

## **ACT 381 BROWNFIELD PLAN**

**CentrePort Commons  
Southeast Corner of Portage Road and Centre Ave  
Kalamazoo County, City of Portage  
City of Portage Brownfield Redevelopment Authority**

**11/19/2019**

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

**Approved by the Brownfield Redevelopment Authority on \_\_\_\_\_**

**Approved by the Portage City Council on \_\_\_\_\_**

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# ACT 381 BROWNFIELD PLAN

## 1.0 INTRODUCTION

### 1.1 Proposed Redevelopment and Future Use for Each Eligible Property

The proposed redevelopment consists of a single parcel of approximately 8 acres, which is the subject of a five-unit site condominium known as CentrePort Commons. A portion of the site previously contained a gas station which left behind legacy contamination in the soil and groundwater qualifying the site as a "Facility". The site is in the City of Portage, which is a qualified local governmental unit ("QLGU"), in the heart of the city's growing Lake Center District.

The project involved the demolition of the former gas station, construction of new interior roads, sidewalks, sewer and stormwater infrastructure and associated stormwater management systems. A 12,706 square foot building is being built on units 2 & 3 of the CentrePort Commons development, which will be leased by Bronson Family Practice. The building features a masonry and glass façade with various roof levels and pitches. The building will have a full basement for medical record storage. It is anticipated that Units 1, 4 and 5 of CentrePort Commons will be developed with retail, office and/or commercial uses for future unknown tenants and/or owners. A proposed site plan is included as Attachment E to this brownfield plan.

The total capital investment on the Unit 2 & 3 development is expected to be approximately \$6 million. Construction of the 12,706 building began in the 3<sup>rd</sup> quarter of 2019 and will be completed by the summer of 2020.

### 1.2 Eligible Property Information

#### Basis of Eligibility

The property consists of a single five-unit site condominium which is approximately 8.06 acres in size. Contamination from leaking underground storage tank(s) has been previously identified on the southern portion of the site (formerly 8043 Portage Road), which was previously occupied by a gasoline station. As a result, 8043 Portage Road is classified as a "facility" (see Attachment D).

Verification of Facility status is contained in Attachment C.

#### Location and Legal Description

SE Corner of Portage Road and Centre Ave Portage, MI 49002	8.06 Acres
Tax IDs:	0023-501-O; 0023-502-O; 0023-503-O; 0023-504-O; 0023-505-O

**Legal Description:**

A PARCEL OF LAND SITUATION IN THE NE 1/4 AND THE NW 1/4 OF SEC 23, T3S, R11W; COMM AT THE N 1/4 COR OF SEC23, T3S, R11W; TH S89DEG53'29"E 648.32FT ALONG THE N LI OF THE NE 1/4 OF SAID SEC TO THE W LI OF THE E 1/2 OF THE NW 1/4 OF SAID NE 1/4; TH CONTINUING 2 89DEG53'29"E 170 FT ALONG SAID N LI; TH S00DEG28'10"E 50 FT PARALLEL WITH SAID W LI TO THE S ROW LI OF CENTRE AVE AND THE POB; TH CONT S00DEG28'10'E 318 FT PARALLEL WITH SAID W LI; TH N89DEG53'29"W 96.45 FT PARALLEL WITH SAID N LI TO THE E LI OF THE W 660 FT (PERPENDICULAR MEASURE) OF SAID NE 1/4; TH S00DEG17'25"E 259.01 FT ALONG SAID E LI TO A POINT S00DEG17'25"E 627 FT PARALLEL WITH SAID E LI FROM THE N LI; TH N89DEG53'29"W 681.33 FT PARALLEL WITH SAID N LI TO THE CENTER LI OF PORTAGE RD; TH NORTHERLY 165.34 FT ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 3125.36 FT AND A CHORD N03DEG45'51"E 165.00 FT TO A POINT S00DEG17'25"E 462 PARALLEL WITH SAID E LI FROM SAID N LI; TH S89DEG53'29"E 369.64 FT PARALLEL WITH SAID N LI TO A POINT N89DEG53'29"W 300 FT FROM SAID E LI; TH N00DEG17'25"W 132.00 FT PARALLEL WITH SAID E LI; TH N89DEG53'29"W 310 FT PARALLEL WITH SAID N LI TO THE E LI OF W 50 FT OF SAID NE 1/4; TH S8989DEG53'29"E 705.47 FT ALONG SAID S ROW LI TO THE POB. CONTAINING 8.09 ACRES OF LAND. PARCEL SUBJECT TO HIGHWAY EASEMENT FOR PORTAGE RD.

**2.0 Information Required by Section 13(2) of the Statute**

**2.1 Description of Costs to Be Paid for With Tax Increment Revenues**

Tax increment revenues will be used to reimburse Treystar Holdings, LLC ("Developer:") for the cost of eligible activities as authorized by the Brownfield Redevelopment Financing Act (Act 381). Eligible activities will be reimbursed with local TIR only.

The total cost of eligible activities to be reimbursed under this plan are limited to \$172,000. Authority administrative costs are anticipated to be \$17,255. Capitalization of the Local Brownfield Revolving Fund is estimated to be \$172,000. The estimated cost of all eligible activities under this plan are summarized in Table 1.

**Non-Environmental Activities**

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

**Authority Expenses**

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

## **2.2 Summary of Eligible Activities**

### **2.2.1 Demolition**

Demolition activities included the removal of an abandoned gasoline station and its related features such as awnings, piping, electrical conduit, and surfacing. The total cost of demolition was \$18,821.

### **2.2.2 Infrastructure Improvements**

Infrastructure improvement activities included the installation of 400 linear feet of public sewer main through the "facility" portion of development. Additionally, infrastructure improvement activities included the construction of an urban stormwater management system. Costs under this category included the excavation and construction of a stormwater retention and infiltration basin and associated collection structures and piping.

The City of Portage also intends to obtain an easement from the developer on a small portion of the property at the corner of Portage Road and Centre Ave and install new signage for the Lake Center business district.

The total cost of these infrastructure improvement is anticipated to be \$111,500.

### **2.2.3 Site Preparation**

Site Preparation activities included soil removal and fill, clearing and grubbing, site grading and surveying along with engineering and design related to eligible activities. The cost of site preparation activities was \$81,287.

### **2.2.4 Local Brownfield Revolving Fund**

The Authority intends to capture non-school tax increments for deposit in the local brownfield revolving fund for a full five years, however the dollar amount is limited to the amount of eligible activities included in this brownfield plan. This capture is estimated to be \$172,000

## **2.3 Estimate of Captured Taxable Value and Tax Increment Revenues**

An estimate of the captured taxable value for this redevelopment by year is depicted in Table 2. This plan captures all available TIR, including real and personal property TIR.

## **2.4 Method of Financing and Description of Advances Made by the Municipality**

The eligible activities will be financed by the developer and reimbursed as outlined in this plan and accompanying development agreement. No advances from the City are anticipated at this time.

## **2.5 Maximum Amount of Note or Bonded Indebtedness**

No note or bonded indebtedness for this project is anticipated at this time. Therefore, this section is not applicable.

## **2.6 Duration of Brownfield Plan**

The duration of this plan is estimated to be 9 years consistent with current city policy which limits the duration of developer reimbursement to 15 years, plus five full years of capture to the Local Brownfield Revolving Fund. It is estimated that the redevelopment of the property will be completed in 2019 and that full recapture of eligible costs and eligible administrative costs of the authority through TIR will be completed within 6 years.

While eligible activities previously incurred and to be incurred in the future exceed \$200,000, reimbursement to the developer is limited to \$147,000 under this plan while the City of Portage will then be reimbursed up to \$25,000 for their infrastructure improvements. As a result, capture to the LBRF is limited to the total eligible activities included in this plan, which is \$172,000 or 5 full years as required by Act 381.

Capture of TIR is expected to begin in 2020, however could be delayed for up to 5 years after the approval of this plan as permitted by Act 381. In no event shall capture extend beyond 30 year as required by Act 381. An analysis showing the reimbursement schedule is attached as Table 3.

## **2.7 Estimated Impact of Tax Increment Financing on Revenues of Taxing Jurisdictions**

An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions is illustrated in detail within Table 2.

## **2.8 Legal Description, Property Map, Statement of Qualifying Characteristics and Personal Property**

The property consists of a single five-unit site condominium which is approximately 8 acres in size and is located at the southeast corner of Portage Road and Centre Ave. A legal description of the property along with a scaled map showing eligible property dimensions, is attached as Figure 1.

The parcel is considered "eligible property" due to the presence of contaminants, specifically benzene, ethylbenzene, xylene and trimethylbenzene isomers in soil and groundwater at concentrations in excess of the most stringent applicable MDEQ GRCC. Therefore, the property is a "Facility" as defined by Part 201.

