

# CITY OF MUSKEGON

## DOWNTOWN DEVELOPMENT AUTHORITY/BROWNFIELD REDEVELOPMENT AUTHORITY MEETING

**December 2, 2025 @ 10:30 AM  
MUSKEGON CITY COMMISSION CHAMBERS  
933 TERRACE STREET, MUSKEGON, MI 49440**

### **AGENDA**

- ROLL CALL:**
- PUBLIC COMMENT ON AGENDA ITEMS:**
- NEW BUSINESS:**
  - I. **Shaw Walker Development and Reimbursement Agreement** Economic Development
- UNFINISHED BUSINESS:**
- ANY OTHER BUSINESS:**
- ADJOURNMENT:**

#### **AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE CITY OF MUSKEGON AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES**

To give comment on a live-streamed meeting the city will provide a call-in telephone number to the public to be able to call and give comment. For a public meeting that is not live-streamed, and which a citizen would like to watch and give comment, they must contact the City Clerk's Office with at least a two-business day notice. The participant will then receive a zoom link which will allow them to watch live and give comment. Contact information is below. For more details, please visit:

[www.shorelinecity.com](http://www.shorelinecity.com)

The City of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting with twenty-four (24) hours' notice to the City of Muskegon. Individuals with

disabilities requiring auxiliary aids or services should contact the City of Muskegon by writing or by calling the following:

Ann Marie Meisch, MMC. City Clerk. 933 Terrace St. Muskegon, MI 49440. (231)724-6705.  
[clerk@shorelinecity.com](mailto:clerk@shorelinecity.com)



## Agenda Item Review Form

### Muskegon Downtown Development Authority/Brownfield Redevelopment Authority

<b>Commission Meeting Date:</b> December 2, 2025	<b>Title:</b> Shaw Walker Development and Reimbursement Agreement															
<b>Submitted by:</b>	<b>Department:</b> Economic Development															
<b>Brief Summary:</b>																
<b>Detailed Summary &amp; Background:</b>																
<b><u>Goal/Action Item:</u></b>																
<b>Is this a repeat item?:</b> Explain what change has been made to justify bringing it back to Commission:																
<b>Amount Requested:</b>	<b>Budgeted Item:</b> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 25%;">Yes</td> <td style="width: 10%;"></td> <td style="width: 25%;">No</td> <td style="width: 10%;"></td> <td style="width: 20%;">N/A</td> <td style="width: 10%;"></td> </tr> </table>	Yes		No		N/A										
Yes		No		N/A												
<b>Fund(s) or Account(s):</b>	<b>Budget Amendment Needed:</b> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 25%;">Yes</td> <td style="width: 10%;"></td> <td style="width: 25%;">No</td> <td style="width: 10%;"></td> <td style="width: 20%;">N/A</td> <td style="width: 10%;"></td> </tr> </table>	Yes		No		N/A										
Yes		No		N/A												
<b>Recommended Motion:</b> Motion to approve the Development Reimbursement Agreement between the State of Michigan, Parkland Development, and the City of Muskegon Brownfield Redevelopment Authority as presented and to authorize the Chair to sign.																
<b>Approvals:</b>	<b><u>Name the Policy/Ordinance Followed:</u></b>															
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Information Technology																
Other Division Heads																
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Legal Review																

**REIMBURSEMENT AGREEMENT**

by and among

**MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY,**

a public body corporate;

**MICHIGAN STRATEGIC FUND,**

a public body corporate and politic;

**MICHIGAN DEPARTMENT OF TREASURY;**

and

**PARKLAND PROPERTIES OF MICHIGAN – SHAW WALKER, LLC, SHAW WALKER  
OPPORTUNITY ZONE BUSINESS 1, LLC, SHAW WALKER OPPORTUNITY ZONE  
BUSINESS 2, LLC, SHAW WALKER OPPORTUNITY ZONE BUSINESS 3, LLC, AND  
SHAW WALKER OPPORTUNITY ZONE BUSINESS 4, LLC,**

all Michigan limited liability companies

**TRANSFORMATIONAL BROWNFIELD PLAN FOR PROJECTS LOCATED**

**AT**

**965 W. WESTERN AVENUE**

**920 & 930 WASHINGTON AVENUE**

**1330 DIVISION STREET**

**November 21, 2025**

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**SCHEDULES**

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**EXHIBITS**

Exhibit A: Definitions

Exhibit B: Transformational Brownfield Plan

Exhibit C: Combined Annual Estimates of State Capture Revenues, by Project

Exhibit D: Safe Harbor Election Form

Exhibit E: Safe Harbor Methodology and Factors

Exhibit F: Annual Safe Harbor Report Form

Exhibit G: Request to Shift Tax Capture Revenues

## REIMBURSEMENT AGREEMENT

for the Transformational Brownfield Plan for the Project(s) at:

965 W. WESTERN AVENUE  
920 & 930 WASHINGTON AVENUE  
1330 DIVISION STREET

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into as of November 21, 2025 ("Effective Date"), by and between PARKLAND PROPERTIES OF MICHIGAN – SHAW WALKER, LLC, a Michigan limited liability company (the "Developer"); SHAW WALKER OPPORTUNITY ZONE BUSINESS 1, LLC, SHAW WALKER OPPORTUNITY ZONE BUSINESS 2, LLC, SHAW WALKER OPPORTUNITY ZONE BUSINESS 3, LLC, and SHAW WALKER OPPORTUNITY ZONE BUSINESS 4, LLC, all Michigan limited liability companies (individually "Owner" and collectively, the "Owners"), the MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY, a Michigan public body corporate (the "BRA"), the MICHIGAN STRATEGIC FUND, a public body corporate and politic (the "MSF"); and the MICHIGAN DEPARTMENT OF TREASURY ("Treasury"). As used in this Agreement, Developer, Owners, the BRA, the MSF, and Treasury are, individually, a "Party" and, collectively, the "Parties."

### RECITALS:

A. Except as otherwise defined in this Agreement, all capitalized terms shall have the respective meanings set forth in Exhibit A.

B. Michigan Public Act 381 of 1996, as amended ("Act 381"), authorized municipalities to create brownfield redevelopment authorities to facilitate the implementation of brownfield plans; designate brownfield properties; and otherwise promote the revitalization, redevelopment and reuse of certain brownfield properties;

C. The BRA was created pursuant to Act 381 to promote the redevelopment of brownfield properties within the City of Muskegon (the "City") through the implementation of brownfield plans.

D. The City established the BRA and adopted a city-wide brownfield plan pursuant to resolutions dated February 23, 1998 and April 14, 1998; and the brownfield plan was amended on December 13, 2016 and February 11, 2025, to identify eligible activities for the eligible properties located at 965 W Western; 920 & 930 Washington Avenue; and 1330 Division Street, commonly known as the former Shaw Walker Furniture Company.

E. Michigan Public Act 46 of 2017 ("Act 46") authorized the creation of transformational brownfield plans under Act 381 to enable the revitalization of brownfield properties that will have a transformational impact on local economic development and community revitalization.

F. A transformational brownfield plan allows for the capture of Construction Period Tax Capture Revenues, Tax Increment Revenues, Income Tax Capture Revenues, Withholding Tax Capture Revenues, and Sales & Use Tax Capture Revenues (as each is defined in Act 381, and collectively referred to herein as "Tax Capture Revenues") subject to the requirements of Act 381.

G. A transformational brownfield plan further entitles Developer and Owners to an exemption from sales tax and use tax on materials used to construct redevelopment projects on Eligible Properties pursuant to Section 4d of the General Sales Tax Act (MCL 205.54d) and Section 4dd of the Use Tax Act (MCL 205.94dd) (collectively, the “Sales and Use Tax Exemption”).

H. Developer and Owners intend to develop or cause development of four (4) brownfield properties located within the City at: 965 W. Western Avenue; 920 & 930 Washington Avenue; and 1330 Division Street (collectively, the “Transformational Project Sites”), and as each is more particularly described in the TBP, attached as Exhibit B.

I. The TBP is made under Act 381, as amended by Act 46, and in accordance with and pursuant to the master development plan of the City of Muskegon, including the 2008 Muskegon Downtown and Lakeshore Redevelopment Plan and the 2017 Imagine Muskegon Lake Plan that envisioned the rehabilitation of the former Shaw Walker manufacturing site to support housing in the City of Muskegon, to advance and incentivize redevelopment of the Transformational Project Sites as for housing related activities described in the TBP.

J. As a condition precedent to the commencement of reimbursement of Tax Capture Revenues, Act 381 requires the MSF to approve a transformational brownfield plan that further defines the Eligible Activities and the approved uses of Tax Capture Revenues.

K. In accordance with and pursuant to the master development plans of the City described above, the Muskegon City Commission (the “Governing Body”) and the MSF approved the Transformational Brownfield Plan (“TBP”) attached hereto as Exhibit B on February 11, 2025 and April 22, 2025, respectively, under which Developer shall receive reimbursement from available Tax Capture Revenues and the benefit of the Sales and Use Tax Exemption in accordance with the terms of this Agreement.

L. The MSF Resolution approves the use of up to 100% of the Income Tax Capture Revenues generated under the TBP provided the eligible properties within the TBP are subject to a written, binding affordable housing agreement between the BRA, Developer and Owners.

M. The BRA, Developer, and Owners entered into a binding affordable housing agreement on February 11, 2025.

N. Prior to the commencement of reimbursement under the TBP, Act 381 requires the execution of a reimbursement agreement to establish the terms, conditions, and processes by which the BRA, MSF, and Treasury will collect and use available Tax Capture Revenues to reimburse Developer for the cost of Eligible Activities.

O. Pursuant to Act 381, upon the execution of this Agreement, the transfer and distribution of Tax Capture Revenues as specified in Act 381, the TBP, and this Agreement shall be binding on the State of Michigan and all taxing units levying ad valorem property taxes or specific taxes against property subject to the TBP.

P. The Parties are entering into this Agreement to specify the terms and conditions associated with the reimbursement of costs associated with the Eligible Activities.

## **AGREEMENTS**

NOW, THEREFORE, the Parties hereto agree as follows:

### **1. The Transformational Brownfield Plan**

The TBP was approved by resolution of the Governing Body on February 11, 2025, and by the MSF Resolution on April 22, 2025. To the extent provisions of the TBP, and any subsequent amendment, conflict with this Agreement, as it may be amended, the terms and conditions of this Agreement control. To the extent provisions of the TBP, and any amendment thereto, or this Agreement conflicts with Act 381, Act 381 controls.

### **2. Failure to Commence or Complete a Project**

#### **(a) Failure to Commence Eligible Activities**

(i) This Agreement shall be terminated in its entirety in the event the TBP is terminated by the Governing Body as a result of Developer and Owners' failure to initiate any Eligible Activities within two years of the date of the MSF Resolution approving the TBP or, if applicable, any subsequent amendment thereto. Notwithstanding anything else in this Agreement to the contrary, the Parties hereby acknowledge that the Developer has initiated Eligible Activities.

(ii) Either the MSF or the BRA may terminate this Agreement as to an individual Project if no Eligible Activities are initiated on such Project by the later of:

(1) the last date of the applicable calendar quarter listed on Schedule 2(a); or

(2) the date that is five (5) years after the date of the MSF Resolution approving the TBP or any subsequent amendment.

(iii) To the extent that this Agreement is not terminated as to an individual Project pursuant to subsection (ii), above:

(1) neither the MSF nor the BRA shall terminate this Agreement as to such Project: (A) if Developer and Owners have undertaken to cure such failure to commence Eligible Activities and is diligently pursuing such cure; or (B) without good cause in any other circumstance; and

(2) upon written approval of the MSF Fund Manager, not to be unreasonably withheld or delayed, Developer and Owners may receive an extension of up to twelve (12) additional months from the applicable commencement dates on Schedule 2(a) for those Projects that have not yet commenced.

(iv) If the Governing Body terminates the TBP as to an individual Project that has not commenced, as provided in subsection (ii) above, this Agreement shall be deemed terminated as to such Project subject to the adjustments contemplated by Section 21(b) hereof.

(v) For purposes of confirming Developer's commencement of Eligible Activities under this Section 2(a), the MSF shall review the Eligible Activities included in Developer's Annual Cost Certification obligation outlined in Section 6 below and the Written Determination in Section 6(d) shall serve as confirmation of the same.

(b) Failure to Timely Complete a Project

(i) Except as set forth herein, this Agreement may be terminated in accordance with this Section 2 and Section 21 as to any Project that fails to be Substantially Complete by the estimated Substantial Completion date set forth on Schedule 2(b), as may be amended in accordance with Section 2(b)(ii), corresponding to such Project.

(ii) The Parties acknowledge and agree that because the actual commencement dates and order of construction may vary from the estimated timelines set forth in the TBP, the actual completion dates may similarly vary. Therefore, in the event Developer and Owners adjust the order of commencement (and, therefore, the order of completion) of Projects, it shall notify the MSF and BRA in writing of the revised commencement and completion dates and such changes will thereby be incorporated into this Agreement via amendment, as set forth in subsection (vi), below.

(iii) Upon written approval of the MSF Fund Manager, Developer and Owners shall have the following opportunities to extend the completion date for a Project:

(1) Up to twenty-four (24) months from the applicable estimated completion date in Schedule 2(b) to complete such Project; and

(2) For those Projects extended pursuant to subsection 2(b)(iii)(1), an additional extension of up to eighteen (18) months if such Project is Under Construction and Developer and Owners certify (i) that they have been proceeding in good faith with construction of the Project, and (ii) the additional time is required to complete the Project.

(iv) The MSF may provide additional extensions of the Project completion dates outlined herein as MSF determines are reasonable and warranted due to construction, market, or financing contingencies, or resulting from a Force Majeure event.

(v) Developer and Owners shall be considered to have failed to complete a Project if such Project: (1) is not completed in substantial accordance with the Redevelopment Program Plan for such Project, or (2) a request for Certificate of Completion is not submitted to the applicable local authority within ninety (90) days following the Substantial Completion date for such Project as set forth in Schedule 2(b), as each date may be modified and/or extended by this Section. However, Developer and Owners shall not be considered to have failed to complete such Project if Developer and Owners provide the MSF Fund Manager a completion guaranty that is satisfactory to the MSF Fund Manager in its reasonable judgment.

