

**BROWNFIELD DEVELOPMENT AND REIMBURSEMENT AGREEMENT
MIDLINK BUSINESS PARK REDEVELOPMENT**

This BROWNFIELD PLAN DEVELOPMENT AND REIMBURSEMENT AGREEMENT, (the "Agreement"), is entered into on _____, 2011 between the COUNTY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY, (the "Authority"), a Michigan body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, ("Act 381"), whose address is 201 West Kalamazoo Avenue, Kalamazoo, Michigan 49007, and 5200 EAST CORK STREET INVESTORS, LLC, (the "Developer"), a Delaware Limited Liability Company, whose address is 5200 East Cork Street, Kalamazoo, Michigan 49048.

RECITALS

- A. The County of Kalamazoo (the "County") has established the Authority and the Authority and the County have adopted a Brownfield Plan dated 9/2/08, which was later amended on 11/17/09 and subsequently on 12/07/10, and, to the extent that it applies to the Property located at 5200 E. Cork St., Kalamazoo, MI, is referred to as, the "Plan Amendment", pursuant to the provisions of Act 381; and
- B. The Authority and the County have determined that Brownfield redevelopment constitutes the performance of an essential public purpose, which protects and promotes the public health, safety, and welfare; and
- C. The Authority and the County have designated certain properties that have conditions of environmental contamination, blight or functional obsolescence as appropriate sites for redevelopment and inclusion in the Plan Amendment (Attached as Exhibit 1); and
- D. Act 381 permits the use of real and personal property, non-school and school tax revenues generated from the increase in value (the "Increment") to Brownfield sites constituting eligible property under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs of conducting Eligible Activities, except for the use of school operating increments for environmental eligible activities when the developer is a liable party for the site contamination. Hereafter, such revenue shall be referred to as Tax Increment Revenue ("TIR"); and
- E. Developer owns property commonly known as Midlink Business Park, (the "Property"), located in Comstock Township, Kalamazoo County, and consisting of approximately 340 acres. The Property is described in Exhibit 1; and
- F. The Developer is redeveloping prior uses of the Property, and developing additional and new uses of the Property, in order to achieve compliance with State environmental response requirements and have mixed industrial, commercial, and retail uses of the Property (the "Development"); and

- G. The Development is expected to continue to create construction, direct and indirect jobs, and significantly increase taxable values for the applicable taxing jurisdictions; and
- H. Environmental investigations of the Property have found concentrations of hazardous substances that exceed Generic Residential Cleanup Criteria as promulgated by the Michigan Department of Natural Resources and Environment (“MDNRE”), accordingly, the Property is a “facility” as defined by Part 201 of the Natural Resources and Environmental Protection Act (“NREPA”), Act 451 of 1994, as amended; and
- I. As a “facility”, the Property is an “eligible property” for which Eligible Activities, as defined in Act 381, have been identified in the Plan Amendment approved by the Authority and the County Board of Commissioners, with the concurrence of the Comstock Township Board of Trustees; and
- J. Eligible Activities in the Plan Amendment and Act 381 Work Plan have been approved by the Authority which requires subsequent MDNRE approval of the Act 381 Work Plan, as applicable, during the course of the Development; and
- K. The Plan Amendment describes the Eligible Activities as reasonably necessary for the Development; and
- L. The Plan Amendment for the Property which has been approved by the Authority describes the Eligible Activities and their attendant costs in summary form based upon the information provided by the Developer; sets out an estimate of the captured taxable value as provided by the Comstock Township Assessor, and an estimate of the tax revenues, an estimate of the reimbursement payment schedule, and an estimate of the impact of tax increment financing on the revenues of the taxing jurisdictions. The Eligible Activities costs in the Plan Amendment are estimated budget amounts; and
- M. The purpose of this Agreement is to state the obligations of the parties to this Agreement for reimbursement of the costs incurred for Eligible Activities as approved by the Authority.