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

**2.9 Estimates of Residents and Displacement of Individuals/Families**

No persons reside at the property therefore this section is not applicable.

**2.10 Plan for Relocation of Displaced Persons**

No persons reside at the property thus none will be displaced. Therefore, this section is not applicable.

**2.11 Provisions for Relocation Costs**

No persons reside at the property thus none will be displaced. Therefore, this section is not applicable.

**2.12 Strategy for Compliance with Michigan's Relocation Assistance Law**

No persons reside at the property thus none will be displaced. Therefore, this section is not applicable.

**2.13 Other Material that the Authority or Governing Body Considers Pertinent**

None.

# Figure 1

## Legal Description and Eligible Property Map

### Legal Description:

A PARCEL OF LAND SITUATION IN THE NE 1/4 AND THE NW 1/4 OF SEC 23, T3S, R11W; COMM AT THE N 1/4 COR OF SEC23, T3S, R11W; TH S89DEG53'29"E 648.32FT ALONG THE N LI OF THE NE 1/4 OF SAID SEC TO THE W LI OF THE E 1/2 OF THE NW 1/4 OF SAID NE 1/4; TH CONTINUING 2 89DEG53'29"E 170 FT ALONG SAID N LI; TH S00DEG28'10"E 50 FT PARALLEL WITH SAID W LI TO THE S ROW LI OF CENTRE AVE AND THE POB; TH CONT S00DEG28'10'E 318 FT PARALLEL WITH SAID W LI; TH N89DEG53'29"W 96.45 FT PARALLEL WITH SAID N LI TO THE E LI OF THE W 660 FT (PERPENDICULAR MEASURE) OF SAID NE 1/4; TH S00DEG17'25"E 259.01 FT ALONG SAID E LI TO A POINT S00DEG17'25"E 627 FT PARALLEL WITH SAID E LI FROM THE N LI; TH N89DEG53'29"W 681.33 FT PARALLEL WITH SAID N LI TO THE CENTER LI OF PORTAGE RD; TH NORTHERLY 165.34 FT ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 3125.36 FT AND A CHORD N03DEG45'51"E 165.00 FT TO A POINT S00DEG17'25"E 462 PARALLEL WITH SAID E LI FROM SAID N LI; TH S89DEG53'29"E 369.64 FT PARALLEL WITH SAID N LI TO A POINT N89DEG53'29"W 300 FT FROM SAID E LI; TH N00DEG17'25"W 132.00 FT PARALLEL WITH SAID E LI; TH N89DEG53'29"W 310 FT PARALLEL WITH SAID N LI TO THE E LI OF W 50 FT OF SAID NE 1/4; TH S8989DEG53'29"E 705.47 FT ALONG SAID S ROW LI TO THE POB. CONTAINING 8.09 ACRES OF LAND. PARCEL SUBJECT TO HIGHWAY EASEMENT FOR PORTAGE RD.

# Table 1

## Eligible Activities Costs

Local Only Eligible Activities Costs and Schedule		
Local Only Eligible Activities	Cost	Completion
		Season/Year
<b>Demolition</b>		
<i>Demolition of abandoned gas station structures</i>	\$ 18,821	Spring 2010
<b>Sub-Total - Demolition</b>	<b>\$ 18,821</b>	
<b>Infrastructure Improvements</b>		
<i>Urban Stormwater Management System</i>	\$ 46,700	Spring 2010
<i>Sanitary Sewer</i>	\$ 39,800	Spring 2010
<i>City of Portage Signage</i>	\$ 25,000	Summer 2020
<b>Subtotal – Infrastructure</b>	<b>\$ 111,500</b>	
<b>Site Preparation</b>		
<i>Geotechnical Engineering, Surveying and Design</i>	\$ 22,437	Winter 2010
<i>Soil Removal/Fill</i>	\$ 17,150	Spring 2010
<i>Clearing and Grubbing</i>	\$ 9,800	Spring 2010
<i>Grading</i>	\$ 31,900	Spring 2010
<b>Sub-Total – Site Prep</b>	<b>\$ 81,287</b>	
<b>Local Only Eligible Activities Total</b>	<b>\$ 211,608</b>	

## **Table 2**

### **Tax Capture Schedule**

Plan Year	1	2	3	4	5	6	7	8	9	10	TOTAL
Estimated Taxable Value (TV) Increase Rate: 2.0%											
Portaage, Michigan November 19, 2019											
City of Portage	\$ 368	\$ 13,771	\$ 14,126	\$ 14,488	\$ 14,858	\$ 15,223	\$ 15,619	\$ 16,011	\$ 16,411	\$ 16,819	\$ 17,707
KVCC	\$ 96	\$ 3,575	\$ 3,667	\$ 3,761	\$ 3,857	\$ 3,955	\$ 4,055	\$ 4,156	\$ 4,260	\$ 4,366	\$ 35,747
KESAA Unincorporated	\$ 0.144	\$ 5	\$ 184	\$ 189	\$ 193	\$ 198	\$ 203	\$ 208	\$ 214	\$ 219	\$ 1,838
KESAA Unincorporated	\$ 1,500	\$ 51	\$ 1,909	\$ 1,957	\$ 2,007	\$ 2,058	\$ 2,111	\$ 2,163	\$ 2,218	\$ 2,273	\$ 19,900
KESAA Specialized	\$ 1,948	\$ 51	\$ 1,909	\$ 1,957	\$ 2,007	\$ 2,058	\$ 2,111	\$ 2,163	\$ 2,220	\$ 2,275	\$ 2,329
KESAA Unincorporated	\$ 4,6810	\$ 34	\$ 1,273	\$ 1,306	\$ 1,339	\$ 1,373	\$ 1,408	\$ 1,443	\$ 1,480	\$ 1,517	\$ 12,726
KCTC	\$ 1,0000	\$ 34	\$ 1,273	\$ 1,306	\$ 1,339	\$ 1,373	\$ 1,408	\$ 1,443	\$ 1,480	\$ 1,517	\$ 15,554
County Operating	\$ 4,6810	\$ 34	\$ 1,273	\$ 1,306	\$ 1,339	\$ 1,373	\$ 1,408	\$ 1,443	\$ 1,480	\$ 1,517	\$ 12,726
CCTC	\$ 0.7500	\$ 26	\$ 55	\$ 99	\$ 104	\$ 100	\$ 105	\$ 106	\$ 108	\$ 110	\$ 9,545
CCTC Trustee	\$ 0.3435	\$ 11	\$ 400	\$ 411	\$ 421	\$ 423	\$ 434	\$ 445	\$ 455	\$ 477	\$ 4,002
Portaage Library	\$ 2,0000	\$ 68	\$ 2,545	\$ 2,611	\$ 2,678	\$ 2,746	\$ 2,816	\$ 2,887	\$ 2,959	\$ 3,109	\$ 25,435
County Public Safety	\$ 1,4472	\$ 49	\$ 1,842	\$ 1,889	\$ 1,938	\$ 1,987	\$ 2,038	\$ 2,089	\$ 2,141	\$ 2,195	\$ 18,418
County Housing	\$ 0.9998	\$ 3	\$ 127	\$ 130	\$ 134	\$ 137	\$ 141	\$ 144	\$ 148	\$ 151	\$ 1,270
County Senior	\$ 0.3500	\$ 12	\$ 445	\$ 457	\$ 469	\$ 481	\$ 493	\$ 505	\$ 518	\$ 531	\$ 4,454
Local Total	\$ 30,3097	\$ 1,001	\$ 38,575	\$ 39,570	\$ 40,584	\$ 41,619	\$ 42,675	\$ 43,751	\$ 44,850	\$ 45,970	\$ 47,112
Non-Capture Millage											
Portaage School Debt	\$ 7,3500	\$ 250	\$ 9,354	\$ 9,956	\$ 9,842	\$ 10,092	\$ 10,348	\$ 10,610	\$ 10,876	\$ 11,147	\$ 93,540
County Juvenile Home Debt	\$ 0,1873	\$ 6	\$ 238	\$ 245	\$ 251	\$ 257	\$ 264	\$ 270	\$ 277	\$ 284	\$ 2,384
KESAA Debt	\$ 0,3650	\$ 12	\$ 465	\$ 477	\$ 499	\$ 501	\$ 514	\$ 527	\$ 540	\$ 554	\$ 4,654
State Education Tax (SET)	\$ 6,0000	\$ 204	\$ 7,363	\$ 7,833	\$ 8,040	\$ 8,293	\$ 8,448	\$ 8,661	\$ 8,878	\$ 9,100	\$ 76,359
School Operating Tax	\$ 17,8182	\$ 606	\$ 22,677	\$ 23,262	\$ 24,467	\$ 25,087	\$ 25,720	\$ 26,366	\$ 27,024	\$ 27,696	\$ 226,763
Total Non-Captureable Taxes	\$ 31,7205	\$ 1,079	\$ 40,370	\$ 41,411	\$ 42,473	\$ 43,556	\$ 44,661	\$ 45,788	\$ 46,937	\$ 48,109	\$ 49,305
Total Tax Incremental Revenue (TR) Available for Capture											
Portaage, Michigan	\$ 1,031	\$ 38,575	\$ 39,570	\$ 40,584	\$ 41,619	\$ 42,675	\$ 43,751	\$ 44,850	\$ 45,970	\$ 47,112	\$ 385,737