(vi) Project completion timelines may also be modified by:

(1) amendment to this Agreement without requiring similar amendment to the underlying TBP provided that such amendment is approved by the MSF Board and signed by the MSF and BRA with notice provided to Treasury; or

(2) amendment to the TBP where such amendment shall be automatically effective upon approval by the Governing Body and MSF; this Agreement shall be administratively amended (i.e. without additional approvals) to reflect the revised timeline.

(c) Termination Process

No termination of this Agreement (in whole or part) pursuant to Section 2(a) or 2(b), above, may occur unless and until the Party seeking termination: (i) gives Developer and Owners thirty (30) days' written notice of the intent to terminate; and (ii) provides Developer and Owners with an opportunity to be heard at a public meeting.

Notwithstanding anything in this Section to the contrary, the TBP (or any subsequent amendment thereto) shall not be abolished or terminated until the principal and interest on bonds, if any, issued under Section 17 of Act 381, and all other obligations to which the Tax Increment Revenues are pledged by the BRA have been paid or funds sufficient to make the payment have been identified or segregated.

(d) Suspension of Tax Capture Revenues

(i) If Developer and Owners fail to complete a Project (as evidenced by failure to submit a request for Certificate of Completion) in accordance with the time limitations and subject to any granted extensions pursuant to this Section 2, the Parties agree that the reimbursement of Tax Capture Revenues shall be suspended with respect to such Project. Unless otherwise extended, in the event reimbursement of Tax Capture Revenues is suspended with respect to such a Project, those Tax Capture Revenue estimated for such Project are specifically prohibited from being utilized on another Project within the TBP.

(ii) Reimbursement of Tax Capture Revenues shall remain suspended with respect to any non-completed Project unless and until the MSF grants an extension as provided by this Section 2 or an amendment to the TBP is adopted which provides for an extension of the completion deadline and Developer and Owners return to compliance with this Agreement.

(iii) Upon Developer's satisfaction of any event triggering a suspension of Tax Capture Revenues outlined herein, reimbursement of any suspended Tax Capture Revenues shall recommence in accordance with the reimbursement obligations contemplated by this Agreement.

### **3. Tax Capture Revenues; Generally**

(a) Tax Capture Revenues authorized to be captured or transmitted under the TBP shall be used only in accordance with Act 381 and the approved TBP for the following purposes:

(i) To reimburse Developer pursuant to this Agreement for the cost of Eligible Activities.

(ii) To make payments to the State Brownfield Redevelopment Fund pursuant to Section 13b(15) of Act 381.

(iii) To pay the BRA Administrative Fee in accordance with Section 15, below.

(b) The cost of Eligible Activities identified in the TBP are intended to be reimbursed from Tax Capture Revenues. Subject to any limitations set forth in Act 381, there is no specific assignment of a particular form of Tax Capture Revenues to a particular Eligible Activity.

(c) To the extent feasible, reimbursement of Tax Capture Revenues due to Developer in accordance with this Agreement shall be provided by electronic funds transfer to Developer, or shall be provided to the Trustee or Lender, as applicable, under the Bond Documents or Loan Documents, in an account or accounts to be established for such purpose, provided that the disbursing entity may deduct the actual amount of any electronic funds transfer fees imposed by its financial institution.

(d) Adjustments to Tax Capture Revenues Estimates

(i) The annual Tax Capture Revenues for each Project as set forth in the TBP as well as the corresponding reimbursement amounts based on those Tax Capture Revenues are estimates only. Actual Tax Capture Revenues generated from a Project may be greater or less than the estimated amounts in the TBP.

(ii) Reimbursement for the cost of Eligible Activities for each Project may vary from the estimates set forth in the TBP so long as the aggregate and annual limitations set forth in Section 5(a), below, are not exceeded.

(iii) The procedures for reconciling variations in reimbursement amounts with the estimates contained in the TBP are set forth in Section 7 (for Construction Period TCRs), Section 10 (for State Capture Revenues), and Section 11 (for Tax Increment Revenues).

#### **4. Determination of Eligible Activities Qualified for Reimbursement**

(a) Any reimbursement by or on behalf of the BRA, MSF, or Treasury is limited to Developer and Owners' actual costs incurred for approved Eligible Activities and reimbursement shall only occur to the extent that Tax Capture Revenues are generated from a Project and are available pursuant to the terms of this Agreement (including those provisions permitting reassignment of certain revenues).

(b) The cost of Eligible Activities shall be eligible for reimbursement subject to the following qualifications:

(i) Developer and Owners submit the costs for Eligible Activities in accordance with Section 6 of this Agreement.

(ii) Except in the case of Construction Period TCRs, Developer and Owners receive an Authorization to Commence Reimbursement for the applicable Project pursuant to Section 8 of this Agreement.

(iii) Expenses for Eligible Activities were not incurred more than ninety (90) calendar days prior to the April 22, 2025 approval of the TBP by the MSF, which date is January 22, 2025.

(iv) The total cost of Eligible Activities for which reimbursement is requested does not exceed the Total Approved Reimbursement amount, of One-Hundred Fifty-Four Million Seven-Hundred Fifty-Two Thousand Three and 00/100 Dollars (\$154,752,003.00), subject to corrective action as may be required by Section 8(e) of this Agreement.

(v) All Eligible Activities for which reimbursement is sought are included in the TBP and were conducted in accordance with the terms of the TBP and this Agreement.

(1) Eligible Activities are conducted in accordance with the terms of the TBP and this Agreement if the Eligible Activities: (A) include constructing, renovating, or rehabilitating a Project in accordance with the Redevelopment Program Plan for such Project as set forth in the TBP, and (B) has been verified by the MSF in accordance with Section 6 of this Agreement.

(2) Reimbursement for any non-conforming activities shall not be made until a TBP amendment addressing such activities is approved by each of the BRA, Governing Body, and the MSF. Non-conforming activities undertaken in advance of such approval, but which are ultimately approved via TBP amendment, shall be considered Eligible Activities under this subsection, the costs of which shall be eligible for reimbursement.

(c) The Parties acknowledge and agree that, as outlined in the TBP, Developer and Owners are seeking reimbursement for the cost of Department Specific Activities, which solely include pre-approved costs for reimbursement.

## **5. Limitations on Reimbursement**

(a) In addition to the Total Approved Reimbursement, other approved reimbursements shall not exceed the following limits:

(i) The Total Approved Construction Period TCRs shall not exceed Three Million Five-Hundred Seventy-Six Thousand One-Hundred Twenty-Eight Dollars (\$3,576,128.00).

(ii) The Total Approved Tax Increment Revenues shall not exceed Seventy-Three Million Three-Hundred Ninety-Seven Thousand Two-Hundred Forty-Three Dollars (\$73,397,243.00) for all Projects, comprised of a maximum of Twenty-Six Million Six-Hundred Eighty-One Thousand Three-Hundred Sixty-Four Dollars (\$26,681,364.00) from school tax capture and Forty-Six Million Seven-Hundred Fifteen Thousand Eight-Hundred Seventy-Nine Dollars (\$46,715,879.00) in local tax capture.

(iii) The Total Approved State Capture Revenues shall not exceed Seventy-Seven Million Seven Hundred Seventy-Eight Thousand Six Hundred Thirty-Three Dollars (\$77,778,633.00) for all Projects.

(iv) For purposes of the annual commitment and disbursement limit under Section 14a(19) of Act 381, annual State Capture Revenues disbursed shall not exceed Three Million Eight Hundred Eighty-Eight Thousand Nine Hundred Thirty-Two and 00/100 Dollars (\$3,888,932.00) for each calendar year starting no later than five (5) years after the date of the MSF Resolution and continuing for each Project for a period of twenty years from the start date of such Project (the "State Capture Revenue Disbursement Period"), with such annual amount being reduced upon conclusion of each Project's State Capture Revenue Disbursement Period by the corresponding Combined Annual Estimate; provided, however, that any amount of State Capture Revenues totaling less than the maximum disbursement outlined herein that are not disbursed in a given year shall be accrued and available for disbursement in subsequent years pursuant to Section 10, below.

(b) In addition to the foregoing limitations, the Parties acknowledge and agree that:

(i) Each Project may not receive more than thirty (30) years of reimbursement from Tax Increment Revenues from the beginning date of capture of Tax Increment Revenues with respect to such Project, and each Project may not receive more than twenty (20) years of reimbursement from Income TCRs, Withholding TCRs, and Sales & Use TCRs from the beginning date of capture of each with respect to such Project.

(ii) Treasury shall deposit annually an amount equal to the Construction Period TCRs, Income TCRs, Withholding TCRs, and Sales & Use TCRs due to Developer for that calendar year into the State Brownfield Redevelopment Fund for reimbursement to Developer as required by Section 8a(4) of Act 381.

## **6. Reporting and Certification of Eligible Activities**

(a) Annual Cost Certification. No later than March 1 following each calendar year during which Project construction occurs, Developer and Owners shall submit to the BRA and MSF a report certifying the cost of Eligible Activities incurred for each Project during the preceding year, the form of which shall be provided by the MSF to the Developer and Owners ("Annual Cost Certification"), and which report shall also identify the cumulative cost of Eligible Activities reported for each Project. If the form is not made available by the MSF at least sixty (60) days prior to the April 1<sup>st</sup> due date, Developer and Owners may submit the Annual Cost Certification in an alternative format, as determined by Developer and Owners, provided the format satisfies the report contents described in Section 6(b) below. In the event that the actual cost of Eligible Activities exceeds the amount estimated in the TBP, costs for approved Eligible Activities in excess of that estimated in the TBP shall remain eligible for potential future reimbursement. Failure to include Eligible Activities in a given year's submission shall not preclude the inclusion of those Eligible Activities in a subsequent year's submission.

(b) Report Contents. The Annual Cost Certification shall include the following additional information separately for each Project:

(i) A general description of the Eligible Activities that were conducted in the preceding calendar year.

(ii) Documentation reasonably sufficient to establish Developer and Owners' payments for Eligible Activities conducted in the preceding calendar year; provided, that a standard construction industry AIA "pay application" format shall be sufficient to meet the requirements of this Section 6(b)(ii), but is not required.

(iii) Developer and Owners' certification that the Eligible Activities were conducted in accordance with the terms of the TBP and this Agreement.

(iv) Developer and Owners' certification, representation, and warranty that all activities included in the Annual Cost Certification qualify as Eligible Activities under Act 381 and this Agreement.

(v) Developer and Owners shall specifically identify those activities, if any, being undertaken during the pendency of an amendment pursuant to Section 4(b)(v)(2) of this Agreement.

(vi) Except for the total amount of public sources otherwise identified in the TBP, Developer's certification that none of the costs for which reimbursement is requested are costs that were paid for with a grant or forgivable loan from any other public source.

(c) Final Cost Certification. Developer and Owners shall decide in their sole discretion when to submit their final report certifying the cost of Eligible Activities incurred for each Project (the "Final Cost Certification"), which in no event shall be later than twenty-four (24) months after the issuance of a Certificate of Completion for such Project. The Final Cost Certification shall comply with the requirements for Annual Cost Certifications for those costs incurred, if any, since the previous year's Annual Cost Certification. After Developer and Owners have submitted its Final Cost Certification for a Project, any costs incurred relative to that Project that were not included in an Annual Cost Certification or the Final Cost Certification are not subject to reimbursement under this Agreement and shall not be included in the calculation of the Actual Capital Investment, absent an amendment to the TBP.

(d) Written Determination. Within ninety (90) days after its receipt of a complete Annual Cost Certification or Final Cost Certification, the MSF shall notify Developer and Owners in writing of the total amount of Eligible Activities meeting the requirements of Section 4(b) hereof, and therefore eligible for reimbursement from available Tax Capture Revenues as well as the total that do not meet the requirements of Section 4(b) hereof ("Written Determination"), notice of which shall be provided concurrently to BRA and Treasury; provided, however, that in the event of a pending amendment as contemplated under Section 4(b)(v)(2) of this Agreement, the MSF shall provide the Written Determination by the later of thirty (30) days after the final approval of such amendment and ninety (90) days after receipt of a complete Annual Cost Certification or Final Cost Certification. The Written Determination is separate and distinct from, and not bound by, the evaluation(s) of the Actual Capital Investment or submission(s) of the Certificate of Completion relating to individual Projects pursuant to Section 8 of this Agreement.

(e) In the event the MSF determines that any portion of the activities do not qualify as Eligible Activities, an authorized representative of the MSF, BRA, and Developer shall, upon Developer's request, meet to discuss the reasons such activities were not approved as Eligible Activities and the conditions pursuant to which Developer can obtain approval. The MSF, BRA, and Developer agree to work cooperatively and diligently to resolve and/or comply with any such conditions, including permitting Developer and Owners to provide additional documents and information, additional costs, and/or a revised Annual Cost Certification or Final Cost Certification.

(f) Within thirty (30) days after the receipt of a revised Annual Cost Certification or revised Final Cost Certification, the MSF shall provide a revised Written Determination based upon the revised Annual Cost Certification or revised Final Cost Certification, notice of which shall be provided concurrently to BRA, Developer, and Treasury.

(g) Any disputes regarding whether activities included in the Annual Cost Certification or Final Cost Certification qualify as Eligible Activities shall be resolved in accordance with Section 23(f) of this Agreement.

## **7. Construction Period Reimbursements**

Prior to Developer and Owners' submission of a Final Cost Certification for a Project, TBP benefits shall be limited to the Sales and Use Tax Exemption and reimbursement of Eligible Activities from Construction Period TCRs, which shall be made in accordance with this Section 7.

### **(a) Sales and Use Tax Exemption**

(i) No later than March 1 following each calendar year during which construction occurs, Developer and Owners shall submit to the MSF a report detailing the actual value of the Sales and Use Tax Exemption for each Project that is Under Construction during such calendar year (the "Sales and Use Tax Exemption Report"). Within ninety (90) days after the completion of construction for each Project, Developer and Owners shall submit to the MSF its final Sales and Use Tax Exemption Report detailing the total actual value of the Sales and Use Tax Exemption for such Project.

(ii) The Total Sales and Use Tax Exemption for the entirety of the TBP shall not exceed Four Million Eight Hundred Forty-Six Thousand Three-Hundred Eighty-Six Dollars (\$4,846,386.00).

(iii) Any adjustments to the Sales and Use Tax Exemption amount for an individual Project shall be made pursuant to Section 7(c), below.

### **(b) Construction Period Tax Capture Revenues**

(i) Construction Period TCRs will be available to reimburse Developer for the cost of Eligible Activities incurred by Developer and Owners only to the extent such revenues are reported to Treasury in accordance with this Agreement and Act 381.