NOW, THEREFORE, based upon the recitals set forth above and in consideration of the mutual terms and conditions set forth below, the Developer and the Authority, agree as follows:

1. **Development of the Property.** Developer agrees to develop the Property consistent with this Agreement, the Plan Amendment and with any site plans, which have already, or may be from time to time, approved by the Township of Comstock for the Property and consistent with applicable zoning, building and land use laws. As a general matter, the intent of this Agreement is for the Developer to redevelop the Property for reuse, including but not limited to the following uses:

Kaiser Aluminum is leasing approximately 464,519 square feet of space in the East Building. Kaiser is creating a state-of-the-art extrusion facility by making improvements to the existing building space. The manufacturing process will take both prime aluminum and recycled aluminum scrap and convert them into billets suitable for extrusion. Kaiser is planning on an investment of approximately \$100 million and potentially creating 300 permanent manufacturing jobs.

Additionally the proposed project includes the redevelopment of approximately 16 acres of former parking lot located west of the main west building. This development could include hotels and multiple retail and restaurant establishments. Other areas of the outlying portions of the business park are also planned for commercial/office development; light industrial operations, distribution and manufacturing uses. These developments could result in over \$13 million of additional investment and 160 permanent full-time jobs.

2. Reimbursement for Approved Eligible Activities, and Amendments to Work Plans:

2.1 Unless otherwise allowed under Act 381, the Authority is requiring Work Plans for all eligible activities seeking reimbursement from school TIR. Eligible activities conducted prior to the date of this Agreement shall be reimbursed from school TIR and/or non-school TIR, to the extent authorized by Act 381, subject to sections 2.2, 2.3 and 6.2 herein.

2.2 The Authority shall reimburse the Developer for Eligible Activities at the Property, to the extent permitted by Act 381, provided for in the Plan Amendment and approved by the Authority or MDNRE, as applicable. To the extent that the MDNRE does not approve a particular cost item or interest on a cost item authorized by the Plan Amendment for reimbursement from TIR attributable to school TIR, the Authority shall use TIR generated from local taxes to reimburse the full amount of that cost item. Reimbursements to the Developer shall be limited to a total dollar amount of \$8,067,254.00 (comprised of a limit of \$6,067,254.00 in Eligible Costs and up to \$2,000,000.00 in interest costs) OR a maximum of 18 years of TIR reimbursement, whichever comes first.

2.3 Order of Payments: The actual and documentable administrative expenses and Eligible Activities of the Authority, as described in Section 6.5, will be paid first, with the balance of the Tax Increment Revenues paid to the Developer as reimbursement for the actual cost of the Eligible Activities and Work Plan costs, plus interest calculated at 3% simple interest on Developer's unpaid Eligible Activities from the date they have been approved for reimbursement by the Authority. All payments will be governed by the Plan Amendment and this Agreement. It is anticipated that the Authority shall retain and accrue amounts available from increased tax revenues.

2.4 Local Site Remediation Revolving Fund. The Authority may collect TIR for deposit into the local site remediation revolving fund after Developer has reached the limits of reimbursement contained in this Agreement and the Plan Amendment,

for a period of five years, as provided by Act 381.

2.5 The Authority or its assigns will review and approve all Work Plans required by Act 381 pursuant to this Agreement. The Authority may choose to contract directly for certain Eligible Activities related to the Authority's administrative operations or Eligible Activities it will undertake under the Plan Amendment.

2.6 The Developer shall pay and submit an affidavit of payment for the reasonable and necessary costs of the Eligible Activities that have been approved by the Authority or MDNRE, as applicable, before requesting any reimbursement. Eligible Activities shall be reimbursed to the Developer pursuant to the submission and reimbursement process set forth in section 6.

2.7 All Work Plans must be submitted in writing to the Authority for consideration, and are subject to the approval of the Authority and MDNRE, where applicable. Eligible Activities not approved by the Authority may not be reimbursable. The Authority shall approve or provide written reasons for non-approval of all Work Plans or changes or additions to a Work Plan within thirty (30) business days of receipt of the Work Plan request.

3. **Limitations of Reimbursement.**

3.1 Reimbursement shall not be more than actual TIR from the Development captured during the duration of the Plan Amendment. An estimate of available tax capture is provided in Table 2 of the Plan Amendment. Nor shall the total amount of reimbursement be for more than the reasonable and necessary cost of the Eligible Activities approved by the Authority in the Plan Amendment. An estimate of the total Eligible Activities is stated in Table 1 of the Plan Amendment. Reimbursement is further limited by the dollar and time caps contained in the Plan Amendment and in paragraph 2.2 of this Agreement.

