

## **REIMBURSEMENT AGREEMENT**

This Reimbursement Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_, 2024 by and between Moschouris Management Company, LLC, a limited liability corporation (hereinafter referred to as the “Owner”), whose address is 28454 Woodward Ave., Royal Oak, MI 48067 and the **City of Madison Heights Brownfield Redevelopment Authority**, a Michigan municipal corporation (hereinafter referred to as the “BRA”) whose address is 300 West Thirteen Mile Rd., Madison Heights, MI 48071.

### RECITALS:

Owner owns two parcels of land situated in the City of Madison Heights, Oakland County, Michigan (the “City”), as more particularly described on the attached Exhibit A and, together with personal property located thereon, is hereinafter referred to as the “Subject Property,” that qualifies as an Eligible Property under Section 2 of the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (“Act 381”).

The BRA was created by the City under Act 381, to promote the revitalization of environmentally distressed areas through the implementation of Brownfield plans for certain eligible property under Act 381.

To induce and facilitate the proposed redevelopment of the Subject Property (the “Project”), on **January 16, 2024** the BRA adopted, and on **February 12, 2024** the Madison Heights City Council approved, a Brownfield Plan (the “Plan” or “Brownfield Plan”) attached hereto as Exhibit B, for the Subject Property, under which the Owner may receive, subject to this Agreement, the benefit of reimbursement from Tax Increment Revenues for the cost of Eligible Activities undertaken by the Owner on the Subject Property.

The BRA and the Owner desire to establish the terms and conditions upon which the BRA shall utilize Tax Increment Revenues captured pursuant to the Plan to reimburse the Owner for the costs of Eligible Activities undertaken by the Owner.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Definitions. Capitalized terms shall have those definitions provided under Act 381 unless otherwise provided by this Agreement or unless inconsistent with the context in which the term is used. However, notwithstanding the definitions provided under Act 381, for purposes of this Agreement, Tax Increment Revenues shall only mean and include such Tax Increment Revenues generated from the sources specified in Section 3 hereof.

2. The Plan. The approved Brownfield Plan, Attached hereto as Exhibit B, is fully incorporated herein and made a part of this Agreement. To the extent that any provisions of the Brownfield Plan conflict with this Agreement, the terms, and conditions of this Agreement control. To the extent any provisions of the Brownfield Plan, this Agreement, or the Development Agreement conflict with Act 381, then Act 381 shall control.

3. Sources and Uses of Tax Increment Revenues.

(a) The following Tax Increment Revenues attributable to the levies of ad valorem taxes and Specific Taxes upon the Subject Property that are eligible for capture by the BRA under Act 381, will comprise the sources of Tax Increment Revenues available to the BRA for purposes of the Plan and to make the reimbursement payments required under this Agreement:

- (i) All local and operating millages, with the exception of the Detroit Institute of Arts ("DIA") and Detroit Zoo Operating Millages, any Debt Millages and School Operating and Debt Millages; and
- (ii) Levies of the Oakland Intermediate School District.

(b) The BRA shall not be required by this Agreement to use Tax Increment Revenues attributable to the levies by the State of Michigan of the State Education Tax or by the Madison School District. However, this Agreement shall not prohibit BRA, in its sole discretion, from capturing or using Tax Increment Revenues attributable to the Subject Property for any purpose authorized by Act 381.

4. Determination of Eligible Activities Qualified for Reimbursement.

(a) All costs of Eligible Activities attributable to the Subject Property for which the Owner seeks reimbursement from Tax Increment Revenues shall satisfy each of the following applicable qualifications:

- (i) The Eligible Activity and the cost of the Eligible Activity is included in the Brownfield Plan, or any amendment or supplement thereto approved by the BRA or its designee, and the Eligible Activity is conducted in accordance with the Brownfield Plan, this Agreement, Act 381, and all applicable local, State, and federal laws and regulations.
- (ii) The Eligible Activity has not occurred greater than six months (180 days) before the effective date of approval of the Plan by the Madison Heights City Council, February 12, 2024 (the "Effective Date"), unless expressly approved as an element of the Brownfield Plan.

