

**BROWNSTOWN TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY  
FAÇADE IMPROVEMENT PROGRAM**

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## Application Checklist

Please provide information for the following items. Refer to Application Packet for description of requested materials.

1. Applicant Information \_\_\_\_\_
2. Project Information \_\_\_\_\_
3. Project Description \_\_\_\_\_
4. Mortgage Information \_\_\_\_\_
5. Mortgage/Title Search \_\_\_\_\_
6. Building Information \_\_\_\_\_
7. Signed Application Form \_\_\_\_\_
8. Signed Mortgage Note \_\_\_\_\_
9. Notarized letter of permission from owner \_\_\_\_\_
10. Other Required Documentation
  - A. Property deed with legal description \_\_\_\_\_
  - B. Proof that property taxes and township accounts are paid and current \_\_\_\_\_
  - C. Proof of property and liability insurance \_\_\_\_\_
  - D. Copies of any leases associated with property \_\_\_\_\_
  - E. Two contractor quotes for total façade project \_\_\_\_\_
  - F. Photographs of proposed project site \_\_\_\_\_
11. Attachment One \_\_\_\_\_
12. Attachment Two \_\_\_\_\_
13. Attachment Three \_\_\_\_\_
14. Attachment Four \_\_\_\_\_

15. Attachment Five \_\_\_\_\_

16. Attachment Six \_\_\_\_\_

17. Façade Improvement Agreement \_\_\_\_\_

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## Purpose

As a tool to promote to economic stimulation within the downtown development district, the Brownstown Township Downtown Development Authority has committed Tax Increment Financing (TIF) funds to aid private businesses owners in their financial commitment to the District. The DDA has created the Façade Improvement Program to rehabilitate façades and other structural improvements of DDA district commercial buildings. The program intends to create consistency in design, materials and architectural character thereby enhancing the physical appearance of the DDA district.

The program takes advantage of a hybrid between matching DDA grants and low interest DDA loans to assist local businesses.

## Eligibility

A property must be located within the legal boundaries of the Downtown Development Authority Development district to be eligible. [See Attachment One]. The following eligibility criteria also apply:

1. Only projects consistent with the Master Plan and zoning will be considered for program funding.
2. The building must meet a basic condition test, which indicates that the property appears to be structurally sound, the roof intact and meets basic public safety codes.
3. The Brownstown Township Board and Planning Commission will offer its recommendations of the proposed improvements. The DDA Project Review Committee will have the final approval of proposed improvements, before project is presented to the DDA Board.
4. Most exterior structural improvements are eligible for assistance. Please see Attachment Six for a detailed list.
5. Building owners or tenants are eligible. If a tenant applies for assistance, they must provide written proof that the building owner has authorized proposed improvements and evidence of an executed lease for a term equal to the Façade Improvement Agreement.
6. The program relies on a first come, first serve basis. Once program funds are depleted, applications will be accepted the following year.

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## Ineligible Uses of Program Funds

Program funds cannot be utilized for any of the following uses:

1. Refinancing existing debt
2. Property acquisition
3. Interior improvements or furnishings
4. Site plan, building or sign permit fees
5. Property appraisal costs, legal fees, or loan origination fees
6. Labor costs paid to the owner/applicant or relatives of owner/applicant

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## Program Requirements

Applicants will be required to complete an application packet provided by the Downtown Development Authority. Applications may be obtained at the Brownstown Township Community Services Department offices. Professional architectural services may be requested if the proposed improvement is deemed to have a certain level of significance. The applicant and architect will also be required to execute a “Façade Improvement Agreement” to access program funds. In addition to all required forms, architectural renderings and/or project descriptions must be presented in sufficient detail to demonstrate the exact scope of work. The following items will also be required as a part of the review/approval process:

1. At least two licensed contractor quotes must be submitted, however, the applicant will not necessarily be required to accept the low bidder.
2. A valid mortgage on the subject property and/or personal guarantee will be required as collateral. If the applicant is a tenant, the building owner must agree to and approve a lien to be placed on the building.
3. Funding for projects undertaken prior to Project Review Committee written approval will not be considered.
4. A mortgage title search shall be performed at the expense of the applicant.
5. A background check shall be performed at the expense of the applicant.
6. All required municipal or governmental permits must be obtained prior to construction start-up.
7. Applicant must appear at a DDA Board Work Session do disclose project details and answer any member of the Board’s questions.
8. Funds will be provided on a draw basis upon completion of work. Executed contracts and/or contractor invoices must be presented prior to disbursement of program funds.
9. Façade Improvement Program matching grant funding will be at least 50/50. The DDA Project Review Committee holds the right to increase its contribution, at its discretion. Matching grant funds will not exceed \$20,000. This grant is in the form of a reimbursement, where upon project completion, the applicant files a Request for Grant Reimbursement application, available at the Community Services Department offices.
10. Specifications of the low interest loan, will ultimately be determined by the Project Review Committee. Generally, loan interest rates will be at least two (2) points below the prime rate, and the payback period will not exceed ten (10) years. The

opportunity exists for the DDA Board to forgive TBD amount of debt, after TBD amount of years. Eligibility and details of this opportunity are project specific and lies at the discretion of the Project Review Committee.

11. Construction must commence within 60 days of approval for funding and the Project must be completed within 120 days thereafter. Requests for time extensions must be submitted in writing and will only be approved upon the expressed written consent of the DDA board of directors.
12. Applicant must agree to abide by the items outlined in Attachment Two: Cooperation Agreement.
13. Applicant must provide proof that all property taxes are current and the subject property is properly insured.
14. After completion of the Project, and for a period of five (5) years thereafter, the Developer, its successors and assigns, agree not to modify or alter the façade of the building without the express written permission of the DDA.

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## Financing Guidelines

Applicants must demonstrate proof of equity equating to requested funds.

## Application & Selection Process

DDA staff will work closely with property owners and tenants to market the program and determine initial eligibility under program guidelines. Once the initial scope of work has been determined, staff will present the project to the DDA Project Review Committee. This committee will meet as needed (not more than once per month) to provide input, make suggestions to scope of work and approve or deny individual projects. Upon preliminary approval by committee, the project will be submitted to DDA Board for final approval. Upon positive recommendation from the Township Board and Planning Commission along with the approval of the DDA Board at a regularly scheduled monthly meeting, a Façade Improvement Agreement will be executed and the project can proceed.

## Selection Criteria

1. Priority will also be given to projects that demonstrate permanence in nature of the improvement itself and materials used.
2. Buildings with first floor retail uses or projects, which will result in new commercial occupancy, will receive funding priority.
3. Projects, which will result in the creation or rehabilitation of upper story residential units or loft apartments, will also be considered.
4. Additional criteria that address the economic impacts of the proposed improvement and the overall program goals are included in Attachment Three and Four of this packet.
5. Attachment Two of this packet addresses General Design Guidelines that will govern the evaluation taken by Project Review Committee of proposed façade improvements.

## Source of Program Funding

The Brownstown Township Downtown Development Authority (DDA) sponsors this program. The source of funding for the program is tax increment financing revenue made available under Michigan Public Act 197 of 1975 and Township Ordinance 280, as adopted by the Brownstown Township Board of Trustees in April, 1993. The DDA Board, for approval by the Brownstown Township Board of Trustees, recommends annual funding allocations for the program.

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### **Rights Reserved**

The Brownstown Township Downtown Development Authority reserves the right to reject any and all applications up to the limit of closing. The specific program guidelines herein are subject to revision or amendment by the DDA Board. The DDA may discontinue this program at any time, subject to the availability of program funding.

At the time of contract execution, the Brownstown Township Downtown Development Authority reserves the right to place a lien on the property in order to ensure a cooperative commitment.

