

GRAND TRAVERSE COUNTY
BROWNFIELD REDEVELOPMENT AUTHORITY

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development Agreement is made on Aug 21, 2017 among **REGENCY MIDWEST VENTURES LIMITED PARTNERSHIP** (the "Owner") the **DOWNTOWN DEVELOPMENT AUTHORITY ("DDA")**, the **CITY OF TRAVERSE CITY** (the "City"), the **TRAVERSE CITY LIGHT AND POWER ("TCL&P")**, and the **GRAND TRAVERSE COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY** (the "GTCBRA"), a Michigan public body corporate.

PREMISES

A. The Owner is engaged in the redevelopment of 300 East State Street (Tax Parcel No 28-51-794-090-00) commonly known as the New Conference Center and Pool/Health Club (the "Developments"), described on attached Exhibit A, to be located on the property described on attached Exhibit B (the "Site").

B. The GTCBRA has been formed pursuant to Act 381, Public Acts of Michigan, 1996, MCL 125.2651 et seq. ("Act 381"), to promote the revitalization of environmentally distressed areas. The GTCBRA has approved a Brownfield Plan that includes the Development (the "Plan", attached as Exhibit C), and the Eligible Property is part of the Plan as amended.

C. The GTCBRA has determined in furtherance of its purposes and to accomplish its goals and Plan to finance certain "Eligible Activities" as defined by Sec. 2(n) of Act 381, Public Acts of 1996, MCL 125.2652(n) within Eligible Property on the Site and as described in the Act 381 Work Plan attached as Exhibit D as the same may be amended or supplemented.

D. Pursuant to the Plan and the Act 381 Work Plan, the GTCBRA 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 Plan approved by the GTCBRA (the "Tax Increments"). Upon satisfaction of the conditions expressed in this Agreement, the GTCBRA will use the Tax Increments as provided by law and as described in this Agreement.

In consideration of the premises and the mutual covenants contained in this Agreement, the Owner and the GTCBRA 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) "Agreement" means this Development and Reimbursement Agreement entered into between the GTCBRA, City, DDA, TCL&P and the Owner.

(c) "City" means the City of Traverse City.

(d) "TCL&P" means Traverse City Light and Power

(e) "County" means the County of Grand Traverse, Michigan.

(f) "Development" means the site work, building construction, utilities, and equipment relating to the Eligible Property as described on attached Exhibit B.

(g) "Eligible Activities" means those response activities as defined by Sec. 2(n) of Act 381, Public Acts of 1996, as amended, MCL 125.2652(n), or approved by the Michigan Department of Environmental Quality (MDEQ) or the Michigan Strategic Fund (MSF) as part of the approved Act 381 Work Plan.

(h) "Eligible Property" means the property as defined by Sec. 2(o) of Act 381, MCL 125.2652(o) for purposes of completing the Eligible Activities.

(i) "Environmental Consultant" or "Consultant" means the consulting firm retained or hired by the Owner to fulfill its obligations under this Agreement, including the Eligible Activities set forth in the Act 381 Work Plan.

(j) "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 60 days after written notice thereof has been given by the other party. It also means any filing of bankruptcy or bankruptcy reorganization by the Owner.

(k) "GTCBRA" means the Grand Traverse County Brownfield Redevelopment Authority, established by the County Commission on September 24, 1997, or its successors.

(l) "Indemnified Persons" means the County, the GTCBRA, City, TCL&P, DDA and their members, officers, agents and employees.

(m) "Owner" means Regency Midwest Ventures Limited Partnership.

(n) "Transaction Costs" means GTCBRA's costs, expenses, and liabilities related to the authorization, execution, administration, oversight, fulfillment of the GTCBRA's obligations under this the Agreement, 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 Plan, approvals of the Development, printing costs, costs of reproducing documents, filing and recording fees, counsel fees, financial expenses, insurance fees and expenses, administration and accounting for the 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 Plan, 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.

(o) "Maximum Cost of Eligible Activities" means the GTCBRA's maximum obligation to pay for the Eligible Activities. The maximum obligation shall not exceed the total amounts set forth in the approved Brownfield Plan, as amended or supplemented, and attached as Exhibit C, for Eligible Activities, contingency (if included), interest (if included), plan preparation, and fees. The total amount of this maximum obligation shall be 100% of the amount set forth in the Brownfield Plan, as amended or supplemented, for Eligible Activities, contingency (if included), interest (if included), plan preparation, and fees.