(ii) For purposes of this Section, "Eligible Workers" means those individuals physically present and working within, on, or at a Project for the construction, renovation, or other improvement of such site.

(iii) By March 1 each year during which a Project is Under Construction, Developer and Owners shall report to Treasury the following information for each Project (the "Annual Construction Capture Report"), which information is necessary to calculate Construction Period TCRs for the preceding year: (1) the Federal Employer Identification Number ("FEIN") for each applicable employer; (2) the last four digits of each Eligible Worker's Social Security number; (3) the Eligible Worker's name; and (4) the total taxable wages paid to the Eligible Worker.

(iv) Developer and Owners shall provide an Annual Construction Capture Report for each Project; and the information reported for each Project shall be verified by the contractor of record for such Project; provided, that submission of the information required under this Section using Treasury's Worksheet for Construction Period Tax Capture form, or other similar form containing such information, shall satisfy the verification requirement. Developer and Owners acknowledge that Treasury has the right to request a review or reconciliation of the wages by an independent auditing firm selected and retained by Developer and Owners, and Developer and Owners shall be responsible for the cost of any such audit.

(v) Within sixty (60) days after receiving a complete Annual Construction Capture Report, Treasury shall provide notice to Developer as to the amount of Construction Period TCRs attributable to each Project, as calculated by Treasury. Treasury shall reimburse Developer on or before July 31 for approved Eligible Activities conducted for a Project by Developer and Owners using one hundred percent (100%) of the available Construction Period TCRs attributable to such Project until the total estimated Construction Period TCRs for such Project has been reached.

(vi) In the event Treasury determines that the information provided in the Annual Construction Capture Report does not comply with the requirements of Section 7(b)(iii), Treasury shall, within thirty (30) days after receiving the Annual Construction Capture Report, provide notice to Developer and Owners of the insufficiency and the information required. Treasury shall reimburse Developer as soon after July 31st as reasonably practical upon the receipt of a compliant Annual Construction Capture Report for approved Eligible Activities conducted for a Project using one hundred percent (100%) of the available Construction Period TCRs attributable to such Project until the total estimated Construction Period TCRs for such Project has been reached.

(c) Adjustments to Construction Period Reimbursement Amounts

(i) Intra-Project Adjustments. Following submission of the Sales and Use Tax Exemption Report and Annual Construction Capture Report for a Project that is Under Construction, Developer may, by written notice to the MSF, BRA, and Treasury, increase either the Sales and Use Tax Exemption amount or the Construction Period Tax Capture Revenue reimbursement applicable to such Project if, and only if, Developer identifies an equal and offsetting decrease in the amount that will be reimbursed from another Project. For the sake of clarity, the total combined Sales and Use Tax Exemption and Construction Period TCRs reimbursement shall not exceed the combined amount for the Project as provided in the TBP, except by operation of Section 7(c)(ii), below. Further, the total Sales and Use Tax Exemption and Construction Period TCRs available for all Projects shall not exceed the amounts set forth in Section 5, above.

(ii) Inter-Project Adjustments: from Completed Project to Project Under Construction. In the event a completed Project does not utilize the entirety of its estimated Sales and Use Tax Exemption and/or estimated Construction Period TCRs, then, following the submission of such Project's final Sales and Use Tax Exemption report and final Annual Construction Capture Report, Developer may, by written notice to the MSF, BRA, and Treasury, request an increase in the Sales and Use Tax Exemption and/or Construction Period Tax Capture Revenue allocated to a Project that is Under Construction by the amount of each not utilized by the completed Project. For the sake of

clarity, the total Sales and Use Tax Exemption and Construction Period TCRs available for all Projects shall not exceed the amounts set forth in Section 5, above.

**8. Project Completion: Certification of Completion; Capital Investment Reporting; Authorization to Commence Reimbursement**

(a) Upon completion of a Project, reimbursement for Eligible Activities shall be limited to reimbursements using Income TCRs, Withholding TCRs, Sales & Use TCRs (collectively, "State Capture Revenues"), and Tax Increment Revenues.

(b) Certification of Completion. Prior to reimbursement using State Capture Revenues and Tax Increment Revenues, Developer and Owners shall certify to the BRA and MSF that Project construction is complete by providing to the BRA and MSF a true and correct copy of a temporary or permanent Certificate of Completion issued by the applicable local authority. The Certificate of Completion shall evidence Developer and Owners' completion of the Project only and does not: (i) impact the MSF's determination regarding Eligible Activities under Section 6; or (ii) terminate Developer and Owners' right to submit their Final Cost Certification under Section 6.

(c) Certification of Actual Capital Investment. Following completion of the first Project, and no more than once each calendar year thereafter, the MSF may request that Developer and Owners certify their Actual Capital Investment in all Projects that have been completed to that point. Once Developer and Owners certify that all Projects have been completed and that no further Projects will be undertaken, no further certifications of Actual Capital Investment shall be required or requested.

(d) Authorization to Commence Reimbursement. For each Project, following the later of: (1) Developer and Owners' submission of the Certificate of Completion, and (2) sixty (60) days after MSF's issuance of a final Written Determination following Developer and Owners' submission of its Final Cost Certification:

(i) If the Actual Capital Investment for the Project is equal to or greater than ninety percent (90%) of the Estimated Total Project Cost for that Project, the MSF shall advise Developer and the BRA that the requirements of Section 14a(8) of Act 381 have been satisfied with respect to the Project and that reimbursement for Eligible Activities using State Capture Revenues and Tax Increment Revenues is authorized to commence in accordance with this Agreement (the "Authorization to Commence Reimbursement").

(ii) If the Actual Capital Investment for the Project is less than ninety percent (90%) but equal to or greater than eight-five percent (85%) of the Estimated Total Project Cost for that Project, the MSF may reduce the authorized reimbursement for that Project by the number of percentage points the Actual Capital Investment is less than the Estimated Total Project Cost if it determines such modification is necessary to maintain compliance with Act 381. For example, if the Actual Capital Investment for a Project is eighty-five percent (85%) of the Estimated Total Project Cost, MSF may reduce the authorized reimbursement amount for that Project by up to fifteen percent (15%).

(iii) If the Actual Capital Investment for the Project is less than eighty-five percent (85%) of the Estimated Total Project Cost for that Project, the Parties agree that the change to the Project shall have been of such a material nature that an amendment to the TBP is required for reimbursement to commence with respect to such Project.

(e) Corrective Action. If, by the date that is five (5) years after the date of the MSF Resolution (or, if applicable, the later of any date set pursuant to Section 2 hereof or any subsequent amendment to the TBP), the MSF concludes that Developer and Owners' Actual Capital Investment has not yet met the minimum investment threshold applicable under Act 381 as a result of a failure to commence construction of a particular Project, MSF may, following thirty (30) days prior notice and an opportunity for Developer and MSF to meet and discuss, pursue the following actions as prescribed in Act 381:

(i) Permanently rescind the authorization to use the Sales and Use Tax Exemption and Tax Capture Revenues for those Projects in the TBP which are not yet Under Construction; and

(ii) If the MSF determines that Developer and Owners acted in bad faith, reduce the amount of reimbursement for completed Projects.

## **9. State Capture Revenues; Generally; Reporting; Calculation**

(a) Following issuance of the Authorization to Commence Reimbursement and a Written Determination confirming that Eligible Activities have been approved for reimbursement, Developer and Owners shall be authorized to submit necessary reimbursement requests to be reimbursed for the costs of Eligible Activities using State Capture Revenues. Except as set forth herein, Treasury shall reimburse Developer on or before July 31st of each year from available State Capture Revenues in accordance with this Section. In furtherance of this reimbursement, Developer understands and agrees that:

(i) State Capture Revenues will be available to reimburse Developer for the cost of approved Eligible Activities incurred by Developer and Owners only to the extent such revenues are reported to Treasury in accordance with this Agreement and Act 381; and

(ii) The amount of State Capture Revenues available for reimbursement shall equal one hundred percent (100%) of the total Income TCRs, fifty percent (50%) of Withholding TCRs, and one hundred percent (100%) of the total Sales and Use TCRs calculated pursuant to this Section; and

(iii) Except as otherwise provided in Section 10, below, Treasury shall only reimburse Developer for the cost of approved Eligible Activities conducted for a Project by Developer and Owners using available State Capture Revenues attributable to such Project up to the Combined Annual Estimate for such Project. The Combined Annual Estimate for each Project is attached hereto as Exhibit C.

### **(b) Income Tax Capture Revenue; Reporting; Calculation.**

(i) Method of Calculation; Election of Safe Harbor Method. For those Projects that include one or more residential units, prior to the first reimbursement of Income TCRs, Developer shall elect to either: (1) have Treasury annually calculate the Income TCRs associated with each Project in accordance with Section 2(dd) of Act 381 or, alternatively, (2) utilize the Safe Harbor Method of calculating Income TCRs. The Parties hereby acknowledge that as of the Effective Date, Developer has elected to utilize the Safe Harbor Method of calculating Income TCRs for the Projects, as confirmed by the execution of the Safe Harbor Election Form, attached hereto as Exhibit D, and that the MSF Approved Safe

Harbor Factors and methodology set forth in Exhibit E shall be applied. Developer further acknowledges that such election cannot be changed or rescinded.

(ii) Intentionally omitted.

(iii) Safe Harbor Method. In accordance with Developer's election to utilize the Safe Harbor Method to calculate Income TCRs for the Projects:

(1) Annual Safe Harbor Report Submission. On or before March 1 of each year after a Project has received its Authorization to Commence Reimbursement, Developer and Owners shall submit a certified "Annual Safe Harbor Report", attached as Exhibit F, to the MSF with that information necessary to calculate Income TCRs using the Safe Harbor Method for the prior year, which information includes certification of the residential units and total square footage actively leased or occupied at the Project the prior year and, in the case of units made available for sale, sold in an arms-length transaction as evidenced by the existence of a binding lease agreement, executed deed, or similar instrument.

(2) MSF Notification; Revision. Within sixty (60) days after receiving an administratively complete Annual Safe Harbor Report, the MSF shall provide notice to Developer and Treasury that such submission has been approved and the amount available for reimbursement. If the MSF determines that the Annual Safe Harbor Report is not administratively complete, the MSF shall, within said sixty (60) days after its receipt, provide notice to Developer and Treasury of the non-compliance and the information required to comply with this Section. At any time, Developer may submit a revised Annual Safe Harbor Report.

(3) Treasury Review; Reimbursement. Upon confirmation by Treasury that the Annual Safe Harbor Report and calculations are complete and accurate, and within thirty (30) days of the MSF approval described in Section 9(b)(iii)(2), Treasury shall reimburse Developer for the cost of approved Eligible Activities incurred by Developer and Owners using available Income TCRs. When utilizing the Safe Harbor Method, Developer and Owners may submit the Annual Safe Harbor Report once per year and receive Safe Harbor reimbursements for Income TCRs once per year.

(c) Withholding Tax Capture Revenue; Reporting; Calculation.

(i) Developer and Owners shall cause each employer located within the Project to comply with the reporting requirements set forth in this Section 9(c) either through a contract or lease requirement with each such employer, or other similar means.

(ii) The Parties hereto acknowledge that the reimbursement of Withholding TCRs is limited to amounts that are reported in accordance with Chapter 17 of the Income Tax Act of 1967, 1967 PA 281, MCL 206.701 to 206.713, and the State of Michigan has no obligation with respect to Withholding TCRs that are not reported or paid.

(iii) Method of Calculation; Election of Safe Harbor Method. Prior to the first reimbursement of Withholding TCRs, Developer shall elect to either: (i) have Treasury annually calculate the Withholding TCRs associated with each Project in accordance with Section 2(zz) of Act 381 or, alternatively, (ii) utilize the Safe Harbor Method of calculating

Withholding TCRs. The Parties hereby acknowledge that as of the Effective Date, Developer has elected to utilize the Safe Harbor Method of calculating Withholding TCRs for the Projects, as confirmed by the execution of the Safe Harbor Election Form, attached hereto as Exhibit D, and that the MSF Approved Safe Harbor Factors and methodology set forth in Exhibit E shall be applied. Developer further acknowledges that such election cannot be changed or rescinded.

(iv) Intentionally omitted.

(v) Safe Harbor Method. In accordance with Developer's election to utilize the Safe Harbor Method of calculating Withholding TCRs for the Projects:

(1) Annual Safe Harbor Report Submission. On or before March 1 of each year after a Project has received its Authorization to Commence Reimbursement, Developer and Owners shall submit to the MSF a certified "Annual Safe Harbor Report", attached as Exhibit F, as to that portion of the Eligible Property that is actively occupied by non-residential uses, as evidenced by the existence of a binding lease agreement or similar instrument.

(2) MSF Notification; Revision. Within sixty (60) days after receiving an administratively complete Annual Safe Harbor Report, the MSF shall provide notice to Developer and Treasury that such submission has been approved and the amount available for reimbursement. If the MSF determines that the Annual Safe Harbor Report is not administratively complete, the MSF shall, within sixty (60) days after its receipt, provide notice to Developer and Treasury of the non-compliance and the information required to comply with this Section. At any time, Developer may submit a revised Annual Safe Harbor Report.

(3) Treasury Review; Reimbursement. Upon confirmation by Treasury that the Annual Safe Harbor Report and calculations are complete and accurate, and within thirty (30) days of the MSF approval described in Section 9(c)(v)(2), Treasury shall reimburse Developer for the cost of approved Eligible Activities incurred by Developer and Owners using the available Withholding TCRs. When utilizing the Safe Harbor Method, Developer may submit the Annual Safe Harbor Report once per year and receive Safe Harbor reimbursements for Withholding TCRs once per year.

(d) Sales & Use Tax Capture Revenue; Reporting; Calculation.

(i) Developer and Owners shall require each applicable person occupying an Eligible Property to comply with the reporting requirements set forth in this Section 9(d) either through a contract or lease requirement with each such employer, or other similar means.

(ii) The Parties hereto acknowledge that the reimbursement of Sales & Use Tax TCRs is limited to amounts that are reported in accordance with this Section 9(d), and the State of Michigan has no obligation with respect to Sales & Use Tax TCRs that are not reported or paid.

(iii) No later than March 1 following each calendar year after a Project has received its Authorization to Commence Reimbursement, Developer and Owners shall

submit to Treasury a report detailing the amount of sales tax and use tax collected by each business located on an Eligible Property during such calendar year (the “Annual Sales & Use Tax Capture Report”). Alternatively, each business located on an Eligible Property can submit its own Annual Sales & Use Tax Capture Report. The Annual Sales & Use Tax Capture Report shall include, but not be limited to, the following: (1) each business name, (2) the address of each such business within the Project, (3) each business’s FEIN, (4) sales tax collected and remitted by business for this location; and (5) use tax collected and remitted by business for this location.

