BROWNFIELD REIMBURSEMENT AGREEMENT
HAMLIN/ADAMS PROPERTIES LLC
ROCHESTER HILLS, MICHIGAN

THIS AGREEMENT ("Agreement") is made as of this _____ day of April, 2018, by and between the City of Rochester Hills, Michigan ("City") and LRH Development, LLC ("Developer"), of 25101 Chagrin Blvd., #300, Beachwood, OH 44122.

RECITALS

This Agreement is made under the following circumstances:

A. Developer has a signed purchase agreement to buy the property more fully described on Exhibit 1 attached hereto (the "Property"). This Agreement will take effect and be binding on the date that Developer closes its acquisition of the Property (the "Effective Date").

B. Developer proposes to remediate pre-existing contamination and construct a residential development on the Property (the "Development") and to excavate and encapsulate pre-existing contamination on a parcel of land adjoining the Property (the "Land") in accordance with the Amended Consent Judgment dated April _____, 2018, entered into by the City and Developer in Oakland County Circuit Court Case No. 04-060730-CZ (the "Amended Consent Judgment").

C. It has been determined that both the Property and the Land are each a "Facility" as defined by MCL 324.20101 *et seq*. ("Part 201").

D. There are costs and responsibilities which Developer will incur as a result of the Property and the Land each being a Facility consisting of certain environmental response activities ("Environmental Activities"):

(1) required to fulfill and comply with Developer's "due care obligation" under Part 201;

(2) pursuant to the Brownfield Plan adopted on March 6, 2018 by the City of Rochester Hills Brownfield Redevelopment Authority (“BRA”) and approved by the City of Rochester Hills City Council on March 12, 2018 (the “Brownfield Plan”) pursuant to the Brownfield Redevelopment Financing Act ("BRFA”), MCL 125.2651, *et seq*., as amended, or

(3) pursuant to the Amended Consent Judgment

(these costs, eligible for reimbursement under the BRFA are, collectively, “Environmental Costs”).

The BRA has incurred and will continue to incur certain costs in connection with the Brownfield Plan ("Administrative Costs"), for administrative and operating activities, and for preparing and reviewing a Work Plan pursuant to the BRFA. The Environmental Costs and the Administrative Costs are collectively referred to as “Costs.” The types of Environmental Activities and the Costs are more fully described in the Brownfield Plan. A copy of the Brownfield Plan is attached as Exhibit 2. The Costs and activities identified in the Brownfield Plan are estimates; the actual Costs may vary depending on the nature and extent of unknown conditions encountered on the Property or the Land.

E. The proposed Development is expected to remove and/or control environmental risks relating to each of the Property and the Land, provide additional public access to land to residents of the City, as well as significantly increase the taxable value of, and corresponding tax revenues generated by, the Property.

F. The City has agreed to assist Developer by reimbursing the Environmental Costs through the use of tax increment revenues as provided in the Brownfield Plan.

G. By approving this Agreement, the parties intend that they will act in accordance with the Amended Consent Judgment, Brownfield Plan and Work Plan, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Tax Capture. The BRA shall capture Tax Increment Revenue, as defined in the BRFA, from the Property and the Land and use those Tax Increment Revenues as provided in this Agreement, the Amended Consent Judgment and the BRFA. The City may retain, prior to reimbursement of Developer for Eligible Costs of Eligible Activities: (a) In each fiscal year, $10,000 of tax increment revenues attributable to local taxes for reasonable and actual administrative and operating expenses of the BRA; (b) three percent (3%) of tax increment revenues shall be deposited in the local brownfield revolving fund if the BRA establishes such a fund pursuant to Section 8 of the BRFA for the purposes allowed under the BRFA; (c) fifty percent (50%) of the tax increment revenues derived from the State Education Tax, which shall be deposited in the state brownfield revolving fund. Doing so shall not extend the reimbursement period under the Brownfield Plan and Amended Consent Judgment.

2. Compliance with the Plan. Developer shall comply with the terms of the Amended Consent Judgment, Brownfield Plan and Work Plan. Developer's compliance shall include, but not be limited to, providing any and all accountings, documentation, and executing any documentation, reasonably requested by the City or the BRA to evidence compliance with, or warrant payments under, the Brownfield Plan.

