

*****Draft*****

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), is entered into as of the last date ascribed to below, by and between the CITY OF MADISON HEIGHTS, a Michigan municipal corporation, with offices located at 300 West Thirteen Mile Road, Madison Heights, Michigan 48071, ("City"), and MOSCHOURIS MANAGEMENT COMPANY, LLC whose address is 28454 Woodward Ave., Royal Oak, MI 48067 ("Developer").

WITNESSETH:

WHEREAS, the Developer owns a parcel of real property in the City of Madison Heights and legally described on the attached **Exhibit A**, attached hereto and incorporated by reference, which will be collectively referred to within this Agreement as the "Property," and

WHEREAS, Developer wishes to make improvements to the Property; and

WHEREAS, the improvements Developer wishes to make to the Property include the demolition of the existing building and the parking lot west of this building, infrastructure (including storm water) improvements, landscaping, and other activities/improvements identified on **Exhibit B**, attached hereto, and incorporated by reference (the "Project").

WHEREAS, the City requires that Developer's Project comply with the City of Madison Heights Code of Ordinances; and

WHEREAS, the City will agree to issue permits for the Project contingent upon Developer agreeing to the Development Criteria set forth in this Agreement; and

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

1. RECITALS. The foregoing recitals are incorporated in and form a part of this Agreement.
2. DEFINITIONS. The following definitions shall apply to the provisions of this Agreement:
 - A. “Commencement of the Project” means that permits for the Project have been issued, and actual physical Development activity is underway.
 - B. “Substantial Completion of the Project” means sufficient work has been completed showing that a financial commitment as well as the Developer’s intent and ability to satisfactorily complete each applicable Phase of the Development within the time frames established in this Agreement. The City, in its reasonable discretion, shall determine whether the Developer has Substantially Completed each phase of the development.
 - C. “Completion of the Project” means that the improvements to the Property required by this Agreement have been satisfied and the Project is fully completed.
3. DEVELOPMENT CRITERIA.
 - A. PERMIT ISSUANCE: To obtain issuance of permits for the Project, Developer agrees to the following:
 - i. To meet the conditions contained in this Agreement;
 - ii. To complete the Project within the deadlines provided in this Agreement;
 - iii. To comply with the site plan attached as **Exhibit B** for making the improvements set forth in this Agreement within the time periods established by this Agreement; and
 - iv. To complete all Proposed Site Activities and Future Site Activities as identified on **Exhibit B** within the time periods established by this Agreement.

B. IMPROVEMENTS AND INVESTMENTS:

- a. All activities/improvements for the Project including, but not limited to all Site Plan Requirements identified in **Exhibit B** and all Proposed Site Activities and Future Site Activities as identified in **Exhibit B**, shall be completed by ~~XXXXXXXX-XX-XXXX~~. The City acknowledges that the Property is contaminated, and that Developer's objective is to capture constituents of concern in the soil and groundwater and to perform remediation actions. If Developer fails to complete the Project by ~~XXXXXXXX-XX-XXXX~~, or as may otherwise be extended through an amendment to this Agreement, then Developer shall furnish a cash deposit or proof of funds evidencing the same with the City in the amount of One Hundred Thousand (\$100,000.00) Dollars which is intended to cover the cost of the remaining activities/improvements for the Project listed on **Exhibits B**. Said deposit shall be refunded to Developer within ten (10) days after completion of the Project and issuance of a certificate of occupancy. The Developer shall request a release of the deposit prior to issuance. This section in no way shall be interpreted to circumvent or misconstrue the City's policy regarding bond requirements.
- b. Developer agrees to invest a minimum of \$3.1 million (three million, one-hundred thousand U.S. dollars) for all activities/improvements for the Project including, but not limited to all Site Plan Requirements identified in **Exhibit B** and all Proposed Site Activities and Future Site Activities as identified in **Exhibit B**.

C. INSPECTIONS. The Developer shall permit inspections of the Property as needed by the City, and the City shall provide reasonable notice to the Developer unless an emergency arises, in which case, the City will make a good faith attempt to contact the Developer.