### **Default & Remedy**

To access program funds, applicants must demonstrate a bona fide commitment to implement building improvements and must certify that construction will commence within 60 days of funding approval and that the Project will be completed within 120 days thereafter. Applicant will be in default if rehabilitation is not undertaken within the specific time period, with 100% of paid costs and expenses to be reimbursed to the Downtown Development Authority. In the event of default all program funds applied to the project shall become due and payable, plus collection costs and reasonable attorney fees, if applicable. One or more of the following events shall constitute default:

1. The Owner/Applicant fails to pay, when due, any real estate taxes or special assessments on the subject property.
2. The Owner/Applicant expends program funds for uses other than approved project costs as represented in the original application.
3. If, during a period of five (5) years following the completion of the project, the
4. Owner/Applicant transfers ownership or interest in subject property to another party, unless, such transfer secures the prior written approval of the Brownstown Township Downtown Development Authority.
5. Borrower defaults on private bank loan or other public financing made in conjunction with the DDA Façade Improvement Program.
6. After completion of the Project, and for a period of five (5) years thereafter, the Developer, its successors and assigns, agree not to modify or alter the façade of the building without the express written permission of the DDA.

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APPLICATION FORM

Applicant Is:	
<input type="checkbox"/>	Property Owner
<input type="checkbox"/>	Tenant
<input type="checkbox"/>	Other: _____

1. APPLICANT INFORMATION		
NAME:		
BUSINESS ADDRESS:		
HOME ADDRESS:		
BUSINESS PHONE:		HOME PHONE:
FAX:		EMAIL:
FEDERAL ID #:		UNEMPLOYMENT ACCOUNT #:
<i>IF LEASED</i>		
PROPERTY OWNER'S NAME:		
ADDRESS:		
PHONE:		
FAX:		EMAIL:

2. PROJECT INFORMATION		
BUILDING LOCATION:		
BUSINESS/ES LOCATED WITHIN BUILDING:		
BUILDING AGE:		LOCATED WITHIN HISTORIC DISTRICT?
BUILDING ZONED AS:		BUILDING SEV:
OWNER OF RECORD:		
<i>IF LEASED</i>		
LEASE EXPIRES:		RENEWAL TERM:

3. PROJECT DESCRIPTION		
Describe in detail the proposed scope of work including design firm selected. In describing project, be sure to differentiate between interior renovations vs. exterior façade improvements to be undertaken. Use separate sheet(s) if necessary.		
<i>ANTICIPATED CONSTRUCTION</i>		
START DATE:	COMPLETION DATE:	TOTAL PROJECT COST:

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<b>4. MORTGAGE INFORMATION</b>	
IS THERE A CURRENT MORTGAGE ON THE PROPERTY?	
IF YES, HOLDER OF MORTGAGE:	
DATE OF MORTGAGE:	
ORIGINAL AMOUNT:	CURRENT BALANCE:
ARE THERE ANY OTHER LOANS, LIENS, DEED RESTRICTIONS ON THE PROPERTY?	
IF YES, PLEASE LIST:	

<b>5. MORTGAGE TITLE SEARCH</b>	
IS THE PROPERTY TITLE SEARCH CLEAR OF ANY DISCREPANCIES?	
DATE OF SEARCH:	

<b>6. BUILDING INFORMATION</b>	
WILL THE PROJECT RESULT IN A CHANGE OF USE FOR THE BUILDING?	
<i>USES OF THE BUILDING AFTER COMPLETION OF THE PROJECT:</i>	
1 <sup>ST</sup> FLOOR:	
2 <sup>ND</sup> FLOOR:	
3 <sup>RD</sup> FLOOR:	

<b>7. OTHER REQUIRED DOCUMENTATION</b>	
A. PROPERTY DEED WITH LEGAL DESCRIPTION OF PROPERTY	
B. TITLE SEARCH	
C. PROOF THAT ALL PROPERTY TAXES AND TOWNSHIP ACCOUNTS ARE PAID AND CURRENT	
D. PROOF OF PROPERTY AND LIABILITY INSURANCE	
E. SIGNED MORTGAGE NOTE	
F. COPIES OF ANY LEASES ASSOCIATED WITH PROPERTY	
G. PROJECT BUDGET	
H. TWO (2) CONTRACTOR QUOTES/ CONSTRUCTION BIDS	
I. PHOTOGRAPHS OF PROPOSED PROJECT SITE	
J. PERSONAL GUARANTEE	
K. PERSONAL ASSET SHEET	