2.1 Payment of Costs by BRA. The BRA shall reimburse Developer for the Eligible Costs of Eligible Activities, subject to City Staff's reasonable determination that those costs conform with the terms and conditions of this Agreement, the Brownfield Plan, and the BRFA. Such reimbursement will be solely through the use of tax increment revenues generated from the Property and the Land. As provided in the Brownfield Plan, 5% simple interest is a reimbursable eligible expense and shall accrue from the date the work specified in the Brownfield Plan is undertaken subject to the terms and limits of the Brownfield Plan. The BRA and the City

are not obligated to provide to Developer any other financial incentives, public financing, bonds, funding, loans or grants, or reimbursements from other sources. Reimbursement to Developer may occur only to the extent the Developer or other taxpayer for the Property generate tax increment revenues available for the making of reimbursements in accordance with the Brownfield Plan, Work Plan and applicable federal and state laws and regulations. From time to time, but not more frequently than monthly, Developer shall submit to the City a copy of invoices and an itemized statement of costs of Eligible Activities paid or incurred for reimbursement. The statement shall include a narrative describing the Environmental Activities performed and an explanation of how such activities qualify for reimbursement hereunder. Within sixty (60) days thereafter, the City shall review Developer's submission to determine whether such activities qualify for reimbursement and shall advise Developer in writing if any activities do not qualify. If the City does not respond to the Developer's submission within such 60 days, the submission shall be deemed approved hereunder.

As to those activities, costs or invoices not approved, the City shall provide an explanation of the reason why such activities, costs or invoices are not approved and nothing contained herein shall prevent the Developer from resubmitting such invoices, statement of costs or other supplemental documentation and/or responses to the City's rationale for disapproval.

2.2 The City shall cause Developer to be paid the amounts approved, but only to the extent tax increments relating to the Property or the Land are available. Before any payment is made to the Developer, the City shall first deduct the amounts specified in paragraph 1 hereof to be paid as provided thereunder in the specified order of priority. If sufficient tax increments are not available to pay the entire approved amount, the balance of the approved amount shall be paid from tax increments next received by the BRA relating to the Property and/or the Land.

Notwithstanding anything contained herein to the contrary, DBB Hamlin, LLC and DBB Adams, LLC, the owner of the Land, disclaim any interest in any payments hereunder.

2.3 In the event of a dispute over a disallowed cost, the BRA and Developer shall promptly meet to review the reimbursement request and discuss, in good faith, the conditions pursuant to which Developer may obtain approval of the disallowed cost. If this does not resolve the issue, either party may submit the dispute to court as provided in this Agreement.

2.4 In addition to the foregoing, the Eligible Costs shall not be paid to Developer unless:

(a) They are eligible for payment pursuant to the BRFA, the Brownfield Plan, the Work Plan and other applicable federal and state laws and regulations, as applicable;

(b) They are incurred for Eligible Activities described by the Brownfield Plan and/or Work Plan or any subsequent amendments of those plans;

(c) They are actually paid by Developer; and

(d) Developer is not in material default of Developer's obligations under the Brownfield Plan, Work Plan or the Amended Consent Judgment, which default remains uncured at the time the request for payment is made.

2.5 In accordance with the Amended Consent Judgment, in the event the Environmental Costs exceed the amount of $13,419,587, the parties shall, in good faith, negotiate about extending the payment period. Also, the repayment period shall be extended for the reasonable time necessary due to non-payment or delinquent payment of taxes by Developer or Developer’s successors, grantees, tenants or assigns. However, under no circumstances shall the repayment period be extended beyond the maximum duration permissible under the BRFA.

2.6 Termination The obligations of the City and BRA pursuant to this Agreement shall terminate on the earlier to occur of: (a) the date on which the City is no longer authorized to collect taxes calculated on the Captured Taxable Value; (b) twenty four (24) years

after completion of the development on the Property; (c) the date on which there remain no outstanding unreimbursed Eligible Costs; or (d) the notification to Developer of an occurrence of an Event of Default, that, if disputed, is determined by the Oakland County Circuit Court to be an actual Default by Developer.

2.7 The City Treasurer shall, in accordance with the BRFA, transmit the tax increment revenues to the BRA within thirty (30) days after collection.

