

CR 44335  
(Attached to  
CR 43133)

## AMENDMENT TO REIMBURSEMENT AGREEMENT

THIS AMENDMENT TO REIMBURSEMENT AGREEMENT, is made as of December 18, 2013 (the "Amendment"), by and among the **WASHTENAW COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY** (the "WCBRA"), A Michigan public body corporate, having the address at 110 North Fourth St., Ann Arbor, MI 48107, **RSW Washtenaw, LLC**, a Michigan limited liability company (RSW Washtenaw), and **AHC Ann Arbor, LLC**, a Delaware limited liability company, whose address is 180 East Broad Street Columbus, Ohio 43215 ("AHC Ann Arbor" or "Assignee")

### RECITALS

**WHEREAS**, RSW Washtenaw and the WCBRA are parties to a certain Reimbursement Agreement, dated as of March 8, 2012 (the "Reimbursement Agreement") Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Reimbursement Agreement, and

**WHEREAS**, RSW has substantially completed the construction of the Development and the WCBRA voted on November 7, 2013, to approve the Eligible Activities as substantially complete and to approve up to \$5.4 Million in Eligible Expenses for reimbursement to RSW Washtenaw under the Reimbursement Agreement, and

**WHEREAS**, RSW Washtenaw desires to assign its interest in the reimbursement under the Reimbursement Agreement to AHC Ann Arbor, and

**WHEREAS**, RSW Washtenaw intends to assign its interest in the Site to AHC Washtenaw, and

**WHEREAS**, RSW Washtenaw has provided AHC Ann Arbor with written notice of the Reimbursement Agreement, Work Plan, the nature and extent of Eligible Activities performed by the Owner pursuant to the Plan, and the extent of any outstanding obligations on the part of the WCBRA for reimbursement to the Owner for pay-as-you-go expenses from taxes to be captured from the Site, and

**WHEREAS**, the parties wish to further amend the Reimbursement Agreement on the terms and conditions set forth in this Amendment

### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1 **INCORPORATION OF RECITALS AND DEFINED TERMS** The above recitals are hereby incorporated into this Amendment as if fully set forth herein

2 **PAYMENT OF TIF PROCEEDS.** The Parties agree that upon full execution of this Amendment, subject to the terms of the Reimbursement Agreement, all payments otherwise due to RSW Washtenaw pursuant to the Reimbursement Agreement shall be assigned to, due to and paid to AHC Ann Arbor at the address specified herein

**3 SALE, CONVEYANCE OR TRANSFER OF THE SITE.** Section 10.2 of the Reimbursement Agreement is modified to read as follows

Until such time as all certified Eligible Expenses are fully reimbursed by Tax Incremental Revenues under the Reimbursement Agreement, the Plan and/or the Work Plan, prior to any sale, conveyance or transfer of ownership of any portion of the eligible property, Owner shall provide (i) written notice of such transfer of ownership to WCBRA, (ii) written notice to any such transferee of the existence of the Plan and the Reimbursement Agreement, as amended, and (iii) the transferee's agreement to be bound by such Plan and Reimbursement Agreement. This provision shall neither apply to nor prohibit the Owner from selling, conveying, encumbering, or transferring property (including any interest therein) or units within structures to third parties for the land uses as contemplated by the Development.

Nothing in the Reimbursement Agreement shall prohibit the parties from filing a memorandum of the Reimbursement Agreement, outlining the general terms and conditions contained therein, with the Washtenaw County Registrar of Deeds. Filing such a memorandum shall constitute notice to any transferee as required by this Agreement.

**4 ASSIGNMENT** Section 10.3 of the Reimbursement Agreement is modified as follows

Except for required assignments associated with the financing for the Development and assignments resulting from Owner's lender exercising remedies under its loan documents, including through foreclosure, deed in lieu of foreclosure or power of sale by any such lender, neither the Reimbursement Agreement, nor any of the rights or obligations contained within it may be assigned or otherwise transferred by 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, unless otherwise provided herein, whether by operation of law or otherwise, without the prior written consent of the WCBRA, which consent 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.

