

INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE AGREEMENT  
BETWEEN THE CITY OF ANN ARBOR AND EDWARD BROTHERS, INC.

This Agreement, made this \_\_\_ day of \_\_\_\_\_, by and between the City of Ann Arbor, a Michigan municipal corporation, hereinafter referred to as "City", and Edward Brothers, Inc., a Michigan S-Corporation, hereinafter referred to as "Edward Brothers".

Whereas, Pursuant to Michigan Public Act 198 of 1974, as amended ("Act"), Edward Brothers submitted on October 22, 2010 an Application for Industrial Facilities Exemption Certificate ("Application") for new personal property to be acquired and installed in Ann Arbor Industrial Development District 2007-010, which was established on August 20, 2007 (the District);

The parties agree that the City approval of tax abatement pursuant to its Application is subject to the terms and conditions of this Agreement as follows:

1. The length of time for which the abatement is approved is Twelve (12) years after the effective date of the Industrial Facilities Exemption Certificate. The abatement is for new personal property equipment to be purchased in 2010 and 2011 (the "New Personal Property"). The abatement will terminate December 30, 2023.
2. Edward Brother's abatement is only for the items listed in Exhibit A which is attached and incorporated by this reference in the Agreement. Exhibit A supersedes the listing on its Application filed with the City Clerk on October 22, 2010.
3. Edward Brothers will provide the City Assessor with a detailed list of all taxable personal property at its location prior to the issuance of the abatement.
4. Edward Brothers guarantees to the City that during the term of the abatement:
  - a. the taxable value on real property in the District will not be less than the 2010 amount, as adjusted for inflation in accordance with the method employed by the City for such adjustment.
  - b. the taxable value on personal property of Edward Brothers in the District will not be less than the taxable value of such personal property assessed for the tax year 2010, plus the value of the New Personal Property, both adjusted downward for depreciation in accordance with State Tax Commission multipliers.
5. On or before February 20, 2012 Edward Brothers shall provide the City Assessor with the actual costs of new Personal Property. If those costs are less than the estimated cost on the Application by more than ten percent

(10%), the City may consider revocation of the Certificate subject to provision 9 of this agreement.

6. By December 31, 2012, Edward Brothers will maintain four hundred and ninety (415) jobs at the facility named on the Application as of the effective date of the Certificate. If Edward Brothers does not maintain the current level of jobs by December 31, 2012, the City may consider revocation of the Certificate subject to provision 9 of this agreement. Edward Brothers shall comply with all of the requirements of the City's Living Wage Ordinance, provided as Attachment B for reference.
7. Edward Brothers shall maintain operations within the City of Ann Arbor during the period of time for which the tax incentives are in effect. If Edward Brothers relocates, whether within or outside of the State of Michigan, Edward Brothers shall pay to the affected taxing units an amount equal to those taxes it would have paid during the abatement term had the abatement not been in effect.
8. By February 1st of each year during the term of this Agreement, Edward Brothers shall provide the City Assessor a detail list of all personal property assets at its location within the District and the number of employees for each of the following categories: at prior year-end, new hires, attrition, and at present year-end together with any other information necessary or reasonably required for the City Assessor to determine annually as of December 31 the value and taxable value of each facility separately for both real and personal property having the benefit of the Certificate.
9. The parties agree that if one party believes the other has breached a part of this Agreement, no legal or administrative action shall be taken with respect to the alleged breach unless the party allegedly in default is given written notice of the alleged breach and thirty (30) days thereafter to remedy the alleged breach. Written notice of an alleged breach by the City shall be sent to the City Chief Financial Officer and the City Attorney at the City, 100 N. Fifth Avenue, Ann Arbor, Michigan 48103. Written notice of an alleged breach by Edward Brothers shall be sent to Edward Brothers, Inc., 2500 South State Street, Ann Arbor MI, 48104, Attention: James Mulady.
10. Edward Brothers acknowledges and agrees that no payment of any kind in excess of the fee allowed by Act has been made or promised in exchange for favorable consideration of this Application.
11. Edward Brothers agrees to pay the City a \$1,000 nonrefundable application fee, which is equal to the lesser of the City's actual cost or two percent (2%) of the total property taxes abated for the term that the industrial facilities exemption certificate is in effect, within thirty (30) days of receipt of an invoice from the City.