3. Representations, warranties and covenants of City. The City, for itself and on behalf of the BRA, represents, warrants and covenants to Developer and that on the Effective Date, and shall be deemed to represent, warrant and covenant on each and every day during the term of this Agreement, as follows:

3.1 The City is a duly-incorporated Michigan home-rule city, and the BRA is duly organized, validly existing and in good standing under the laws of the State of Michigan and the BRA, has all corporate power and authority to enter into this Agreement and is duly qualified and in good standing in the State of Michigan.

3.2 Neither the City nor the BRA are a party to, subject to or bound by any agreement or other obligation, or any judgment, order, writ, injunction or decree of any court or governmental authority, which could prevent or materially impair the carrying out of this Agreement. The making and performance of this Agreement, and transactions contemplated herein, by the City and BRA will not violate any provision of law or result in the breach of, or constitute a default under, any lease, indenture, bank loan, credit agreement or other material agreement or instrument to which the City or BRA are a party or by which its authority or property may be bound or affected.

3.3 The City has the authority to bind the BRA relative to the representations, warranties and covenants herein.

4. Representations, Warranties and Covenants of Developer. Developer represents, warrants and covenants to the BRA on the Effective Date, and shall be deemed to represent, warrant on each and every day during the term of this Agreement, as follows:

4.1 Prior to submitting any invoices pursuant to Section 2 hereof, Developer shall have completed the Environmental Activities outlined in the request for reimbursement. However, payments hereunder are not conditioned on completion of any specific Environmental Activities or improvements at any specific time or in any specific sequence, provided that Developer is in compliance with its obligations hereunder. The BRA shall make the payments required hereunder even if development of the Property or remedial work at the Land are not fully completed at the time that a request for reimbursement is made.

4.2 Developer shall undertake and complete all Environmental Activities at the Property and Land necessary to achieve compliance with the Brownfield Plan, Work Plan, Amended Consent Judgment, and applicable federal and state laws and regulations.

4.3 Developer is validly existing and in good standing under the laws of the State in which they are domiciled, have all corporate power and authority to enter into this Agreement and is duly qualified and in good standing in the State of Michigan.

4.4 Developer is not a party to, subject to or bound by any agreement or other obligation, or any judgment, order, writ, injunction or decree of any court or governmental authority, which could prevent or materially impair the carrying out of this Agreement. The making and performance of this Agreement, and transactions contemplated herein, by Developer will not violate any provision of law or result in the breach of, or constitute a default under, any

lease, indenture, bank loan, credit agreement or other material agreement or instrument to which Developer is a party or by which its property may be bound or affected.

4.5 To the Developer's knowledge, the Developer is not a liable party for any environmental contamination that existed on the Property or the Land as of the date of this Agreement.

5. Default by Developer. The neglect or failure by Developer to cure within a reasonable time, under the circumstances, the occurrence of any of the following events shall be considered an "Event of Default":

A. The material breach, by Developer of any representation, warranty or covenant of this Agreement.

B. The failure of Developer, to comply with this Agreement.

C. The failure of Developer to comply with the terms of the Amended Consent Judgment, the Brownfield Plan or the Work Plan.

D. The failure of Developer to make any property tax payment to the County of Oakland or to the City of Rochester Hills in full, for any portion of the Property for which it has the obligation to make such payments. However, the failure of a successor-in-interest, grantee or other third party who is not under Developer's control or direction or under common control or direction with Developer to make timely property tax payments shall not be construed to be an Event of Default by Developer.

5.1 If, for any reason during the term of this Agreement, while Developer, or any party under Developer's control or direction or under common control or direction with Developer, owns the Property, or any portion thereof, and there is a refund of property tax payments to the then-Owner of the Property, the BRA may deduct the amount of any such reimbursement attributable to Tax Increment Revenues from any amounts due and owing the Developer hereunder.

5.2 City agrees to provide Developer with reasonable notice of, and an opportunity to cure, the claimed Default, prior to or within ten (10) business days of discovery of same. Unless an emergency otherwise dictates a shorter period of time, Developer shall have no more than thirty (30) days after receiving notice as provided herein to cure any defect for which the City provides notice hereunder, unless such cure requires additional time to implement or complete, in which case Developer shall be provided a commercially reasonable amount of time to complete the cure, provided that Developer begins promptly and diligently pursues such cure. Failure by Developer to cure any Default as provided herein shall in no event bar or preclude any defense or claim to which Developer may otherwise be entitled.