(b) Owner understands and agrees that any reimbursement by or on behalf of the BRA of any expenses for approved activities shall be only for “Eligible Activities” as defined in Act 381 and the Brownfield Plan or for which reimbursement is authorized under this Agreement. It is further understood and agreed that any reimbursement to or on behalf of Owner shall only occur to the extent that Tax Increment Revenues are generated from the Subject Property and those Tax Increment Revenues or other revenue is available under Act 381 and this Agreement for the making of reimbursements to the Owner.

5. BRA Reimbursement Payments to Owner.

(a) From time to time, but not more frequently than quarterly without approval of the BRA, Owner may submit to the BRA prior to completion of Eligible Activities a certification of costs of Eligible Activities paid or incurred for which reimbursement is sought in accordance with this Agreement and the Brownfield Plan. Such certification shall include a narrative of the approved activities performed showing that such activities qualify for reimbursement under this Agreement, a representation and warranty of the Owner that all activities for which reimbursement is sought qualify as Eligible Activities under Act 381 and this Agreement, copies of all documents or reports for whose preparation payment is requested, a copy of invoices for the work described in such certification, and any substantiating documentation for such invoices that is reasonably requested by the BRA.

(b) Within thirty (45) days of its receipt of such certification and supporting invoices, the BRA shall complete its review of the submission to confirm that such activities qualify for reimbursement under this Agreement and the Brownfield Plan and advise Owner in writing (“Written Determination”) of its confirmation, or if any activities do not so qualify, the specific reasons why the BRA believes that such activities do not so qualify.

(c) To the extent that such submission is approved, the BRA shall cause Owner to be paid the amounts approved within forty-five (45) days after the date of submission of the statement by Owner, but only to the extent that Tax Increment Revenues attributable to the Subject Property are available. If sufficient Tax Increment Revenues attributable to the Subject Property are not available at the time a submission for costs of Eligible Activities is approved and payment is due, the approved amount shall be paid from Tax Increment Revenues attributable to the Subject Property that are next received by the BRA.

(d) To the extent that any portion of such submission is not approved within the thirty (45) day review period, an authorized representative of the BRA and Owner shall, upon the written request of either party within fourteen (14) days after receipt of the Written Determination, meet promptly to discuss the reasons the submission (or any portion thereof) was not approved and the conditions pursuant to which Owner can obtain approval of such disallowed request and Owner and BRA agree to work cooperatively and diligently to resolve and or comply with any such conditions.

(e) The Owner shall notify the BRA of the completion of Eligible Activities for which reimbursement may be sought under this Agreement. The Owner shall provide the BRA with a final certification of costs of Eligible Activities within ninety (90) days after the date of completion of the Eligible Activities for which reimbursement is sought under this Agreement.

The Owner shall receive progress payments under paragraph 5(c) for costs incurred for Eligible Activities prior to final certification.

(f) No interest or other similar charge shall accrue or attach to any reimbursement payment agreed to by BRA under this Agreement.

(g) Anything in this Agreement to the contrary notwithstanding, the Owner and its affiliates shall comply with all applicable laws, ordinances or other regulations imposed by the City or any other properly constituted governmental authority with respect to the Subject Property and shall use the Subject Property in accordance with the Plan for the term of this Agreement; and if the Owner shall fail to do so, the BRA may, in its sole discretion, withhold reimbursement payments under this Agreement for as long as such violation persists.

(h) The BRA shall not be required to capture Tax Increment Revenues to be used to reimburse the Owner pursuant to this Agreement after February 09, 2054. If the BRA has not fully reimbursed the Owner for the costs of Eligible Activities by such date, the BRA reimbursement obligation shall terminate unless the BRA and the City Council agree to extend capture of Tax Increment Revenues beyond such date. The BRA or the City shall not be responsible for reimbursing any costs of Eligible Activities if Tax Increment Revenues throughout the duration of the Plan are insufficient to cover said costs. The BRA will reimburse the Owner for Eligible Activities for a not-to-exceed amount of two-million, forty-one thousand, six hundred and eighty-six dollars (\$2,041,686).

#### 6. Adjustments.

If, due to an appeal of any tax assessment or reassessment of any portion of the Property or for any other reason the Authority is required to reimburse any Tax Increment Revenues to the City or any other tax levying unit of government, the Authority may deduct the amount of any such reimbursement, including interest and penalties, from any amounts due and owing the Developer. If all amounts due the Developer under this Agreement have been fully paid or the Authority is no longer obligated to make any further payments to the Developer, the Authority shall invoice the Developer for the amount of such reimbursement and the Developer shall pay the Authority such invoiced amount within 30 days of the Developer's receipt of the invoice. Amounts invoiced and paid to the Authority by the Developer pursuant to this paragraph shall be reinstated as Eligible Costs for which the Developer shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement. Nothing in this Agreement shall limit the right of the Developer to appeal any tax assessment.