Applicant Is Applying For:	
<input type="checkbox"/>	DDA Matching Grant
<input type="checkbox"/>	DDA Low Interest Loan

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I / We certify that all information set forth in this application is a true representation of the facts pertaining to the subject property for the purpose of obtaining funding under the DDA Façade Improvement Program. I understand and acknowledge that any willful misrepresentation of the information contained in this application could result in disqualification from the program, requiring any funds already disbursed to be repaid in full to the Brownstown Township Downtown Development Authority.

The applicant further certifies that he/she has read and understands the DDA Façade Improvement Program Guidelines. If a determination is made by DDA staff and DDA Board of Directors that program funds have not been used for eligible program activities, the Applicant agrees that the proceeds shall be returned, in full, to the DDA and acknowledges that, with respect to such proceeds so returned, he/she shall have no further interest, right, or claim. It is understood that all DDA funding commitments are contingent upon the availability of program funds.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
(Print Signature)

(If leased, building owner's signature is required.)

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

\_\_\_\_\_  
\_\_\_\_\_  
(Print Signature)

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For committee use only:		
	Yes	No
Project adheres to design guidelines	<input type="checkbox"/>	<input type="checkbox"/>
Project is approved by the DDA Project Review Committee	<input type="checkbox"/>	<input type="checkbox"/>
Project has positive recommendation from the Planning Commission	<input type="checkbox"/>	<input type="checkbox"/>
Project has positive recommendation from the Township Board	<input type="checkbox"/>	<input type="checkbox"/>
Project has final approval by the DDA Board	<input type="checkbox"/>	<input type="checkbox"/>

For committee use only:	
<b>Matching Grant Funding Approval</b>	
Matching grant ratio	/
DDA matching grant contribution	\$

For committee use only:	
<b>Low Interest Loan Funding Approval</b>	
Loan amount	\$
Interest rate	%
Loan duration	years

For committee use only:	
<b>Debt Forgiveness Approval</b>	
Amount to be forgiven	\$
Time period after which debt will be forgiven	years

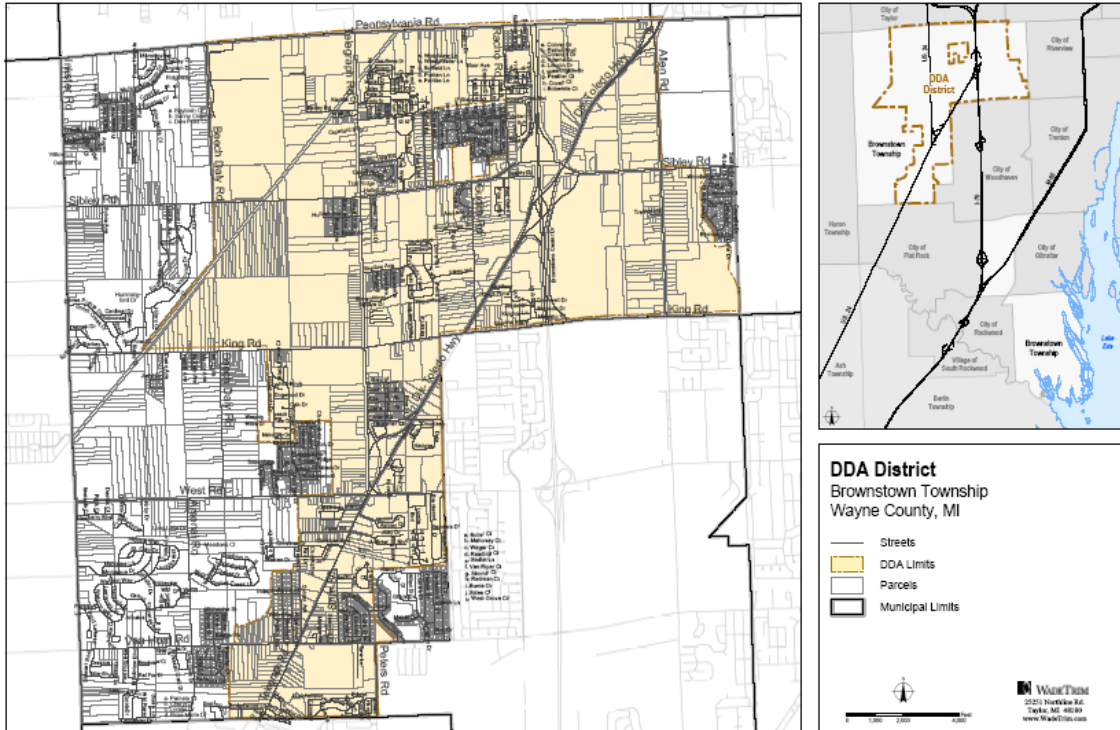
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Please return completed application to:  
ATTN: Façade Improvement Program Review Committee  
21313 Telegraph Road  
Brownstown, Michigan  
48183