AHC Ann Arbor or its successor(s) may transfer the right to reimbursement for outstanding pay-as-you-go obligations, or any other reimbursement obligation of the WCBRA, to be paid through taxes captured from a portion of the Site captured that is sold, conveyed, or transferred only if AHC Ann Arbor or its successor(s) complies with the following

- (a) AHC Ann Arbor or its successor(s) provides any future prospective transferee with (i) written notice to any such transferee of the existence of the Plan and the Reimbursement Agreement, as amended, and (ii) written notice of the Work Plan, the nature and extent of Eligible Activities performed by the Owner pursuant to the Plan, and the extent of any outstanding obligation on the part of the WCBRA for reimbursement to AHC Ann Arbor or its successor(s) for pay-as-you-go expenses from taxes to be captured from the Site,
- (b) AHC Ann Arbor or its successor(s) and the future transferee enter into an allocation agreement covering how the Tax Revenues collected on the Site shall be distributed between AHC Ann Arbor or its successor(s) and such prospective transferee for any outstanding obligations or future obligations for Eligible Activities on the Site, and

- (c) AHC Ann Arbor or its successor(s) provides the WCBRA with copies of the written notice and the agreed-upon allocation between AHC Ann Arbor or its successor(s) and the future prospective transferee of the right to Tax Revenues

A transfer attempted without complying with the above requirements shall be deemed a waiver to the right to reimbursement for outstanding pay-as-you-go obligations, or any other reimbursement obligation of the WCBRA to be paid through Taxes pursuant to the Reimbursement Agreement

5 **NOTICES** Section 10.4 of the Reimbursement Agreement is modified as follows

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 WCBRA

Nathan Voght  
Office of Community & Economic Development  
Washtenaw County  
Staff Support to Authority pursuant to MCL 125.2657  
Washtenaw County Brownfield Redevelopment Authority  
110 North Fourth Avenue, P O Box 8645  
Ann Arbor, Michigan 48107-8645

With a courtesy copy to  
Corporation Counsel,  
Washtenaw County  
220 N Main, P O Box 8645  
Ann Arbor, MI 48107-8645

If to AHC Ann Arbor or its successor(s)

AHC Ann Arbor Properties, LLC  
c/o Glimcher Limited Partnership  
180 East Broad Street  
Columbus, Ohio 43215  
Attn: General Counsel

With a courtesy copy to

Arthur Siegal, Esq  
Jaffe, Raitt, Heuer & Weiss, P C  
27777 Franklin, Suite 2500  
Southfield MI 48034  
asiegal@jaffelaw.com

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

6 **NEW OWNER.** AHC Washtenaw, LLC, a Delaware limited liability company, whose address is 180 East Broad Street Columbus, Ohio 43215 ("AHC Washtenaw") intends to accept title to the Development site from RSW Washtenaw. AHC Washtenaw acknowledges that by such assignment, it will assume all obligations applicable to the Owner under the Reimbursement Agreement except as provided herein. The WCBRA acknowledges that such an assignment does not impair in anyway WCBRA's obligations to make TIF payments under the Agreement or AHC Ann Arbor's rights to TIF payments under the Reimbursement Agreement. AHC Washtenaw has no claim to reimbursement under the Reimbursement Agreement.

7 **MISCELLANEOUS**

(a) Construction. The terms of this Amendment amend and modify the Reimbursement Agreement as if fully set forth in the Reimbursement Agreement.

(b) Ratification. All other provisions of the Reimbursement Agreement not specifically modified by this Amendment are preserved, confirmed and shall remain in full force and effect.


(c) Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original although not fully executed, but both of which taken together shall constitute a single instrument. The signature page of either counterpart may be detached from the other counterpart without impairing the legal effect of the signatures thereon. Counterpart signature(s) by facsimile or email, or signatures on facsimile or scanned/mailed signature page(s) of this Amendment, are expressly permitted.

