GRAND TRAVERSE COUNTY
BROWNFIELD REDEVELOPMENT AUTHORITY

**DEVELOPMENT AGREEMENT**

This Development Agreement ("**Agreement**") is made on 11/25/08, 2008, between 701 FRONT, LLC (the "**Developer**"), and the GRAND TRAVERSE COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY (the "**GTCBRA**"), a Michigan public body corporate.

PREMISES

A. The Developer has indicated its desire and intent to redevelop the property described on the attached **Exhibit A** (the "**Property**") for the purpose of constructing a new two-story commercial building that is expected to be used for medical offices (the "**Development**").

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, and the Property is part of the Plan as amended (the "**Plan**", attached as **Exhibit B**).

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(m) of Act 381, Public Acts of 1996, MCL 125.2652(m) within eligible property on the site and consistent with the Act 381 Work Plan attached **as Exhibit C** as the same may be amended or supplemented.

D. Pursuant to the 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 Increment revenues as provided by law and as described in this Agreement. The GTCBRA may also use Site Remediation Funds as provided in this agreement and as anticipated by the Plan.

**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) "County" means the County of Grand Traverse, Michigan.

(b) "Eligible Activities" means those activities as defined by section 2(m) of Act 381, MCL 125.2652(m), identified in the Plan, or approved by the Michigan Economic Growth Authority (MEGA) as part of the approved Act 381 Work Plan, or which are required to comply with MDEQ's requirements for Developer to satisfy due

care obligations under section 7a of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.20107a.

(c) "Eligible Property" means property defined as eligible under section 2(n) of Act 381, MCL 125.2652(m).

(d) "Environmental Consultant" means the environmental consulting firm retained or hired by the Developer to fulfill its obligations under this Agreement, including the eligible activities covered by the proceeds of the Pay-As-You-Go obligations set forth in the Plan.

(e) "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 30 days after written notice thereof has been given by the other party. It also means any filing of bankruptcy or bankruptcy reorganization by the Developer.

(f) "Force Majeure" means unforeseeable events beyond a party's reasonable control and without such party's failure or negligence, including, but not limited to, acts of God, acts of public enemy, acts of federal, state, or local government,fire, flood, severe inclement weather, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and substantial delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.

(g) "Indemnified Persons" means the County and the GTCBRA and the members, officers, agents and employees of the County or GTCBRA.

(h) "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, this Agreement, or other related agreements with Developer, if any, and any other costs, charges, expenses, and professional and attorney fees in connection with the foregoing.

(i) "Maximum Cost of Eligible Activities" means the GTCBRA's maximum obligation to pay for the eligible activities.

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

## ARTICLE 2.

## COVENANTS OF THE OWNER

Section 2.1 Construction of Development. The Developer will proceed with the Development and the obligations under this Agreement in its discretion. If the Developer decides to do so, it will 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 Developer's own funds (**"Pay-As-You-Go"**) and receive reimbursement from the GTCBRA (also referred to as **"Debt Obligation"**) in accordance with this Agreement and the Plan. All costs identified in the Plan that are not associated with the multiphase extraction system referred to in section 2.3 of the Plan, including interest on those costs at a rate of 2.5% per annum, (**"non-MPE Costs"**) will be reimbursed to the extent of available Tax Increments for payment of eligible activities in accordance with the terms of this Agreement and as detailed in the Plan. Costs associated with the multiphase extraction system (**"MPE Costs"**) will be reimbursed as follows: (1) the County's Site Remediation Fund will be used to reimburse $10,000 per year of MPE Costs from the time such costs are incurred until a total of $80,000 is expended or until such time as all non-MPE costs are reimbursed and Tax Increments are available to reimburse MPE Costs. It is understood that should TIF monies become available prior to the full expenditure of $80,000 out of the LSRF no further payments on principal will be made out of the LSRF. The $10,000 per year is only to be used until TIF is available to begin reimbursement on the non-MPE costs; (2) the Site Remediation Fund will be used to reimburse interest on MPE Costs until all MPE Costs are reimbursed; (3) any Tax Increments available after reimbursement of non-MPE Costs will be used to reimburse MPE Costs. Interest on MPE costs will accrue at a rate of 6% per annum in years 1–4; 5% in years 5–8; and 4% in all years thereafter. The revenues shall be utilized by the parties and payment made in the following order of priority: (a) First, the revenues will be applied to administrative and transaction costs; (b) Second, to reimburse the Pay-As-You-Go expenses of the Developer as provided in the Plan and this Agreement.