(iv) Treasury shall calculate the amount of Sales & Use TCRs attributable to each Project for each calendar year in accordance with the methodology developed pursuant to Section 2(aaa) of Act 381 based upon the information provided in the Annual Sales & Use Capture Report.

## **10. State Capture Revenues; Adjustments**

(a) Treasury shall track actual State Capture Revenues against the applicable annual and aggregate limits under this Agreement using a single Reconciliation Account.

(i) If the actual amount of disbursed State Capture Revenues attributable to a Project for a calendar year is less than the Combined Annual Estimate for such Project, such difference shall be reflected as “Undisbursed Authority” in the Reconciliation Account.

(ii) If the actual amount of available State Capture Revenues attributable to a Project for a given year is more than the Combined Annual Estimate for such Project, the amount of such excess shall be reflected as “Excess Revenue” in the Reconciliation Account. For purposes of this Section, State Capture Revenues on a Project that are committed and available annually but not disbursed in a given year shall be considered “available” in subsequent years.

(iii) In addition to those reimbursements pursuant to Section 9, Treasury shall use any Excess Revenue in the Reconciliation Account to pay down any Undisbursed Authority across all Projects and such amount shall be included in the total amount due to be transmitted to Developer under the TBP and this Agreement for such year. Any Excess Revenue or Undisbursed Authority remaining after such pay down shall be carried over to subsequent years.

(iv) To ensure that tax capture authority is not reallocated from a Project that is not in fact being delivered, a Project must be Under Construction or completed to generate Excess Revenue or Undisbursed Authority; provided, that once a Project is Under Construction or completed, any accrued but undisbursed Tax Capture Revenues shall become Excess Revenue or Undisbursed Authority. Further, if this Agreement has been suspended with respect to a Project for any reason, such Project shall not generate Undisbursed Authority or Excess Revenue during the pendency of the suspension, provided, however, once a Project is no longer suspended, any such disregarded Undisbursed Authority or Excess Revenue during the period of suspension shall be considered to be generated once the applicable suspension is no longer applicable.

(b) If the amount of available Income TCRs, Withholding TCRs, or Sales & Use TCRs attributable to a Project exceeds the estimated total in the TBP:

(i) Developer may submit a written request to MSF and Treasury to increase the reimbursement for such Project using the available Income TCRs, Withholding TCRs, or Sales & Use TCRs provided the total reimbursement amount remains less than or equal to Developer and Owners' cost for Eligible Activities.

(ii) The MSF shall, upon receipt of Developer's written request, approve the increase in reimbursement if, and only if, Developer also identifies an equal and offsetting decrease in the amount that may be reimbursed from Income TCRs, Withholding TCRs, or Sales & Use TCRs for another completed Project as required to maintain compliance with the Total Approved State Capture Revenues.

(iii) Upon MSF's approval of Developer's request, Treasury shall provide reimbursement from available Income TCRs, Withholding TCRs, or Sales & Use TCRs, and MSF and Treasury shall adjust the amount available for reimbursement for the Project for which the equal and offsetting decrease was identified; provided, however, that Developer may elect to reassign the increase and/or offsetting decrease to another completed Project in a future year pursuant to the process in this Section.

(c) For purposes of the aggregate commitment limit under Section 14a(20) of Act 381, MSF and Treasury commit and affirm that Treasury will disburse up to Seventy-Seven Million Seven-Hundred Seventy-Eight Thousand Six-Hundred Thirty-Two Dollars (\$77,778,632.00) in Total Approved State Capture Revenues in aggregate for all Projects under this Agreement, subject to corrective action as may be required by Section 8(e) of this Agreement.

#### **11. Tax Increment Revenues**

(a) In accordance with Act 381 and the TBP, the BRA shall capture Tax Increment Revenues for Eligible Property attributable to all ad valorem, personal property, and specific taxes, including taxes levied for school operating purposes and regardless of whether such taxes began to be levied after the TBP was adopted, less the amount of property taxes levied on the Eligible Property for the year the Eligible Property became subject to the TBP. Such Tax Increment Revenues shall be available in accordance with this Agreement and the TBP to reimburse Developer for the cost of approved Eligible Activities by Developer and Owners. Tax Increment Revenues do not, however, include, taxes levied to pay off specific obligations such as bonds and/or debt (i.e. non-capturable millages or assessments).

(b) Upon the issuance of an Authorization to Commence Reimbursement and a Written Determination for a Project, Developer shall be reimbursed from available Tax Increment Revenues for the cost of approved Eligible Activities by Developer and Owners by the later of July 31 of each year or forty-five (45) days after the BRA's receipt of such Tax Increment Revenues from the City Treasurer or other local tax collecting entity as follows:

(i) The BRA shall reimburse Developer for approved Eligible Activities conducted for a Project by Developer and Owners using one hundred percent (100%) of the available Tax Increment Revenues attributable to such Project, less amounts withheld for the BRA Administrative Fee described in Section 15 and the State Brownfield Redevelopment Fund, until the total amount of Tax Increment Revenues estimated for such Project in the TBP has been reached.

(ii) In the event Developer anticipates that the actual Tax Increment Revenues attributable to a Project will exceed the estimated Tax Increment Revenues for such

Project, Developer may prospectively request an increase in the allowed reimbursement for such Project based on the projected long-term Tax Increment Revenue anticipated to be attributable to a Project. Any such request shall be in writing and sent to the MSF, BRA, and Treasury. Any request for the increase in reimbursement for a Project shall be approved by the MSF and BRA if, and only if, Developer identifies an equal and offsetting decrease in the amount to be reimbursed from Tax Increment Revenues for another completed Project such that there is no change to the Total Approved Tax Increment Revenues for all Projects; provided, however, that Developer may elect to reassign the offsetting decrease to another Project in a future year through the notification process pursuant to this Section 11(b)(ii).

(iii) Upon approval of a reimbursement increase or reallocation by the BRA and MSF, the BRA shall reimburse Developer for approved Eligible Activities by Developer and Owners conducted for a Project using one hundred percent (100%) of the available Tax Increment Revenues attributable to such Project, as adjusted pursuant to Section 11(b)(ii), less amounts withheld for the BRA Administrative Fee and the State Brownfield Redevelopment Fund, until the revised total amount of Tax Increment Revenues for such Project has been reached.

(c) To the extent that excess Tax Increment Revenues attributable to a Project are unable to be reallocated pursuant to Section 11(b) of this Agreement or as otherwise permitted in Act 381, the BRA shall cause such excess Tax Increment Revenues to be remitted to the applicable taxing jurisdiction(s).

(d) The Parties understand and agree that the BRA's responsibility to provide reimbursement under this Agreement is dependent on receiving the Tax Increment Revenues from the City Treasurer or other tax collecting entity.

(e) The BRA intends, without warranty, that the Tax Increment Revenues constitute "Special Revenues" within the meaning of Section 902(2)(C) of the U.S. Bankruptcy Code and, if pledged, constitute "Pledged Special Revenues" in accordance with Section 922 of the U.S. Bankruptcy Code; provided, however, that regardless of characterization, Tax Increment Revenues are payable to the Developer only in accordance with the terms of this Agreement.

## **12. Accounting and Reconciliation**

(a) To facilitate the accounting and reconciliation processes under this Agreement, the Parties agree that if a change in Tax Capture Revenue estimates, in whole or in part, for a Project is made, the Parties will append to the TBP updated Tax Capture Revenue tables reflecting the updated Project-level Tax Capture Revenue estimates.

(b) The Parties acknowledge that, under the TBP, Tax Capture Revenues generated from one Project within the TBP may be used to fund Eligible Activities on another Project within the TBP. The Parties agree that Developer will provide advance notice to the MSF, Treasury, and, as applicable, the BRA, in the form of the Request to Shift Tax Capture Revenues attached hereto as Exhibit G if Developer intends to use Tax Capture Revenues generated from one Project to reimburse approved Eligible Activities from another Project. Upon approval by the MSF, which shall not be unreasonably withheld or conditioned, the Parties shall append the approved Request to Shift Tax Capture Revenues to Exhibit G. The Parties acknowledge that taking such action pursuant to this paragraph is for the convenience of the Parties only and does not constitute an amendment to the Agreement.

### **13. Potential Bond and Loan Financing**

(a) Notwithstanding anything in this Agreement to the contrary, the Parties agree that the Projects may be financed with proceeds from Bonds or Loans, together with other funds available to the Developer and Owners.

(b) The Bonds may consist of one or more series of bonds and shall be secured and repaid pursuant to the terms of this Agreement and the Bond Documents. The Loans may consist of one or more series of loans and shall be secured and repaid pursuant to the terms of this Agreement and the Loan Documents. Until full debt repayment, it is expected that some or all of the available Tax Capture Revenues will be pledged to secure repayment of the Bonds or Loans, as the case may be, in accordance with the applicable Bond Documents or Loan Documents. The Bonds and Loans shall be without recourse to any conduit issuer, except as may be set forth in the Bond Documents or Loan Documents, respectively.

(c) In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the Bond Documents or Loan Documents, or the terms and conditions for an equity investor's investment in a Developer or Owners' SPE, at the request of any Party to this Agreement, the Parties shall use good faith efforts to enter into an amendment, restatement or supplement to this Agreement which is mutually agreeable to all Parties for the purpose of making this Agreement consistent with the terms and conditions of the Bond Documents or Loan Documents, or equity investment, as applicable. The Parties to this Agreement acknowledge and agree that following issuance of the Bonds and making of the Loans, certain actions permitted under this Agreement, including amendment, restatement or supplement to this Agreement, may require the approval of the holders of any Bonds or the Lender that would be affected thereby.

### **14. Designation of Alternate Recipients; Assignment of Rights**

(a) Except as set forth herein, Developer and Owners may assign, convey, or transfer their respective obligations under this Agreement in its entirety only with the prior written consent of the BRA and MSF, with notice to be provided to Treasury of any such assignment. Owners hereby assign their right to reimbursement under this Agreement to Developer and the BRA and MSF hereby consent to such assignment.

(b) In connection with issuance of Bonds or making of Loans, the Parties may:

(i) assign such rights under this Agreement to the Trustee of the Bonds or Lender under the Loans, as security for the Bonds or Loans, as the Bond issuer or Lender requests in connection with issuance of the Bonds or making of the Loan;

(ii) designate the Trustee, Lender or other third party as agent to complete one or more obligations of Developer or Owners under this Agreement; provided, however, that any such designation in no way relieves Developer or Owners of its obligations under this Agreement; and

(iii) assign, pledge, and otherwise provide for the irrevocable transfer of Tax Capture Revenues constituting pledged revenues under the Bond Documents to the Trustee or Lender under the Loan Documents, as security for the Bonds or Loan, as the issuer requests in connection with issuance of the Bonds or the Lender requests in connection with making of the Loans.

Any assignment, pledge, or transfer made pursuant to this Section 14(b) shall automatically terminate only when all amounts and sums due Trustee under the Indenture for the Bonds are paid in full, the Bonds are no longer outstanding, and the Indenture is fully released and discharged, with Developer or Owners providing the BRA and MSF written notice of any such termination. BRA and MSF hereby consent to the assignment by the Developer of all its right, title and interest in, to and under the Tax Capture Revenues and the Reimbursement Agreement to the Trustee for the Bonds.

(c) Upon receipt of written notice from the applicable Trustee or Lender directing the Parties to pay Tax Capture Revenues to the Trustee or its designee, the Parties shall thereafter comply with such direction in accordance with the Bond Documents or Loan Documents, as applicable, and shall be deemed to have consented to such direction, and such payment to or at the direction of the Trustee or Lender shall constitute satisfaction of payment obligations hereunder. Notwithstanding anything to the contrary herein, the BRA shall have the right to approve any form of consent evidencing the assignment of Tax Increment Revenues as security, which approval shall not be unreasonably conditioned, delayed, or withheld.

(d) Prior written approval of the MSF and BRA as described in Section 14(a), with notice to be provided to Treasury, is required prior to the assignment or transfer of this Agreement as it relates to a Project for which reimbursement will continue; provided, however, that no assignment may be made to a person responsible for an activity causing a release at the Property under Section 20126 or 21323a of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, MCL 324.20126 and 324.21323a; and, provided further, that a change in ownership arising out of a foreclosure, delivery of a deed in lieu of foreclosure or other Loan or Bond default is presumptively approved (and may be conditionally approved in advance as required to effectuate a financing transaction), if the person to which this Agreement will be assigned or transferred satisfies the background qualifications referenced in Section 18(b)(v) of this Agreement and is not prohibited from receiving assistance from the MSF or BRA under applicable law.

(e) The TBP contemplates that each Project is permitted to be developed by one or more Developer or Owners' SPEs. Provided that the requirements of the TBP are complied with, Developer and Owners may, without prior written consent from any other Party, but upon written notice to the BRA, MSF, and Treasury, as to any Project: (i) assign its right to reimbursement hereunder for such Project to the Developer or Owners' SPE of such Project; and (ii) request that reimbursement payments made for such Project be paid to such entities. Further, the Parties acknowledge and agree that each Developer or Owners' SPE may hold fee title to, or a ground leasehold interest in, its Transformational Project Sites. Owners hereby assign their right to reimbursement under this Agreement to Developer and the BRA and MSF hereby consent to such assignment.

(f) Following completion of a Project, Developer may assign its right to a portion of the as-then unpaid reimbursement for such completed Project to another completed Project upon written notice to the BRA, MSF, and Treasury of such assignment and all subsequent payments will be made as Developer designates without separate approval of MSF or BRA, or amendment to the TBP or this Agreement. Such assignment shall not increase the total Tax Capture Revenues, the Total Approved State Capture Revenues, Total Approved Tax Increment Revenues or the Total Approved Reimbursement in this Agreement or in the TBP.

**15. BRA Administrative Fee**

(a) The Parties acknowledge that the TBP includes an annual payment to the BRA for the administrative and operating expenses of the BRA ("BRA Administrative Fee"), and that use of Tax Incremental Revenues to pay the BRA Administrative Fee is identified separately in the TBP from the amount identified to be reimbursed to Developer for the cost of Eligible Activities.

