



City of Plymouth
Brownfield Redevelopment Authority
Meeting Minutes
January 24, 2023 – 3:30 p.m.

City of Plymouth
201 S. Main
Plymouth, Michigan 48170-1637

www.plymouthmi.gov
Phone 734-453-1234
Fax 734-455-1892

1. CALL TO ORDER

- a. Chair Colleen Pobur called the meeting to order at 9:00 a.m.
Present: Chair Pobur, Members Nancy Anderson, Steve Anderson, John Buzuvis, Alan Deal, Paul Sincock
Excused: John Townsend

Also present: Finance Director John Scanlon

2. CITIZENS COMMENTS

There were no citizen comments.

3. APPROVAL OF THE MEETING MINUTES

Sincock offered a motion, seconded by N. Anderson, to approve the minutes of the of the May 31, 2022 meeting.

MOTION PASSED

4. APPROVAL OF THE AGENDA

Sincock offered a motion, seconded by S. Anderson, to approve the agenda for January 24, 2023.

MOTION PASSED

5. BOARD MEMBER COMMENTS

There were no board member comments.

6. OLD BUSINESS

There was no old business.

7. NEW BUSINESS

- a. Proposed Brownfield Reimbursement Agreement Amendments for 550 N. Holbrook (Starkweather Schoolhouse Lofts)

The group discussed the amendments and noted that the initial plan was approved in February of 2016 and the developer had not yet submitted a signed copy of the agreement. Additionally, the developer requested an amendment to the agreement in 2022. The agreement required that all reimbursement requests be submitted within 990 days after completion of each approved eligible activity. The proposed amendment removes the 90-day provision.

The following motion was offered by Sincock and seconded by N. Anderson.

WHEREAS The Brownfield Redevelopment Authority of the City of Plymouth originally adopted a Brownfield Plan and Reimbursement Agreement for the Starkweather School property at 550 N. Holbrook in February of 2016; and

WHEREAS The originally adopted Brownfield Reimbursement agreement now requires an amendment; and

WHEREAS The Brownfield Redevelopment Authority of the City of Plymouth reviewed those amendments at their meeting on January 24 of 2023.

NOW, THEREFORE, BE IT RESOLVED that the City of Plymouth Brownfield Redevelopment Authority hereby approves the amended Brownfield Reimbursement Agreement for the Starkweather School Property as attached.

REIMBURSEMENT AGREEMENT

This Brownfield Reimbursement Agreement ("Agreement") is made as of _____, 2022, among the City of Plymouth Brownfield Redevelopment Authority (the "Authority"), a public body corporate with offices at 101 South Main Street, Plymouth, MI 48170; and Curtis-Plymouth LLC, the principal address of which is 990 Pierce Street, Birmingham, MI, 48009 (the "Developer").

RECITALS

A. The Authority was created by the City of Plymouth ("City") pursuant to the Brownfield Redevelopment Financing Act, 1996 P.A. 381, as amended (the "Act"), and, pursuant to the Act, the Authority has prepared a Brownfield Plan to include the Property (as defined below) which was duly approved by the City Council on March 7, 2016 following a public hearing on March 7, 2016, a copy of which is attached as **Exhibit A** (the "**Brownfield Plan**").

B. The Developer owns the Starkweather School Site in the City of Plymouth which is described on the attached Exhibit B (the "**Property**") and which, due to the presence on the Property of certain hazardous substances as described in the Brownfield Plan is a "facility" and "eligible property" and is therefore commonly referred to as a "brownfield."

C. Provided it obtains any needed zoning and building approvals from the City and others, the Developer plans to develop the property (the "**Improvements**") into a multi-family apartment and single family residential development. This will increase the tax base for taxing jurisdictions, create new housing options, recreational activities, uplift property values, and enhance nearby neighborhoods.

D. In order to make the Improvements on the Property, the Developer will incur costs to complete the **Eligible Activities** as more fully described in the Brownfield Plan ("**Eligible Costs**").

E. In accordance with Act 381 and the Brownfield Plan, the parties desire to use the property tax revenues that are generated from an increase in the tax value of the Property resulting from its development ("**Tax Increment Revenues**") to reimburse the Developer for **Eligible Costs** it incurs in redeveloping the Property.