3.2 The amount of reimbursement for approved Eligible Activities is governed by the Plan Amendment and this Agreement. The amount eligible for reimbursement may not be increased without amendment of the Plan Amendment, and may require further approval by MDNRE. It is Developer's obligation to ensure that it has met the requirements for approval by the appropriate agency or agencies in order to meet the requirements for reimbursement under Act 381.

3.3 The total amount and duration of reimbursements is governed by the Plan Amendment and this Agreement. The Developer shall assume responsibility for any additional costs for Eligible Activities in excess of the approved amount in the Plan Amendment. In the event that the amount of the reimbursements provided pursuant to this Agreement is not sufficient to complete the approved Eligible Activities, or in the event that additional or other Eligible Activities are appropriate to carrying out the Development, the Developer may request an amendment, in writing, to the Plan Amendment and Act 381 Work Plan for additional reimbursement. The proposed amendment is subject to approval by the Authority with subsequent approval by the Comstock Township Board, the County Board of

Commissioners and the MDNRE, as applicable, and must meet the requirements of Act 381. Refusal of any of these entities to approve such an amendment does not relieve Developer of its obligations to develop the Property, as provided herein, at its own cost.

3.4 In addition to any other remedies provided in this Agreement, if any payment made by the Authority is determined by audit, the State of Michigan, or a court of appropriate jurisdiction to be improper or outside of the scope of obligations under this Agreement, or in the event of the Developer's breach or default of this Agreement, the Developer shall, at the request of the Authority, repay or return any monies paid by the Authority that are directly related to the breach, default or improper payment, within sixty (60) days of notice, given in writing by the Authority. Failure to remit said funds will result in a late fee penalty in the amount of an additional 10%, accrued annually from the date of notice of the outstanding balance.

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

3.6 It is anticipated that there will be sufficient available tax increment revenues to meet the Authority's reimbursement obligations under this Agreement. However, notwithstanding anything in this Agreement to the contrary, if for any reason the Development does not result in sufficient revenues to satisfy the Authority's reimbursement obligations, the Developer agrees that it will not have any claim or further recourse of any kind or nature against Kalamazoo County or the Authority. Subject to Developer's right to request an amendment to the Plan Amendment or Act 381 Work Plan, in the event the captured tax revenues are insufficient, the Developer assumes financial responsibility for any unreimbursed shortfall.

3.7 The Authority shall be under no obligation to reimburse, nor shall interest accrue on, any Eligible Costs so long as Developer's property taxes are delinquent on the Property.

4. Compliance with Approved Work Plans, Laws, Rules and Regulations.

4.1 Developer shall carry out the Eligible Activities in accordance with the Plan Amendment and Act 381 Work Plan (including all subsequent work plan amendments), approved first by the Authority and subsequently by MDNRE, as applicable, in a reasonable and workmanlike manner.

4.2 Developer shall comply fully with all local ordinances, state and federal laws, and all applicable local, state and federal rules and regulations. Nothing in this Agreement shall abrogate the effect of any local ordinance.

4.3 Non-compliance with this Agreement shall be regarded as material breach

of this Agreement. The Authority may do one or more of the following: 1) withhold future payments, or 2) terminate this Agreement. Prior to the Authority taking such action, the Authority shall provide thirty (30) days written notice and provide the Developer an opportunity to cure. If the Developer's non-compliance is not cured within ninety (90) days after receiving the Authority's written notice, the Authority may take action as outlined above.

4.4 Appropriate measures will be taken by the Developer and its contractors to insure that contaminated soil and other materials will be properly removed and disposed of or contained onsite. Reasonable hours of construction shall be maintained. Adjacent landowners, citizens and visitors shall be provided with reasonable precautions such as fencing. Reasonable efforts shall be taken to limit the impact of the project on local streets and neighbors during construction.

5. **Developer to Provide Information.**

5.1 Developer shall maintain the financial information and data used in support of the requests for reimbursement for Eligible Activities in accordance with generally accepted accounting principles and practices. The Authority shall have access to these records during normal business hours, provided the Authority submits a request to the Developer to review the records with reasonable advance notice.

5.2 The Developer shall provide written proof to the Authority of waiver of liens by the environmental consultant, contractors and subcontractors performing services or providing materials for the Development under the Plan Amendment, prior to any TIR reimbursement.