(b) The BRA Administrative Fee shall be paid prior to any reimbursement from available Tax Incremental Revenues attributable to Local Taxes commencing with the first year of capture under the TBP. If the actual amount of Tax Incremental Revenues from Local Taxes is not sufficient to fully pay the BRA Administrative Fee in a given year, the BRA shall add the outstanding balance to the following year's BRA Administrative Fee.

(c) The BRA Administrative Fee for each year of tax capture under the TBP shall be 1% of the State TIR Available for Reimbursement plus the Total Local Property Tax Incremental Revenue.

**16. MSF Administrative Fee**

(a) Developer or the Owners shall pay to MSF on or before June 30th of each year an "MSF Administrative Fee" in the amount not to exceed the lesser of Thirty-One Thousand One Hundred Twelve and 00/100 Dollars (\$31,112.00) or as otherwise calculated per the MSF Transformational Brownfield Plan Program Guidelines in effect as of the date hereof. The Parties acknowledge and agree that the MSF Administrative Fee shall cover the administrative expenses of both Treasury and MSF and will be allocated by and between MSF and Treasury consistent with the Memorandum of Understanding between them ("MOU"). The MSF Administrative Fee shall remain in effect until the completion of reimbursement from Construction Period TCRs and State Capture Revenues.

(b) The first payment of the MSF Administrative Fee is due thirty (30) days from the date the Agreement is fully executed by all parties. Upon the final payment of the MSF Administrative Fee, and provided that all such payments have been made as described in Section 16(a), Developer and Owners shall have no further obligation to the MSF under this Section 16.

(c) If Developer or the Owners fails to make the required payments under Section 16(a), the MSF shall provide Developer and Owners with notice that, if Developer or the Owners fails to cure the non-payment within sixty (60) days, the MSF, as its sole remedy, is authorized pursuant to this Section 16 to request that Treasury withhold such amount from the next scheduled reimbursement of Tax Capture Revenues under this Agreement and allocate such amount between Treasury and MSF consistent with the aforesaid MOU; provided, however, that in the event of non-payment, the amount transferred shall be one hundred twenty-five percent (125%) of the MSF Administrative Fee that would otherwise be due.

**17. Compliance with Executive Orders**

Intentionally omitted.

**18. Representations and Warranties**

(a) Developer and Owners represent and warrant the following:

(i) Eligible Property. Each of the Transformational Project Sites qualify as Eligible Property under Act 381.

(ii) Ownership and Possession of the Property. Developer or Owners, or the applicable Developer or Owners' SPE(s), is, or will be prior to undertaking Eligible Activities, the fee owner or ground-lessee of the Transformational Project Sites included in the TBP and further Developer or Owners, or the applicable Developer or Owners' SPE, has, or will have prior to undertaking Eligible Activities, the right to develop each Project on the applicable Transformational Project Sites.

(iii) Developer and Owners Investment. Developer and Owners estimate that the total development cost for the Projects included in the TBP inclusive of Developer and Owners cost will exceed the minimum eligible investment for approval as a transformational brownfield plan. The qualifying minimum eligible investment for the Transformational Project Sites is Twenty-Five Million and 00/100 Dollars (\$25,000,000.00).

(iv) Responsible Party. With respect to any Transformational Project Sites qualifying as a "Facility" under Part 201 of NREPA, Developer and Owners are not responsible for an activity causing a release under Section 20126 or 21323a of NREPA.

(v) Environmental Obligations. Any long-term environmental monitoring, operation, or maintenance activities or obligations will be performed as required by law.

(vi) Land Bank Incentives. Except for blight elimination and stabilization grant funds, the development of the Transformational Project Sites does not, and will not in the future, include a land bank incentive financing component from the State of Michigan Land Bank Authority that would alter the taxable value of the Property.

(vii) Tax Abatements and Appeals. The Transformational Project Sites are subject to approved tax abatements, as outlined in the TBP, and are not subject to any current or pending property tax adjustments, or property tax assessment appeals.

(b) Developer and Owners, for themselves, further represent and warrant:

(i) Organization. Developer and Owners are a series of limited liability companies duly organized and validly existing under the applicable laws of the State of Michigan and they have the power and authority to enter into and perform its obligations under this Agreement.

(ii) Company Authority. The execution, delivery and performance by Developer and Owners of this Agreement has been duly authorized and approved by all necessary and proper action on the part of Developer and Owners, and will not: (i) violate any provision of law; or (ii) result in the breach of, be a default of, or require any further consent under any of Developer or Owners' organizational and governing documents; or (iii) result in the breach any agreement or instrument to which Developer or the Owners are a party, or by which Developer or Owners or their property may be bound or affected. This Agreement is valid, binding, and enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or principles of equity affecting the enforcement of creditors' rights generally or by general principles of equity.

(iii) Consent. Other than as provided in this Agreement, no approval is necessary from any governmental or other entity as a condition to the execution and delivery of this Agreement by Developer and Owners.

(iv) Full Disclosure. Neither this Agreement, nor any written statements or certificates furnished by Developer or Owners to the MEDC, the MSF, the Governing Body, Treasury, or the BRA in connection with the making of this Agreement contain any untrue statement of material fact or omit any material fact necessary to make the statements true. There are no undisclosed known facts which materially adversely affect or are reasonably likely to materially adversely affect the properties, business, or condition (financial or otherwise) of Developer or Owners or the ability of Developer or Owners to perform their obligations under this Agreement.

(v) Criminal and Civil Matters. Developer and Owners affirm that to the best of their knowledge that them or their affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in Developer or Owners, or any Developer or Owners SPE, of 20% or more: (i) do not have any criminal convictions incident to the application for or performance of a state contract or subcontract; and (ii) do not have any criminal convictions or have not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes.

(vi) Litigation and Other Proceedings. There are no suits or proceedings pending or threatened by or before any court, governmental commission, board, bureau, or other administrative agency or tribunal, which, if resolved against Developer or Owners, would have a material adverse effect on the financial condition or business of Developer or Owners or impair Developer or Owner's ability to perform its obligations under this Agreement.

(vii) Compliance with MSF Agreements. Developer and Owners are not in default of and has not been issued a notice of non-compliance under any other agreement currently in effect between the Developer or Owners and the MSF or the MEDC.

(viii) Conflict of Interest. Developer and Owners affirm that there exists no actual or potential conflict of interest that is reasonably likely to materially and adversely affect Developer or Owners' ability to perform their obligations under this Agreement. As used in this paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan or the Governing Body.

(ix) Improper Influence. Developer and Owners further affirm that neither Developer, Owners nor their managers, members, employees, or agents, have offered, or shall offer, directly or indirectly, anything of value to influence the MSF, MEDC, MEDC Executive Committee, the Governing Body, the BRA and their respective directors, participants, officers, agents, and employees. Developer and Owners also affirm that neither Developer, Owners, nor their affiliates or their managers, members, employees or agents has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Developer or Owners or their affiliates, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

**19. Covenants; Additional Obligations of Developer**

(a) Restrictive Covenant. No portion of any Project may be used at any time prior to the expiration or earlier termination of this Agreement as a private or commercial golf course; country club; adult entertainment facility; massage parlor; racetrack or other facility used for gambling; any establishment engaged in the business of selling, exhibiting, or delivering pornographic or obscene materials or paraphernalia commonly used for illegal drugs; or any store the principal business of which is the sale of alcoholic beverages for consumption off-premises.

(b) Annual Reporting Obligation. On or before March 1 each year during the term of this Agreement, Developer and Owner shall submit to the BRA a report regarding the status of each Project. Each report shall include all information the BRA is required to report to the Governing Body and MSF pursuant to Section 16(8) of Act 381. The BRA may, in its sole discretion, waive this requirement via written notice to Developer.

(c) Failure to Report. If Developer and Owner fail to submit the annual report required pursuant to Section 19(b) on or before March 1, the BRA may, at its sole discretion, withhold \$25,000 from the next scheduled reimbursement of Tax Increment Revenues for each sixty (60) day period the report is not provided, which amount shall be withheld on an equal basis from each Project scheduled to receive reimbursement; provided, however, that amounts so withheld shall be disbursed to Developer within thirty (30) days after the BRA's receipt of the required report; and further provided that such funds shall not be withheld to the extent they are required during such time period to pay principal and/or interest on Bonds or other obligations which are secured by TCR's.

For example, if Developer and Owner fail to provide the report required by Section 19(b) within 180 calendar days from the beginning of the calendar year, and is thus 120 days out of compliance, BRA is authorized to withhold \$50,000 from the next scheduled reimbursement(s) of Tax Increment Revenues until 30 days after the BRA's receipt of the required report.

(d) Property Tax Appeals. Developer and Owners agree to provide notice to the BRA within thirty (30) days of initiating any appeal or other request for adjustment of any real property tax assessment for any Project for which reimbursement will be sought. The Parties acknowledge that the captured Tax Increment Revenues portion of the real property taxes paid under appeal for a specific Project will be held in escrow and not available for reimbursement with respect to such Project during the pendency of such appeal or other request for adjustment. In the event that a tax appeal or adjustment results in a refund, credit, or repayment of real property taxes previously captured under the TBP and reimbursed under this Agreement, Developer and Owners shall repay the captured Tax Increment Revenues no later than sixty (60) days after its receipt of written notice from the BRA of the amount owed. If Developer and Owners fail to make the required repayment within sixty (60) days of its receipt such notice, the BRA may, at its sole discretion, deduct the amount owed from the next scheduled reimbursement of Tax Increment Revenues for the applicable Project so as to satisfy Developer and Owners repayment obligation under this Section.

(e) Insurance. Prior to the commencement of each Project, Developer and Owners, and each of their contractors, at their sole cost and expense, shall carry and maintain the following types of insurance, in the amounts specified. All insurance shall be maintained until the Certificate of Completion has been submitted for the Project.

(i) Commercial General Liability (“CGL”) insurance in the amount of at least One Million Dollars (\$1,000,000) for any single event and Two Million Dollars (\$2,000,000) annual aggregate against claims of any and all persons, firms and corporations for personal injury, death or property damage occurring upon, in or about the Project.

(ii) Automobile liability, covering all owned, non-owned, and hired vehicles used in connection with the Project: bodily injury (including death and property damage with a combined single limit of One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) each occurrence.

(iii) Worker’s compensation insurance or self-insurance as required by the State of Michigan.

(iv) Developer and Owners shall require all contractors and subcontractors to provide workers’ compensation, CGL, and automobile liability insurance with the same minimum limits specified herein, to the extent reasonably practicable.

(v) Developer shall provide the BRA with a certificate evidencing such insurance upon request. All liability policies shall name the MSF, MEDC, the Governing Body, and the BRA as additional insureds and shall expressly provide that no less than 30 days prior written notice shall be given to the MSF, MEDC, the Governing Body, and the BRA in the event of cancellation or non-renewal.

(vi) All policies shall be provided by insurers licensed to do business 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.

(vii) Any loss or damage against which an Indemnified Person is indemnified under Section 19(f) of this Agreement that is recovered by such insurance shall offset the liability of the Developer and Owners as to said Indemnified Person under this Agreement.

(f) Indemnification. Developer and Owners agree to indemnify, defend and hold harmless the BRA, MSF, MEDC, Treasury, the Governing Body, and any and all of their respective past, present and future members, officials, employees, representatives, agents and consultants (collectively, the “Indemnified Persons”), from any and all losses, demands, claims, actions, causes of action, assessments, suits, judgments, damages, liabilities, penalties, costs and expenses (including without limitation the reasonable fees and expenses of attorneys and other consultants) which are asserted against, or are imposed upon, or incurred by, the Indemnified Persons and which are resulting from, relating to, or arising out of the implementation of this Agreement and the TBP; provided that Developer and Owners shall not be liable for any settlement of any proceedings made without its consent (which consent shall not be unreasonably withheld, delayed or conditioned); and provided further that Developer and Owners shall not be obligated to indemnify the Indemnified Persons to the extent the liability in question was caused by the willful misconduct or gross negligence of the involved Indemnified Person(s). In addition:

(i) Performance of Developer and Owners’ obligations contemplated under this Agreement is within the sole control of Developer and Owners and their employees, agents and contractors, and the Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or failures to act by Developer and Owners, their employees, agents or contractors; or loss or damage related to the construction, operation, maintenance, and management of the Projects.

(ii) Except for their respective obligations to transmit and reimburse Tax Capture Revenues as otherwise set forth in this Agreement or required by Act 381, the MSF, Treasury, the MEDC, the BRA, the State of Michigan, and the Governing Body shall not be liable to Developer and Owners for any reason.

(iii) In the event of any disagreement between the members, managers, shareholders, directors or officers of Developer which result in conflicting instructions to, or adverse claims or demands upon the BRA, MSF, or Treasury with respect to the payment of the reimbursement contemplated by this Agreement, the BRA, MSF, or Treasury shall not be or become liable in any way for its failure or refusal to comply with any such conflicting instructions or adverse claims or demands, and shall be entitled to continue to refrain from acting until such conflicting instructions or adverse claims or demands (1) shall have been adjusted by written agreement executed by all necessary Parties and the BRA, MSF, or Treasury shall have been notified in writing thereof or (2) shall have finally been determined in a court of competent jurisdiction. The BRA, MSF, or Treasury may, at the sole discretion of each, file an interpleader action. Upon depositing the reimbursement with a court of competent jurisdiction, the BRA, MSF, or Treasury shall be released from any further liability under this Agreement with respect to said reimbursement.

(iv) The BRA, MSF, MEDC, Treasury, Governing Body, and Developer and Owners agree to act cooperatively in the defense of any action brought against an Indemnified Person to the greatest extent possible.

(v) In the event of a dispute between Developer and/or Owners and an Indemnified Person over the existence or amount of an indemnification obligation under this Section 19(f), upon the resolution of such dispute by a court of competent jurisdiction, and to the extent consistent with an applicable judicial order, the Party that was successful in the dispute may seek such remedies as may be available at law or equity.

(vi) The obligations of Developer and Owners under this Section 19(f) shall survive indefinitely.