\*Personal Property Tax increment, if any, will be captured however is not contemplated in this table

## **Table 3**

### **Reimbursement Schedule**

**Tax Increment Revenue Reimbursement Allocation Table**

CentrePort Commons  
Portage, Michigan  
November 19, 2019

Estimated Total Years of Plan: **10**

Estimated Capture	\$ 385,737
Administrative Fees	\$ 17,976
State Brownfield Redevelopment Fund	N/A
Developer Reimbursement	\$ 147,000
City Reimbursement	\$ 25,000
Local Brownfield Revolving Fund	\$ 172,000

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	TOTAL
Total Local Incremental Revenue	\$ 1,031	\$ 38,575	\$ 39,570	\$ 40,584	\$ 41,619	\$ 42,675	\$ 43,751	\$ 44,850	\$ 45,970	\$ 47,112	\$ 385,737
BRA Administrative Fee (5%)	\$ 48	\$ 1,798	\$ 1,844	\$ 1,891	\$ 1,940	\$ 1,989	\$ 2,039	\$ 2,090	\$ 2,142	\$ 2,196	\$ 17,976
Local TIR Available for Reimbursement	\$ 983	\$ 36,777	\$ 37,726	\$ 38,693	\$ 39,680	\$ 40,686	\$ 41,712	\$ 42,759	\$ 43,827	\$ 44,917	\$ 367,760
<hr/>											
Local Only Costs	\$ 172,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Treystar Holdings, LLC	\$ 147,000	\$ 983	\$ 36,777	\$ 37,726	\$ 38,693	\$ 32,821					\$ 147,000
City of Portage	\$ 25,000				\$ 6,858	\$ 18,142					\$ 25,000
Total Local Only Reimbursement Balance	\$ 171,017	\$ 134,240	\$ 96,514	\$ 57,821	\$ 25,000	\$ 6,858					
Total Annual Reimbursement	\$ 983	\$ 36,777	\$ 37,726	\$ 38,693	\$ 39,680	\$ 18,142	\$ -	\$ -	\$ -	\$ -	\$ 172,000
<b>LOCAL BROWNFIELD REVOLVING FUND</b>											
LBRF Deposits *	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total LBRF Capture (Local Only)	\$ -	\$ -				\$ 22,544	\$ 41,712	\$ 42,759	\$ 43,827	\$ 21,157	\$ 172,000

**Footnotes:**

- \* Up to five years of capture for LBRF Deposits after eligible activities are reimbursed. May be taken from DEQ & Local TIR only.
- \* Capture to the LBRF shall not exceed the total amount of Eligible Activities included in the brownfield plan

## **Attachment A**

### **Brownfield Plan Resolutions**

**CITY OF PORTAGE, COUNTY OF KALAMAZOO**

**RESOLUTION APPROVING AN AMENDED BROWNFIELD REDEVELOPMENT PLAN  
BY ADDING BROWNFIELD PLAN NO. 8  
FOR THE CITY OF PORTAGE PURSUANT TO AND  
IN ACCORDANCE WITH THE PROVISIONS OF ACT 381  
OF THE PUBLIC ACTS OF THE STATE OF MICHIGAN 1996,  
AS AMENDED**

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

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

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

Resolution offered by Councilmember \_\_\_\_\_ and  
seconded by Councilmember \_\_\_\_\_.

WHEREAS, the Brownfield Redevelopment Authority (the Authority) of the City of Portage, pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the Act), has approved Brownfield Plan No. 8 (8015, 8043 and 8061 Portage Road and 2610 and 2700 East Centre Avenue) pursuant to and in accordance with Section 13 of the Act as an amendment to the Brownfield Redevelopment Plan approved by the Council on September 4, 2001.

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

WHEREAS, the Council makes the following determinations and findings:

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

B. The Amended Plan meets all of the requirements for a Brownfield Plan set forth in Section 13 of the Act;

C. The amount of captured taxable value estimated to result from adoption of the plan is reasonable;

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

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

NOW, THEREFORE, BE IT RESOLVED THAT:

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

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

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

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

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

RESOLUTION ADOPTED: \_\_\_\_\_

---

Adam Herringa, City Clerk

STATE OF MICHIGAN        )  
                              )ss  
COUNTY OF KALAMAZOO    )

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

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

---

Adam Herringa, City Clerk

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

Approved as to Form:

Date: 11/14/2019  
By: PL  
City Attorney

## **Attachment B**

### **Reimbursement Agreement**

## **BROWNFIELD REIMBURSEMENT AGREEMENT**

This BROWNFIELD REIMBURSEMENT AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_, 2019, by and between Treystar Holdings, LLC and TOF CentrePort I, LLC, with offices at 161 E. Michigan Avenue, Suite 400, Kalamazoo, Michigan 49007 (the "Developer"), and the City of Portage Brownfield Redevelopment Authority (the "AUTHORITY"), established by the City of Portage with its office at 7900 S. Westnedge Avenue, Portage, MI 49002.

### **RECITALS**

- A. The Authority was created by the City of Portage (the "City") pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of Michigan of 1996 as amended ("Act 381"), and, pursuant to Act 381, the Authority has prepared a Brownfield Plan which was duly approved by the City Council of the City (the "Brownfield Plan").
- B. The Developer owns property in the City addressed as 8015, 8043 and 8061 Portage Road and 2610 and 2700 East Centre Avenue (a five-unit site condominium project known as CentrePort Commons), City of Portage, County of Kalamazoo, Michigan and which is legally described in the attached Exhibit A and which is included in the Brownfield Plan as being a "facility" as defined in Act 381 (the "Property").
- C. Act 381 permits the use of the real and personal property tax revenues generated from the increase in value (the "Increment") to brownfield sites constituting Eligible Property as defined under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs in conducting Eligible Activities and, unless Developer is a liable party for the site contamination, permits the reimbursement to Developer of Eligible Costs it has incurred.
- D. The Developer is in the process of constructing an approximate 12,600 sq. ft. medical office building (the "Project") on 2610 and 2700 East Centre Avenue (units 2 and 3 of the CentrePort Condominium) and is requesting to be reimbursed for certain eligible activities that were completed in 2010 in an amount not to exceed One Hundred Forty-seven Thousand Dollars (\$147,000.00). These activities are all described in the City of Portage Brownfield Redevelopment Authority Brownfield Plan for the Project dated November 19, 2019 (the "Brownfield Amendment"), attached as Exhibit B. The Eligible Activities have the effect of assisting in the redevelopment of the Property, maintaining and increasing employment within the City, increasing tax base within the City and otherwise enhancing the economic vitality and quality of life in the City.
- E. Act 381 permits the use of the real property tax revenues generated from the incremental increase in property value of a redeveloped brownfield site constituting an "eligible property" under Act 381 to which the Authority is entitled to receive to pay or to reimburse the payment of costs of conducting activities that meet the requirements under Act 381 of "Eligible Activities".
- F. By completing the Eligible Activities on the Property, the Developer incurred costs of performing the Eligible Activities.
- G. In accordance with Act 381, the parties desire to use the property tax revenues that are generated from an increase in the taxable value of the Property resulting from its

redevelopment to which the Authority is entitled to receive (the "Tax Increment Revenues") to reimburse the Developer for the Eligible Costs.

- H. Whereas, the Developer will construct and develop all phases necessary to complete the Project and has obtained financing for said improvements and the AUTHORITY, subject to the terms, conditions, and limitations contained herein, intends, pursuant to the Brownfield Plan, to reimburse the Developer for the certain costs of Eligible Activities.
- I. The parties are entering into this Agreement to establish the terms and procedure for such reimbursement.