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**Attachment One**

**Downtown Development Authority Boundary Map**



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**Attachment Two**

**General Design Guidelines**

1. The criteria for the Project Review Committee will be based on the improvement's accordance with the Township's Master Plan and zoning standards.
2. Changes to the façade of the buildings or structural improvements will not remove, alter, damage or cover up significant architectural features of the building which reflect a major alteration that is itself architecturally coherent, or which help create a unified and attractive appearance to the building.
3. Changes to the façade of buildings will represent a modern treatment which blends into and is compatible with the building and adjoining buildings.
4. In general, the Project Review Committee will encourage repair and preservation of existing features of facades, unless alterations to these facades have resulted in an incoherent, unattractive or inharmonious appearance. While encouraging correction of such alterations, the committee will advocate minimal alterations of harmonious features.
5. For facades which have previously been substantially altered and for which a modern treatment is chosen, such a treatment will conform with the features, materials, rhythms, color and general appearance of the building and those adjoining, particularly if the building is one in a row of buildings with identical or similar design features.
6. Paint colors will be from a neutral palette and/or be compatible with adjoining buildings and colors in the DDA district. Trim colors, which highlight building details, will be encouraged.
7. The size, color and shape of a sign should compliment the building and add to the aesthetic appeal of the surrounding area.

I/We certify that I/We have read and understand the above design guidelines

\_\_\_\_\_  
Applicant Date

\_\_\_\_\_  
Initials

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**Attachment Three**

**Cooperation Agreement for Design, Façade and Building Rehabilitation Programs**

If the project for which this application is submitted is approved for funding by the Board of the Brownstown Township Downtown Development Authority (DDA), the applicant shall cooperate with the DDA in furtherance of its fundamental goal of halting property value deterioration, eliminating that deterioration, and promoting economic growth and vitality within the Downtown Development Area by:

- \_ Participating in DDA sponsored tours of Downtown
- \_ Committing where possible to uniform store hours
- \_ Participating in downtown promotion
- \_ Design review for any changes to the façade

\_\_\_\_\_  
Applicant Date

\_\_\_\_\_  
Initials

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**Attachment Four**

**Additional Criteria**

Please use this sheet to answer the following attach additional sheets as necessary:

1. Economic Impact:
  - a. Projected Real Property Tax Increase:
  - b. Projected Personal Property Tax Increase:
  - c. Temporary (construction) Jobs Created:
  - d. Permanent Jobs Created:

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Applicant Date

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**Attachment Five**

**Grant Criteria: Façade Improvement Program**

Applications for funding under the Brownstown Township Downtown Development Authority's Façade Improvement Program will be evaluated using the following criteria. These criteria ensure that each project that is approved contributes to the continuing revitalization to the DDA Development district as expressed in the following documents: Brownstown DDA Plan, Project Downtown Design Guidelines, as well, as contributing to the wise use of monies allocated for such goals.