(g) Access to Records and Inspection Rights. During the Term of this Agreement, there will be frequent contact between Developer and Owners and the MEDC, MSF, or other representative of the State. For all years in which Developer and Owners submits any report required herein including, but not limited to, the Annual Cost Certification, Final Cost Certification, Annual Construction Capture Report, Annual Safe Harbor Report, or Annual Sales & Use Capture Report and for one (1) year thereafter, Developer and Owners shall permit the MSF, MEDC, Treasury, Auditor General, the Department of Technology, Management and Budget (“DTMB”) and/or BRA to visit Developer and Owners, and any other location where books and records of Developer and Owners are normally kept, upon reasonable advance notice, to inspect the books and records, including financial records and all other information and data relevant to the review and approval of any report required herein including, but not limited to, the Annual Cost Certification, Final Cost Certification, Annual Construction Capture Report, or Annual Sales & Use Capture Report. At such visits, Developer and Owners shall permit the MSF, MEDC, Treasury, Auditor General, DTMB, or the BRA to make copies or extracts from information related to the pertinent review and approval. Any information and data determined to be Confidential Information shall be subject to the protections in Section 22 of this Agreement.

(h) Loss of Revenue from a Taxing Jurisdiction. The Parties acknowledge that pursuant to Section 14a(14) of Act 381, the procedure, adequacy of notice, and findings by and upon which the TBP was approved shall be presumptively valid unless contested in a court of competent jurisdiction within sixty (60) days after the date of the MSF Resolution (i.e., June 21, 2025); and that an approved amendment to the TBP shall likewise be conclusive unless contested within sixty (60) days after approval of the amendment by the MSF, and that if a resolution adopting an amendment to the TBP is contested, the original MSF Resolution is not open to contest. In the event that a taxing jurisdiction, or any other party, challenges the capture of any Tax Increment Revenues under the TBP after the TBP is conclusive under Act 381, the BRA shall take no action to withhold, delay, or condition reimbursement unless and until a court of competent jurisdiction issues an order preventing the capture and/or use of such Tax Increment Revenues. To the extent a court of competent jurisdiction orders the refund or repayment of any captured Tax Increment Revenue previously paid to Developer, Developer agrees to repay said Tax Increment Revenues to the BRA in accordance with such order; provided, that any repayment by Developer under this Section shall be made only after the exhaustion or expiration of all rights of appeal in all forums and courts of competent jurisdiction, and the issuance of a final non-appealable order for such repayment; and provided further, that, to the extent such action is permitted by such court order, the BRA does hereby agree to reimburse the Developer any such repayment by the Developer, solely from future capturable revenues from the Project or Projects for which Tax Increment Revenues were repaid that may be available under the Plan for disbursement to the Developer after the payment of the BRA Administrative Fee and to the State Brownfield Development Fund within the applicable Term of capture under the TBP.

(i) Project Changes. Any change to one or more Projects shall be in accordance with the requirements for Project changes set forth in the TBP, or an approved amendment to the TBP. Notwithstanding the preceding, any change to the planned development of a Project that, either individually or when combined with prior changes, would reduce the gross square footage of either residential, retail, office, or hotel use, from the amount specified in the TBP for such use within such Project site by:

(i) less than 5% of the cumulative total gross square footage of the entire Project site shall be considered *de minimis* and shall not require approval.

(ii) more than 5% but less than 15% of the cumulative total gross square footage of the entire Project site shall require approval of the MSF President, MSF Fund Manager, or other authorized agent of the MSF delegated pursuant to the MSF Resolution. MSF approval of such a change shall be made only if MEDC brownfield staff determine that the Project as changed will still result in an overall positive fiscal impact to this State and continues to align with MEDC's investment criteria.

(iii) more than 15% of the total gross square footage of the entire Project site shall require an amendment to the TBP pursuant to Section 13c of Act 381.

(j) Intentionally omitted.

(k) Zoning and Building Requirements. The Projects will be constructed in such a manner as to conform to applicable zoning, planning, building and other regulations of governmental authorities having jurisdiction over the Projects; and the Developer and Owners have obtained, or will obtain, all necessary leases, permits, zoning waivers, variances, or other permissions, to allow for development of the Projects; provided, that Developer and Owners' representation and warranty under this paragraph applies only to construction activities which

Developer and Owners carry out directly, and not to tenant improvements or similar construction activities carried out by or on behalf of third-party tenants, unless such construction activities are submitted by Developer and Owners as Eligible Activities; and provided further, that Developer and Owners will take commercially reasonable steps to include in its lease agreements the requirement that its tenants carry out any such construction activities in accordance with any zoning, planning, permitting, or other regulations that may be applicable.

(l) Discharge of Obligations. During the Term of this Agreement, unless contested in good faith and discharged by appropriate proceedings, Developer and Owners shall promptly pay and discharge all taxes, assessments, and governmental charges lawfully levied or imposed upon it in connection with the Projects (in each case before they become delinquent and before penalties accrue).

(m) Compliance with Laws. During the Term of this Agreement, Developer and Owners will not be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees, or other requirements imposed by any governmental authority with respect to the Projects, which in a manner that is reasonably likely to materially and adversely affect the Projects.

(n) Non-Discrimination and Unfair Labor Practices. To the extent Developer or Owners are directly hiring any employees in connection with the performance of Eligible Activities under this Agreement, Developer and Owners will not discriminate against any employee or applicant for employment with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. In addition, contracts and subcontracts entered into for performance of Eligible Activities under this Agreement:

(i) Will contain a provision requiring nondiscrimination in employment as required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq.

(ii) Will not be awarded to an employer whose name appears in the current register of employers failing to correct an unfair labor practice, as compiled pursuant to MCL 423.322.

(o) Change of Legal Status. Developer and Owners will (a) give the MSF and BRA written notice of any change in its name, its state organizational identification number, if it has one, its type of organization, its jurisdiction of organization, and (b) not make any change in its legal structure that would, as a matter of law, affect its surviving obligations under this Agreement, without the prior written consent of the MSF and the BRA, which consent shall not be unreasonably withheld.

(p) Compliance with MSF Agreements. During the Term of this Agreement, with respect to each Project, Developer and Owners will not be in default of or issued a notice of non-compliance under any other agreement between the Developer and Owners and the MSF or the MEDC pertaining to the same Project.

(q) Conflict of Interest. Developer and Owners agree to respond within sixty (60) days to a request from the MEDC or BRA, which request shall not be made more than once per calendar year, to inform the MEDC and BRA, as applicable, of possible conflicts of interest that may arise as a result of a material change in Developer and Owners' business or financial

interests that would conflict with Developer and Owners' performance of its obligations under this Agreement or otherwise create the appearance of impropriety with respect to this Agreement. As used in this paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan or the Governing Body.

## **20. Limitations on Remedies for Certain Breaches**

In the event of a breach of any representation, warranty, or covenant contained in Section 18 or Section 19, the MSF, BRA, or Treasury shall provide Developer and Owners with notice of the breach and provide sixty (60) days to cure the breach. If the breach is not cured within sixty (60) days after Developer and Owners receiving notice, the MSF, BRA, or Treasury 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, including monetary damages; provided, however, if the nature of the default cannot be reasonably cured within sixty (60) days, Developer and Owners shall have an additional sixty (60) days to cure the default provided they are diligently working to cure the default; further provided, however, that, except (i) as required by law, (ii) as expressly provided in this Agreement or the TBP, or (iii) as otherwise provided in this Section 20, remedies for breach of a representation, warranty, or covenant under Section 18 or Section 19 of this Agreement shall not include termination, suspension, or any other impairment of reimbursement under this Agreement. In the event that Developer or Owners breach any of the covenants set forth in Sections 19(a), 19(b), 19(c), 19(i), 19(k), 19(o) and 19(p), the BRA, MSF or Treasury, as applicable, may suspend reimbursement only for the Project for which the breach has occurred and such suspension shall remain unless and until the breach is cured, an amendment to the TBP and/or this Agreement, as applicable, is approved, or a court of competent jurisdiction issues a final, unappealable order requiring that reimbursement resume. For avoidance of doubt, in the event of a breach by the Developer or Owners with respect to any representation, warranty or covenant under this Agreement, the Treasury, MSF and BRA only may exercise its rights and remedies against the Project for which the breach occurred and cannot pursue any action whatsoever against or impacting any other Project, including, without limitation, suspending reimbursement payments for any other Project.

## **21. Termination**

(a) The BRA and MSF may terminate this Agreement only under the circumstances set forth in Section 2 and this Section 21:

(i) If, prior to completion of a Project, (1) Developer or Owners make changes to the plan for such Project that do not comply with the requirements for project changes as set forth in the TBP, and (2) the non-compliance with the requirements for project changes is material, such that the Eligible Activities of constructing, rehabilitating, or renovating a Project are not approved Eligible Activities under this Agreement, and (3) Developer or Owners knowingly fails to disclose such changes to the BRA and MSF, and (4) Developer or Owners have made an intentionally false certification in the Annual Certification by representing such activities as Eligible Activities and submitting such activities to make them eligible for reimbursement, and (5) upon being notified by the BRA or MSF of such misrepresentation, fails to cure such misrepresentation within one hundred and eighty (180) days, as the same may be extended by mutual agreement of the BRA and MSF; then, in such event, the authorization for Developer to use Tax Capture Revenues for such Project is permanently rescinded. Reimbursement of such Tax Capture Revenues shall be suspended during the cure period.

(ii) If Developer or Owners intentionally make or suborn a material misrepresentation in the submission of an annual report under Section 7 or Section 9 of this Agreement that results in an improper increase in the amount of Tax Capture Revenues determined to be generated from such Project, the BRA and MSF may immediately terminate this Agreement with respect to such Project.

(b) If this Agreement is terminated with respect to a specific Project (or Projects), the MSF, BRA, and Treasury shall adjust the aggregate and annual Tax Capture Revenue and reimbursement limitations under this Agreement (including the limitations for component forms of Tax Capture Revenue) in accordance with the estimates for such terminated Project(s) as previously set forth in the TBP, as the same may have been previously updated or adjusted pursuant to this Agreement.

(c) Upon the effective date of the termination of this Agreement with respect to a Project, BRA, MSF, and Treasury shall have no further obligation under this Agreement for such Project; provided, that in the event of a termination of this Agreement for a Project, neither the BRA nor MSF shall be entitled to repayment of prior reimbursements for such Project unless such reimbursements were provided on the basis of fraud by Developer or Owners.

(d) For avoidance of doubt, notwithstanding any other provision of this Section 21, if the MSF and BRA elect to terminate this Agreement in accordance with this Section 21, such termination shall be applicable only to the Project for which cause for termination exists under this Section 21 and not the entire Agreement or their obligations hereunder relating to any other Project.

## **22. Confidentiality**

In connection with the transactions contemplated by this Agreement, the MSF, the MEDC, or their representatives may obtain, or have access to, proprietary financial or business information related to the Projects and to Developer and Owners. Under MCL 125.2005(9), the MSF has authority, upon Developer or Owners' request, to acknowledge financial or proprietary information provided by Developer or Owners as confidential. If the MSF acknowledges Developer or Owners' information as confidential (the "Confidential Information"), the MEDC and the MSF agree that they and their representatives will use the Confidential Information solely for the purpose of administering this Agreement, and that the Confidential Information will be kept strictly confidential and that neither the MEDC, the MSF, nor any of their representatives will disclose any of the Confidential Information in any manner whatsoever. However, the MSF or the MEDC may disclose Confidential Information: (i) to such of its representatives who need such information or data for the sole purpose of administering this Agreement; (ii) to the extent required by applicable law (including, without limitation, the Michigan Freedom of Information Act); (iii) if, before the date of execution of this Agreement, such information or data was generally publicly available; (iv) if, after the date of execution of this Agreement, such information or data becomes publicly available without fault of or action on the part of the MSF, the MEDC, or its representatives; and (v) in all other cases, to the extent that Developer or Owners gives their prior written consent to disclosure. The MEDC and MSF further agree to provide Developer and Owners advance notice if the MEDC or MSF will disclose Confidential Information under this Section. Developer and Owners acknowledge that the MSF, MEDC, Treasury, and BRA are subject to the Freedom of Information Act, MCL 15.231 et seq., and may be required to disclose financial or proprietary information provided by Developer. This Section 22 shall survive indefinitely.

### **23. Miscellaneous**

(a) Compliance Manager. The MSF Fund Manager shall designate a compliance manager to administer this Agreement and monitor the performance of Developer and Owners and the reimbursement of Tax Capture Revenues under this Agreement (the "Compliance Manager"). The Compliance Manager may be changed at the discretion of the MSF Fund Manager. The MSF Fund Manager shall give Developer and Owners notice of the designated Compliance Manager, and any change thereto.

(b) Mutually Negotiated. The Parties, with the assistance of their respective legal counsel, have negotiated together to reach the terms of this Agreement, participated in the drafting of this Agreement, and acknowledge that this Agreement is the product of the joint effort of all Parties. In no event shall the terms of this Agreement be construed more strictly against one Party than the other Party.

(c) Force Majeure. No Party shall be deemed in default of this Agreement for any delay or failure to fulfill any obligation hereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of circumstances of a Force Majeure event. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (i) provide written notice to the other Parties of the nature and extent of any such Force Majeure condition; and (ii) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, assigns and transferees. In the event of any assignment or transfer of any right or obligation hereunder, such assignment or transfer shall be subject to all provisions under this Agreement.

(e) Governing Law. 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.

(f) Jurisdiction. The Parties shall make a good faith effort to resolve any controversies that arise regarding this Agreement. If a controversy cannot be resolved, the Parties agree that any legal actions concerning this Agreement shall be brought in the Michigan Court of Claims or, as appropriate, Ingham County Circuit Court in Ingham County, Michigan. Developer and Owners acknowledge by executing this Agreement that they are subject to the jurisdiction of such court and agrees to service by first class or express delivery wherever Developer and Owners reside. This Section 23 shall survive indefinitely.

(g) Amendment. Except as otherwise expressly stated in this Agreement, this Agreement may not be modified or amended except by a written instrument signed by the Parties.

(h) Counterparts; PDF Signatures. This Agreement may be signed in counterparts. Delivery of an executed counterpart of a signature page to this Agreement via electronic mail transmission in PDF format shall be as effective as delivery of a manually executed counterpart of this Agreement.

(i) Third Party Beneficiaries. Except for the Trustee and bondholders under the Bond Documents, in no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except that the Governing Body shall be an express third-party beneficiary of Developer and Owners' obligations under Sections 19(e), and 19(f) and the MEDC shall be an express third-party beneficiary of Developer and Owners' obligations under Sections 19(e), 19(f), 19(g), and 19(q). For purposes of this Agreement, references to "Developer" includes all Developer SPEs and other affiliates of Developer that are or will be the developer of the Transformational Project Sites subject to this Agreement. For purposes of this Agreement, references to "Owners" includes all Owner SPEs and other affiliates of Owner that are or will be the developer of the Transformational Project Sites subject to this Agreement. The Trustee and bondholders under the Bond Documents shall be permitted, but not obligated, to cure Developer and Owners' default under or noncompliance with this Agreement or the TBP to the extent permitted under the applicable Bond Documents in order to prevent or remedy any termination, suspension, or any other impairment of reimbursement of Tax Capture Revenues described in this Agreement.