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 Developer agrees and understands that it will have no claim or further recourse of any kind or nature against the GTCBRA except from available Tax Increments, and if for any reason the revenues are insufficient or there are none, then Developer assumes full responsibility for any such loss or cost.

It is understood and agreed that the Debt Obligation of GTCBRA is subject to the following conditions:

(a) Approval by MEGA and GTCBRA of (1) the Act 381 Work Plan, as amended or supplemented, or (2) of the eligible activity as qualifying for school or local tax capture; however, to the extent an eligible activity falls outside subparagraph 2.2(a)(1) or (a)(2), then the eligible activity must be identified in the Plan, as amended, and approved by the GTCBRA for local tax recapture to the extent authorized by Act 381.

(b) The Developer shall provide proof of ownership of the Property if applicable, and shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement and any Financing Agreement or other agreement with GTCBRA, and all preconditions to the performance of the Developer shall have been satisfied.

(c) Developer shall provide written proof of waivers of liens by the Environmental Consultant, any contractor, subcontractor providing services as described in this Agreement.

(d) Developer 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 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 Advanced Payment for Administrative Expenses. The Developer agrees to make an advance payment of $7,500 to the GTCBRA in order to cover administrative costs and fees, as defined in section 7(h) of the Act, that are part of the approval of the Act 381 Work Plan and any eligible activity on an eligible property. The payment shall be a pre-approved reimbursable administrative cost subject to tax increment financing under sections 13(3) and 13(16) of Act 381, the Plan and the satisfaction and performance of the terms of this Agreement.

The amount of the payment will be determined based on the policies and procedures of the GTCBRA, taking into consideration the size, scope, and complexity of the project. The advanced payment shall be placed in an escrow account, and shall only be drawn on to reimburse the GTCBRA for administrative expenses that are part of eligible activities on eligible property, or are part of the Act 381 Work Plan approval process or are general GTCBRA administrative

expenses, as provided in section 13(16) of Act 381, 1996 as amended, MCL 125.2663. If the administrative costs of the GTCBRA are less than the advance payment, then the remainder shall be returned to the Developer. If the administrative costs of the GTCBRA exceed the advance payment, the Developer shall remain responsible for the reimbursement of those costs under the terms of this Agreement.

If the GTCBRA's administrative costs exceed the advance payment, the Developer may be required to make additional payments to the escrow account. The amount of any additional payments, if necessary, shall be calculated in the same manner as the original advanced payment outlined above. The GTCBRA shall give the Developer reasonable notice of the necessity for any additional payments.

If for any reason the Developer is unable to obtain title to the site and is therefore unable to perform this contract, the GTCBRA withholds the right to keep that portion of the advance payment necessary to cover its administrative costs and fees incurred up to the time of default.

Section 2.4 Indemnification of Indemnified Persons.

(a) The Developer 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 from and after the date of this Agreement. If any suit, action or proceeding is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the Developer and the Developer shall defend such Indemnified Person with counsel selected by the Developer, which counsel shall be reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Developer and the Developer shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Developer 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 Developer shall not be liable for payment or settlement of any such claim or proceeding made without its consent.

(b) The Developer 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 Developer 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 Developer shall be deemed to be a third party beneficiary contract in favor of the GTCBRA or any Indemnified Persons.

(c) The Developer shall assure that to the extent an Environmental Consultant provides services toward completion of any eligible activities, at a minimum, the consultant shall provide to the GTCBRA and the County the indemnity provisions set forth in Sec. 6.13 of this Agreement.

(d) The indemnity provisions shall survive the term of this Agreement.

Section 2.5 Property Access. The Developer shall grant to GTCBRA or its designated agents, access to the Property to exercise their respective rights related to the purposes and pursuant to the terms of this Agreement. The GTCBRA shall give the Developer 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.