#### 7. BRA Review Fees.

All legal or other consulting fees related to the BRA review of the Plan and this Agreement shall be payable from Tax Increment Revenues in the first year for which Tax Increment Revenues are available for capture. The BRA shall collect two-thousand five-hundred dollars (\$2,500) annually from the Tax Increment Revenues throughout the duration of the Plan as an administrative fee to cover ongoing expenses associated with managing the Plan.

#### 8. Indemnification.

(a) Owner indemnifies and holds harmless BRA, and any and all of its past present and future members, officials, employees, representatives, attorneys, agents and consultants, from any and all losses, demands, claims, actions, causes of action, assessments, suits, judgments, damages, liabilities, penalties, costs and expenses (including without limitation the fees and expenses of attorneys and other consultants) which are asserted against, or are imposed upon or incurred by BRA or an above listed person and which are resulting from, relating to, or arising out of any of the following:

- (i) Any order of the State, any agency thereof, or a court of competent jurisdiction, under the process described in Paragraph 7(a)(vi) below, requiring that the State of Michigan or any other taxing jurisdiction be repaid or refunded any levy captured as Tax Increment Revenues and paid to Owner as a reimbursement payment under this Agreement made in excess of the amount of Tax Increment Revenues the BRA is determined by the State, any agency thereof, or a court to be allowed by law to use for such reimbursement.
- (ii) Any act or omission of the Owner, after taking title to the Subject Property, with respect to the conduct of a baseline environmental assessment, due care activity or additional response or remedial activity for the Subject Property, including any failure by the Owner to take any affirmative action required by law to prevent the release of a hazardous substance or any other contaminant or the exacerbation of an existing environmental condition.
- (iii) Any release of a hazardous substance or any other contaminant on the Subject Property or an exacerbation of an existing environmental condition, any adverse effects on the environment, or any violation of any State or federal environmental law or regulation caused or due to an act or omission by the Owner, except if caused by an act or omission of the BRA or City or any of its past, present and future members, officers, employees, representatives, agents and consultants.
- (iv) The Eligible Activities for the Subject Property.
- (v) The operation of the business of the Owner on the Subject Property.
- (vi) In the event any person challenges or otherwise asserts that the State of Michigan or any other taxing jurisdiction must be repaid or refunded any levy captured as Tax Increment Revenues and paid to Owner as a reimbursement payment under this Agreement, the BRA shall provide written notice of such challenge or assertion and provide the Owner with the opportunity to defend such challenge or assertion and Owner shall not be required to repay or reimburse any such funds until a court order addressing such issue has been issued and no right of appeal remains.

(b) The BRA may, at its discretion and without the consent of the Owner, set off any amount owing to the Owner under this Agreement to satisfy any indemnification obligation of the Owner under this Section 7.

(c) The Owner shall obtain and maintain throughout the term of this Agreement, at its cost, and require its contractors engaged in Eligible Activities to obtain and maintain commercial general liability insurance against claims of any and all persons, firms and corporations for personal injury, death or property damage occurring upon, in or about the Subject Property, in amounts not less than \$2,000,000.00 for damages resulting to one person, \$2,000,000.00 for damages resulting from one casualty, and \$2,000,000.00 for damages resulting to property and at the time the Owner executes this Agreement, shall provide the BRA with a certificate evidencing such insurance and that the Owner has the statutorily required workers' compensation insurance. The liability policies shall name the City and the BRA and their officers, employees, and agents as additional insured. All policies shall be provided by insurers qualified to write the respective insurance in the State of Michigan, be in such form and include such provisions as are generally considered standard provisions for the type of insurance involved, prohibit cancellation or substantial modification without at least thirty (30) days written notice to the BRA or its authorized agent. Any loss or damage against which the BRA is indemnified under Section 7(a) above that is recovered by such insurance shall offset the liability of the Owner to BRA under this Agreement.