(p) "Plan" means the Brownfield Redevelopment Plan, as defined under Act 381, and adopted March 15, 2017, as amended, and attached as Exhibit C.

(q) "Site" means the real property located in the County of Grand Traverse, State of Michigan, as described in attached Exhibit B, if applicable, and made a part hereof. The Site and its description in Exhibit B may be amended by the parties to reflect any transfer of land after the execution of this Agreement. Such a modification shall be by amendment of this Agreement and shall be in writing signed by both parties.

(r) "Tax Increments" means tax increment revenues, as defined by Act 381, from all taxable real and personal property located on the Project Site during the life of the Plan.

(s) "Act 381 Work Plan" means the Work Plan approved by the GTCBRA on March 23, 2017 and attached as Exhibit D, as subsequently amended or supplemented.

(t) "MSF Work Plan" means the Work Plan approved and approved by the GTCBRA on March 23, 2017 and attached as Exhibit D, as subsequently amended or supplemented.

(u) "DDA" means Traverse City Downtown Development Authority.

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.

Section 1.3 Incorporation of Premises. The statements included in the Premises above are incorporated as if fully set forth in this Section 1.3.

ARTICLE 2.

COVENANTS OF THE OWNER

Section 2.1 Construction of Development. The OwnerDDA, City and TCL&P shall proceed with the Development and the obligations under this Agreement in its discretion. If it decides to do so, it shall proceed with due care and diligence and commence and complete the Eligible

Activities and the Development in accordance with this Agreement, and in accordance with any applicable law, regulation, code and ordinance.

Section 2.2 Covenant to Pay Financial Obligations. The Development will utilize the Owner's own funds, including debt financing obtained by the Owner, and receive reimbursement for Eligible Activities in accordance with the terms of this Agreement, the Brownfield Plan, and the Act 381 Work Plan from the GTCBRA in accordance with the outline payment schedule on attached Exhibit E. City, DDA and TCL&P shall utilize their own funds and receive reimbursement for Eligible Activities in accordance with the terms of this Agreement, the Brownfield Plan, and the Act 381 Work Plan from the GTCBRA in accordance with the outline payment schedule on attached Exhibit E. The GTCBRA shall first reimburse its Transaction Costs from captured Tax Increments. The GTCBRA shall then reimburse Owner using 50% of the captured Tax Increments (both State and Local taxes) for its Eligible Activities, as illustrated on the attached Exhibit E, Reimbursement of Eligible Activities - Sharing of Revenues Schedule. The remaining 50% of the revenues in each year shall then be distributed to the public developer (City, DDA, or TCL&P depending upon which entity expended the funds for the Eligible Activities in question) for approved eligible expenses as provided in this Agreement and as illustrated on the attached Exhibit E.

It is anticipated that there will be sufficient available Tax Increments to meet the obligations under this Agreement. However, if for any reason the Development does not result in sufficient revenues to satisfy such obligations, the Owner agrees and understands that it will have no claim or further recourse of any kind or nature against the GTCBRA except from available captured tax revenues, and if for any reason the revenues are insufficient or there are none, then Owner assumes full responsibility for any such loss or cost. This provision does not restrict Owner's ability to request an amendment to the Act 381 Work Plan and/or Plan, subject to GTCBRA's review process and full discretion to approve, modify or deny any proposed amendments.

It is expressly understood and agreed that the reimbursement of GTCBRA is subject to the following conditions:

- (a) Approval by the MDEQ and/or MSF, and GTCBRA of (1) the Act 381 Work Plan, as amended or supplemented, or (2) of the Eligible Activity as qualifying for school tax capture; however, to the extent an Eligible Activity falls outside (1) or (2) of this subparagraph, then the Eligible Activity must be identified in the Brownfield Plan, as amended, and approved by the GTCBRA for local tax recapture to the extent authorized by Act 381.
- (b) The Owner shall provide proof of ownership of the Site if applicable, and shall provide the GTCBRA with a list of any potentially responsible parties (PRP's), to the best of the Owner's knowledge, for the contamination on the property, and shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement and any other agreement with GTCBRA, and all preconditions to the performance of the Owner shall have been satisfied.