F. The Brownfield Plan for the Property describes the activities and their attendant costs in summary form based upon the information provided by the Developer; sets out an estimate of the captured taxable value, an estimate of the tax increment revenues, an estimate of the reimbursement payment schedule, and an estimate of the impact of tax increment financing on the revenues of the taxing jurisdictions. The eligible activities costs in the Brownfield Plan are estimated budgeted amounts. Prior to initiation of eligible activities, the Developer shall submit an Implementation Plan to the Authority; and

G. Accordingly, the purpose of this Agreement is to set out the obligations of the parties to this Agreement for reimbursement of the cost of the eligible activities as approved by the Authority and the City.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this Agreement, the parties agree as follows:

1. **Brownfield Plan.** To the extent provisions of the Brownfield Plan conflict with this Agreement, the terms and conditions of the Brownfield Plan control. To the extent provisions of the Brownfield Plan or this Agreement conflict with Act 381, Act 381 controls. Changes or additions to the Brownfield Plan may be submitted in writing to the Authority and to the City for approval. If such changes or additions increase the total cost of the eligible activities to an amount greater than in the approved Brownfield Plan, an amended Brownfield Plan incorporating the cost of said changes or additions may be approved at the sole discretion of the Authority and the City.

2. Construction of Development. The Developer shall proceed with due care obligations to complete the Improvements and undertake and complete the eligible activities resulting in the Eligible Costs, all in accordance with this Agreement, the Brownfield Plan, and all applicable laws, rules, regulations, permits, orders, and directives of any official or agency of competent jurisdiction. The Developer shall undertake and achieve substantial completion of the Development as described above within a reasonable time after the Brownfield Plan is approved by the Authority and the City.

(a) The parties agree that this Agreement and the Tax Increment Revenues collected and distributed pursuant to the Brownfield Plan are intended to fund only the Eligible Costs that have been approved by the Authority.

(b) Prior to the payment of eligible activities, the Developer shall submit a detailed Implementation Plan that includes, as a minimum, applicable estimates of the following items related solely to eligible activities:

(i) Cost estimates and/or actual costs for project costs related to eligible activities; and

(ii) The Implementation Plan costs shall be provided in the same format as Attachment C to the Brownfield Plan for the Brownfield Plan costs approved by the Authority.

(c) The Developer shall comply fully with all local ordinances, state and federal laws, and all applicable local, state and federal rules and regulations. Nothing in this Agreement shall abrogate the effect of any local ordinance.

(d) This Agreement does not obligate the City to issue any permit required by law to implement the Development.

(e) Noncompliance with this Agreement or discovery of material irregularities at any time are regarded as material breaches of this Agreement. The Authority, in addition to any other remedy provided by law, may do one or more of the following:

(i) withhold future payments to the extent such reimbursed payments relate directly to the noncompliance with the Agreement;

(ii) recover reimbursement payments already disbursed to the extent such reimbursed payments relate directly to the noncompliance with the Agreement; or

(iii) terminate this Agreement.

3. Capture of Taxes. The City shall, during the term of this Agreement, collect all Tax Increment Revenues from the Property and transmit 100% of the eligible incremental local tax revenues (with the exception of the City Voted Debt millage and District Library Voted Debt Millage, the DIA and Detroit Zoo Operating Millages) generated from real and personal property to reimburse the Developer for the costs of eligible activities. Such reimbursement shall not be more than the tax increment revenues captured during the duration of the Brownfield Plan from the taxable improvements located on the Property, including both real property and personal property. Nor shall the total amount of reimbursement be for more than the reasonable and necessary cost of the eligible activities approved by the Authority or otherwise permitted by the Act.