## AGREEMENTS

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

1. **Definitions.** Capitalized terms shall have those definitions provided under Act 381 unless otherwise provided by this Agreement or unless inconsistent with the context in which the term is used.
2. **The Plans.** The AUTHORITY has approved the Brownfield Plan and the Developer hereby also approves the Brownfield Plan. To the extent provisions of the Brownfield Plan and any subsequent amendments conflict with this Agreement, and as it may be amended, the terms and conditions of this Agreement control. To the extent provisions of the Brownfield Plan and any subsequent amendments or this Agreement conflicts with the Brownfield Act, as amended, Act 381 controls.
3. **Construction of Project.** The Developer acknowledges and represents, and the AUTHORITY and the City agree, that the Developer shall, at its own cost, have the sole right and responsibility to develop, construct and complete the development of the Project as determined by the Developer, in accordance with site plans and permits approved by the City, and the Developer shall pay for the development, construction, completion and maintenance of the Eligible Activities and Eligible Investments specified in the Brownfield Plan, subject to the Developer's Repayment Obligation (defined herein). For the purposes of this Agreement, "construction" or "construct" or similar terms shall include the acquisition, placement and/or installation of business personal property by the Developer within the Property. All development improvements performed by the Developer on the Project shall comply, in all respects, with all of the City's regulations including, but not limited to, zoning ordinances and building code, as well as all applicable federal, state, city, local and municipal rules, regulations and laws.
4. **Submission of Plans and Permit Applications.** The Developer has submitted all required plans and applications required by the City and its engineers for the Project and the Developer has obtained all required permits and approvals, paid all applicable fees, and the Developer has begun construction of the Project in accordance with the approved site plan identified in the Brownfield Plan. The Developer may modify and amend its site plan at any time and from time to time provided City approvals are obtained and provided that all improvements called for by such modifications and amendments shall not alter the "Eligible Property" as defined and used in the

Brownfield Act.

5. **Construction of Certain Improvements by the Developer.** The Developer asserts that Eligible Activities described in the Brownfield Plan have been completed. Promptly after completion of construction of the Project and upon request of the Developer, the AUTHORITY and the City shall execute and deliver to the Developer a Certificate of Completion (the "Certificate of Completion"). When issued, the Certificate of Completion, except for any items to be completed or corrected as set forth therein, shall be a conclusive determination by the AUTHORITY and City of their satisfaction with respect to the obligations of the Developer and their satisfaction that the construction of the Project has been completed in accordance with the provisions of this Agreement.
6. **AUTHORITY Costs and Expenses.** All legal and consulting fees, and other expenses incurred by the AUTHORITY (including administrative and operating costs as described in Section 14 hereof) in connection with the Brownfield Plan, this Agreement or the Project, other than reimbursement to the Developer for approved expenses of Eligible Activities, shall be reimbursable annually to the AUTHORITY from the Tax Increment Revenues in an amount not to exceed 5% of available TIR.
7. **Builders Risk Insurance Prior to Completion.** Prior to completion of the construction of the Project as certified by the AUTHORITY and City, the Developer shall keep in force at all times Builder's Completed Value Risk Insurance, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of the work performed and equipment, supplies and materials furnished for the Project. Such insurance policies shall be issued by a company satisfactory to the AUTHORITY and City. All such policies shall contain a provision that the same will not be cancelled or modified without thirty (30) day prior written notice to the AUTHORITY and the City.
8. **Insurance Proceeds.** If all or any part of the Project is damaged or destroyed, the insurance proceeds resulting from such damage or destruction shall be used by Developer for the cost of restoring or rebuilding the Project. The Project shall be restored or rebuilt substantially in accordance with the construction plans provided by Developer and approved by the AUTHORITY and City and shall be of at least equal value and substantially the same character as prior to the damage or destruction.
9. **Rights of Inspection.** During construction of the Project, the City's and AUTHORITY's designees shall have the right at any time and from time to time to enter upon the Project for purposes of inspection. Such inspection by the City and AUTHORITY of the Project shall not be construed as a representation by the AUTHORITY or the City that there has been compliance with the site plan or that the Project will be, or are, free of faulty materials or workmanship, or a waiver of any right, the AUTHORITY, the City or any other party may have against Developer or any other party for non-compliance with the site plan and the terms of this Agreement.
10. **Implementation of Construction and Utility Maintenance Easements.** The parties shall all coordinate together and use their best efforts to establish all construction access maintenance and utility service easements designated in

the Brownfield Plan or as more particularly defined in site plans and engineering plans pertaining to the Project.

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

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

- a.** All costs of Eligible Activities attributable to the Property for which the Developer seeks reimbursement from Tax Increment Revenues shall satisfy each of the following applicable qualifications:
  - i.** The Eligible Activity and the cost of the Eligible Activity is included in the Brownfield Plan approved by the AUTHORITY or any amendment or supplement thereto approved by the AUTHORITY, and the Eligible Activity was conducted in accordance with the terms of the Brownfield Plan, this Agreement, and all applicable state and federal laws and regulations.
  - ii.** The cost of the Eligible Activity is payable from Tax Increment Revenues only after reimbursement to AUTHORITY of the AUTHORITY'S Administrative and Operating Costs as set forth in Sections 6 and 14.
- b.** Developer understands and agrees that any reimbursement of the Developer by or on behalf of the AUTHORITY of any expenses for approved activities shall be only for "Eligible Activities" as defined in the Act 381, and the Brownfield Plan and for which reimbursement is authorized under this Agreement. It is further understood and agreed that any reimbursement to or on behalf of the Developer shall only occur to the extent that Tax Increment Revenues are generated from the Property and those Tax Increment Revenues are available under Act 381 and this Agreement for the making of reimbursements to the Developer.
- c.** Pursuant to the Brownfield Plan, the AUTHORITY shall capture the Tax Increment Revenues generated from real and personal property taxes allowed by law on the eligible property beginning 2020 and continuing, unless eliminated or otherwise modified by this Agreement, the total which shall not exceed One Hundred Forty-Seven Thousand Dollars (\$147,000.00) but no later than 2029. This Agreement shall terminate the earlier of the date when all reimbursements required under this Agreement have been made or the Brownfield Plan has expired.

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

- a.** From time to time, but not more frequently than quarter-annually without

approval of the AUTHORITY, the Developer may submit to the AUTHORITY a certification of costs of Eligible Activities paid or incurred for reimbursement in accordance with this Agreement and the Brownfield Plan. Such certification shall include a narrative of the approved activities performed and an explanation of why such activities qualify for reimbursement under this Agreement, a representation and warranty of the Developer that all activities for which reimbursement is sought qualify as Eligible Activities under Act 381, copies of all documents or reports for whose preparation payment is requested, a copy of invoices for the work described in such certification, and any substantiating documentation for such invoices that is requested by the AUTHORITY.

- b. Within thirty (30) days of its receipt of such statement and supporting invoices, the AUTHORITY shall review the submission to confirm that such activities qualify for reimbursement under this Agreement and the Brownfield Plan and advise the Developer in writing if any activities do not so qualify including the specific reasons why the AUTHORITY believes that such activities do not so qualify.
- c. Subject to Section 14 below, to the extent that such submission is approved by the AUTHORITY Board, the AUTHORITY shall thereafter cause the Developer to be paid the amounts approved within forty-five (45) days, but only to the extent that Tax Increment Revenues attributable to the Property are available. If sufficient Tax Increment Revenues attributable to the Property are not available at the time such submission is approved and payment is due, the approved amount shall be paid from Tax Increment Revenues attributable to the Property that are next received by the Authority and that are not otherwise allowed to be used for purposes permitted by Section 14 below.
- d. To the extent that any portion of such submission is not approved, any authorized representative of the AUTHORITY and the Developer shall, within fourteen (14) days upon the request of either party, meet promptly to discuss the reasons the submission was not approved and the conditions pursuant to which the Developer can obtain approval of such disallowed request.
- e. No interest or other charge shall accrue or attach to any reimbursement payment agreed to by AUTHORITY under this Agreement.
- f. The AUTHORITY shall have no obligation to reimburse the Developer for Eligible Costs for Tax Increment Revenue captured and received by the AUTHORITY after 2029. This Agreement is limited to Tax Increment Revenue captured and received by the AUTHORITY for tax years 2020-2029.