- (c) Owner shall provide written proof of waivers of liens by the Environmental Consultant, Consultant, any contractor, subcontractor providing services as described in this Agreement.
- (d) Owner shall pay all real estate tax obligations when due.
- (e) GTCBRA shall only be obligated to reimburse Debt Obligation that has been reviewed and approved by the GTCBRA. Approval of the application and subsequent approvals of Brownfield plans, work plans, or any other determination of eligibility in no way guarantees or establishes a right to reimbursement of expenditures through tax increment financing prior to review or approval of invoices. Expenditures must be documented to be reasonable for Eligible Activities by submission of invoices and other appropriate documentation. Reimbursement shall only occur pursuant to the terms and conditions of this Agreement, as well as the policies and procedures of the GTCBRA for review and approval of invoices. All invoices for any Eligible Activities on the Eligible Property must be submitted to the GTCBRA for its review within one year from the date of the invoice. While the GTCBRA may waive this requirement in its discretion for good cause shown, the GTCBRA shall be under no obligation to reimburse any invoice for an Eligible Activity that is not submitted in a timely fashion.

Section 2.3 Indemnification of Indemnified Persons.

- (a) The Owner shall defend, indemnify and hold the Indemnified Persons harmless from any loss, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property as a result of the ownership or operation, use or maintenance of the Development or arising out of performance of activities under this Agreement or any related agreement from and after the date hereof. If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the Owner and the Owner shall defend such Indemnified Person with counsel selected by the Owner, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Owner and the Owner shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Owner may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its consent. The Owner shall not be liable for payment or settlement of any such claim or proceeding made without its consent.
- (b) The Owner also shall indemnify the Indemnified Persons for all reasonable costs and expenses, including reasonable counsel fees, incurred in successfully enforcing or pursuing any obligation of or claim against the Owner under this Agreement or any related agreement. To the extent that the enforcement of such obligation or claim involves a claim against an Environmental Consultant who performs work or

services under the terms or within the scope of this Agreement, the Environmental Consultant's agreement with the Owner shall be deemed to be a third party beneficiary contract in favor of the GTCBRA or any Indemnified Persons.

- (c) The Owner shall assure that to the extent an Environmental Consultant, Consultant, Contractor or Subcontractor provides services toward completion of any Eligible Activities, at a minimum, the Environmental Consultant, Consultant, Contractor or Subcontractor shall provide to the GTCBRA and the County the indemnity provisions set forth in Section 6.13(a) of this Agreement for the services that the particular Environmental Consultant, Consultant, Contractor or Subcontractor is performing.
- (d) The indemnity provisions shall survive the term of this Agreement.

Section 2.4 Site Access. The Owner shall grant to GTCBRA, the MDEQ and/or MSF, or their designated agents, access to the Site to exercise their respective rights related to the purposes and pursuant to the terms of this Agreement. Site access shall include the right to inspect the performance of any Eligible Activities, as provided in the Brownfield Plan and Work Plan, in the GTCBRA's discretion. The GTCBRA shall give the Owner 24 hours written notice of its intent to access the Site whenever possible. If notice cannot be given due to an emergency or any other unforeseen circumstance, the GTCBRA shall give notice as is reasonable and practicable under the circumstances. All such employees or agents must comply with all Site safety standards.

ARTICLE 3.

CONDITIONS PRECEDENT TO OWNER'S OBLIGATION

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

- (a) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which any of the parties to this Agreement is a party, or threatened against any party to this Agreement 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 the GTCBRA to collect and use Tax Increments revenues to repay its obligations under this Agreement and the Financing Agreement.
 - (2) A material adverse effect on the Owner's or the GTCBRA's ability to comply with the obligations and terms of this Agreement, the Plan, or the Act 381 Work Plan.

- (b) There shall have been no Event of Default by the GTCBRA and no action or inaction by the GTCBRA eventually which with the passage of time could become an Event of Default.
- (c) The GTCBRA shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement.

ARTICLE 4.