(d) Agreement to be bound. AHC Ann Arbor agrees to be bound by the terms of the Reimbursement Agreement to the extent that RSW Washtenaw, AHC Washtenaw or any future transferee of AHC Washtenaw is not so bound.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed as follows.

WASHTENAW COUNTY BROWNFIELD  
REDEVELOPMENT AUTHORITY

By: \_\_\_\_\_

  
James Haless  
Chairperson

Its \_\_\_\_\_

WASHTENAW COUNTY

Verna J. McDaniel 07/01/2014  
Verna J. McDaniel 12:04 PM  
VERNA J. MCDANIEL  
COUNTY ADMINISTRATOR

APPROVED AS TO FORM

Curtis N. Hedger 07/01/2014  
Curtis Hedger 9:58 AM  
CURTIS N. HEDGER  
CORPORATION COUNSEL

APPROVED AS TO CONTENT

Mary Jo Callan 6/27/14  
Mary Jo Callan, Director  
Washtenaw County OCED

ATTESTED TO

Lawrence Kestenbaum 07/01/2014  
Lawrence Kestenbaum 1:02 PM  
Lawrence Kestenbaum  
County Clerk/Register

AHC ANN ARBOR, LLC

By: GLIMCHER PROPERTIES LIMITED  
PARTNERSHIP, its sole member

By: GLIMCHER PROPERTIES CORPORATION,  
its sole General Partner

By: George A. Schmidt  
George A. Schmidt  
Executive Vice President  
General Counsel & Secretary

RSW WASHTENAW, LLC

By: AHC ANN ARBOR, LLC,  
its managing member

By: GLIMCHER PROPERTIES LIMITED  
PARTNERSHIP, its sole member

By: GLIMCHER PROPERTIES CORPORATION,  
its sole General Partner

By: George A. Schmidt  
George A. Schmidt  
Executive Vice President  
General Counsel & Secretary

AHC WASHTENAW, LLC

Executes this Agreement solely to acknowledge  
and accept and be bound by Paragraph 6 hereof

By RSW WASHTENAW, LLC,  
its sole member

By: AHC ANN ARBOR, LLC,  
its managing member

By: GLIMCHER PROPERTIES LIMITED  
PARTNERSHIP, its sole member

By: GLIMCHER PROPERTIES CORPORATION,  
its sole General Partner

By: George A. Schmidt  
George A. Schmidt  
Executive Vice President  
General Counsel & Secretary

## Nathan Voght

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**From** Curtis Hedger  
**Sent** Monday, November 18, 2013 10:10 AM  
**To** Arthur Siegal  
**Cc** Nathan Voght  
**Subject** RE: Revised Amendment Agreement

Arthur: This looks fine to me. Nathan, do you have any additional comments or suggestions? Curt

**From:** Arthur Siegal [<mailto:asiegal@jaffelaw.com>]  
**Sent:** Monday, November 18, 2013 10:09 AM  
**To:** Curtis Hedger, Nathan Voght  
**Cc:** 'Ted Hathaway <[THathaway@glimcher.com](mailto:THathaway@glimcher.com)> ([THathaway@glimcher.com](mailto:THathaway@glimcher.com))', 'Max Reisweg', 'Thomas A. Stegeman ([tom@arch-invest.com](mailto:tom@arch-invest.com))'  
**Subject:** Revised Amendment Agreement

Attached pursuant to your comments and requests is a revised version of the agreement for your review and comment. I look forward to presenting before the BRA on December 9<sup>th</sup>. If there are any final questions or comments, please let me know. I am sending this to my client and their financial partners for their review as well and will let you know if they have any comments or questions.


**Arthur H. Siegal**  
Jaffe Raitt Heuer & Weiss, P.C.  
27777 Franklin Road – Suite 2500  
Southfield, MI 48034  
P 248 351 3000  
D 248 727 1452  
F 248 351 3082  
[asiegal@jaffelaw.com](mailto:asiegal@jaffelaw.com)  
[www.jaffelaw.com](http://www.jaffelaw.com)  
BLOG [www.michigangreenlaw.com](http://www.michigangreenlaw.com)

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