**14. AUTHORITY Administrative and Operating Costs.**

- a. The AUTHORITY may retain funds to pay administrative and operating costs of the AUTHORITY from the annual Tax Increment Revenues attributable to the Property. The amount the AUTHORITY may retain shall not exceed the actual administrative operating costs or the amounts permitted by Act 381, and for funding of the Local Site Remediation Revolving Fund to the extent permitted by applicable law and the Brownfield Plan. In no event shall the AUTHORITY retain more than 5% of the available Tax Increment Revenues in any given year.
- b. The amount retained pursuant to this Section 14 may be generated only from Tax Increment Revenues attributable to the levies of Local Taxes upon the Property.
- c. All amounts captured by the AUTHORITY that exceed the lesser of actual AUTHORITY administrative costs or the 5% limitation on administrative expense reimbursement shall be redistributed for reimbursement to the Developer to pay for Eligible Activities as authorized by the Brownfield Plan.
- d. The AUTHORITY may retain the amount permitted by this Section 14 prior to making any reimbursement under Section 13 to the Developer. To the extent Tax Increment Revenues are not available from levies of Local Taxes for any year in an amount sufficient to make the reimbursement under this Section 14 for that year, the shortfall may be reimbursed from any subsequent years' Tax Increment Revenues attributable to the Property after reimbursements required under this Section 14 and Section 13 are made for the year in question.

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

- a. Until issuance of the Certificate of Completion pursuant to Section 5 of this Agreement, the Developer will not: (i) assign, sell or transfer its interest in the Property and/or the Project or any part thereof or any interest therein, except for utility easements; or (ii) assign this Agreement, without in each case the prior written consent of the City and the AUTHORITY, which consent will not unreasonably be withheld. Any such assignment shall be an "Approved Assignment." The City and the AUTHORITY shall give their consents if:
  - (i) the Developer demonstrates, subject to reasonable review by the City and the AUTHORITY, that the assignee has the ability and financial stature to fulfill the obligations assigned by the Developer; and
  - (ii) the assignee assumes unconditionally in writing all of Developer's past, present and future obligations assigned by the Developer. In the event the assignee fails to perform all of the obligations assigned by the Developer, the Developer shall retain the obligation to perform all remaining unperformed obligations previously assigned.

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

16. **Property Tax Appeal.**

a. In the event the Developer files an appeal with the Michigan Tax Tribunal related to the taxable value of the Property, the AUTHORITY may do either of the following:

i. Remit tax reimbursement payments based upon the lowest taxable value being sought pursuant to the appeal until resolution of the appeal **and** hold any Tax Increment Revenue that is collected but not remitted as a result of a tax appeal in a separate account of the AUTHORITY until the pending appeal is adjudicated; and once any tax appeals are adjudicated, either return the escrowed funds to the local unit in compliance with any tax appeal rulings, or make payments pursuant to Sections 13 and 14 of this Agreement, or

ii. If the AUTHORITY reasonably determines, after notice to the Developer and an opportunity for the Developer to discuss the issues with the AUTHORITY, that the Developer's taxable value being sought pursuant to the appeal will so diminish or negatively change the benefit of the Project to the taxing jurisdictions involved that the original expectations will no longer exist or be substantially diminished, the AUTHORITY may determine that the Developer is ineligible to receive any further reimbursement under this Agreement and hold any Tax Increment Revenue that is collected but not remitted as a result of this provision in a separate account of the AUTHORITY until the pending appeal is adjudicated. If the appeal results in a Property valuation that is substantially consistent with the Brownfield Plan and if the Developer completes the Project as contemplated by this Agreement, then the AUTHORITY shall make payments pursuant to Sections 13 and 14 of this Agreement.

b. In no event will the Developer be required to return reimbursement payments made by the AUTHORITY to Developer. No sanctions hereunder will accrue to Developer in the event it files an action in the Michigan Tax Tribunal with respect to the property in order to correct a clerical error of the Assessor, such as an error in addition or subtraction.

17. **Municipal Representatives not Personally Liable.** No AUTHORITY Board Member, City Council member or any other official, employee, agent, consultant, advisor, attorney or representative of the AUTHORITY or City shall be personally liable to Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

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

a. Except to the extent any of the following arises from or relates to the fraud,

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

- i. any defect in the design or construction of the Project, or the negligence or willful misconduct of Developer, its agents or independent interests in connection with the construction of the Project;
  - ii. The capture and use of Tax Increment Revenues, including any order, ruling, or instruction to repay or refund the State of Michigan or any other taxing jurisdiction for any levy captured as Tax Increment Revenues and paid to Developer as a reimbursement payment under this Agreement made in excess of the amount of Tax Increment Revenues the AUTHORITY is determined by the State, any agency thereof or by a court to be allowed by law to use for such reimbursement;
  - iii. Any act or omission of the Developer with respect to the conduct of a baseline environmental assessment, due care activity or additional response or remedial activity for the Property, including any failure by the Developer to take any affirmative action to prevent the release of a hazardous substance or any other contaminant or the exacerbation of an existing environmental condition;
  - iv. Any release of a hazardous substance or any other contaminant on the Property or an exacerbation of an existing environmental condition, any adverse effects on the environment, or any violation of any state or federal environmental law or regulation caused or due to act by the Developer or in any way related to the Property;
  - v. The Eligible Activities for the Property; or
  - vi. The operation of the business of the Developer or tenant on the Property.
- b. Notwithstanding anything herein to the contrary, neither the AUTHORITY nor City shall be liable to Developer for damages arising in any way from this Agreement, or any other obligation or agreement made in connection therewith or from any breach thereof, or arising from a declaration or a final

judgment by a court of competent jurisdiction that all or any portion of the Brownfield Act is unconstitutional or that the Brownfield Plan in whole or in part are invalid.

- c. All covenants, stipulations, promises, agreements and obligations of Developer contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Developer and not of any member, director, officer, agent, servant or employee of Developer in their individual capacities.
- d. Subject to subsection (e) below, the AUTHORITY may, at its discretion and without consent of the Developer, set-off any amount owing to the Developer under this Agreement to satisfy any indemnification obligation of the Developer under this Section.
- e. Prior to set-off of any amount owing to the Developer to satisfy any indemnification obligation of the Developer under this Section, the Developer shall be provided an opportunity to address the AUTHORITY and the AUTHORITY shall determine whether the exercise of the rights of set-off provided under subsection (d) is necessary to protect the interests of the AUTHORITY.

19. **Environmental.** Developer warrants and represents as follows:

- a. Developer agrees to comply in all material respects with all environmental laws and regulations applicable to the Project, and further agrees, except as is in compliance with applicable laws, not to knowingly place or dispose of, or knowingly cause to be placed or disposed of, any toxic or hazardous substances (as defined in subsection (d) below) ("Hazardous Substances") on any parcel located within the Project, and not knowingly manufacture, store, use, treat or dispose of such substances, or permit any manufacturing, storage, use, treatment or disposal of any Hazardous Substances on the Project.
- b. "Hazardous Substances" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, asbestos or related materials defined in: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); (2) the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.); (3) the Resource Conservation and Recovery Act, as amended (41 U.S.C. Section 9601, et seq.); (4) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; or (5) Michigan's Natural Resources and Environmental Protection Act, as amended (M.C.L. 324.101 et seq.), including any regulations adopted or publications promulgated pursuant to the above-referenced statutes, or as otherwise defined, classified, characterized, listed or identified by any other federal, state or local governmental law, ordinance, rule or regulation.
- c. No portion of the funds or benefits received by Developer pursuant to this Agreement or otherwise received by Developer in connection with Act 381

and the Project shall operate or be used to subsidize response activities that would benefit a liable party at the Property, under the standards of the Michigan Natural Resources and Environmental Protection Act or other similar federal law, or otherwise relieve such a liable party of such obligation.

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

- a. **Organization and Authority.** It: (i) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement; and (ii) has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute its legal, valid and binding obligation of it, enforceable in accordance with its terms, subject to applicable insolvency laws.
- b. **No Defaults or Violations of Law.** The execution and delivery of this Agreement will not conflict with or result in a breach of any of the terms of, or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which it is a party or by which it is bound or any charter, or any of the rules or regulations applicable to it, subject to applicable insolvency laws.
- c. **Pending Litigation.** No litigation, proceedings or investigations are pending or, to the knowledge of it is threatened against it, except claims which if adversely determined will not, in the opinion of its counsel, materially and adversely affect the financial condition or operations of it. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of it, threatened against it seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement by it or which would in any manner challenge or adversely affect its existence or powers to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by it of the terms and provisions of this Agreement.

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

- a. **Organization and Authority.** It: (i) is duly organized under the laws of the state of its incorporation or organization, and is authorized to do business in and is in good standing under the laws of the State of Michigan; (ii) has full corporate power to execute and deliver and perform the terms and obligations of this Agreement; and (iii) has been authorized by all necessary corporate or member action to execute and deliver this Agreement, enforceable in accordance with its terms, subject to applicable insolvency laws.
- b. **No Defaults or Violations of Law.** The execution and delivery of this Agreement by it will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust,

lease or other agreement or instrument to which it is a party or by which it is bound or its respective articles of incorporation, bylaws, articles of organization, operating agreement, or any of the rules or regulations applicable to it of any court or other governmental body, subject to applicable insolvency laws.