(d) Anything contained in this Agreement to the contrary notwithstanding all indemnity obligations under this Section 7 shall expire and be completely extinguished one (1) year after the date of the final reimbursement of approved Eligible Activities, except with respect to any bona fide claim which is asserted, and with respect to which an action against Owner is commenced in the Circuit Court of Oakland County, Michigan (and the summons and complaint relating to such action is received by Owner) on or before such expiration date.

#### 9 Assignment; Binding Effect.

This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the express written consent of the other party, which shall not be unreasonably withheld, provided, however, the Developer may only assign its interest in this Agreement to an affiliate (as defined below) without the prior written consent of the Authority, provided, that the Authority receives advanced written notice any such planned assignment, not less than sixty (60) days prior to said assignment, and the assignee acknowledges to the Authority in writing on or prior to the effective date of such assignment its obligations upon assignment under this Agreement, provided, further, that the Developer may make a collateral assignment of the Tax Increment Revenues after review of such assignment and consent by Authority's legal counsel and approval of the Authority's Executive Director. As used in this paragraph, "affiliate" means any corporation, company, partnership, limited liability company, trust, sole proprietorship or other individual or entity which (a) is owned or controlled by the Developer, (b) owns or controls the Developer or (c) is under common ownership or control with the Developer. This Agreement shall be binding upon any successors or permitted assigns of the parties.

#### 10. Loss of Revenue from a Taxing Jurisdiction.

It is understood that the Brownfield Plan, as approved, is intended to capture Tax Increment Revenues from several taxing jurisdictions. In the event that a taxing jurisdiction, or any other party, challenges the capture of any tax revenues and the State, an agency thereof, or a court of competent jurisdiction issues an order preventing the capture and use of those revenues and

requiring the refund or repayment of any captured Tax Increment Revenue previously paid to Owner pursuant to this Agreement, the Owner agrees to repay to the BRA the captured Tax Increment Revenues previously paid to Owner pursuant to this Agreement.

11. Effective Date. This Agreement shall take effect upon its execution by the BRA and City.

11. Owner Obligations, Representations and Warranties; Termination and Enforcement.

(a) Owner represents and warrants the following:

(i) With respect to the Subject Property, Owner is not a party liable under section 20126 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20126.

(ii) The Subject Property qualifies as Eligible Property under Act 381.

(b) The BRA may terminate this Agreement should Owner: (1) fail to fulfill in a timely and proper manner any of its obligations under paragraphs 5(e) and 5(g); or (2) violate a representation or warranty in paragraph 10(a); provided that before such termination the BRA shall deliver to the Owner a written notice of termination specifically describing the breach causing issuance of the notice of termination, and the Owner shall have thirty (30) days after delivery of the notice to cure such breach; provided, however, if such default is not reasonably capable of being cured within the thirty (30) day period, Developer shall have such period of time as is reasonably necessary to cure the default as long as Developer diligently commences to cure the default within the thirty (30) period and thereafter diligently pursues the cure to completion, but in no event shall said cure period exceed ninety (90) days (unless BRA extends the same in writing). If Developer fails to cure, within the time periods described herein, the termination shall be effective the day after the cure period lapses. If the Owner cures within the time allowed (as may be extended), then this Agreement shall not be terminated for the breach.

(c) Upon the effective date of the termination of this Agreement, the BRA shall have no further obligation under this Agreement to make any payments to Owner in reimbursement of any costs of Eligible Activities incurred or to be incurred by the Owner.

(d) In lieu of termination, the BRA may seek to enforce and compel performance with the terms of this Agreement in a court of competent jurisdiction by specific performance or mandatory injunction and may pursue any other remedy that may be available to it at law or equity.

(e) Agreements Not to Contest

(i) The Owner agrees not to contest the terms and conditions of this Agreement.

(ii) The Owner acknowledges that the City may program and incorporate in its Capital Improvement Plan, reconstruction of the roadways adjacent to the Owner's property. If this does occur, the Owner agrees not to oppose any lawful

Special Assessment imposed against the real property of the Owner as deemed necessary by the City in its sole discretion for reconstruction of said roadways.

iii) Owner may contest invoiced costs under this Agreement if it believes:

(a) The cost documentation contains clerical, mathematical, or accounting errors.