6 Miscellaneous.

6.1 The BRA's and City's acceptance and review of plans and drawings submitted to the BRA in connection with the Brownfield Plan and the Work Plan shall not be construed as a grant or waiver of site plan approval or construction plan approval pursuant to City ordinances or the Amended Consent Judgment concerning those improvements depicted or described, as it is mutually understood by the parties that any such plans or drawings submitted have been for brownfield financing purposes only.

6.2 Choice of Law. This Agreement is governed by and must be construed in accordance with the law of the State of Michigan as if fully performed therein and without reference to its conflict of laws principles.

6.3 Notices. Any notices or other communications required or permitted under this Agreement shall be sufficiently given if in writing and (i) hand-delivered, including delivery by courier service, (ii) sent by overnight mail by a nationally recognized overnight mail service, or (iii) sent by certified mail, return receipt requested, post prepaid, addressed to the recipient at

the address stated below, or to such other address as the party concerned may substitute by written notice to the other:

If to City:	City of Rochester Hills 1000 Rochester Hills Dr. Rochester Hills, MI 48309 Attention: Sara Roediger, Planning and Economic Development Director
With a copy to:	John D. Staran, Esq. Hafeli Staran &Christ, P.C. 2055 Orchard Lake Road Sylvan Lake, MI 48320
If to Developer:	LRH Development, LLC 25101 Chagrin Blvd.,#300 Beachwood, OH 44122 Attention: Seth Mendelsohn
With Copies to:	Arthur H. Siegal, Esq. Jaffe Raitt Heuer & Weiss, P.C. 27777 Franklin, Suite 2500 Southfield, MI 48034

All notices forwarded by overnight mail are deemed received on the date the overnight service actually delivers the notice. All notices hand delivered shall be deemed received on the day of delivery. All notices forwarded by mail shall be deemed received on the date two (2) days (excluding Sundays and legal holidays when the U.S. mail is not delivered) immediately following date of deposit in the U.S. mail; provided, however, the return receipt indicating the date upon which the notice is received shall be prima facie evidence that such notice was received on the date of the return receipt. Addresses may be changed by giving notice of such change in the manner provided herein. Unless and until such written notice is received, the last address given shall be deemed to continue in effect for all purposes.

6.4 Entire Agreement and Amendments. This Agreement, including the Plans and Exhibits referred to herein, and the Amended Consent Judgment, contains the entire

understanding of the parties hereto with respect to the subject matter contained herein and may only be amended or terminated by a written instrument executed by all parties. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or provided for herein.

6.5 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of the Oakland County Circuit Court declares that any term or provision hereof is invalid or unenforceable, the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

6.6 Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

6.7 Captions. The captions to the Sections and subsections contained in this Agreement are for reference only, do not form a substantive part of this Agreement and do not restrict or enlarge substantive portions of this Agreement.

6.8 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.9 Parties in Interest/Assignment.

6.9.1 Other than provided for in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

6.9.2 This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other parties, which shall not be unreasonably withheld. This Agreement shall be binding upon any successors or permitted assigns of the parties. Notwithstanding any assignment of the Agreement, Developer will remain obligated for the performance of the obligations attributed to Developer, provided that such assignee shall be primarily obligated for the performance of the same.

6.9.3 Developer may assign its rights and obligations without the consent of the City or the Authority provided that such assignment is made: (a) as a pledge to secure financing; (b) to an entity owned or controlled by at least fifty percent (50%) of Developer's members; or (c) to an entity controlled by the same individuals as control Developer. In the event of such an assignment, the assigning party shall provide prompt notice of such assignment to the Authority at the address provided in Section 6.3 with a written assignment document that adequately confirms and provides for the assignment and assumption of all rights and obligations under this Agreement signed by both assignor and assignee.

6.9.4 Developer may assign its rights to payment hereunder

without the consent of the City or the Authority provided that the assigning party shall provide prompt notice of such assignment to the Authority at the address provided in Section 6.3 with a written assignment document that adequately confirms and provides for the assignment and confirms that assignor remains fully liable otherwise and releases the City and the Authority for liability for future payments.