- c. Pending Litigation. No litigation, proceedings or investigations are pending or, to its knowledge, threatened against it, except claims that if adversely determined will not, in the opinion of its counsel, materially and adversely affect its financial condition or its operations. In addition, no litigation, proceedings or investigations are pending or, to its knowledge, threatened against it seeking to restrain, enjoin or in any way limit its approval and delivery of this Agreement or which would in any manner challenge or adversely affect its entity existence or powers to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by it of the terms and provisions of this Agreement.
- d. Power and Authority. Developer possesses all necessary power and authority to fully implement and carry out all foreseeable obligations and duties imposed upon it under this Agreement.
- e. Not Liable Party. With respect to the Property, Developer is not a party liable under section 20126 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20126.
- f. Eligible Property. The Project qualifies as Eligible Property under Act 381.

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

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

- a. If any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or
- b. Breach by a party of any material covenant, warranty or obligation set forth in this Agreement.
- c. With respect the AUTHORITY, the enactment by the AUTHORITY of any rule or regulation which prevents or prohibits the AUTHORITY from presently or prospectively performing any covenant, condition or agreement contained herein.

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

- a. In the case of an Event of Default by a party hereto or any successors to such party, such party or successor shall, upon written notice from the aggrieved party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice. If, in such case action is not taken, or not diligently pursued, or if the Event of Default shall not be cured or remedied within a reasonable time, beyond such sixty (60) day period the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceedings to compel specific performance by the party in default of its obligations. In case a party hereto shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the parties hereto shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of each party shall continue as though no such proceedings had been taken.
- b. In the event the Developer does not cure the Event of Default within 60 days, this Agreement will be considered terminated on the 61<sup>st</sup> day after the written notice of an Event of Default was delivered. Upon the effective date of the termination of this Agreement, the AUTHORITY shall have no further obligation under this Agreement to make any payments to the Developer in reimbursement of any costs of Eligible Activities incurred or to be incurred by the Developer. In lieu of termination, the AUTHORITY may seek to enforce and compel performance with the terms of this Agreement in a court of competent jurisdiction by specific performance or mandatory injunction and may pursue any other remedy that may be available to it in law or equity.

25. **No Waiver by Delay.** Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not

operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that each party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a non-defaulting party under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by a non-defaulting party.

26. **Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by a party with respect to the performance, nor the manner of time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of any other party.
27. **Legislative Authorization.** This Agreement is governed by and subject to the restrictions set forth in the Brownfield Act, as amended, and the Michigan General Property Tax Act. In the event that there is legislation enacted in the future which restricts or adversely affects the amount of Tax Increment Revenues capturable, Eligible Properties, or Eligible Activities relating to already approved plans, then any Developer's rights and the AUTHORITY's obligations under this Agreement shall be eliminated or modified accordingly.
28. **Freedom of Information Act.** Developer stipulates that all requests and documentation submitted by them shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.231 et seq. of the Michigan Compiled Laws and no claim of trade secrets or other privilege or exception to the Freedom of Information Act will be claimed by it in relation to this Agreement, requests for reimbursement and supporting documentation.
29. **Plan Modification** The Brownfield Plan may only be modified to the extent allowed under the Brownfield Act by mutual agreement in writing of the AUTHORITY and the City.
30. **Notices.** All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown below their respective signatures to this agreement. Either party may change the address by written notice sent by registered or certified mail to the other party.
31. **Entire Agreement** This agreement supersedes all agreements previously made among the parties relating to the subject matter, if any. There are no other

understandings or agreements between them concerning the subject matter contained herein.

32. **Non-Waiver, Time of the Essence** No delay or failure by either party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein. Time is of the essence.
33. **Headings** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
34. **Governing Law** This agreement shall be construed in accordance with and governed by the laws of the State of Michigan.
35. **Counterparts** This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
36. **Binding Effect** Subject to the terms herein, the provisions of this agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

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

**City of Portage Brownfield Redevelopment Authority**

Date: \_\_\_\_\_, 20\_\_\_\_\_  
By: \_\_\_\_\_  
Its Chairperson

Date: \_\_\_\_\_, 20\_\_\_\_\_  
By: \_\_\_\_\_  
Its Secretary/Treasurer

**Developer**

Date: \_\_\_\_\_, 20\_\_\_\_\_  
By: \_\_\_\_\_  
Its

EXHIBIT A

Legal Description:

A PARCEL OF LAND SITUATION IN THE NE 1/4 AND THE NW 1/4 OF SEC 23, T3S, R11W; COMM AT THE N 1/4 COR OF SEC23, T3S, R11W; TH S89DEG53'29"E 648.32FT ALONG THE N LI OF THE NE 1/4 OF SAID SEC TO THE W LI OF THE E 1/2 OF THE NW 1/4 OF SAID NE 1/4; TH CONTINUING 2 89DEG53'29"E 170 FT ALONG SAID N LI; TH S00DEG28'10"E 50 FT PARALLEL WITH SAID W LI TO THE S ROW LI OF CENTRE AVE AND THE POB; TH CONT S00DEG28'10'E 318 FT PARALLEL WITH SAID W LI; TH N89DEG53'29"W 96.45 FT PARALLEL WITH SAID N LI TO THE E LI OF THE W 660 FT (PERPENDICULAR MEASURE) OF SAID NE 1/4; TH S00DEG17'25"E 259.01 FT ALONG SAID E LI TO A POINT S00DEG17'25"E 627 FT PARALLEL WITH SAID E LI FROM THE N LI; TH N89DEG53'29"W 681.33 FT PARALLEL WITH SAID N LI TO THE CENTER LI OF PORTAGE RD; TH NORTHERLY 165.34 FT ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 3125.36 FT AND A CHORD N03DEG45'51"E 165.00 FT TO A POINT S00DEG17'25"E 462 PARALLEL WITH SAID E LI FROM SAID N LI; TH S89DEG53'29"E 369.64 FT PARALLEL WITH SAID N LI TO A POINT N89DEG53'29"W 300 FT FROM SAID E LI; TH N00DEG17'25"W 132.00 FT PARALLEL WITH SAID E LI; TH N89DEG53'29"W 310 FT PARALLEL WITH SAID N LI TO THE E LI OF W 50 FT OF SAID NE 1/4; TH S8989DEG53'29"E 705.47 FT ALONG SAID S ROW LI TO THE POB. CONTAINING 8.09 ACRES OF LAND. PARCEL SUBJECT TO HIGHWAY EASEMENT FOR PORTAGE RD.



**EXHIBIT B**

[Insert Brownfield Plan]

## **Attachment C**

### **Facility Verification**

## Joe Agostinelli

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**From:** Gurnee, Michael (EGLE) <GurneeM1@michigan.gov>  
**Sent:** Monday, September 30, 2019 5:50 PM  
**To:** Joe Agostinelli  
**Cc:** Heywood, David (EGLE)  
**Subject:** RE: Facility Verification | 8043 Portage Road, Portage | Centreport Commons

Hi, Joe –

According to a BEA report submitted December 2005 for the property at 8043 Portage Road, Portage (PPN at time of BEA submittal: 10-00023-050-0), the property is indeed a facility.

Please let me know if you have any questions or concerns. Thanks,

Mike Gurnee  
Brownfield Redevelopment Coordinator  
Kalamazoo District Office  
Michigan Department of Environment, Great Lakes, and Energy  
269-568-1291 | [GurneeM1@michigan.gov](mailto:GurneeM1@michigan.gov)  
[Follow Us](#) | [Michigan.gov/EGLE](http://Michigan.gov/EGLE)

**From:** Joe Agostinelli <JAgostinelli@southwestmichiganfirst.com>  
**Sent:** Monday, September 30, 2019 2:53 PM  
**To:** Gurnee, Michael (EGLE) <GurneeM1@michigan.gov>  
**Subject:** Facility Verification | 8043 Portage Road, Portage | Centreport Commons

Hi Mike-

We are working with Treystar Holdings on the redevelopment of the SE corner of Portage Road and Centre Ave in Portage and are preparing a new brownfield plan for this project. A previous brownfield plan on this site was approved by the City of Portage in 2006, amended in 2009, and then abolished in 2019 because no vertical development had occurred and tax capture did not begin within the required 5 years of plan adoption. A new brownfield plan is being contemplated to reimburse the developer for brownfield eligible activities through local-only capture.

It appears that a BEA was completed in December 2005. Can you confirm that this parcel, which has since been combined with two other parcels, is a Facility?

Thank you in advance for your assistance!