(j) Remedies Cumulative. 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. This subsection (j) does not permit a Party to hold Developer or Owners in default as to one Project arising out of a default as to a different Project.

(k) Entire Agreement. This Agreement constitutes the entire agreement of the Parties and integrates all of 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.

(l) Waiver. 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 of the Parties.

(m) Conflicting Terms. Except as provided in Section 1 and Section 13(c), 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.

(n) Severability. If any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall to any extent be 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, shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(o) Periodic Certifications. Developer and Owners may, from time to time, in connection with the sale or transfer of a Project, or any debt or equity financing or refinancing of a Project, deliver written notice to any other Party requesting that each such Party certify in writing that, and such Party shall, to the best of their knowledge, certify: (i) that this Agreement is in full



933 Terrace Street  
Muskegon, Michigan 49440  
Phone: (231) XXX-XXX  
Email: XXXXXXXXXXXX

With a copy to: Parmenter Law  
Attn: City of Muskegon City Attorney  
601 Terrace St.  
Muskegon, MI 49440  
Phone: (231) 722-1621  
John@parmenterlaw.com

If to Developer: Jon Rooks  
Parkland Properties of Michigan – Shaw Walker, LLC  
75 W Walton Avenue  
Suite A  
Muskegon, MI 49440  
Phone: (231) 722-7001  
Email: jon@parklandmi.com

With a copy to: Jared T. Belka  
Warner Norcross + Judd  
150 Ottawa Avenue NW  
Suite 1500  
Grand Rapids, MI 49503  
Phone: (616) 752-2447  
Email: jbelka@wnj.com

If to Owners: Jon Rooks  
Shaw QOZB 1, Shaw QOZB 2, Shaw QOZB 3, and  
Shaw QOZB 4  
75 W Walton Avenue  
Suite A  
Muskegon, MI 49440  
Phone: (231) 722-7001  
Email: jon@parklandmi.com

With a copy to: Jared T. Belka  
Warner Norcross + Judd  
150 Ottawa Avenue NW  
Suite 1500  
Grand Rapids, MI 49503  
Phone: (616) 752-2447  
Email: jbelka@wnj.com

*[Signatures on following page.]*

The signatories below warrant that they are empowered to enter into this Agreement.

**DEVELOPER**

\_\_\_\_\_  
By:  
Its:  
  
Dated: \_\_\_\_\_

**OWNERS**

\_\_\_\_\_  
By:  
Its:  
  
Dated: \_\_\_\_\_

**CITY OF MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY**

\_\_\_\_\_  
By:  
Its:  
  
Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Its:  
  
Dated: \_\_\_\_\_

**MICHIGAN STRATEGIC FUND**

\_\_\_\_\_  
Matthew Casby  
Fund Manager  
  
Dated: \_\_\_\_\_

**MICHIGAN DEPARTMENT OF TREASURY**

\_\_\_\_\_  
By:  
Its:  
  
Dated: \_\_\_\_\_

**SCHEDULE 2(a)**

**PROJECT COMMENCEMENT DATE(S)**

The estimated dates for commencement of each Project pursuant to the TBP as approved are as follows:

<b>PROJECT</b>	<b>ESTIMATED COMMENCEMENT DATE</b>
<b>Project #1</b> (Bldg. 3 and Bldg. 4)	June 1, 2022
<b>Project #2</b> (Bldg. 5)	June 1, 2022
<b>Project #3</b> (Bldg. 6)	June 1, 2022
<b>Project #4</b> (Bldg. 7)	June 1, 2022
<b>Project #5</b> (Bldg. 1)	June 1, 2022
<b>Project #6</b> (Bldg. 2)	June 1, 2022
<b>Project #7</b> (Townhomes)	June 1, 2022

**Schedule 2(b)**

**PROJECT COMPLETION DATE(S)**

The estimated dates for Substantial Completion of each Project pursuant to the TBP as approved are as follows:

<b>PROJECT</b>	<b>ESTIMATED SUBSTANTIAL COMPLETION DATE</b>
<b>Project #1</b> (Bldg. 3 and Bldg. 4)	December 30, 2027
<b>Project #2</b> (Bldg. 5)	December 30, 2027
<b>Project #3</b> (Bldg. 6)	December 30, 2027
<b>Project #4</b> (Bldg. 7)	December 30, 2027
<b>Project #5</b> (Bldg. 1)	December 30, 2029
<b>Project #6</b> (Bldg. 2)	December 30, 2029
<b>Project #7</b> (Townhomes)	December 30, 2031

## EXHIBIT A

### DEFINITIONS

1. **“Act 381”** has the meaning set forth in Recital B of this Agreement.
2. **“Actual Capital Investment”** means the total amount expended to construct a Project through the submission of the Final Cost Certification for that Project, including, but not limited to, pre-development costs, soft costs, hard construction costs, release and payment of retainages, financing costs and fees, tenant improvements costs, tenant allowances, and commissions.
3. **“Agreement”** means this Reimbursement Agreement, including all Schedules and Exhibits to this Agreement.
4. **“Annual Construction Capture Report”** means the annual report submitted by Developer and Owners and certified by the Construction Manager or General Contractor of record containing the employee and wage information required to calculate and provide reimbursement using Construction Period TCRs.
5. **“Annual Cost Certification”** means Developer and Owners’ annual submission documenting the cost of Eligible Activities incurred in the preceding calendar year, and in total, for each Project.
6. **“Annual Sales & Use Tax Capture Report”** means the annual report submitted by Developer and Owners to Treasury identifying the information required to calculate and provide reimbursement using Sales & Use TCRs.
7. **“Authorization to Commence Reimbursement”** means the authorization provided by the MSF in accordance with Section 14a(8) of Act 381, MCL 125.2664a(8), which allows for the commencement of post-construction reimbursement for a Project using Tax Increment Revenues and State Capture Revenues.
8. **“BRA”** has the meaning set forth in the Preamble of this Agreement.
9. **“BRA Administrative Fee”** means the annual administrative fee owed to the BRA for each active year of the TBP that is to pay the administrative and operating costs of the BRA pursuant to Act 381.
10. **“Bonds”** means bonds, notes or other obligations of the issuer ultimately selected by the Developer for financing of one or more Projects, whether issued in one or more series, and whether issued by public or private sale.
11. **“Bond Documents”** means the documents executed in connection with issuance of the Bonds, including but not limited to any trust agreement, loan agreement, purchase or placement agreement, offering documents and related security documents, including pledge and irrevocable direction agreements related to Tax Capture Revenues.
12. **“Certificate of Completion”** means certification by the applicable local authority that Developer and Owners have completed construction of a Project as evidenced by the

issuance of a Certificate of Occupancy (temporary or permanent), Certificate of Acceptance, or their equivalents.

13. **“City”** has the meaning set forth in Recital H of this Agreement.
14. **“Combined Annual Estimate”** means the average annual amount of State Capture Revenues estimated for a Project under the TBP as set forth in Exhibit C.
15. **“Compliance Manager”** has the meaning set forth in Section 23.
16. **“Construction Period Tax Capture Revenues”** or **“Construction Period TCRs”** means that term as defined under Section 2 of Act 381, MCL 125.2652.
17. **“Department Specific Activities”** means that term as defined in Section 2 of Act 381, MCL 125.2652.
18. **“Developer”** has the meaning set forth in the Preamble of this Agreement and each Developer SPE or other affiliate of Developer that is or will be the developer of the Transformational Project Sites subject to this Agreement, and their successors and assigns.
19. **“Developer and Owners’ SPE”** means Developer and Owners-controlled or affiliated single purpose entities.
20. **“Effective Date”** has the meaning set forth in the preamble.
21. **“Eligible Activities”** means that term as defined under Section 2 of Act 381, MCL 125.2652 and as further specified in the TBP.
22. **“Eligible Property”** means that term as defined under Section 2 of Act 381, MCL 125.2652 and as further specified in the TBP.
23. **“Eligible Workers”** has the meaning set forth in Section 7(b)(ii).
24. **“Estimated Total Project Cost”** means the following estimated total development cost for each Project, as adjusted to account for those costs that would be incurred through the Certificate of Completion, and excluding such costs as would occur after submission of the Final Cost Certification for a Project:

Project	Estimated Total Project Cost <sup>1</sup>
Project #1 (Bldg. 3 and Bldg. 4)	\$ 95,178,306
Project #2 (Bldg. 5)	\$ 22,094,964
Project #3 (Bldg. 6)	\$ 45,889,540
Project #4 (Bldg. 7)	\$ 6,798,450
Project #5 (Bldg. 1)	\$ 2,659,359
Project #6 (Bldg. 2)	\$ 689,015
Project #7 (Townhomes)	\$ 39,488,218
TOTAL	\$ 212,797,852

<sup>1</sup> The Parties acknowledge and agree that the reallocation of costs between Projects and the reduction in the expected total investment from the estimated amounts in the TBP and the MSF Resolution are *de minimis* in nature and do not require an amendment to the TBP or the MSF Resolution.

25. **“Excess Revenue”** has the meaning set forth in Section 10(a)(ii) of this Agreement.

26. **“Facility”** means that term as defined under Section 2 of Act 381, MCL 125.2652.

27. **“Final Cost Certification”** has the meaning set forth in Section 6(b) of this Agreement.

28. **“Force Majeure”** means any delay or failure in performance caused by acts beyond a person’s reasonable control, including, but not limited to, an act of God, such as earthquake, hurricane, tornado, flooding, other natural disaster, or pandemic or other public health emergency, or in the case of war, action of foreign enemies, terrorist activities, labor dispute or strike, riot, government sanction, blockade, embargo, or failure of electrical service, or accidents, fires, floods, strikes, labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts, supplies, equipment, material, labor, or transportation, acts of subcontractors, interruption of utility services, acts or delays of any governmental authority, or any similar cause.

29. **“Governing Body”** means the Muskegon City Commission.

30. **“Income Tax Capture Revenues”** or **“Income TCRs”** means that term as defined under Section 2 of Act 381, MCL 125.2652.

31. **“Indemnified Persons”** means the BRA, MSF, MEDC, Treasury, the Governing Body, and any and all of their respective past, present and future members, officials, employees, representatives, agents and consultants.

32. **“Lender”** means any entity engaged in making commercial loans, including, without limitation, financial institutions, banking institutions, building and loan associations, pension funds, municipal or state employees’ or teachers’ retirement funds, real estate investment trusts, federal or state savings and loan associations, savings banks, insurance companies, local, state or federal governments or agencies, mutual funds, debt funds, opportunity funds, private and public finance companies, investment banks, securities or brokerage firms, endowments and trusts.

33. **“Loan Documents”** means the documents executed in connection with any Loan, including, but not limited to, any loan agreement, promissory note, mortgage and other security documents and other related documents, including pledge and irrevocable direction agreements related to Tax Capture Revenues.

34. **“Loans”** means loans, bank facilities, notes or other obligations to the Lender ultimately selected by the Developer for financing of a Project, whether entered directly or on a syndicated basis.

35. **“Local Taxes”** means that term as defined in Section 2 of Act 381, MCL 125.2652.

36. **“MEDC”** means the Michigan Economic Development Corporation, a public body corporate and politic.

37. **“MSF”** has the meaning set forth in the preamble.

38. **“MSF Administrative Fee”** means the annual administrative fee owed to the MSF for each active year of the TBP to cover the administrative expenses of both Treasury and MSF pursuant to the MSF Transformational Brownfield Plan Program Guidelines in effect as of the date hereof.

39. **“MSF Board”** means the Board of Directors of the MSF.

40. **“MSF Fund Manager”** means the person or persons designated by the Board of Directors of the MSF from time to time to serve as the manager for the MSF programs.

41. **“MSF Resolution”** means that Resolution 2024-127 dated as of August 27, 2024, pursuant to which the MSF approved the TBP.

42. **“NREPA”** has the meaning set forth in Section 14(d).

43. **“Owners”** has the meaning set forth in the Preamble of this Agreement and each Owners’ SPE or other affiliate of Owners that is or will be the developer of the Transformational Project Sites subject to this Agreement, and their successors and assigns.

44. **“Party”** or **“Parties”** has the meaning set forth in the Preamble.

45. **“Pledged Special Revenues”** means that term as defined under Section 922 of the U.S. Bankruptcy Code.

46. **“Project”** means, respectively, the redevelopment of each of the Transformational Project Sites, as each is described in the TBP and as follows, and as each may be modified pursuant an approved amendment to the TBP:

<b>Project</b>	<b>Building(s)</b>
Project #1	Bldg. 3 and Bldg. 4
Project #2	Bldg. 5
Project #3	Bldg. 6
Project #4	Bldg. 7
Project #5	Bldg. 1
Project #6	Bldg. 2
Project #7	Townhomes

47. **“Reconciliation Account”** means the tracking system maintained by the MSF and Treasury to ensure that disbursements of State Capture Revenues remain within the applicable annual limitations, and to effectuate the carry-over provisions of Section 14a(19) of Act 381, by ensuring balance between the amount of any one or more of Income TCRs, Withholding TCRs, and State & Use TCRs not disbursed in a given year with the amount carried-over and disbursed in a future year.

48. **“Redevelopment Program Plan”** means the development program and Projects for each of the Transformational Project Sites as further depicted in Figure 8 of the TBP.

49. **“Safe Harbor Income Tax Report”** has the meaning set forth in Section 9(b)(iii)(1).

50. **“Safe Harbor Method”** means the alternate method of calculating Income TCRs or Withholding TCRs pursuant to Sections 2(dd)(iii) and 2(III)(iv), respectively, of Act 381, MCL 125.2652(dd) and 125.2652(III).

51. **“Sales and Use Tax Capture Revenues”** or **“Sales & Use TCRs”** means that term as defined under Section 2 of Act 381, MCL 125.2652.

52. **“Sales and Use Tax Exemption”** means the exemption from Sales Tax and Use Tax on materials used to construct the redevelopment projects on the Transformational Project Sites pursuant to Section 4d of the Sales Tax Act (MCL 205.54d) and Section 4dd of the Use Tax Act (MCL 205.94dd) as approved under the TBP.