5.3 Except as otherwise noted below, documentation related to a request for reimbursement shall be submitted to the Authority upon completion of said approved Eligible Activities but in no event more frequently than on a quarterly basis. Documentation for reimbursable work performed by the Developer prior to this Agreement shall be provided to the Authority within 90 days of the date of this Agreement. Developer shall submit the following documentation:

- a. a written statement detailing the costs;
- b. a written explanation as to why they are Eligible Activities;
- c. for those costs that have been approved by MDNRE for use of school TIR, references to any applicable portions of the Act 381 Work Plan as approved by MDNRE, which approves of such expenses as eligible for payment from school TIR;
- d. copies of invoices from contractors, engineers or others who provided such services or, for Developer's personnel for whose services reimbursement is being sought, detailed time records showing the work performed by such

individuals; and

- e. a statement that the Eligible Activities have not been and will not be submitted to any insurance carrier for reimbursement, or they have been submitted to an insurance carrier for reimbursement and have been denied, in whole or in part. Developer shall provide the Authority with evidence of the date of submission to and responses from the insurance carrier. In the event the Eligible Activities expense has been denied, in whole or in part, by the insurance carrier and is submitted to the Authority for reimbursement, interest shall accrue on such Eligible Activities expense as of the date such expense was determined to be eligible by the Authority. Providing that when they were submitted to the insurance carrier, a full copy was shared with the Authority, such that the Authority could review and determine at that point if they are Eligible Activities for reimbursement under the Plan. Further, in the event that the Developer receives payment from any insurance carrier for an amount which has been previously reimbursed by the Authority, Developer shall immediately return the reimbursed monies to the Authority.
- f. any other information which may be reasonably required by MDNRE or by the Authority or its auditors
- g. no interest shall accrue on any Eligible Cost until the Developer has complied with the terms of this paragraph.

6. **Authority to Determine Amount to be Reimbursed.**

6.1 Within forty-five (45) days after the Developer has submitted documentation requesting reimbursement, the Authority shall make a determination as to the eligibility for reimbursement, based upon the reasonable and necessary costs of the Eligible Activities approved by the Authority or MDNRE, as applicable, and notify the Developer of the determination. The Authority shall not be obligated to pay reimbursement to the Developer until all supporting documentation (as described in section 5.3) has been submitted to the Authority.

6.2 Payments to the Developer shall be made on a semi-annual basis as incremental local and school taxes are captured and available as described in sections 2.2 and 2.3.

6.3 If the Authority determines that requested costs are inconsistent with the Plan Amendment, or the Act 381 Work Plans to be approved by the Authority or MDNRE, the Authority shall notify the Developer in writing of its reasons for rejection within the forty-five (45) day time period for review. The Developer shall be provided an opportunity to meet with the Authority and provide additional information. If the rejection is not resolved or cured within sixty (60) calendar days after the Authority provides notification in accordance with the terms of this Agreement, there is no obligation to pay the portion of the invoice rejected until the parties have participated in the dispute resolution process described in paragraph

11.4.

6.4 The Developer shall not be reimbursed by the Authority for any approved Eligible Activities that have been or will be reimbursed or credited against other obligations by any other governmental entity except as provided for in the Plan Amendment.

6.5 TIR Retention. The Authority shall retain such revenues as are allowed by Act 381 in order to pay its actual and documentable administrative expenses and Eligible Activities.

6.6 In the event there is any conflict between the Plan Amendment and this Agreement, terms of the Plan Amendment will take precedence over this Agreement.

6.7 If property taxes owed by Developer are delinquent for more than one year, the Agreement to reimburse the Developer may be terminated and no further reimbursement to the Developer shall occur. The Authority will notify the Developer, in writing, of the intent to terminate this Agreement. Prior to the Authority taking such action, the Authority shall provide forty-five (45) days written notice and provide the Developer an opportunity to cure. If the Developer's property tax delinquency is not cured within forty-five (45) days after receiving the Authority's written notice, this Agreement will terminate forty-five (45) days after the date of the period to cure has expired.