D. PERMIT ISSUANCE. Upon the execution of this Agreement, the City shall issue permits necessary to complete the Project, and the other activities/improvements required by this Agreement, provided, however, the required Architecturally or

Engineered stamped, construction drawings shall be submitted to the City by State Licensed Contractors and be in compliance with all applicable State of Michigan and International Codes, and comply with the City of Madison Heights current site standards. Further, upon submission of any future permit applications by Developer during the term of this Agreement, the City shall issue permits necessary to complete any activities/improvements to the Project, provided, however, the required Architecturally or Engineered stamped, construction drawings are submitted to the City by State Licensed Contractors and are in compliance with all applicable State of Michigan and International Codes and comply with the City of Madison Heights site standards.

4. **DEFAULT BY DEVELOPER.** Developer shall be deemed to be in default of this Agreement if Developer materially fails to comply with any covenant, clause, provision, requirement, or agreement herein contained. However, Developer shall not be in default of this Agreement if Developer's failure to comply with any covenant, clause, provision, requirement, or agreement herein contained is caused by any act(s), event(s) or combination thereof that are beyond the reasonable control of Developer, and Developer promptly initiates and continues best efforts to cure Developer's failure to comply with such covenant, clause, provision, requirement or agreement. Upon default by Developer, the City shall be entitled to seek any legal or equitable remedy available under the law, including, but not necessarily limited to, money damages or specific performance. The Developer shall be entitled to thirty (30) days' written notice of any default and the opportunity to cure same. If any default has not been cured within thirty (30) days of the delivery of the notice to the address of Developer specified in this Agreement, or such additional time as may be reasonably required considering the circumstances of the default, the City may revoke the Brownfield Plan and Reimbursement Agreement and initiate an action for any legal or equitable remedy available. If Developer is in default, no past or future payments that may be due to the developer for completed Eligible Activities shall be payable by the City unless the default is cured.

5. **BINDING EFFECT.** This Agreement binds the parties, and their respective successors, legal representatives, and assigns.
6. **NON-DISCRIMINATION REQUIREMENT.** The Developer, its successors and assigns, and every successor in interest to the Property or any part thereof, shall not discriminate upon the basis of race, color, religion, sex, or national origin in the rental or in the use or occupancy of the Property or any improvements to be erected thereon, or any part thereof.
7. **MODIFICATION.** The promises, covenants, terms, and conditions herein contained shall not be modified, altered, or extended without the mutual written consent of the parties.
8. **NOTICE.** Except as otherwise specified herein, all notices, consents, approvals, requests, and other communications (collectively called “Notices”) required or permitted under this Agreement shall be given in writing and are effective on delivery. Delivery may be effectuated by personal service with receipt obtained; certified mail or first-class mail with delivery proof; or nationally recognized overnight courier delivery service with next business day delivery. Notices shall be addressed as follows:

If to the City, to: City of Madison Heights
 300 West Thirteen Mile Road
 Madison Heights, Michigan 48071
 Attn: Community & Economic Development

If to Developer, to: Moschouris Management Company, LLC
 28454 Woodward Ave.
 Royal Oak, MI 48067
 Attn: William Gershenson or Nick Moschouris

9. **INDEMNIFICATION.** Developer shall assume all liability for and protect, indemnify, defend, and hold harmless the City, its officers, directors, employees, volunteers, invitees, agents and representatives (hereinafter collectively “Indemnitees”) from and against all actions, claims, demands, judgments, losses, expenses, suits or actions, (including attorney fees) for any injury or death of any person or persons, and loss or damage to property of any person or persons whomsoever, arising either out of this Agreement or the intentional

or negligent acts, errors or omissions of the Developer or its agents, contractors, subcontractors, and employees. However, Developer shall not be required to indemnify the City for such injury, death, loss, or damage to the extent caused by the City's negligence. Developer's obligation to indemnify the City shall survive termination and/or expiration of this Agreement.

10. **INSURANCE.** During the period this Agreement is in effect and until the Developer completes the Project, Developer and its consultants/contractors/subcontractors who perform any activities/improvements for the Project shall maintain general liability insurance in amounts of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. The insurance shall list the City as an additional insured, as its interest may appear. The Developer shall provide the City with a certificate of insurance evidencing such insurance coverage as provided for herein. Said insurance coverage shall protect the City from claims for bodily injury, death, property damage, and pollution liability which may arise or occur from the activities/improvements undertaken for the Project or because of this Agreement. All certificates of insurance shall be provided to the City for approval prior to commencement of the Project. The City may review the policies from time to time to assure itself of its terms, and that the insurer is financially responsible.
11. **SEVERABILITY.** If any one or more provisions of this Agreement, or in any instrument or other document delivered pursuant to this Agreement, or the application thereof to any person or circumstance is, to any extent, declared or determined to be invalid or unenforceable, the validity, legality, and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected or impaired thereby, and each provision of this Agreement is valid and enforceable to the fullest extent of the law.
12. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is deemed an original document, but together constitute one instrument.