COVENANTS OF THE GTCBRA

Section 4.1 Adoption of Plan. The GTCBRA 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 the Owner of the Owner's Eligible Activity expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement, Act 381, the Plan, and any applicable Act 381 Work Plan, and approved by the GTCBRA pursuant to its policies and procedures. These policies and procedures include, but are not limited to, the GTCBRA's standards for local tax incremental financing eligibility.

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

Section 4.3 GTCBRA or Contract Manager Oversight. The GTCBRA may retain the services of a qualified contract manager to exercise oversight of the Owner and its Environmental Consultant, Consultant, contractors, or subcontractors for purposes of assuring that the activities, invoices and accounting by the Owner are fair, reasonable, and constitute Eligible Activities within the meaning and scope of this Agreement, the Plan, the Act 381 Work Plan, and Act 381. The Owner shall provide to the GTCBRA Director and 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 GTCBRA has no right to control or to exercise any control over the actual services or performance by the Owner of the Eligible Activities, except as to assurance that the Owner has met the conditions and requirements of this Agreement.

ARTICLE 5.

CONDITIONS PRECEDENT TO GTCBRA'S OBLIGATIONS

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

- (a) Before commencing work on each stage of Eligible Activities and pursuant to the policies adopted by the GTCBRA, the Owner or their designee will present a project budget for each stage to the GTCBRA Director at least two weeks prior to the next regular meeting of the GTCBRA. The project budget will be submitted at each such stage 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) The Owner shall submit invoices of its expenses and a written statement demonstrating a factual basis that it has completed any Eligible Activities to the GTCBRA Director, for preliminary review and approval, within 30 days of Owner's payment of invoice. Pursuant to Section 2.2, above, the GTCBRA shall not have any obligation to reimburse any invoice that is submitted to the Authority later than one year after the original invoice date, regardless of when payment on the invoice was made. Within 14 days of receipt of the invoice, the GTCBRA Director 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 the GTCBRA. In the event of approval of such invoice, the invoice shall be paid within 14 days of the date of approval or, if the GTCBRA has insufficient Tax Increments with which to pay the invoice at the time of its approval, then within 14 days of GTCBRA's receipt of sufficient Tax Increments. In the event of an objection to the invoice, the GTCBRA Director will notify the Owner, and the Owner shall meet with the GTCBRA Director and resolve or cure the objection. If the GTCBRA does not authorize payment on an invoice, then there shall be no obligation on the part of the GTCBRA to pay the invoice absent a determination by a court of competent jurisdiction that GTCBRA has the obligation to pay such invoice.

- (c) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which any of the parties to this Agreement is a party, or threatened against any party to this Agreement contesting the validity or binding effect of this Agreement or the validity of the 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 the ability of the GTCBRA to collect and use Tax Increments to pay the obligations.
 - (2) A material adverse effect upon the ability of the Owner to conduct Eligible Activities.
 - (3) Any other material adverse effect on the Owner's or the GTCBRA's ability to comply with the obligations and terms of this Agreement, or the Plan.
- (d) There shall be no uncured Event of Default by the Owner and no action or inaction by the Owner eventually which with the passage of time would likely become an Event of Default. The foregoing notwithstanding, if reimbursement of Owner is refused by reason of Owner's action or inaction which with the passage of time would likely become an Event of Default, then if Owner shall cure such threatened default, this precondition shall be deemed fulfilled as of the time of such cure and, provided that all other preconditions to GTCBRA's reimbursement obligation have been met at the time of such cure, then Owner shall then be entitled to reimbursement.
- (e) The Owner shows it is owner of the Site or the Site is under land contract, and the Owner is not in default on any contract or other agreement relating to its ownership, development, or use of the Site which default would have a material adverse effect on the Owner's or the GTCBRA's ability to comply with the obligations and terms of this Agreement or the Plan.
- (f) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land uses and Development have been secured.
- (g) The Owner has consent of any affected utility for relocation, burial or the activity to accomplish the Eligible Activities.
- (h) The Owner retains an Environmental Consultant, contractor, or subcontractor to advise, conduct, or complete the Eligible Activities related to the pay-as-you-go obligations as set forth in this Agreement.
- (i) There is no change in law which would have one or more of the effects described above.