## ARTICLE 3.

## CONDITIONS PRECEDENT TO OWNER'S OBLIGATION

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

(a) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the County or the GTCBRA is a party, or threatened against the Developer, the County or the GTCBRA 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 to repay its obligations under this Agreement and the Financing Agreement.

(2) A material adverse effect on the Developer's or the GTCBRA's ability to comply with the obligations and terms of this Agreement or the Plan.

(b) There shall have been no Event of Default by the GTCBRA and no action or inaction by the GTCBRA 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 Developer of the Developer's Pay-As-You-Go fund expenses incurred for eligible activities 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 Developer's satisfactory completion of the eligible activities described in the Plan, pursuant to this Agreement, and where applicable approved by MEGA and where applicable approved by the GTCBRA, the GTCBRA shall reimburse the Developer subject to and in accordance with the terms set forth in this Agreement ~~and the Plan~~. The Developer shall have sole responsibility to pay the Environmental Consultant or other contractors or subcontractors for completion of such eligible activities and provide written waiver of any liens. If the Developer 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 Developer shall bear such costs without any obligation on the part of GTCBRA. If the costs of eligible activities, set forth in the Plan, as amended or supplemented, are less than such maximum cost, then the Developer 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 Developer and its Environmental Consultant, contractors, or subcontractors for purposes of assuring that the activities, invoices and accounting by the Developer are fair, reasonable, and constitute eligible activities within the meaning and scope of this Agreement, the Plan, and Act 381. The Developer shall provide to the Director and its Contract Manager access to data, reports, sampling results, invoices, and related documents reasonably necessary to fulfill the exercise of such oversight. GTCBRA has no right to control or to exercise any control over the actual services or performance by the Developer of the eligible activities, except as to assurance that the Developer has met the conditions and requirements of this Agreement.

## ARTICLE 5.

## CONDITIONS PRECEDENT TO GTCBRA'S OBLIGATIONS

Section 5.1 Conditions Precedent to GTCBRA's obligation to reimburse Pay-As-You-Go funds for the Development

The obligations of the GTCBRA to reimburse Developer for Pay-As-You-Go or MPE Costs is subject to the following conditions precedent which must be satisfied by the Developer, 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 Developer by the mere fact that an eligible activity or a dollar amount for such activity is identified in the 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 Developer has been approved and is authorized by Act 381 and has been completed and approved in accordance with the following procedure and this Agreement, Developer shall be entitled to reimbursement of its Pay-As-You-Go or MPE Costs.

(a) Before commencing work on each stage of eligible activities and pursuant to the policies adopted by the GTCBRA, the Developer 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 Developer 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 and approve or reject the reasonableness of the invoice and activity as eligible, and, if approved, arrange for payment. In the event of an objection, the GTCBRA Director will notify the Developer within the 14 day time period, and the Developer shall meet with the GTCBRA Director and resolve or cure the objection. If the objection is not resolved or cured within 28 days, there is no obligation to pay the portion of the invoice objected to until the parties have mutually agreed in writing through an alternative dispute mediation or there is a final judgment or order of a court of competent jurisdiction directing payment.

(c) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the County or the GTCBRA is a party, or threatened against the Developer, the County or the GTCBRA 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 Developer to conduct Eligible Activities.

(3) Any other material adverse effect on the Developer's or the GTCBRA's ability to comply with the obligations and terms of this Agreement, or the Plan.

(d) There shall have been no Event of Default by the Developer and no action or inaction by the Developer eventually which with the passage of time would likely become an Event of Default.

(e) The Developer shows it is owner of the Property or the Property is under land contract, and the Developer is not in default on any contract or other agreement relating to its ownership, development, or use of the Property.

(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 Developer has consent of any affected utility for relocation, burial or the activity to accomplish the eligible activities.

(h) The Developer 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 Property 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 Developer. The Developer 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 Developer is unable to obtain title to the site, the GTCBRA is not obligated to perform any of the terms of this Agreement.

## ARTICLE 6.

### OWNER'S ENVIRONMENTAL CONSULTANT RESPONSIBILITIES

Section 6.1 Eligible Activities and Due Care Obligation. The Developer covenants that it will contract with a competent and qualified Environmental Consultant or other competent and

qualified contractors or subcontractors ("**Contractors**") to conduct and complete the eligible activities set forth in this Agreement and the Plan, as amended or supplemented, and to meet any due care obligation under Sec. 20107a, NREPA, MCL 324.20107a and 324.20129a, in accordance with any MDEQ requirements.