7. **Access for Inspection.** The Authority shall act as the clearinghouse for all Employees and Agents of the Authority who wish to gain access for inspection of the Development. All Employees and Agents are authorized to enter upon the Property during normal business hours for the purpose of inspecting the work related to the Authorized Eligible Activities and making determinations that such work is being performed in accordance with the Act 381 Work Plan in a workmanlike manner with prior reasonable notice to the Developer and Tenant of each area to be inspected. The Developer reserves the right to preclude access or request the employee or agents of the Authority vacate the property for health and safety issues. Any employees or agents of the Authority must comply with all site safety standards, including, but not limited to, MIOSHA requirements.

8. **Indemnification.** The Developer shall indemnify, hold harmless, and defend the Authority, the County, its officials, agents and employees, from any and all claims or causes of action arising from or on account of the acts or omission of the Developer, its officers, employees, agents or any persons acting on its behalf or under its control, in implementing the Eligible Activities described in the approved Work Plans or arising in any way from this Agreement including but not limited to, claims for damages, reimbursement or set-off arising from, or on account of, any contract, agreement or arrangement between the Developer and any person or company for the performance of Eligible Activities or the terms of this Agreement, including claims due to construction delays.

The Authority shall indemnify, hold harmless, and defend the Developer, its agents and employees, from any and all claims or causes of action arising from or on account of the acts or omission of the Authority, its officials, employees, agents or any persons acting on its behalf or under its control, in implementing the Eligible Activities described in the approved Work Plans or arising in any way from this Agreement including but not limited to, claims for damages, reimbursement or set-off arising from, or on account of, any contract, agreement or arrangement between the Authority and any person or company for the performance of Eligible Activities or the terms of this Agreement, including claims due to construction delays.

9. **Insurance.** As applicable, the Developer shall purchase and maintain insurance not less than the limits set forth below. All coverage's shall be with insurance companies licensed and admitted to do business in the State of Michigan. As applicable, the Developer shall maintain such other insurances as it deems appropriate for its own protection.

9.1 Worker's Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.

9.2 Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit. Coverage shall include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Endorsement or Equivalent.

9.3 Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

9.4 The following shall be inserted in the Developers Certificate of Coverage for the insurance described in 9.2 above: The County of Kalamazoo and the Kalamazoo County Brownfield Redevelopment Authority are additional insureds as their interests may appear.

9.5 It is understood and agreed that Developer shall provide written notice to the Authority within thirty (30) days of Developer becoming aware of cancellation, non-renewal or material change in the coverage listed in 9.2 above.

9.6 Proof of Insurance – The Developer shall provide to the Authority at the time this Agreement is returned by it for execution, certificates of insurance for each of the policies mentioned above. If so requested, certified copies of all policies will be furnished.

10. **Notices.** All notices, requests, demands and other communications that are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes hereunder if (a) delivered personally to the party to whom the same is directed, or (b) sent by certified mail, postage prepaid, return receipt requested, at the address identified below; or to such other party

at such other address as shall be given in writing in accordance herewith.

- 10.1 If to the Authority, to: Mr. David Artley or BRA designee
Brownfield Redevelopment Authority
201 W. Kalamazoo Avenue, Room 206
Kalamazoo, Michigan 49007
- With copy to: Mr. Thomas Canny
Kalamazoo County Corporation Counsel
201 W. Kalamazoo, MI 49007-3777
- 10.2 If to Developer, to: Mr. David Smith
5200 East Cork Street Investors, LLC
5200 East Cork Street
Kalamazoo, MI 49048

11. **Miscellaneous Provisions.**

11.1 Successors and Assigns; Assignments. There are no other intended Beneficiaries to this Agreement. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; however, the Developer shall not assign this Agreement without the prior written consent of the Authority. No person not a party hereto is intended to be a beneficiary of or to have the right to enforce this Agreement.

11.2 Entire Agreement. This Agreement and the Plan Amendment represent the entire agreement, as it exists at the time of the signing of this Agreement between the parties. This Agreement and the Plan Amendment may not be amended, altered or modified unless the party against whom enforcement of any waiver, modification or discharge is sought agrees in writing.

11.3 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. The Parties acknowledge that the proper venue of any court action is in Kalamazoo County, Michigan.

11.4 Dispute Resolution. Any and all disputes, claims, or other controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules, except as varied herein, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The following provisions shall apply to any such arbitration:

- a. The dispute shall be heard and determined by one arbitrator, except that

if any party's claim exceeds \$1 million, exclusive of interest, the dispute shall be heard and determined by three arbitrators, at least one of which shall be an attorney.