- (j) Any Tax Increments owed to a prior owner of the Site for Eligible Activities undertaken on the Property shall be paid to the prior owner of the Property pursuant to the policies and procedures of the GTCBRA unless otherwise directed by written agreement between the prior owner and the Owner. The Owner has no right to any Tax Increments for any Eligible Activity undertaken on the property prior to its purchase of the property.
- (k) If for any reason the Owner is unable to obtain title to the site, the GTCBRA is not obligated to perform any of the terms of this Agreement.
- (l) Until the completion of all Owner's Eligible Activities or until the completion of the Development, whichever is later, the Owner shall provide to the GTCBRA an annual report of investment made and jobs created. Report shall be delivered to the GTCBRA Office no later than October 31, of each year.

ARTICLE 6.

OWNER'S ENVIRONMENTAL CONSULTANT, ITS CONSULTANT, ITS CONTRACTOR, OR ITS SUBCONTRACTOR RESPONSIBILITIES

Section 6.1 Eligible Activities and Due Care Obligation. The Owner covenants that it will contract with a competent and qualified Environmental Consultant(s) ("Consultant"), Consultant and/or other competent and qualified contractors or subcontractors ("Contractors" or "Subcontractors" respectively) to conduct and complete the Eligible Activities set forth in this Agreement and as set forth in the Act 381 Work Plan, as amended or supplemented, or the Plan, as amended or supplemented, and to meet any due care obligation under Sec. 20107a, NREPA, MCL 324.20107a, in accordance with any MDEQ requirements and approval. Each Environmental Consultant, Consultant or Contractor hired by Owner shall be responsible for the activities that they perform on the Eligible Property, but the Environmental Consultant, Consultant or Contractor shall not be liable for the actions of any persons performing work on the Eligible Property that are not working directly or indirectly for the Environmental Consultant, Consultant or Contractor.

Section 6.2 Permits. The Environmental Consultant, Consultant or Contractors shall examine all permits and licenses within their respective professional scopes that pertain to the Site or Development to determine whether all permits and licenses required to be issued by any governmental authority on account of any or all of the activities on the Site or the Development have been obtained or issued and are in full force and effect, and whether the Site or the Development and the activities there are in compliance with the terms and conditions of such permits and licenses, but limited to only those Eligible Activities performed by Owner, Environmental Consultant, Consultant, Contractors, or Subcontractors, and specifically excludes all other activities performed by other Environmental Consultants, Consultants, Contractors, or Subcontractors performing activities retained by another third party.

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

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

Section 6.5 Regulatory Liaison and Data and Reports. If applicable, the Environmental Consultant, Consultant or Contractor will provide communication services and attend meetings with the MDEQ and MSF as it relates to those Eligible Activities performed by Owner, Environmental Consultant, Consultant or Contractor. Environmental Consultant, Consultant or Contractors shall:

- (a) submit reports and test results first to the Owner, and shall submit documents to GTCBRA Director within 5 days thereafter or other such time that is reasonable.
- (b) make known the provisions of this subparagraph to all Contractors and Subcontractors, who shall be bound by the confidentiality provisions of this Agreement.
- (c) submit any such written reports marked "DRAFT FOR DISCUSSION PURPOSES ONLY. CONFIDENTIAL." To the extent GTCBRA or its designated agent reviews or receives a document marked "confidential," it shall be kept confidential except as prohibited by the Freedom of Information Act or other law or regulation.
- (d) disclose on request to GTCBRA Director all data, reports and test results generated by the Environmental Consultant, Consultant or Contractor within the scope of this Agreement, the Development Agreement, or in connection with the Development.

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

Section 6.7 Acknowledgments of No Agency. If the Owner hires an Environmental Consultant or Consultant, the Owner shall first secure the written acknowledgment from such party that such party is not and shall not be or act as an agent or employee of the GTCBRA, nor assume or create any duty, commitment or obligation on behalf of nor bind the GTCBRA in any respect whatsoever. A copy of such written acknowledgment shall be provided to GTCBRA.

Section 6.8 Non-Discrimination Clause. The Owner covenants that the Owner shall not discriminate, and that Owner shall require through its contracts with the Environmental Consultant, Consultant, and with any Contractors or Subcontractors, that they 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, height, weight, or marital status. A breach of this provision may be regarded as a material breach of this Agreement.