12. Edward Brothers acknowledges and agrees that, pursuant to provisions of Act, that issuance of the industrial facilities exemption certificate is determined by the Michigan State Tax Commission on receipt of an approved application by the City Council and agrees to hold the City of Ann Arbor harmless in the event the Commission denies its Application for an Industrial Facilities Exemption Certificate.
13. This Agreement was entered into and was drafted pursuant to and is to be interpreted according to the laws of the State of Michigan. Both parties have had the opportunity to have this Agreement reviewed by legal counsel. This Agreement contains all of the understandings of the parties concerning the subject matter of the agreement and supersedes any prior or contemporaneous agreements or understandings, whether written or oral, between the parties. This Agreement can be amended or modified only in writing executed by the parties. The Certificate may not be transferred or assigned to any other party without the prior consent of the Ann Arbor City Council pursuant to Section 21 of the Act.
14. In any civil action brought pursuant to or to enforce any portions of this Agreement, if the City prevails, the City shall in addition to any other damages, costs or remedies, be entitled to recover its actual expenses incurred to bring, maintain or defend such action including without limitation, its actual, reasonable attorney's fee, without regard to whether such legal services are provided by in-house counsel or outside counsel, from the date the dispute first arises through all appellate proceedings as ordered by the court.
15. Subject to the abatement herein granted, Edward Brothers agrees to timely pay all property taxes assessed during the term of the Certificate.
16. In the event that a court of competent jurisdiction should find a part of this Agreement invalid, such holding shall not affect or invalidate the remaining portions of this Agreement, which shall remain in full force and effect.
17. This Agreement shall be binding on the parties hereto, their successor and assigns. No person except those who are parties to this Agreement and their successors shall have any rights under this Agreement.
18. As an additional term of this Agreement, made without deposit or other consideration, Edwards Brothers grants to the City of Ann Arbor the Right of First Refusal to purchase the real property during the length of the abatement. Before Edward Brothers may sell or transfer the real property, in whole or in part, to any other person or entity, Edward Brothers must first offer the real property to the City by giving written notice of the terms and conditions on which Edward Brothers is willing to sell or transfer the real property. The City

will have sixty (60) business days after the date of receipt of such offer within which to notify Edward Brothers that the City accepts the offer of Edward Brothers on the same terms and conditions described in the notice to the City. If City accepts the offer of Edward Brothers, the closing of such sale or transfer to City will take place in Ann Arbor, Michigan, pursuant to the terms of such offer. If City does not accept the offer in writing in no more than sixty (60) business days after the date of City's receipt thereof, Edward Brothers may sell or transfer the real property to another purchaser at the price and on substantially the terms and conditions stated in the offer to the City within one hundred twenty (120) business days of the owner receipt of rejection of the City's offer. At the end of said one hundred twenty (120) days, the right of Edward Brothers to sell or transfer the real property free from the right of first refusal hereby granted will terminate, and the provisions of this Agreement will apply to any subsequent proposed sale or transfer of the real property by Edward Brothers.

The individuals signing below acknowledge that they have read this Agreement, that they understand it, and that they have the legal authority to execute it in the capacity shown below.

EDWARD BROTHERS, INC.

By \_\_\_\_\_  
John Edwards  
Its Owner \_\_\_\_\_

CITY OF ANN ARBOR

By \_\_\_\_\_  
John Hieftje, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, Clerk

Approved as to substance

\_\_\_\_\_  
Roger W. Fraser, City Administrator

Approved as to form

\_\_\_\_\_  
Stephen K. Postema, City Attorney