(iv) In the event any real, personal, or special property tax dispute concerning properties owned, leased, or controlled by the Owner, the Owner shall make a bona fide effort to resolve such dispute with the City Administration before hiring outside consulting firms or filing suit in the Michigan Tax Tribunal.

12. Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of Owner and the BRA, and their respective heirs, successors, assigns and transferees. The Owner may freely assign its rights hereunder, but its obligations may only be assigned to an entity not affiliated with the Owner if such transfer or assignment is approved in advance by the BRA, which approval shall not be unreasonably withheld, delayed, or conditioned. In the event of any assignment or transfer of any right or obligation hereunder such transfer or assignment shall not be effective unless a written notice by certified mail is provided to the other party. This Agreement shall not be affected or altered in any way by any sale, lease or other disposition or sale of all or a portion of the Subject Property.

(b) This Agreement shall be interpreted and construed in accordance with Michigan law and shall be subject to interpretation and enforcement only in Michigan courts whether federal or state.

(c) This Agreement may be signed in counterparts.

(d) In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party.

(e) Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other party.

(f) This Agreement constitutes the entire agreement of the parties and integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(g) A party may waive any default, condition, promise, obligation, or requirement applicable to any other party hereunder, provided that any such waiver shall apply only to the extent expressly given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation, or requirement in any past or future instance. All waivers of the



provisions of this Agreement must be in writing and signed by the appropriate officers of the waiving party, and all amendments hereto must be in writing and signed by the appropriate officers of all the parties.

(h) In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any other agreement, document or understanding of the parties, this Agreement shall control.

(i) All notices, certificates or communications required by this Agreement to be given shall be sufficiently given and shall be deemed delivered when personally served or sent by facsimile (promptly confirmed in writing) or when mailed by express courier or registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses listed below:

If to the BRA:	City of Madison Heights Community and Economic Development 300 W. Thirteen Mile Road Madison Heights, MI 48071 Phone: (248) 583-0831 Fax: (248) 588-4143
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If to the Proposed Owner:	Moschouris Management Company, LLC 28454 Woodward Avenue Royal Oak, MI 48067 Phone: (313) 580-2261
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**MOSCHOURIS MANAGEMENT COMPANY, LLC**  
a Michigan limited liability company

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

William Gershenson

Its: Vice President of Real Estate

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by William Gershenson, Vice President of Real Estate of Moschouris Management Company (a limited liability company).

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

**CITY OF MADISON HEIGHTS BROWNFIELD  
REDEVELOPMENT AUTHORITY,**  
a Michigan municipal corporation

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

Michael Van Buren

Its: Chairman

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024 by Michael Van Buren, the Chairman of the City of Madison Heights Brownfield Redevelopment Authority, of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_

Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

**CITY OF MADISON HEIGHTS,**

a Michigan municipal corporation

By: \_\_\_\_\_  
Roslyn Grafstein

Its: Mayor

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by Brian C. Hartwell, the Mayor of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

**CITY OF MADISON HEIGHTS,**  
a Michigan municipal corporation

By: \_\_\_\_\_  
Cheryl Rottmann

Its: City Clerk

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by Cheryl Printz, the City Clerk of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

**APPENDIX A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

**Legal Description**

**29448 John R Road, Madison Heights, Wayne County, Michigan:**

Parcel: 44-25-12-304-010

T1N, R11E, SEC 12, N 3 ACRES OFS 6 ACRES OF NW  $\frac{1}{4}$  OF SW  $\frac{1}{4}$  EXC 690 FT, ALSO PART OF NW  $\frac{1}{4}$  OF SW  $\frac{1}{4}$  BEG AT SW SEC COR, TH E 672.6 FT, TH 95.9 FT, TH W 672.2FT, TH S 95.9 FT TO BEG, ALSO PART OF SW  $\frac{1}{4}$  OF SW  $\frac{1}{4}$  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 N89-58-00 W 1373.81 FT TO BEG EXC W 60 FT OF EACH TAKEN FOR RD, ALSO EXC PART OF SW  $\frac{1}{4}$  BEG AT PT DIST S 00-02-18 W 1161.72 FT & S 89-51-16 E 60 FT FROM W  $\frac{1}{4}$  COR, TH S 89-51-16 E 613.92FT, TH S 00-18-28 E 14.24

**APPENDIX B**  
**BROWNFIELD PLAN**