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

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

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

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

- (a) Worker's Compensation 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 the GTCBRA and the

County as additional insured to the extent of the indemnity provided in Section 6.13.

- (c) Pollution or Environmental Impairment Insurance in the amount of at least \$ 1 million per occurrence.
- (d) As to the Environmental Consultant and Consultant only, Professional Liability Insurance in the minimum amount of \$1 million per occurrence.
- (e) The Owner shall furnish to GTCBRA a certified copy of such policies within 30 days of the date of the commencement of the Eligible Activities by such Environmental Consultant, Consultant, Contractor or Subcontractor, and the period of coverage shall commence with the date of performance of the first Eligible Activity by such insured person or entity. The limits of insurance shall not be construed as a limitation on the Environmental Consultant's, Consultant's, Contractor's, or Subcontractor's liability for damages, costs or expenses under this Agreement.
- (f) Upon showing of no or minimal environmental impairment risk with respect to the activities to be performed by any specific Contractor or Subcontractor, the Owner may request in writing a reduction of the amount of coverage in subparagraph (b) to \$500,000; upon the same showing, the Owner may also request as to a specific Contractor or specific Subcontractor a waiver of the Environmental Impairment Insurance required by subparagraph (c). The GTCBRA 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 6.13 Covenants Related to Indemnification and Liability.

- (a) Defend, Indemnify and Hold Harmless. Notwithstanding any other provision of this Agreement, the Owner shall, and Owner shall obtain Environmental Consultant's and Consultant's agreement to defend, indemnify and hold GTCBRA harmless against and from all liabilities, losses, damages, costs, expenses (including attorney fees), causes of action, suits, claims and demands or judgments as it relates to those Eligible Activities performed by Contractors, Owner's Environmental Consultant or Consultant as follows:
 - (1) Which GTCBRA may sustain as a result of the failure of the Environmental Consultant or Consultant to comply with the provisions of this Agreement; and/or
 - (2) Which result from or arise out of any acts or omissions, negligent or otherwise, of the Environmental Consultant's or Consultant's employees, agents, contractors, or subcontractors in the performance of the work specified in this Agreement.

- (3) This indemnity shall only apply to the Environmental Consultant, Consultant or Contractor's actions, and the Owner and Environmental Consultant, Consultant or Contractor shall have no obligation to indemnify, defend or hold harmless the Indemnified Persons for any loss, liability, claim, damage, cost or expense arising out of, related to or resulting from any activities performed by other Environmental Consultants, Consultants, Contractors, or Subcontractors on the Eligible Property.
- (b) Contribution. The Owner shall obtain written acknowledgment that the Environmental Consultant and Consultant could be liable to GTCBRA for all damage, loss, injury or expense to the extent such person or entity's acts or omissions arising out of their individual performance of activities under this Agreement are actionable negligence or gross negligence, or constitute intentional misconduct. The Environmental Consultant and Consultant, shall be liable for contribution to GTCBRA for any such damage, loss, injury or expense of a third party arising out of such activities, notwithstanding Sec. 20128 of the NREPA, MCL 324.20128, and for releases aggravated or proximately caused individually by the Environmental Consultant or Consultant. This subparagraph shall not affect any other liabilities or remedies of the GTCBRA.
- (c) Survivorship of Covenants. Any Environmental Consultant's, Consultant's, Contractor's, or Subcontractor's obligation to indemnify, hold harmless and defend shall survive the termination of this Agreement and the Environmental Consultant's and Consultant's agreement with the Owner but is limited to only those Eligible Activities performed by Contractors or Owner's Environmental Consultant or Consultant, and specifically excludes all other activities performed by other Environmental Consultants, Consultants, Contractors, or Subcontractors performing activities.
- (d) Breach. An uncured breach of the foregoing provisions of Section 6.13 at the option of GTCBRA constitutes, or will result in, a breach of the Development Agreement.
- (e) The written agreement in subparagraph (a) of this section and written acknowledgment in subparagraph (b) shall be filed with the GTCBRA before any reimbursement under the terms of this Agreement.

ARTICLE 7.