Regards,

**Joe Agostinelli** | partner

**southwest michigan first**  
**street** 261 East Kalamazoo Avenue | Suite 200 | Kalamazoo, MI 49007  
**mail** P.O. Box 50827 | Kalamazoo, MI 49005-0827  
**p** 269.553.9588 | **c** 269.567.0669  
[jagostinelli@southwestmichiganfirst.com](mailto:jagostinelli@southwestmichiganfirst.com)

## **Attachment D**

### **Soil Sampling Map**

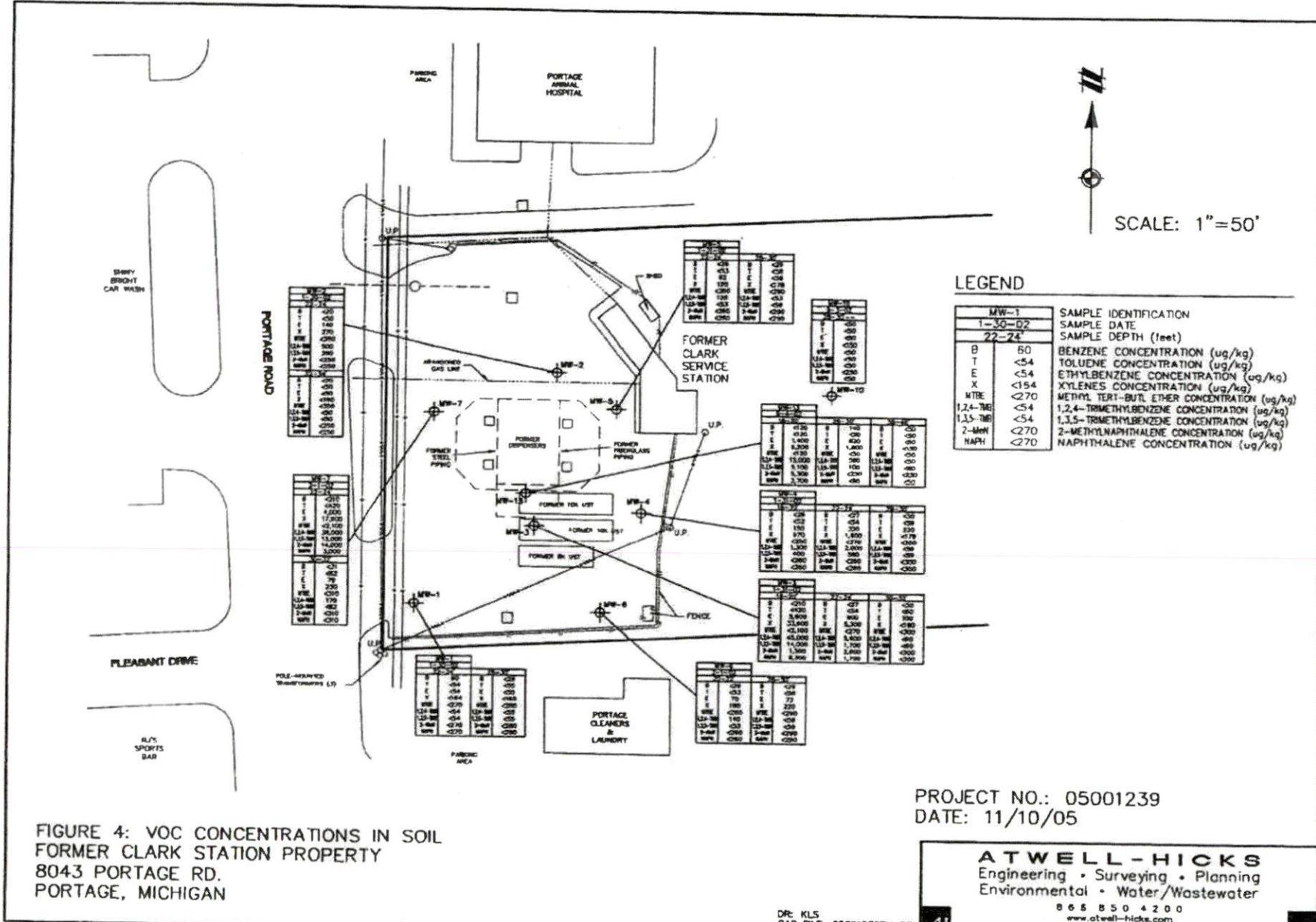


FIGURE 4: VOC CONCENTRATIONS IN SOIL  
FORMER CLARK STATION PROPERTY  
8043 PORTAGE RD.  
PORTAGE, MICHIGAN

PROJECT NO.: 05001239  
DATE: 11/10/05

DR. KLS  
CAD FILE: 05001239EV-0

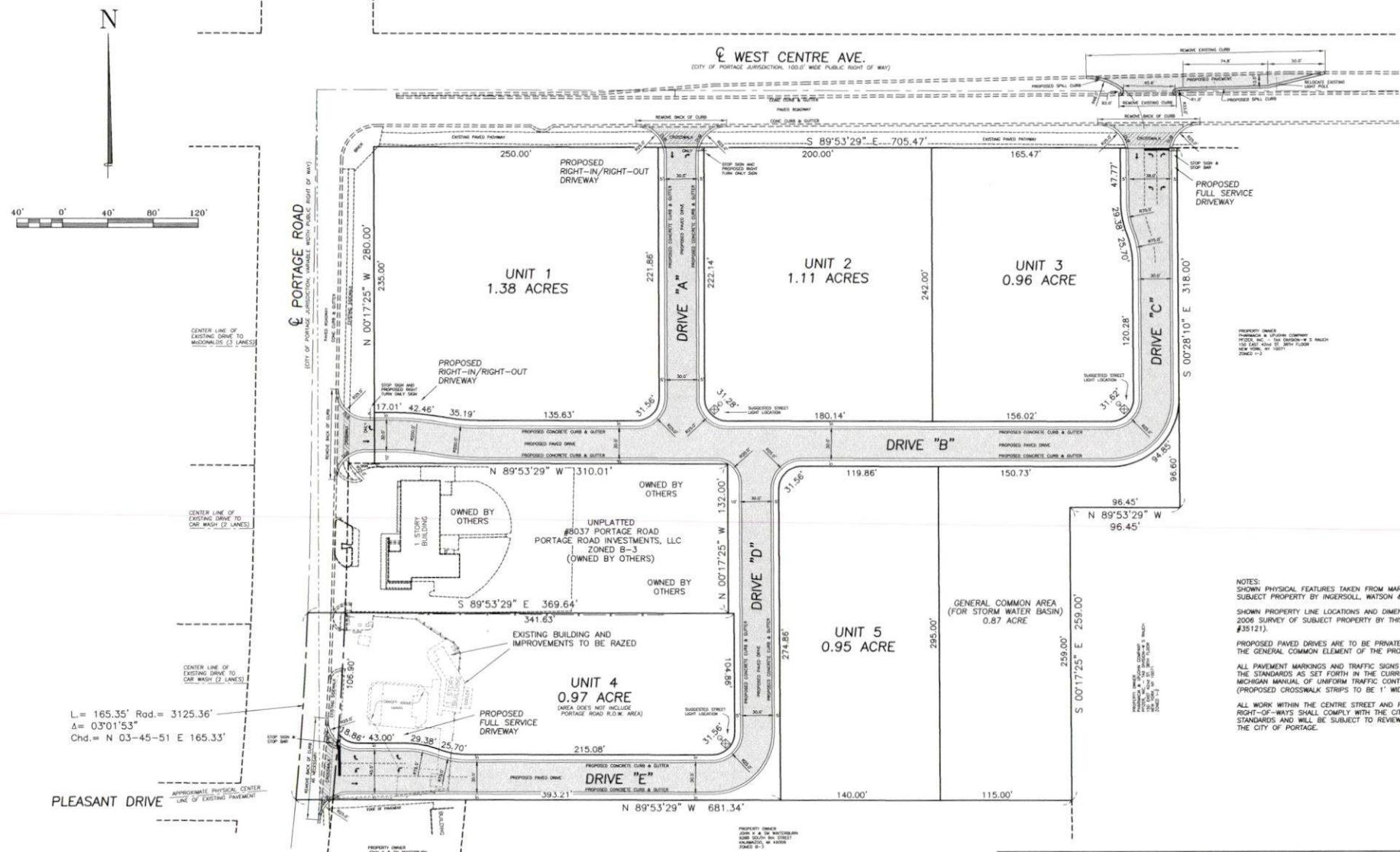
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## **Attachment E**