4. Submission of Costs. Before requesting any reimbursement, the Developer shall pay and submit an affidavit of payment for the reasonable and necessary costs of the eligible activities that have been approved by the Authority. For those Eligible Costs for which the Developer seeks reimbursement from

the Authority, the Developer shall submit to the Authority such of the following as may be required by Authority representatives:

- (a) a written statement detailing the costs,
- (b) a written explanation as to why reimbursement is appropriate under the Plan and this Agreement,
- (c) copies of invoices from the consultants, contractors, engineers, attorneys or others who provided such services,
- (d) copies of Full Unconditional Lien Waiver(s) from the vendor(s) documenting that the invoice was actually paid;
- (e) if, not already submitted, copies of the contract with the contractor or supplier providing the services or supplies for which reimbursement is sought;
- (f) a statement from the engineer and project manager overseeing the work recommending payment; and
- (g) any other documentation reasonably requested by the Authority, in a format and on such forms approved by the Authority, with the Developer's request for reimbursement to assist the Authority in determining whether the work was performed as approved.

The Authority in its sole discretion may accept copies of cancelled checks and a Full Unconditional Lien Waiver in satisfaction of Paragraphs (c) through (e) above if the Developer submits a written explanation as to why an invoice and/or contract is not available along with copies of cancelled checks and a Full Unconditional Lien Waiver. All documentation related to the request for reimbursement shall be submitted after the completion of each approved eligible activity. Prior to reimbursement payments being initiated, the Developer shall submit to the Authority a report of the results of the eligible activities performed. Such results shall include, without limitation, any abatement reports, demolition and disposal documentation, supplemental environmental investigation reports, and response activity reports. In addition, the Developer shall submit construction lien waivers from the contractors and subcontractors for the approved eligible activities prior to any payments being initiated. The Developer may submit a reimbursement request including such information whenever it is available even though Tax Incremental Revenues for the reimbursement may not be available for many years thereafter. The Developer and Authority agree that no reimbursement requests will be accepted by the Authority after December 31, 2026.

5. Payments. Payments to the Developer shall be made as follows:

- (a) Within 60 days of its receipt of the materials identified in paragraph 4 above, the Authority shall decide whether the payment request is for Eligible Costs and whether such costs are accurate. The Authority will determine the amount to be reimbursed, based upon the reasonable and necessary costs of the eligible activities approved by the Authority and the State or otherwise permitted by the Act in light of the actual costs presented in the Developer's submitted documentation. Such amount shall not exceed the amounts set forth in Section 5(d), subject to such amendments as may have been approved by the Authority, nor shall such costs be reduced by the Authority without good cause shown, such approvals not to be withheld unreasonably. If the Authority determines all or a portion of the requested payment is for Eligible Costs and is accurate, it shall see that the portion of the payment request that is for Eligible Costs and is accurate is processed as provided in subparagraph (b) below. If the Authority disputes the accuracy of any portion of any payment request or that any portion of any payment is for Eligible Costs, it shall notify the Developer in writing of its determination and the reasons for its determination. The Developer shall have 28 days to address the reasons given by the Authority and shall have an opportunity to meet with the Authority's representatives or, if the Authority

Board consents, to meet with the Authority's Board to discuss and resolve any remaining dispute. In doing so, the Developer shall provide the Authority a written response to the Authority's decision and the reasons given by the Authority. If the parties do not resolve the dispute in such a manner, it shall be resolved as provided in paragraph 6 below.

(b) Once it approves any request for payment as Eligible Costs and approves the accuracy of such costs, the Authority shall pay to the Developer the amounts for which submissions have been made pursuant to paragraph 4 of this Agreement as the Authority receives Tax Increment Revenues as directed by the Brownfield Plan, until all of the amounts for which submissions have been made have been fully paid to the Developer, or the repayment obligation expires, whichever occurs first.

(c) The repayment obligation under this Agreement shall expire upon the payment by the Authority to the Developer of all amounts due to the Developer under this Agreement or on December 31, 2026, whichever occurs first.

(d) The amount to be reimbursed under this Agreement shall:

(1) The BRA will use captured taxes as referred to in (3) to reimburse the Developer for Eligible Costs total amount not to exceed \$ 1,045,000,

(2) The amount of Eligible Costs to be reimbursed with the capture of taxes levied for school operating purposes ("School Taxes") is estimated to be \$0.

(3) The amount of Eligible Costs to be reimbursed with the capture of taxes not levied for school operating purposes ("Local Taxes") is estimated to be \$ 1,045,000.