Section 6.2 Permits. The Consultant or Contractors shall examine all permits and licenses pertaining to the Property 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 Property or Development have been obtained or issued and are in full force and effect, and whether the Property or Development and the activities there are in compliance with the terms and conditions of such permits and licenses.

Section 6.3 ASTM and Industry Standards. The Developer, 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 Developer. It is expressly understood that GTCBRA is not responsible for payment or reimbursement of any services for or expenses incurred by the Environmental Consultant and/or Developer 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, Contractors, 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 will provide communication services and attend meetings with the MDEQ. Environmental Consultant or Contractors shall:

(a) submit reports and test results first to the Developer, and shall submit documents to GTCBRA Director within 5 days thereafter.

(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." 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 Consultant within the scope of this Agreement, or in connection with the Development.

Section 6.6 Other Agreements. The Developer covenants that it will obtain a warranty from the Environmental Consultant that it is not a party to any other existing or previous agreement

which would adversely affect the Environmental Consultant's or Contractor's ability to perform services with respect to the eligible activities.

Section 6.7 Contractors. If the Developer hires an Environmental Consultant or Contractor, or retains any person, firm or corporation to perform services related to eligible activities under this Agreement, the Developer 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. Neither the Developer, Environmental Consultant, nor Contractors shall discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, gender, 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 and any Contractors shall 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 and any Contractor shall each have and maintain complete control over all its employees, agents and operators. Facts or knowledge of which the Environmental 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 or any Contractor 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 or any Contractor shall exercise its independent judgment for the services provided in this Agreement.

Section 6.10 Disposal of Hazardous Waste. The Developer shall, under a manifest signed by the Developer or its agent, as the generator, have any samples classified as hazardous waste under state or federal law transported for final disposal to a location selected by the Developer or its Environmental Consultant or Contractor. GTCBRA has no oversight or other control or authority over the Developer's obligation to properly dispose of hazardous waste under the terms of this paragraph.

Section 6.11 Compliance With Laws. While on the Property or Development, the Developer, the Environmental Consultant, and any Contractor 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.

Section 6.12 Environmental Consultant or Contractor Insurance. The Developer shall assure that the Environmental Consultant, any Contractors, 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 and Occupational Disease Insurance in the amounts required under the laws of the State of Michigan.

(b) Comprehensive General Liability and Automobile Insurance for bodily injury, death or loss or damage to property or third persons in the minimum amount of at least $1 million per occurrence, which policy shall name the GTCBRA and the County as additional insured to the extent of the indemnity provided in paragraph 6.13.

(c) Pollution or Environmental Impairment Insurance in the amount of at least $1 million per occurrence.

(d) As to the Environmental Consultant only, Professional Liability Insurance in the minimum amount of $1 million per occurrence.

(e) The Developer shall furnish to GTCBRA a certified copy of such policies within 30 days of the date of the commencement of the eligible activities and the period of coverage shall commence with the date of performance of the first eligible activity. The limits of insurance shall not be construed as a limitation on the Consultant's, or Contractor'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 Contractor, the Developer may request in writing a reduction of the amount of coverage in subparagraph (b) to $500,000; upon the same showing, the Developer may also request as to a specific Contractor 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 Limitation of Liability.

(a) Defend, Indemnify and Hold Harmless. Notwithstanding any other provision of this Agreement, the Developer shall obtain Environmental 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 for judgment arising out of:

(1) Those which GTCBRA may sustain as a result of the failure of the Environmental Consultant to comply with the provisions of this Agreement; and/or

(2) Those which result from or arise out of any acts or omissions, negligent or otherwise, of the Environmental Consultant's employees, agents,

contractors, or subcontractors in the performance of the work specified in this Agreement.

(b) Contribution. The Developer shall obtain written acknowledgment that the Environmental Consultant , or any Contractor 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 the performance of activities under this Agreement are actionable negligence or gross negligence, or constitute intentional misconduct; the Environmental Consultant, or any Contractor 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 section 20128 of the NREPA, MCL 24.20128, for releases aggravated or proximately caused by the Consultant. This paragraph shall not affect any other liabilities or remedies of the GTCBRA.