1. Quality of Design: Does the proposed improvement meet the design standards outlined within the Project Downtown Design Guidelines?
2. Specifications, Bids (2) and Cost Analysis: Is the DDA receiving value for the monies requested?
3. Overall Project Impacts: How will the DDA district benefit?
4. Needs Assessment: Are there special factors that should be considered in evaluation of this project?
5. Timetable of Project: Does the project demonstrate a willingness to complete the proposed improvements in a timely manner?
6. Economic Impact: Does the proposed project demonstrate positive economic impacts in any of the following areas?
  - a. Projected property and personal tax increases
  - b. Job creation: construction and permanent
7. Energy Efficiency: Does the proposed project comply with the State of Michigan's energy code?

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Applicant Date

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## Attachment Six

### List of eligible improvements

**Eligible improvements consist of, but are not limited to:**

- Façade improvements
- Rehabilitation, repair, or replacement of storefront, signage, doors, windows, and other architectural components
- Exterior painting
- Masonry improvements
- Awnings
- Exterior lighting
- Roof repair
- Parking
- Landscaping

\*If improvements are not wholly visible from the main corridor, then the partial view must be significant.

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**FAÇADE IMPROVEMENT AGREEMENT**

(\_\_\_\_\_ Project)

This Façade Improvement Agreement (the "Agreement") is made as of

\_\_\_\_\_, between the DOWNTOWN DEVELOPMENT AUTHORITY OF  
Brownstown Township, a Michigan public authority (the "DDA"), and

\_\_\_\_\_, a Michigan \_\_\_\_\_, (the "Developer").

**PREMISES**

**WHEREAS**, the DDA was created pursuant to the Downtown Development Authority Act, Act 197 of the Public Acts of 1975, as amended (the "Act") in 1982 by Ordinance adopted by the Brownstown Township Board of Trustees; and

**WHEREAS**, the Act recognized as essential public purposes, the halting of property value deterioration and the promotion of economic growth; and

**WHEREAS**, the Act has expressly provided the DDA with the power and authority to implement programs and otherwise engage in activity that has the objective of accomplishing the foresaid purposes within the TIF District in

Downtown Brownstown as set forth in the attached Exhibit "A" (the "TIF District"); and

**WHEREAS**, pursuant to the power and authority granted to the DDA by said Act it has established the Downtown Façade Improvement Program (the "Program") as an incentive for property owners/tenants to rehabilitate commercial buildings located within the TIF District and thereby halt property value deterioration and promote economic growth; and

**WHEREAS**, the Program is intended to create consistency in design, materials, and architectural character, thereby enhancing the physical appearance of downtown Brownstown; and

**WHEREAS**, the Developer owns/leases property located in the TIF District as described in Exhibit B (the "Site") and desires to make façade improvements at the Site (the "Project"), the design, description and estimated costs of which are set forth in Exhibit C; and

**WHEREAS**, the DDA has approved Developer's application to participate in the Program and undertake the Project;

**WHEREAS**, the DDA has further agreed to grant the Developer an agreed percentage of the total cost of the Project, but not to exceed TWENTY THOUSAND DOLLARS (\$20,000) pursuant to the terms of the Program and this Agreement in consideration of the foregoing premises and the mutual covenants contained in this Agreement, the Developer and the DDA hereby covenant and agree as follows:

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**ARTICLE I  
COVENANTS OF THE DEVELOPER**

The Developer shall construct and complete the Project in an expeditious and workmanlike manner pursuant to and in accordance with

**Section 101. Construction Completion Time.** Developer shall commence construction within 60 days from the date of this Agreement and Developer shall complete the Project with 120 days thereafter.

