRESENTATIONS AND WARRANTIES**

Section 8.1 Representations and Warranties of CMBRA. CMBRA represents and warrants to Owner and City that:

(a) CMBRA is a public body corporate, established pursuant to Act 381, with all necessary corporate powers pursuant to that Act to enter into and perform this Agreement.

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

Section 8.2 Representations and Warranties of the Owner. Owner represents and warrants to CMBRA and City that:

(a) Owner is a Michigan Limited Liability company with power under the laws of such state to carry on its business as now being conducted and has the power and authority to consummate the transactions contemplated under this agreement.

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on Owner's part, and this Agreement constitutes a valid and binding agreement of Owner in accordance with its terms,.

(c) Except as part of the performance and completion of Eligible Activities under the terms of this Agreement, Owner and its Contractors shall not use Owner Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the Site, and shall obtain all necessary permits in connection therewith.

(d) Owner warrants that it will comply with all obligations under Sec. 7a of Part 201 of the NREPA.

(e) Owner has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

(f) On notice from City, Owner will execute conveyance documents for the sites reasonably necessary for the Public Facilities. Further, Owner shall, upon the full execution of this Agreement, convey a Riverwalk easement over the parcel immediately west of the River Parc Place parcel (Property Tax ID# 51-511-100-03) in substantially the same form as the Riverwalk easement previously granted over River Parc Place parcel, in the form of the Easement attached in Exhibit "E".

Section 8.3 Representations and Warranties of City. City represents and warrants to Owner and CMBRA that:

- (a) City is a Michigan municipal corporation.
- (b) The execution and delivery of this Agreement has been duly authorized by all requisite action on City's part, and this Agreement constitutes City's valid and binding agreement, enforceable in accordance with its terms,
- (c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, or any agreement to which City is a party or by which they are bound.
- (d) City warrants that it will comply with all obligations, covenants and conditions required of it or its agents or Contractors under the terms of this Agreement.
- (e) City shall comply with all due care obligations under Sec. 7a of Part 201 of the NREPA.
- (f) City has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

ARTICLE 9 DEFAULT, REMEDIES, AND TERMINATION

Section 9.1 Remedies Upon Default. Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement as to the defaulting party by giving written notice to the defaulting party, and the defaulting party shall have 30 calendar days to cure the default. If the default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement with the defaulting party or, at the election of such non-defaulting party, may obtain any form of relief permitted under this Agreement, and any applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance of a court of competent jurisdiction. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon default. The prevailing party shall be entitled to an award of reasonable costs and attorneys' fees. With respect to a default by Owner, if said default occurs prior to reimbursement to City from Tax Increment revenues, the following expenses shall be reimbursed by Owner to City:

- (a) Short Street Stabilization Structure engineering expenses incurred by City;
- (b) Cost of curb cuts on Washington Street and Fifth Avenue; and
- (c) Cost of establishing water service to development properties.

**ARTICLE 10
MISCELLANEOUS**

Section 10.1 Term. The term of this Agreement shall commence on the date first written above and shall expire upon payment in full of CMBRA's obligations. Owner and City shall proceed with and continue their Eligible Activities as described in the Act 381 Work Plan, as amended or supplemented. The parties agree to meet and confer as needed following the execution date of this Agreement to discuss the reimbursement priorities and interest in light of data which may then be available projecting TIF revenue and revenue from other sources for the public and private developments.

Section 10.2 Sale or Transfer of Eligible Property or Site within the Plan. Subject to approval by CMBRA as provided in Section 2.5 above, Owner may assign or transfer all or a portion of its interest in the project described in this Agreement to another owner to carry out the purposes and goals of the Plan, or any existing Act 381 Work Plan, subject to the amendment of the Plan. This does not prohibit Owner from selling property or units within structures to third parties for the land uses as contemplated by the Owner's Development. This section shall not impair Owner's right to grant liens or mortgages against any Eligible Property to secure financing.

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

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

If to CMBRA:

Administrator
City of Manistee Brownfield Redevelopment Authority
70 Maple Street
Manistee, Michigan 49660

If to the Owner:

John Groothuis, Managing Member
Manistee Investment Partners, LLC
300 Washington Avenue, Suite 100
Grand Haven, Michigan 49417

If to the City:

City Manager
City of Manistee
70 Maple Street
Manistee, Michigan 49660

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

Section 10.5 Amendment and Waiver. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto.

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

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

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

Section 10.9 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan. Enforcement of this Agreement or disputes arising hereunder shall be resolved in the State courts of Manistee County, Michigan.

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

with respect to the Owner Development to secure Owner's financing from such lenders, or easements to be provided by either the Owner or City.

Section 10.11 Binding Effect. This Agreement shall be binding upon the parties hereto, and in the event of assignment upon their respective successors, transferees, and assigns.

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

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

Section 10.14 No Third Party Beneficiaries. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in any party's Contractors or any other persons or entities not a signatory hereto. This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

Section 10.15 Digital Signatures. The parties hereto acknowledge and agree under the Uniform Electronic Transactions Act, MCL 450.832, *et seq.* that this Agreement may be executed with the electronic signature of any person authorized and required to sign on behalf of the parties hereto.

Section 10.16 Severability. If any provision of this Agreement shall be determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the validity and enforceability of any remaining provisions.

Section 10.17 Subordination. If Owner grants to City any easement or other property right it shall ensure that any lien or mortgage covering the property shall be subordinated to said easement or property right.

IN WITNESS WHEREOF, CMBRA, OWNER and CITY have caused this Agreement to be duly executed and delivered as of the date first written above.

MANISTEE INVESTMENT PARTNERS, LLC

 2-10-16
By: John Groothuis
Its: Member

CITY OF MANISTEE

Colleen Kenny 2/16/16
By: Colleen Kenny
Its: Mayor

CITY OF MANISTEE

Michelle Wright 2/16/16
By: Michelle Wright
Its: Clerk

CITY OF MANISTEE BROWNFIELD
REDEVELOPMENT AUTHORITY

Clinton McKinven 2/9/2016
By: Clinton McKinven - Copus
Its: Chair