REPRESENTATIONS AND WARRANTIES

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

- (a) GTCBRA 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 the GTCBRA, and this Agreement constitutes a valid and binding agreement of the GTCBRA enforceable in accordance with its terms, except as enforce ability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or thereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

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

- (a) The Owner is a South Dakota limited liability limited partnership, authorized to do business in Michigan with power under the laws of such states to carry on its business as now being conducted and has the power and authority to consummate the transactions contemplated under this Agreement by the Owner.
- (b) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Owner, and this Agreement constitutes a valid and binding agreement of the Owner in accordance with its terms, except as enforce- ability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- (c) Except as part of the performance and completion of Eligible Activities under the terms of this Agreement, the Owner, its Contractors, or Subcontractors shall not use the Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the Site, and shall obtain all necessary permits in connection therewith.
- (d) Owner warrants that it will comply with all obligations, covenants and conditions required of it or its agents or contractors under the terms of this Agreement.
- (e) Owner shall comply with all due care obligations under Sec. 7a of Part 201 of the NREPA.
- (f) Owner has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

ARTICLE 8.

OWNER FINANCIAL ASSURANCES

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

- (a) If applicable, Worker's Compensation Insurance in the amounts required under the laws of the State of Michigan;
- (b) Comprehensive General Liability, including Umbrella Liability Insurance for any such underlying liability, and Automobile Insurance for bodily injury, death or loss or damage to property of third persons in the minimum amount of \$2 million per occurrence; and
- (c) If applicable, Environmental Impairment Insurance in the amount of at least \$1 million per occurrence.

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

Section 8.2 Deduction from Owner's Right to Reimbursement. The Owner grants the GTCBRA the right to deduct or set off from any reimbursement obligation to Owner GTCBRA's Transaction Costs for successful enforcement of the terms of this Agreement or other claims if there has been an Event of Default by the Owner.

ARTICLE 9.

DEFAULT, REMEDIES, AND TERMINATION

Section 9.1 Remedies Upon Default. Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party, and the defaulting party shall have 60 days to cure the default or, if such cure requires more than 60 days, then if such defaulting party shall commence and diligently proceed to cure the default within such 60 days, and shall diligently then the defaulting party shall have such time as reasonably necessary to cure the default. If the default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement or, at the election of such non-defaulting party, may obtain any form of relief permitted under this Agreement, and any applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance of a court of competent jurisdiction. 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 attorney fees.

Section 9.2 Tax Valuation and Payment of Tax Increment Revenue Shortfall. Owner and GTCBRA have entered into this Agreement in reliance on certain assumptions about the increase in tax value of the Eligible Property that will be created by the Development, as contained in the Work Plan, attached as Exhibit D. Owner agrees that if there is a tax appeal of the valuation of all or any part of the Eligible Property or Development during the time of tax capture provided for in the Plan and this Agreement, whether by Owner, a future tenant or any other future owner, and if by reason of such appeal the GTCBRA is required to reimburse a taxpayer for any funds which have been paid to Owner, Owner shall be responsible for repaying GTCBRA the amount reimbursed to the taxpayer as a result of any reduction in the assessed value of all or part of the Property or Development. The Owner's obligation to repay the GTCBRA under this Section does not constitute a waiver of Owner's right to be reimbursed again from the tax capture for all Eligible Activities to the extent that sufficient funds are available to pay Owner subsequent to such repayment. This obligation may be assigned by written agreement between Owner and any future tenant or owner of the Eligible Property. A copy of such assignment shall be provided to the GTCBRA.

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 GTCBRA's obligations to reimburse Owner, City, TCL&P and DDA for Eligible Activities and shall not exceed the 30 year tax capture term of the Brownfield Plan.

Section 10.2 Sale or Transfer of Eligible Property or Site within the Plan. Up until the Owner has satisfactorily completed its Eligible Activities and performed its obligations under the terms of this Agreement, the Owner shall not sell, convey, or transfer ownership of any portion of the Eligible Property to another owner to carry out the purposes and goals of the Plan, or any existing Act 381 Work Plan, as described in this Agreement without amendment to the Plan. This does not prohibit the Owner from selling property or units within structures to third parties for the land uses as contemplated by the Development. This Section shall not apply to: (a) assignments between governmental entities (b) assignments for financing required for the Development; (c) the establishment of another entity which shall operate the premises for the infrastructure purposes.