(c) Survivorship of Covenants. Any Environmental Consultant's or Contractor's indemnity, hold harmless and release shall survive the termination of this Agreement and the Environmental Consultant's agreement with the Developer.

(d) Breach. A breach of the foregoing provisions of section 6.13 at the option of GTCBRA constitutes, or will result in, a breach of this 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 work begins or 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 Developer 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 enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or thereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

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

(a) The Developer (i) is duly organized and validly existing as a Michigan limited liability company in good standing under the laws of the State of Michigan, with power under the laws of such state to carry on its business as now being conducted; (ii) is duly qualified to do business in the State of Michigan, and (iii) has the power and authority to consummate the transactions contemplated under this agreement by the Developer.

(b) There is no violation or default by the Developer of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject, and compliance with the terms, conditions and provisions of this Agreement does not conflict with and will not result in or constitute a breach of or default under any of the foregoing, wherein default, breach or violation would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement.

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

(d) Except as a part of the performance and completion of eligible activities under the terms of this Agreement, the Developer or its Contractors shall not use the Property 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 Property, and shall obtain all necessary permits in connection therewith.

(e) Developer 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.

(f) Developer shall comply with all due care obligations under section 7a of Part 201 of the NREPA.

(g) Developer 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 Developer shall obtain and provide proof of the following current in-force insurance:

(a) If applicable, Worker's Compensation and Occupational Disease Insurance in the amounts required under the laws of the State of Michigan; and

(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.

The Developer shall furnish to GTCBRA a certified copy 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 Developer'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 Developer's liability for damages, costs or expenses under this Agreement.

Section 8.2 Deduction from Developer's Right to Reimbursement. The Developer grants the GTCBRA the right to deduct or set off from any reimbursement obligation to Developer as additional financial assurance for GTCBRA's transaction costs or successful enforcement of the terms of this agreement or other claims in the event of a breach or default by the of this Agreement by the Developer.

## 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 28 days to cure the default. If the default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement, 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.

## ARTICLE 10.

### TIME OF PERFORMANCE

Section 10.1 Time of Performance. Each of the parties shall perform the obligations to be performed by it set forth in this Agreement by the times specified, including those in any applicable Development Schedule or Environmental Cleanup Schedule except to the extent that Force Majeure causes a delay in performance, and in such event, the time for performance shall be extended by the period of Force Majeure.

## ARTICLE 11.

## MISCELLANEOUS

Section 11.1 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 under the Debt Obligation.

Section 11.2 Sale or Transfer of Eligible Property or Property within the Plan. Up until the Developer has satisfactorily completed its eligible activities and performed its obligations under the terms of this Agreement, the Developer 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 as described in this Agreement without amendment to the Plan. This does not prohibit the Developer 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 entities where the same principal parties control the Developer's obligations and the fulfillment of those obligations is not materially affected;. (b) assignments for mortgage financing required for the Development; (c) the sale or assignments of memberships in the Developer's LLC provided that the fulfillment of the obligations under this Agreement are not materially affected; (d) the establishment of another entity which shall operate the Property for infrastructure purposes or leasing or rental.

The Developer 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 Increments captured from the portion of the eligible property that is sold, conveyed, or transferred unless the Developer complies with the following:

(a) The Developer provides the prospective purchaser with written notice of the Act 381 Work Plan, the nature and extent of eligible activities performed by the Developer 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 Developer and the prospective purchaser enter into a separate allocation agreement covering how the Tax Increments collected on the property shall be distributed between the Developer and the prospective purchaser for any outstanding obligations or future obligations for eligible activities on the property.

(c) The Developer provides the GTCBRA with copies of the written notice and the allocation agreement between the Developer and the purchaser of the property prior to sale of the property.

Section 11.3 Assignment. Neither this Agreement nor any of the rights or obligations contained within it may be assigned or otherwise transferred by the Developer, nor shall the benefits of this Agreement inure to the benefit of any trustee in bankruptcy, receiver or creditor of the Developer, whether by operation of law, or otherwise, without the prior written consent of the GTCBRA 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 shall constitute a breach of this Agreement.