13. **GOVERNING LAW AND INTERPRETATION.** The laws of the State of Michigan govern this Agreement and the venue for all proceedings in connection with this Agreement shall be Oakland County, Michigan. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and do not supplement, limit, or otherwise vary the text of this Agreement.
14. **LEGAL REPRESENTATION.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply due to the joint contribution of both parties.
15. **WAIVER.** The failure of the City to exercise any right given hereunder or to insist upon strict compliance regarding any provision of this Agreement, at any time, shall not constitute a waiver of such provision or the right by such at any time to avail itself of such remedies as it may have for any breach or breaches of such provision.
16. **ENTIRE AGREEMENT.** This Agreement and any Exhibits attached hereto represent the entire agreement between the parties regarding its subject matter and supersedes and cancels all prior discussions, negotiations, proposals, undertakings, understandings, and agreements, whether written or oral, regarding this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 2024.

THE CITY OF MADISON HEIGHTS

By _____
Roslyn Grafstein
Mayor

STATE OF MICHIGAN)
)ss
COUNTY OF MADISON HEIGHTS)

The foregoing instrument was acknowledged before me, this _____ day of _____, 2024, by Roslyn Grafstein, Mayor of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.

_____, Notary Public
Madison Heights County, Michigan
My commission expires _____

THE CITY OF MADISON HEIGHTS

By _____
Cheryl Rottmann
City Clerk

STATE OF MICHIGAN)
)ss
COUNTY OF MADISON HEIGHTS)

The foregoing instrument was acknowledged before me, this _____ day of _____, 2024, by Cheryl Rottmann, the City Clerk of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.

_____, Notary Public
Madison Heights County, Michigan
My commission expires _____

MOSCHOURIS MANAGEMENT COMPANY, LLC

By: _____

William Gershenson

Its: Vice President of Real Estate

STATE OF MICHIGAN)

)ss

COUNTY OF MADISON HEIGHTS)

The foregoing instrument was acknowledged before me, this ____ day of _____, 2024, by William Gershenson, as Member, on behalf of Moschouris Management Company, LLC.

_____, Notary Public

Madison Heights County, Michigan

My commission expires _____

EXHIBIT A – DESCRIPTION OF REAL PROPERTY

Real property commonly known as 29448 John R Road in the City of Madison Heights, County of Madison Heights, State of Michigan, which is more particularly described as:

Parcel Number: 44-25-12-304-010

Address: 29448 John R Road

Acres: 4.91

Legal Description:

T1N, R11E, SEC 12, N 3 ACRES OF S 6 ACRES OF NW 1/4 OF SW 1/4 EXC E 690 FT, ALSO PART OF NW 1/4 OF SW 1/4 BEG AT SW SEC COR, TH E 672.6 FT, TH N 95.9 FT, TH W 672.2 FT, TH S 95.9 FT TO BEG, ALSO PART OF SW 1/4 OF SW 1/4 BEG AT PT DIST N 00-10-00 E 1205.19 FT FROM SW SEC COR, TH N 00-10-00 E 80.39 FT, TH S 89-29-00 E 1374.18 FT, TH S 00-26-00 W 79.89 FT, TH N 89-58-00 W 1373.81 FT TO BEG EXC W 60 FT OF EACH TAKEN FOR RD, ALSO EXC PART OF SW 1/4 BEG AT PT DIST S 00-02-18 W 1161.72 FT & S 89-51-16 E 60 FT FROM W 1/4 COR, TH S 89-51-16 E 613.92 FT, TH S 00-18-28 E 14.24 FT, TH N 89-50-41 W 614 FT, TH N 00-02-18 E 14.14 FT TO BEG
4.91 A 08/04/08 FR 006

*****INCLUDE OTHER PARCELS IF LOT SPLIT IS COMPLETED PRIOR TO BROWNFIELD PLAN ADOPTION*****

EXHIBIT B – SITE PLAN

Attached