- b. The arbitrator(s) shall have no authority to award punitive damages, except as may be required by statute.
- c. The award of the arbitrator(s) shall be accompanied by a reasoned opinion.
- d. The locale of the arbitration shall be Kalamazoo County, Michigan.
- e. Each party shall bear its own costs, attorney fees and other expenses. The parties shall bear an equal share of the arbitrator(s)'s compensation and expenses and an equal share of the administrative fees and costs of arbitration.
- f. Unless otherwise agreed in writing, the Developer shall carry on the Development and maintain its progress during any arbitration proceedings, and the Authority shall continue to make payments to the Developer in accordance with the Plan Amendment and this Agreement.

11.5 Severability. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms.

11.6 Survival. Except as otherwise provided in this Agreement, all representations, warranties, covenants and agreements of the parties contained in or made pursuant to this Agreement shall survive the execution of this Agreement.

11.7 Effective Date. This Agreement shall become effective when approved and executed by the Authority and the Developer.

11.8 Recitals. The recitals set forth above are incorporated by reference into this Agreement as if fully set forth therein.

12. **Nondiscrimination.**

12.1 The Developer shall adhere to all Federal, State and local laws, ordinances, rules and regulations, and policies prohibiting discrimination in regard to employees and applicants for employment including, but not limited to: (1) The Elliot-Larsen Civil Rights Act, 1976 PA 453, as amended; (2) The Persons with disabilities Civil Rights Act, 1976 PA 220, as amended; (3) Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended, and rules adopted there under; and (4) The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327 (42 USC §12101 et seq.), as amended, and regulations promulgated there under.

12.2 The Developer, as required by law, shall not 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, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight or marital status.

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

13. **Force Majeure.** Whenever either party to this Agreement shall be required to perform any contract, work, labor or service, or to comply with this Agreement, or any other laws, rules, orders, ordinances, regulations or zoning regulations, such party shall not be deemed to be in default under this Agreement and the other party shall not enforce or exercise any of its rights under this Agreement with regard to such other party's default if and for so long as such non-performance or default shall be caused by Force Majeure (herein defined); provided, however, that such party shall commence such performance and continue the same with diligence and continuity immediately after the removal of any of the causes hereinafter specified. The provisions of this section shall not excuse any failure or delay in the payment of any monetary amount required to be paid in accordance with this Agreement, nor shall it excuse the Authority from performing if the Authority has direct or indirect control over any such Force Majeure event, nor shall it excuse the Developer from performing if the developer has direct or indirect control over any such Force Majeure event. "Force Majeure" shall mean acts of God; acts of public enemies; fire or other casualties; acts, failure to act, orders, restraints or delays of any government or any governmental agency, department, committee, council or other entity; explosions; insurrections; failure or delay in obtaining permits or other approvals required under applicable law; civic disturbances; riots; delays of any contractor, subcontractor or supplier; litigation; strikes; landslides; earthquakes; storms; winds in excess of 75 m.p.h.; hurricanes; tornadoes and floods, and other conditions beyond the reasonable control of the party whose obligations are excused.

14. **Further Assurances.** Each party will, whenever and as often as it shall be reasonably requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, as may be necessary in order to carry out the terms and conditions of this Agreement. Each Party further covenants that from and after the effective date, each party shall use reasonable efforts to cooperate with each other to secure all consents, approvals, authorizations and otherwise take such further actions necessary to effect the Development and other activities contemplated by this Agreement.

15. **Consents and Approval to be Reasonable.** Except as otherwise specially provided in this Agreement, all consents and approvals required under this Agreement shall not be unreasonably withheld or delayed. To the extent permitted by law, either

party shall be entitled to conclusively rely on the consent or approval of the other provided the same is executed by those persons holding the offices or authorized to perform the duties of such offices specified herein.

This Agreement was approved by the Authority and the Chair of the Authority was authorized to sign this agreement on the _____th day of _____, 2011 and was signed by the Chair on the _____ of _____ 2011.

SIGNATURE SECTION

For: 5200 EAST CORK STREET INVESTORS, LLC

By: _____

Date:

- David Smith

Its: Authorized Representative

For: KALAMAZOO COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY

By: _____

Date:

- Julie Rogers

Its: Chairperson