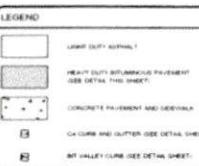
### **Site Plan**



DATE	REVISION	LAYOUT PLAN CENTREPORT COMMONS PART OF NE 1/4 OF SEC 23, T35, R11W, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN	DATE 10/23/2008
11/07/08	REVISED UNIT 5		SHEET: 2 OF 5
11/18/08	REVISED UNIT 5 & BASIN AREA		JOB NO.: 35284
12/11/08	PER CITY COMMENTS		
		<i>Ingersoll, Watson &amp; McMachen, Inc.</i> CONSULTING CIVIL ENGINEERS AND LAND SURVEYORS	
		1133 East Milham Road - Portage, Michigan 49062 - Area 269 344-0155 - Fax 269 344-0555	

**GENERAL NOTES**

- 1. OBSERVATION OF THIS PRACTICE UNDER THESE CONTRACTS TO VERIFY ALL DIMENSIONS IN FIELD.
- 2. IF ANY ERRORS, DISCREPANCIES, OR OMISSIONS BECOME KNOWN DURING THE CONSTRUCTION PHASE, THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR THE CORRECTION OF ANY DEFECTS OR ERRORS, WHETHER OR NOT THE CONTRACTOR WAS AWARE OF THEM, OR WHETHER OR NOT THE CONTRACTOR WAS DIRECTLY AFFECTED BY THE OMISSION OR DEFECT.
- 3. ALL CURVE RADIUS AND DIMENSIONS ARE TO TAKE OF CURVE TO THE PROVIDED CENTER SPACING AND INTERNAL SPACING.
- 4. CURVE SPACING IS TO BE THREE EIGHTS OF THE SPAN NOMINAL SPACING, EXCEPT SPACES AWAY FROM BUILDERS' WALLS WHICH ARE TO BE ONE EIGHT OF THE SPAN.
- 5. SPANNING AREA AND SPANNING SPACES ARE OPEN SPACES - NO.
- 6. ZONING IS AS GENERAL BUSINESS.
- 7. BUILDING HEIGHT - 30 FT.
- 8. PERMIT CODE - RECOMMENDED - 2 PERmits PER EXIST. ROOM - 1 PER EMPLOYEE OF 100 OR MORE.
- 9. SHADING FREE.
- 10. PERMIT CODE - RECOMMENDED - 2 PERmits PER EXIST. ROOM - 1 PER EMPLOYEE OF 100 OR MORE.



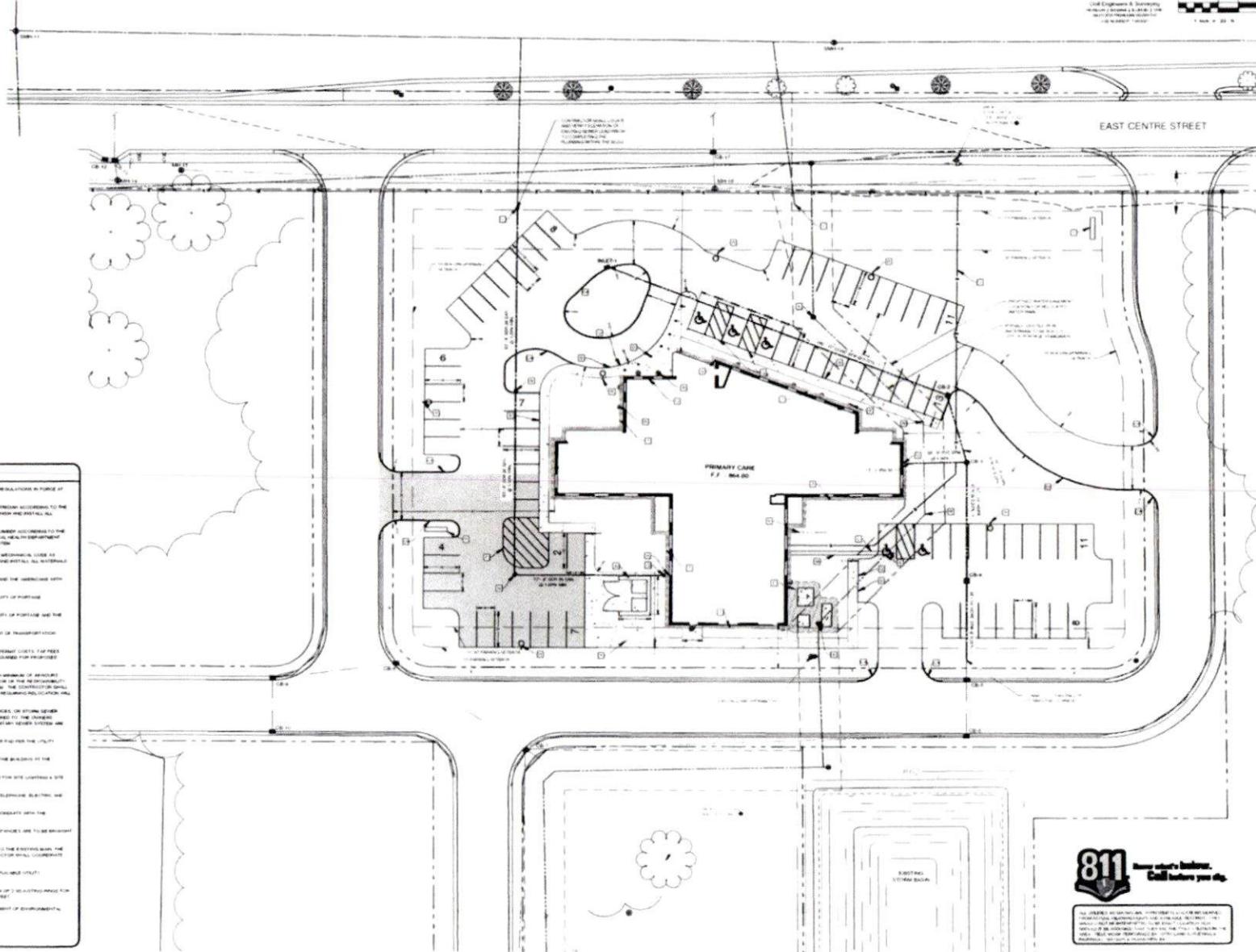


A3 Engineering

Софія Енгельманн, В. Тимченко

**SITE PLAN NOTES**

- ALL 4" X 6" CONCRETE PADS FOR GARDENING TO GROW BULBS/ROSES AT THIS LOCATION.
- INTERNAL WALK WAY IS FREE OF DEBRIS.
- PROPOSED LIGHTED MORNIG/NUIT SIGN TO BE APPROVED SEPARATELY AT LATER DATE.
- BOLLARDS WITH DECORATIVE BOLLARD SIGN/PIERS SEE DETAIL SHEET.
- PROPOSED PIERS CONSIDERATE, GENERATOR AND BATTERIES, REFER TO SITE PLAN FOR ADDITIONAL INFORMATION.
- GARDENING AREA.
- THIS SITE HAS BEEN CLERKED.
- DEMOLITION, CONCRETE, MASONRY CONNECTION WITH PLUMBING PLANS.
- CONNECT TO EXISTING WATER LINE, CONSIDERATE PATH.
- EXISTING ELECTRICAL SERVICE, REFER TO SITE PLAN FOR ADDITIONAL INFORMATION.
- PRIVATE EXISTING WATER LINE, CONSIDERATE CONNECTION WITH MUNICIPALITY.
- 2" DIA. PVC WATER SERVICE.
- 1" PVC WATER SERVICE.
- EXISTING SEWER LINE.
- BUILDING SIGN TO BE APPROVED AT A LATER DATE.
- INTEGRATION OF SITE APPROVAL SIGN FOR CONSTRUCTION.
- AT GARDEN AREA AND GARDEN PADS.
- LIGHT PLATE LOCATION FOR EXISTING ELECTRICAL PLANS FOR ADDITIONAL INFORMATION.
- TOC CONNECTION.
- 2" DIA. MAINTENANCE STORM DRAIN BOUND BEFORE BUILDING USE, LANDSCAPE PLANT FOR ADDITIONAL INFORMATION.
- 1" PVC DRAIN.
- NEIGHBORHOOD DIRECTIONAL SIGN APPROVED AT A LATER DATE.
- 1" PVC DRAIN.
- USE APPROVED SCAFFOLDING FOR USE OF EXISTING STAIRWELL, TO GARDEN AREA.
- CONCRETE PAVEMENT SEE DETAIL SHEET.



CENTRE AVENUE - NEW 30-UNIT CARE BUILDING  
**BRONSON HEALTHCARE GROUP**  
PORTAGE, MICHIGAN 49024

6/1/19 2019  
901502  
STATE UTILITY PLAN  
C3.0  
CONST DOCUMENTS