(4) Upon payment to Developer of total reimbursements as outlined above being met, or expiration of the Plan, reimbursements to Developer shall cease.

(e) The sole source for any reimbursement shall be such Tax Increment Revenues. To the extent permitted by law, such reimbursements, once approved by the Authority under subparagraph (b) above shall be and remain valid and binding obligations of the Authority until paid or until expiration of the time for payment as provided in subparagraphs (c) and (d) above. However, the Developer shall bear any risk of a change in law prohibiting reimbursement at the time Tax Increment Revenues are available for reimbursement to the Developer for costs that were Eligible Costs at the time the Authority approved them. In no event shall the Developer be reimbursed for any approved eligible costs that have been or will be reimbursed or credited against other obligations by any other governmental entity.

(f) If any of the Property is substantially destroyed by fire or natural events or causes as determined by the Building and Engineering Department Director of the City, this Agreement shall terminate unless reconstruction occurs at an equal or greater taxable value within twelve (12) months of the date of the loss. No payments shall be made during the period of reconstruction. Payments shall resume when the reconstruction is substantially complete as determined by the Building and Engineering Department Director of the City.

(g) In addition to any other remedies provided in this Agreement, if any payment made by the Authority is determined to be improper or outside of the scope of its obligations under this Agreement, or in the event of the Developer's breach or default of this Agreement, the Developer shall, at the request of the Authority, repay or return any monies paid by the Authority that are directly related to said breach, default or improper payment.

6. Dispute As To Eligible Costs. If there is a dispute over whether a cost submitted by the Developer is an "Eligible Cost," the dispute shall be resolved by an independent qualified professional chosen by mutual agreement of the parties. If the parties are unable to agree upon a professional, then each party (the City, the Authority, and the Developer) shall appoint an

independent qualified professional to review the Authority's decision, provided that each party chooses a professional that has not been directly employed by or provided services to that party for a period of two (2) years before the date of proposed appointment. If and to the extent that two of the three qualified professionals so selected agree that costs submitted are eligible pursuant to the Brownfield Plan and was previously approved by the Authority, this shall constitute an award, and the Developer shall be reimbursed those costs in accordance with this Agreement. In addition, any such award may be used as the basis for the Wayne County Circuit Court rendering judgment that such award constitutes a final decision under statutory arbitration.

7. Assignment of Future Reimbursement Revenue. The Developer may assign its reimbursement rights under this Agreement via a written instrument, a copy of which must be provided to the Authority no later than thirty (30) days prior to such assignment. However, any such right to reimbursement shall always remain contingent upon material compliance with all aspects of this Agreement on the part of the Developer and any of its assigns, successors, transferees, and heirs. This Agreement shall run with the land constituting the Property and shall be binding upon and inure to the benefit of the Developer and the Authority as well as their respective assigns, successors, transferees, and heirs.

8. Adjustments. If, due to an appeal of any tax assessment or reassessment or any other reason, the Authority is required to reimburse any Tax Increment Revenues, the Authority may deduct the amount of any such reimbursement from any amounts due and owing the Developer or, if all amounts due the Developer under this Agreement have been fully paid, the Authority may invoice the Developer for the amount of such reimbursement and the Developer shall pay the Authority such invoiced amount within 30 days of the Developer's receipt of the invoice from the Authority. Nothing in this agreement shall limit the right of the Developer to appeal any tax assessment.

9. Obligation to Fund Eligible Activities. The Developer shall pay for the Eligible Costs with its own funds and receive reimbursement from the Authority by available Tax Increment Revenues. It is anticipated that there will be sufficient available Tax Increment Revenues to pay for all Eligible Costs under this Agreement. However, if for any reason increased Tax Increment Revenues from the Development do not result in sufficient revenues to satisfy such obligations, the Developer agrees and understands that it will have no claim or further recourse of any kind or nature against the City or the Authority and the Developer shall assume full responsibility for any such loss or costs.