53. **“Sales and Use Tax Exemption Report”** has the meaning set forth in Section 7(a).

54. **“Sales Tax”** means the tax levied under Section 2 of the General Sales Tax Act, 1933 PA 167, MCL 205.52.

55. **“Special Revenues”** means that term as defined under Section 902(2)(C) of the U.S. Bankruptcy Code.

56. **“State Brownfield Redevelopment Fund”** means that term as defined in Section 2 of Act 381, MCL 125.2652.

57. **“State Capture Revenues”** means, collectively, Income TCRs, Withholding TCRs, and Sales & Use Tax TCRs.

58. **“State Capture Revenue Disbursement Period”** has the meaning set forth in Section 5(a)(iv).

59. **“Substantially Complete”** or **“Substantial Completion”** means the completion of construction sufficient to be eligible to apply for issuance of a temporary certificate of occupancy.

60. **“Tax Capture Revenues”** means, collectively, Construction Period TCRs, Tax Increment Revenues, Income TCRs, Withholding TCRs, and Sales & Use Tax TCRs.

61. **“Taxes levied for school operating purposes”** means that term as defined under Section 2 of Act 381, MCL 125.2652.

62. **“Tax Increment Revenues”** means that term as defined under Section 2 of Act 381, MCL 125.2652.

63. **“Term”** means the period from the Effective Date until the completion of reimbursement from Tax Capture Revenues as provided for under the TBP or earlier termination of this Agreement.

64. **“Total Approved Construction Period TCRs”** means the total amount of reimbursement from Construction Period Tax Capture Revenues approved under the TBP, which amount is Three Million Five-Hundred Seventy-Six Thousand One-Hundred Twenty-Eight Dollars (\$3,576,128.00).

65. **“Total Approved Reimbursement”** means the total amount of reimbursement from Tax Capture Revenues approved under the TBP, which amount is One-Hundred Fifty-Four Million Seven-Hundred Fifty-Two Thousand Three and 00/100 Dollars (\$154,752,003.00). The Total Approved Reimbursement does not include the Sales and Use Tax Exemption.

66. **“Total Approved State Capture Revenues”** means the total amount of reimbursement from Income TCRs, Withholding TCRs, and Sales & Use TCRs approved under the TBP, which amount is Seventy-Seven Million Seven-Hundred Seventy-Eight Thousand Six-Hundred Thirty-Two Dollars (\$77,778,632.00).

67. **“Total Approved Tax Increment Revenues”** means the total amount of reimbursement from Tax Increment Revenues approved under the TBP, which amount is Seventy-Three Million Three-Hundred Ninety-Seven Thousand Two-Hundred Forty-Three Dollars (\$73,397,243.00).

68. **“Total Sales and Use Tax Exemption”** means the total amount of Sales and Use Tax Exemption approved under the TBP, which amount is Four Million Eight Hundred Forty-Six Thousand Three-Hundred Eighty-Six Dollars (\$4,846,386.00).

69. **“Transformational Brownfield Plan”** or **“TBP”** means that certain transformational brownfield plan as formally approved by the Muskegon City Commission on February 11, 2025, and the MSF on April 22, 2025, for the four (4) Transformational Project Sites, a copy of which is attached hereto as Exhibit B.

70. **“Transformational Project Sites”** has the meaning set forth in Recital H.

71. **“Treasury”** has the meaning set forth in the Preamble.

72. **“Trustee”** means the trustee acting under one or more trust agreements executed in connection with the Bonds and further identified in the Bond Documents. For the avoidance of doubt, “Trustee” may also include one or more financial institutions acting in a similar capacity in the event one or more bank facilities is ultimately selected by the Developer for financing of the Bonds.

73. **“Under Construction”** means, as determined by the MSF, that work on a Project has commenced and is ongoing, which may include excavation, site work, construction of building foundations, and all subsequent improvements, but which does not include a ceremonial groundbreaking or the securing of the site for future construction.

74. **“Undisbursed Authority”** has the meaning set forth in Section 10(a)(i).

75. **“Use Tax”** means the tax levied under Section 4dd of the Use Tax Act, 1937 PA 94, MCL 205.94dd.

76. **“Withholding Tax Capture Revenues”** or **“Withholding TCRs”** means that term as defined under Section 2 of Act 381, MCL 125.2652.

77. **“Written Determination”** means the MSF’s formal determination as to those activities, as submitted by Developer and Owners in an Annual Cost Certification of Final Cost Certification, that are eligible for reimbursement using Tax Capture Revenues as well as those activities that do not qualify for reimbursement.



**EXHIBIT B**  
**TRANSFORMATIONAL BROWNFIELD PLAN**

**EXHIBIT C**

**COMBINED ANNUAL ESTIMATES OF  
STATE TAX CAPTURE REVENUES, BY PROJECT**

<b>PROJECT</b>	<b>COMBINED ANNUAL ESTIMATE OF STATE TAX CAPTURE REVENUES</b>
<b>Project 1</b> (Bldg. 3 and Bldg. 4)	\$1,889,715
<b>Project 2</b> (Bldg. 5)	\$435,925
<b>Project 3</b> (Bldg. 6)	\$588,628
<b>Project 4</b> (Bldg. 7)	\$0
<b>Project 5</b> (Bldg. 1)	\$333,452
<b>Project 6</b> (Bldg. 2)	\$192,049
<b>Project 7</b> (Townhomes)	\$449,163
<b>TOTAL</b>	<b>\$3,888,932</b>

**EXHIBIT D**

**SAFE HARBOR ELECTION FORM  
FOR PROJECT #1, PROJECT #2, PROJECT #3,  
PROJECT #4, PROJECT #5, PROJECT #6, AND PROJECT #7,**

This Safe Harbor Election Form is submitted on \_\_\_\_\_, pursuant to the Reimbursement Agreement by and among the Parkland Properties Of Michigan – Shaw Walker, LLC (the “Developer”); Shaw Walker Opportunity Zone Business 1, LLC, Shaw Walker Opportunity Zone Business 2, LLC, Shaw Walker Opportunity Zone Business 3, LLC, and Shaw Walker Opportunity Zone Business 4, LLC (collectively, the “Owners”), the Muskegon Brownfield Redevelopment Authority, the Michigan Strategic Fund, and the Michigan Department of Treasury, Case No. 437210, dated November 21, 2025, for the Transformational Brownfield Plan for the Projects at 965 W. Western Avenue, 920 & 930 Washington Avenue, and 1330 Division Street (the “Agreement”). Capitalized terms used herein and not otherwise defined have the meanings set forth in the Agreement.

Pursuant to Sections 2(dd) and 2(III) of Act 381, Developer may elect to utilize the Safe Harbor Method at any time before the first reimbursement of Tax Capture Revenues under the TBP. Developer acknowledges and understands that an election to utilize the Safe Harbor Method, once made, cannot be rescinded.

Developer hereby elects to utilize the Safe Harbor Method of calculating tax capture revenues for Project #1, Project #2, Project #3, Project #4, Project #5, Project #6, and Project #7 as follows:

Withholding Tax Capture Revenues

Income Tax Capture Revenues

The undersigned has the authority to sign on behalf of the Developer.

**PARKLAND PROPERTIES OF MICHIGAN – SHAW WALKER, LLC**

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

**EXHIBIT E**

**SAFE HARBOR METHODOLOGY AND FACTORS**

1. Income Tax Capture Revenues for each completed Safe Harbor Project shall be calculated by multiplying the factor below by the total square footage of residential units actively leased at the Project the prior year and, in the case of units made available for sale, sold in an arms-length transaction, as reported by Developer on the Annual Safe Harbor Report. For example:

Unit square footage: 500 sq ft; Lease start date 1/10/2027; Lease end date 1/9/2028.  
 The 2027 capture for that unit is:  $500 * \$7.55 = \$3,775$  tax capture

2. Withholding Tax Capture Revenues for each completed Safe Harbor Project shall be calculated by multiplying the factor below by the total square footage of non-residential space subject to an existing lease as reported by Developer on the Annual Safe Harbor Report. For example:

Unit square footage: 1,500 sq ft; Lease start date 1/10/2027; Lease end date 1/9/2030.  
 The 2027 capture for that unit is:  $1500 * 7.55 * (356/365) = \$11,045.75$  tax capture

**EXAMPLE:**

<b>PROJECT #1</b>	
<b>Year</b>	<b>Safe Harbor Income/Withholding Tax Capture Per Occupied SF</b>
<b>2023</b>	\$ 6.71
<b>2024</b>	\$ 6.91
<b>2025</b>	\$ 7.12
<b>2026</b>	\$ 7.33
<b>2027</b>	\$ 7.55
<b>2028</b>	\$ 7.78
<b>2029</b>	\$ 8.01
<b>2030</b>	\$ 8.25

*(Safe Harbor Factors on following page.)*

**EXHIBIT F**  
**ANNUAL SAFE HARBOR REPORT**  
**FOR [PROJECT NAME]**  
**FOR [YEAR]**

This Annual Safe Harbor Report for [YEAR] is submitted for [PROJECT NAME] (the “Project”) on \_\_\_\_\_ (the “Submission Date”), pursuant to the Reimbursement Agreement by and among the [DEVELOPER NAME] (“Developer”), the [BRA NAME] (the “BRA”), the Michigan Strategic Fund (the “MSF”), and the Michigan Department of Treasury (“Treasury”), Case No. 437210, dated November 21, 2025, for the [INSERT THE NAME OF THE TBP] (the “Agreement”). Capitalized terms used herein and not otherwise defined have the meanings set forth in the Agreement.

On [date of election] Developer submitted its election to utilize the Safe Harbor Method to calculate *[include as applicable: Income Tax Capture Revenues and Withholding Tax Capture Revenues pursuant to Sections 2(dd) and 2(III) of Act 381, respectively]* for the Project.

The undersigned, in the name of and on behalf of Developer (and not in an individual capacity), hereby certifies, represents, and warrants that as of the Submission Date:

1. Developer has complied and is in compliance with all the terms, covenants and conditions of the Agreement, except for such noncompliance, if any, described on Schedule I, attached (which disclosure will not constitute MSF’s, Treasury’s, or BRA’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*
2. No default exists under the Agreement, except for such defaults, if any, described on Schedule II, attached (which disclosure will not constitute MSF’s, Treasury’s, or BRA’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*
3. The representations and covenants of the Developer set forth in the Agreement are true, with the same effect as though such representations and warranties were made on the date hereof, except for breaches of such representations and warranties, if any, described on Schedule III, attached (which disclosure will not constitute MSF’s, Treasury’s, or BRA’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*
4. *[Include where Income Tax Capture is selected.]* Attached hereto is a completed Annual Safe Harbor Report listing those residential units, including occupancy dates and square footage for each unit, actively leased or owned at the Project during [YEAR].
5. *[Include as applicable where Income Tax Capture is selected.]* Attached hereto are copies of all currently executed leases or other written agreements not previously provided for each leased residential unit at the Project, and any updates, modifications, amendments, and restatements thereto.
6. *[Include as applicable where Income Tax Capture is selected.]* Attached hereto for each residential unit sold at the Project during [2025] is documentary evidence of each such sale.

- 7. *[Include as applicable where Income Tax Capture is selected.]* Developer certifies that each sale of a residential unit at the Project during [YEAR] was an arms-length transaction as required under Section 2(dd)(iii) of Act 381.
- 8. *[Include where Withholding Tax Capture is selected.]* Attached hereto is a completed Annual Safe Harbor Report listing each distinct commercial space, including occupancy dates, type of space, and square footage for each space, actively leased or otherwise occupied by a tenant or operator during [YEAR] at the Project.
- 9. *[Include where Withholding Tax Capture is selected.]* Attached hereto are copies of all currently executed leases or other written agreements not previously provided for each distinct commercial space at the Project that were actively leased or otherwise occupied in [YEAR], and any updates, modifications, amendments, and restatements thereto.

The undersigned has the authority to sign this Annual Safe Harbor Report for [YEAR] on behalf of the Company and signs this Annual Safe Harbor Report [YEAR] as of the Submission Date.

**[DEVELOPER]**

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

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**MSF APPROVAL OF ANNUAL SAFE HARBOR REPORT  
AND REIMBURSEMENTS FOR  
[PROJECT]**

Based upon its review of the above information and the representations of the Developer, the Michigan Strategic Fund hereby approves Developer's submission of the Annual Safe Harbor Report for [YEAR] for [PROJECT] and further approves the following reimbursement[s] of *[include as applicable: Income Tax Capture Revenues and Withholding Tax Capture Revenues]* for [YEAR] for [PROJECT]:

Income Tax Capture Revenues:     \$ \_\_\_\_\_

Withholding Tax Capture Revenues: \$ \_\_\_\_\_

**MICHIGAN STRATEGIC FUND**

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

Dated: \_\_\_\_\_

**EXHIBIT G**  
**REQUEST TO SHIFT TAX CAPTURE REVENUES**

This [Number] Request to Shift Tax Capture Revenues is submitted on \_\_\_\_\_, pursuant to Reimbursement Agreement by and among the [DEVELOPER NAME] (“Developer”), the [BRA NAME], the Michigan Strategic Fund, and the Michigan Department of Treasury, Case No. 437210, dated November 21, 2025, for the [INSERT THE NAME OF THE TBP] (the “Agreement”). Capitalized terms used herein and not otherwise defined have the meanings set forth in the Agreement.

Pursuant to Section 12(b) of the Agreement, Tax Capture Revenues (“TCRs”) generated from one Project within the TBP may be used to fund approved Eligible Activities on another Project within the TBP if and only if Developer identifies an equal and offsetting decrease in the amount of Tax Capture Revenues that may be reimbursed from another Project so as to maintain compliance with applicable approved Tax Capture Revenue limits total(s) as set forth in the Agreement.

Developer hereby requests to shift the following Tax Capture Revenues from [Original Project] to [New Project]:

	<b>Amount Shifted</b>	<b>Revised Estimated TCRs for: [Original Project]</b>	<b>Revised Estimated TCRs for: [New Project]</b>
Construction Period TCRs			
Income TCR			
Withholding TCR			
Tax Increment Revenue			

The undersigned has the authority to sign on behalf of the Company.

**[DEVELOPER]**

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

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**MSF APPROVAL**

Based upon the Michigan Strategic Fund’s review of the above information and the representations of the Developer, Developer’s [NUMBER] Request to Shift Tax Capture Revenues from [Original Project] to [New Project] as proposed is hereby \_\_\_\_\_.

**MICHIGAN STRATEGIC FUND**

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