Section 11.4 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:

Jean Derenzy, Office of the Administrator, 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 Developer:
Ken Petterson
701 Front LLC
603 Bay Street, Traverse, City, Michigan

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

Section 11.5 Amendment and Waiver. No amendment or modification to or of this Agreement shall be binding upon any party until such amendment or modification is reduced to writing and executed by all parties. 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 to this agreement.

Section 11.6 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 11.7 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 11.8 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 11.9 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 11.10 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 Developer's lenders with respect to the Development to secure the Developer's financing from such lenders.

Section 11.11 Binding Effect. This Agreement shall be binding upon the parties hereto, and in the event of assignment under Section 11.2 upon their respective successors, transferees, and assigns. Developer shall provide written notice prior to transfer or assignment of Developer's interest to any subsequent purchaser and assign of the existence of this Agreement.

Section 11.12 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.

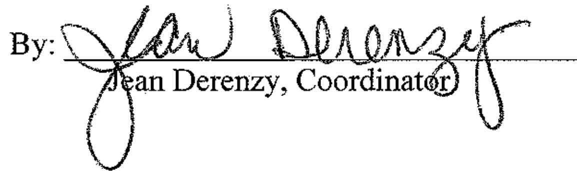
Section 11.13 Survival of Covenants. Except for the financial obligations, the covenants and provisions shall survive the term of this Agreement.

Section 11.14 No Third Party Beneficiaries. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in the Environmental Consultant, Contractors, 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.

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

**GRAND TRAVERSE COUNTY**
**BROWNFIELD REDEVELOPMENT AUTHORITY**

**Approved as to Substance:**

By: 
Jean Derenzy, Coordinator

Peter J. Zirnhelt, Chairman

**Approved as to Form:**

By ______________________________
Scott Howard, Attorney

**701 FRONT, LLC,**
a Michigan Limited Liability Company,

By:
Michael A. Nizzi

Its: Member/Manager

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

**GRAND TRAVERSE COUNTY**
**BROWNFIELD REDEVELOPMENT AUTHORITY**

**Approved as to Substance:**

By: ______________________________
Jean Derenzy, Coordinator

______________________________
Peter J. Zirnhelt, Chairman

**Approved as to Form:**

By ______________________________
Scott Howard, Attorney

**701 FRONT LLC**

By: ______________________________
Dr. Michael Nizzi,

Its: ______________________________

# EXHIBIT A TO DEVELOPMENT AGREEMENT: "THE PROPERTY"

Property Address: 701 W Front Street
Traverse City, Michigan

Parcel Number: 28-51-650-001-00

Legal Description: Lot 1, Block 1, Hannah Lay and Company's 9th Addition, except the west 29 feet thereof; also except that part of Lot 1 described as commencing at the northeast corner of Lot 1, thence west 10 feet, thence southeasterly to a point 10 feet south of the northeast corner, thence 10 feet to the point of beginning.

Property Address: 705 W Front Street
Traverse City, Michigan

Parcel Number: 28-51-650-002-00

Legal Description: Lots 2 and 3 and the west 29 feet of Lot 1, Block 1, Hannah Lay and Company's 9th Addition.

Property Address: 114 S Division Street
Traverse City, Michigan

Parcel Number: 28-51-650-026-00

Legal Description: Lot 22, Block 1, Hannah Lay and Company's 9th Addition.

Adjacent Properties Legal Description: Lots 15 – 22; E/2 of Lot 23; Lot 24 and the @/2 of Lot 23 except right of way rights of adjoining property owners; Lots 25-27; Lot 28 except that part of Lot 28 described as commencing at the Southwest corner of Lot 28, thence # 10 feet, thence Northwesterly to a point on the West line of Lot 28 10 feet north of the Southwest corner, thence South 10 feet to the point of beginning and also except the West 3 feet of said lot 28; all Lots located in Block 15 Hannah Lay and Co's 10th Addition.

Parcel Numbers: 28-51-654-074-00, 28-51-654-073; 28-51-654-072.

# EXHIBIT B TO DEVELOPMENT AGREEMENT: "THE PLAN"

**EXHIBIT C TO DEVELOPMENT AGREEMENT:**
**"THE ACT 381 WORK PLAN"**