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

- (a) The Owner provides the prospective transferee with written notice of the Act 381 Work Plan, the nature and extent of Eligible Activities performed by the Owner

pursuant to the Plan, and the extent of any outstanding obligation for reimbursement for pay-as-you-go expenses from taxes to be captured from the property.

- (b) The Owner and the transferee enter into an allocation agreement covering how the Tax Increments collected on the property shall be distributed between the Owner and the prospective purchaser for any outstanding obligations or future obligations for Eligible Activities on the property.
- (c) The Owner provides the GTCBRA with copies of the written notice and the allocation agreement between the Owner and the transferee of the property within 30 days after transfer of the property.

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

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

If to GTCBRA:

Grand Traverse County
Municipal Assistant to Authority pursuant to MCL 125.2657(5)
Grand Traverse County Brownfield Redevelopment Authority
400 Boardman Avenue
Traverse City, Michigan 49684

If to the Owner:

Tom Biegler, President/CEO
Kyle Scholten, CFO
Regency Midwest Ventures Limited Partnership
3211 West Sencore Drive
Sioux Falls, South Dakota 57106

If to the City:

City of Traverse City
Attn:, City Manager
400 Boardman Ave.

Traverse City, Michigan 49684

If to the DDA:

Traverse City Downtown Development Authority
Attn.: DDA Director
PO Box 42, Traverse City, Michigan 49685

If to TCL&P:

Traverse City Light and Power
Attention: Executive Director
1131 Hastings Street
Traverse City, MI 49686

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

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

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

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

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

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

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

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

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

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

Section 10.14 No Third Party Beneficiaries. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Consultant, Contractors, Subcontractors, or any third parties. This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

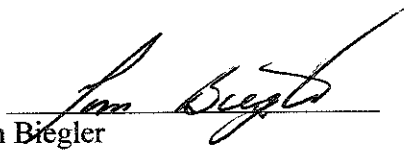
Section 10.15 Disputes. The parties acknowledged the disputes which may arise under this Agreement shall be resolved by the courts of Grand Traverse County, State of Michigan.

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


Owner:

REGENCY MIDWEST VENTURES LIMITED PARTNERSHIP


By: Regency MWG, LLC, Its General Partner

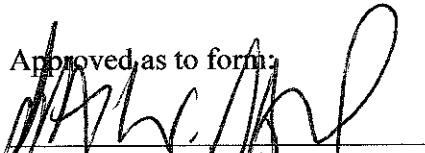
By: 
Tom Biegler
Its: President/CEO

GRAND TRAVERSE COUNTY BROWNFIELD
REDEVELOPMENT AUTHORITY

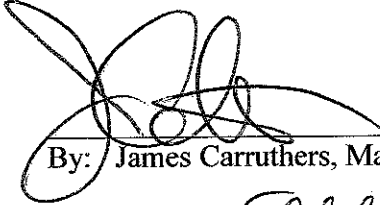

By: Mark Eckoff
Its: Chairman

Approved as to Substance:


By: Jean Derenzy
Its: Director

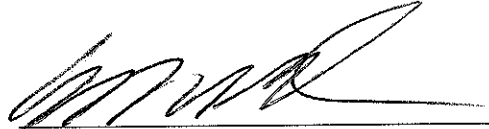
Approved as to form:

By: Scott Howard
Its: Attorney

CITY OF TRAVERSE CITY


By: James Carruthers, Mayor

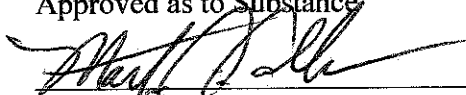

By: Benjamin Marentette, City Clerk

DOWNTOWN DEVELOPMENT
AUTHORITY


By: William Golden, Chair


Steve Constantin, Secretary

Approved as to Substance


By: Martin A. Colburn, City Manager

Approved as to Substance


Rob Bacigalupi, Director

Approved as to Form


Lauren Tribble-Laucht, City Attorney

Approved as to Form


Lauren Tribble-Laucht, DDA Counsel

TRAVERSE CITY LIGHT AND POWER

Tim Arends, Executive Director