6.10 Dispute Resolution. In the event a dispute shall arise as to the parties' respective rights, duties and obligations under this Agreement, or in the event of a claim of breach of the Agreement or Event of Default by any party, such disputes shall be exclusively resolved in Oakland County Circuit Court pursuant to the Amended Consent Judgment, unless otherwise mutually agreed by the parties.

6.11 Survival. Except as otherwise provided in this Agreement, all representations, warranties, covenants and agreements of the parties contained or made pursuant to this Agreement shall survive the execution of this Agreement.

6.12 Recitals. The recitals set forth above are incorporated by reference into the Agreement as if fully set forth therein.

6.13 Site Access. During the Term of this Agreement, the BRA, its employees, agents, contractors and experts may have access to the Development during normal business hours and upon one business day's prior notice to Developer, and as provided in the Amended Consent Judgment, for the purpose of analyzing whether Developer has complied with the Brownfield Plan, the Work Plan or this Agreement provided, however, that such access shall occur in a manner so as not to unreasonably interfere with the operations of Developer.

6.14 Conflicts. If a conflict arises between the terms of or definitions in this Agreement and the BRFA, the BRFA shall prevail and control. If a conflict arises between the

terms of or definitions in this Agreement and the Brownfield Plan, this Agreement shall prevail and control. If a conflict arises between the terms of, or definitions in, this Agreement and the Amended Consent Judgment, the Amended Consent Judgment shall prevail and control. All capitalized terms in this Agreement shall have the meaning provided herein. If no definition is provided herein, the term shall be deemed to have the meaning provided in Part 201, the BRFA or the Amended Consent Judgment as applicable.

6.15 Local Ordinances. Nothing in this Agreement shall abrogate the effect of local ordinances.

6.16 Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

6.17 Interpretation. This is the entire agreement between the parties as to its subject. It shall not be amended or modified except in writing signed by the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision.

6.18 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

6.19 Force Majeure. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance under this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party so delayed and could not have been avoided by exercising reasonable diligence, which may include, for example, natural disaster or decrees of governmental bodies not the fault of the affected party(s). If either party is

delayed by force majeure, the party affected shall provide written notification to the other party immediately, but shall do everything reasonably possible to resume performance. The notification shall provide evidence of the force majeure event to the satisfaction of the other party.

6.20 Miscellaneous. This Agreement may not be amended, altered or modified unless done so in writing by the person against whom enforcement of any waiver, change, modification, or discharge is sought. This Agreement and the exhibits to this Agreement contain all of the representations and statements by the parties to one another, and express the entire understanding between parties, with respect to the Brownfield Plan and Project. All prior and contemporaneous communications between the Authority and the Developer and/or Owner concerning the Brownfield Plan and Project are merged in and replaced by this Agreement.

6.21 Termination. Upon final payment of the Costs as provided in the Brownfield Plan, this Agreement terminates and neither party shall have any obligation to the other hereunder. The City may terminate this Agreement should Developer (A) fail to fulfill in a timely and proper manner any of its obligations under Section 5 hereof; or (B) violate a representation or warranty in Section 4 hereof. Before such termination the BRA shall deliver to Developer a written notice and opportunity to cure under Paragraph 5.6 hereunder. If Developer cures or commences a cure as described in Paragraph 5.6, then this Agreement shall not be terminated for the breach. If Developer does not cure or otherwise contest, then the termination shall be effective on the 31st day after the notice is delivered. Upon the termination of this Agreement, the BRA and the City shall have no further obligation under this Agreement to make any payments to Developer in reimbursement of any Costs of Eligible Activities incurred or to be incurred by the Owner. However, any payments previously made by the BRA and/or the City to the Developer shall belong

to Developer and shall not be subject to a claim of repayment. The remedies of this Section 6.21 are the sole remedies available to the BRA and the City hereunder.

The parties have executed this Agreement on the Effective Date.

CITY OF ROCHESTER HILLS

By:_____

Its:_____

By:_____

Its:_____

And, solely as to the disclaimer in Section 2.2 hereof

DBB Hamlin, LLC

By:_____

Its:_____

DBB Adams, LLC

By:_____

Its:_____