**Section 102. Repayment in the Event of Sale of Project or Change of Ownership or Control of Developer.** If, during a period of five (5) years following the completion of the Project, the Developer shall, without the prior written approval of the DDA, (i) sell or dispose of any portion of the Project, or (ii) cause the ownership of the Developer to change, the Developer shall promptly repay, upon the request of the DDA, the reimbursement made by the DDA hereunder to the Developer, or portion thereof, plus interest at the rate of seven percent (7%) per annum compounded and computed from the date the reimbursement is disbursed to Developer, to the date of payment in accordance with the following schedule:

Date of Event Required

Repayment Amount to be Repaid Within 1<sup>st</sup> year after disbursement: 100% of reimbursement

Within 2<sup>nd</sup> year after disbursement: 80% of reimbursement

Within 3<sup>rd</sup> year after disbursement: 50% of reimbursement

Within 4<sup>th</sup> year after disbursement: 40% of reimbursement

Within 5<sup>th</sup> year after disbursement: 20% of reimbursement

After 5<sup>th</sup> year after disbursement: No repayment required

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**Section 103. Payment of Taxes.** The Developer agrees to pay, or cause to be paid, all real property, personal property and other taxes due and owing with respect to the Site, as and when the same become due. Developer recognizes and agrees that the failure by Developer to pay these taxes, or cause them to be paid is an event of default and a breach of this agreement.

**Section 104. Priority Obligations.** The Developer understands and agrees that the order of priority of payments from DDA is as follows:

1. The annual operating expenses of the DDA;
2. Obligations of the DDA for prior projects; and
3. Payments due Developer under this Agreement

**Section 105. Indemnification of DDA and its Agents.**

1. The Developer shall indemnify and hold the DDA and its members, officers, agents and employees (the "Indemnified Persons") harmless from any loss, expense (including reasonable counsel fees and expenses), or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims against the Indemnified Person by reason of the reimbursement for the cost of the Project, if made by third parties alleging person injuries suffered by them while on the Site arising or resulting from, or in any way connected with, the Project. If any suit, action or proceeding is brought against any Indemnified Person, counsel to the Developer shall defend that action or proceeding.

2. The Developer shall not be obligated to indemnify and reimburse any Indemnified Person under subsection (a) if a court of competent jurisdiction finds that the liability in question was caused by willful misconduct or gross negligence of the involved Indemnified Person, unless the court determines that, despite the adjudication of liability, but in view of all circumstances of the case, the Indemnified Person(s) is (are) fairly and reasonably entitled to indemnity for the expenses which the court considers proper.

3. The Developer shall also indemnify and reimburse the DDA for all reasonable costs and expenses, including reasonable council fees and expenses, incurred in:

- a. Enforcing any obligation of the Developer under this Agreement or any related agreement,
- b. Taking any action requested by the Developer, or
- c. Taking any action considered necessary by the DDA and which is authorized by this Agreement.
- d. The obligations of the Developer under this section shall survive any assignment of this Agreement, unless the DDA otherwise expressly and specifically agrees in writing.

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**Section 106. Agreement not to Charge project scope without consent of DDA.** After completion of the project, and for a period of five (5) years thereafter, the Developer, its successors and assigns, agree not to modify or alter the façade of the building without the express written permission of the DDA. All permitted modifications to the façade shall be consistent with the guidelines established for the Program. This restriction may be enforced either by an action at law, or by an injunction or other equitable proceeding. If requested, the Developers agrees to execute an easement in the building in favor of the DDA, for the purposes set forth herein, which easement shall be perpetual, and run with the land for said five (5) year period.

**ARTICLE II  
COVENANTS OF THE DDA**

**Section 201. Payments to Developer; Conditions Precedent.** Provided that (i) there shall be no event of default or breach of any of the covenants and agreements of the Developer required to have been observed and performed by the Developer under the terms of this Agreement, (ii) no construction liens shall have been filed against the Site, (iii) Developer shall have provided the DDA with such sworn statements, waivers of lien, affidavits, other documents, paid receipts and other proof of payment from Developer and from any general contractor, subcontractors, suppliers and laborers as shall be required by the DDA, (iv) the Project shall have been constructed to the date of the Developer's request for disbursement in a manner satisfactory to the DDA and in accordance with the approved application under the Program and pursuant to Exhibit "C", and (v) the amount of the requested disbursement plus all previous disbursements to the Developer from the DDA for the Project shall not exceed Twenty Thousand Dollars (\$20,000), the DDA shall disburse the Developer a check in the amount of the determined percentage of the costs of the Project made to the date of the request for disbursement.