10. Access for Inspection. Employees and agents of the Authority and the City are authorized to enter upon the Property following a minimum of one (1) business day notice to the Developer for the purpose of inspecting the work related to the authorized eligible activities and making determinations that such work is being performed in accordance with the Brownfield Plan in a workmanlike manner.

11. Indemnification. The Developer shall defend, indemnify, and hold the City and the Authority, and their agents, representatives, and employees (hereinafter "Indemnified Persons") harmless from any loss, expense (including reasonable legal counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising from or on account of the acts or omissions of the Developer, its officers, employees, agents or any persons acting on its behalf or under its control, in implementing the eligible activities described in the approved work plans or arising in any way from this Agreement, including but not limited to, claims for damages, reimbursement or set-off arising from, or on account of, any contract, agreement or arrangement between the Developer and any person for the performance of eligible activities or the terms of this Agreement, including claims on account of construction delays.

12. Insurance. During construction, the Developer and any contractor or subcontractor shall provide and maintain comprehensive general liability insurance with limits of one million dollars (\$1,000,000) combined single limit, for claims which may arise from the Developer's operations under this Agreement, naming the Authority and the City as additionally named insureds. Proof of such insurance

shall be provided to the Authority in care of the Authority's Administrator prior to initiating any redevelopment activities.

13. Termination. This Agreement shall terminate on the earlier to occur of: (a) the date on which the Authority is no longer authorized to capture tax increment revenues; (b) on the date the Brownfield Plan expires; (c) the date when the amount due under the Agreement has been paid; or (d) upon default of this Agreement by the Developer, including, without limitation, if the Development is not completed within sixty (60) months from the effective date of this Agreement; or (e) upon such other conditions as set forth in this Agreement.

14. Payment of Taxes. Developer or any of its successors or assignees of the Development shall pay all real and personal property taxes levied on any portion of the Development on or before the date the same are payable, before any additional interest penalty for late payment is applied.-

15. Miscellaneous.

(a) This is the entire agreement between the parties as to its subject. All previous negotiations, statements and preliminary instruments of the parties or their representatives are merged in this Agreement. It shall not be amended or modified except in writing signed by all the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. Any revision of this Agreement shall not be effective until the provision of a thirty (30) day notice by the City and the Authority to the other parties hereto so that this Agreement remains in full compliance with any applicable Federal, State or Local law or regulation.

(b) This Agreement and the rights and obligations under this Agreement except as previously noted, are up-assignable and non-transferable without the consent of the other parties. It shall, however, be binding upon any successors or permitted assigns of the parties.

(c) This Agreement shall become effective when approved and executed by the Authority and the Developer.

(d) All parties had input into the drafting of this Agreement and all had the advice of legal counsel before entering into this Agreement. In the event any ambiguity of any language in this Agreement arises, such ambiguity shall not be construed against any party,

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

(f) Notices shall be complete when delivered by personal delivery, by courier or delivery service (such as UPS, FedEx or other service) or by certified mail, return receipt requested to the addresses first written above. If any party refuses to accept delivery when presented, delivery shall be deemed to have occurred at the time of such refusal. Any such notice and communication shall be addressed as follows:

If to Authority: City of Plymouth Brownfield Redevelopment Authority
201 S. Main Street
Plymouth, MI 48170
Attn: John Scanlon, City Finance Director
(734) 453-1234

If to Developer: Curtis-Plymouth, LLC
990 Pierce Street
Birmingham, MI 48009
Attn: Mark Menuck
(248) 730-0300

(g) This Agreement shall be governed by the laws of the state of Michigan. To the extent permitted by law, the jurisdiction and venue for any action brought pursuant to, arising from or to enforce any provision of this Agreement shall be solely in the state courts in Wayne County, Michigan.

By signing below, all parties represent and warrant their authority to enter into this agreement on behalf of their respective organizations. The parties have signed this Agreement as of the date first written above.