**Section 202. Additional Indebtedness.** This Agreement shall not prevent the Township or the DDA from issuing any missing bonds, notes or other evidence of indebtedness secured by or payable from the tax increments collected from the Development Area which have a priority over the obligations of the DDA to the Developer under this Agreement.

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**ARTICLE III  
REPRESENTATIONS AND WARRANTIES**

**Section 301. Representations and Warranties of the Developer.**

1. The Developer (i) is duly organized and validly existing as a \_\_\_\_\_ 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 the authority to own or lease the Site and the Project.

2. There is no violation or default by the Developer 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, wherein a default or violation would materially and adversely affect any of the transactions contemplated by, or the validity of, this Agreement. 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.

**Section 302. Representation and Warranties of the DDA.**

1. The DDA is a public body corporate, duly existing and validly created pursuant to the Act. The DDA has taken all actions necessary to authorize the execution and delivery of this Agreement.

2. There is no action, suit, proceeding or investigation before any court, public board or body pending to which the DDA is a party, or to the best knowledge of the DDA threatened against the DDA, contesting the establishment of the DDA or the validity or binding effect of this Agreement.

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**ARTICLE IV  
MISCELLANEOUS**

**Section 401. Assignment of this Agreement.** No party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of all other parties hereto. Consent may be given or withheld in the sole and absolute discretion of the party from whom consent is sought. The obligations of the Developer under this Agreement shall survive any assignment, unless the DDA otherwise specifically and expressly agrees in writing.

**Section 402. Notices.** All written notices, certificates or communications required by this Agreement to be given shall be sufficiently given and shall be deemed delivered when personally served or when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the last know address of the receiving party.

**Section 403. Amendment.** No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto.

**Section 404. Entire Agreement.** This Agreement contains all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implies, among the parties, except to the extent reference is made thereto in this Agreement.

**Section 405. Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

**Section 406. Severability.** If any clause provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions, or sections of this Agreement.

**Section 407. 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 408. Captions.** The captions and heading 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.

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**Section 409. 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 410. Mutual Cooperation.** Each party to this Agreement shall:

1. Take all actions required of it by the terms of this Agreement as expeditiously as possible;

2. Cooperate, to the fullest extent possible, with the other party to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Project, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the construction or operation thereof;

3. 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 Project to secure the Developer's financing from such lenders;

4. Use its best efforts to assist the other party to this Agreement in the discharge of their respective obligations hereunder; and

5. Use its best efforts and cooperate with the other party to assure that all conditions precedent to the completion of the Project are timely satisfied.

**Section 411. Permits and Approvals.** The Developer shall be responsible for obtaining, at its sole cost and expense, all easements, rights-of-way, licenses, permits, approvals and any other permission necessary for the construction of the Project.

**Section 412. Force Majeure.** No party hereto shall be liable for the failure to perform its obligation hereunder if such failure is due to unforeseeable events beyond the party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restriction, strikes and embargoes, and delays of contractors due to such causes.

Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; provided, however, that the party seeking relief from its obligations under this Section 412 shall notify the other parties in writing, setting forth the event giving rise to such failure to perform, within ten (10) days following the occurrence of such event.

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**IN WITNESS WHEREOF,**  
the parties hereto have caused this  
**Agreement**  
to be duly executed as of the date first written above.  
**BROWNSTOWN TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY**

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

Its: \_\_\_\_\_

**DEVELOPER ACCEPTANCE;**

\_\_\_\_\_, a Michigan \_\_\_\_\_, (the  
"Developer") does hereby accept the terms and conditions of Developer set for above in  
this Agreement.

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

Its: \_\_\_\_\_

**LIST OF EXHIBITS**

- Exhibit A – Development Area
- Exhibit B – The Project Site
- Exhibit C – Design, Description and Cost of Project