CURTIS-PLYMOUTH LLC

CITY OF PLYMOUTH BROWNFIELD
REDEVELOPMENT AUTHORITY

By: _____ By: _____

Open.09992.60912.30176632-1

EXHIBIT A
BROWNFIELD PLAN
EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY

Proposed Starkweather School Site Development

REIMBURSEMENT AGREEMENT

This Brownfield Reimbursement Agreement ("Agreement") is made as of ____, 2016, among the City of Plymouth Brownfield Redevelopment Authority (the "Authority"), a public body corporate with offices at 101 South Main Street, Plymouth, MI 48170; and Curtis-Plymouth LLC, the principal address of which is 990 Pierce Street, Birmingham, MI, 48005 (the "Developer").

RECITALS

- A. The Authority was created by the City of Plymouth ("City") pursuant to the Brownfield Redevelopment Financing Act, 1996 P.A. 381, as amended (the "Act"), and, pursuant to the Act, the Authority has prepared a Brownfield Plan to include the Property (as defined below) which was duly approved by the City Council on March 7, 2016 following a public hearing on March 7, 2016, a copy of which is attached as Exhibit A (the "Brownfield Plan").
- B. The Developer owns the Starkweather School Site in the City of Plymouth which is described on the attached Exhibit B (the "Property") and which, due to the presence on the Property of certain hazardous substances as described in the Brownfield Plan is a "facility" and "eligible property" and is therefore commonly referred to as a "brownfield."
- C. Provided it obtains any needed zoning and building approvals from the City and others, the Developer plans to develop the property (the "Improvements") into a multi-family apartment and single family residential development. This will increase the tax base for taxing jurisdictions, create new housing options, recreational activities, uplift property values, and enhance nearby neighborhoods.
- D. In order to make the Improvements on the Property, the Developer will incur costs to complete the Eligible Activities as more fully described in the Brownfield Plan ("Eligible Costs").
- E. In accordance with Act 381 and the Brownfield Plan, the parties desire to use the property tax revenues that are generated from an increase in the tax value of the Property resulting from its development ("Tax Increment Revenues") to reimburse the Developer for Eligible Costs it incurs in redeveloping the Property.
- F. The Brownfield Plan for the Property describes the activities and their attendant costs in summary form based upon the information provided by the Developer; sets out an estimate of the captured taxable value, an estimate of the tax increment revenues, an estimate of the reimbursement payment schedule, and an estimate of the impact of tax increment financing on the revenues of the taxing jurisdictions. The eligible activities costs in the Brownfield Plan are estimated budgeted amounts. Prior to initiation of eligible activities, the Developer shall submit an Implementation Plan to the Authority; and
- G. Accordingly, the purpose of this Agreement is to set out the obligations of the parties to this Agreement for reimbursement of the cost of the eligible activities as approved by the Authority and the City.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this Agreement, the parties agree as follows:

1. Brownfield Plan. To the extent provisions of the Brownfield Plan conflict with this Agreement, the terms and conditions of the Brownfield Plan control. To the extent provisions of the Brownfield Plan or this Agreement conflict with Act 381, Act 381 controls. Changes or additions to the Brownfield Plan may be submitted in writing to the Authority and to the City for approval. If such changes or additions increase the total cost of the eligible activities to an amount greater than in the approved Brownfield Plan, an amended Brownfield Plan incorporating the cost of said changes or additions may be approved at the sole discretion of the Authority and the City.

2. Construction of Development. The Developer shall proceed with due care obligations to complete the Improvements and undertake and complete the eligible activities resulting in the Eligible Costs, all in accordance with this Agreement, the Brownfield Plan, and all applicable laws, rules, regulations, permits, orders, and directives of any official or agency of competent jurisdiction. The Developer shall undertake and achieve substantial completion of the Development as described above within a reasonable time after the Brownfield Plan is approved by the Authority and the City.

(a) The parties agree that this Agreement and the Tax Increment Revenues collected and distributed pursuant to the Brownfield Plan are intended to fund only the Eligible Costs that have been approved by the Authority.

(b) Prior to the ~~payment of eligible activities, the Developer shall submit a detailed~~ implementation Plan that includes, as a minimum, applicable estimates of the following items related solely to eligible activities:

Deleted: initiation

(i) Cost estimates ~~and/or actual costs~~ for project costs related to eligible activities; and

(ii) The Implementation Plan costs shall be provided in the same format as ~~Attachment C to the Brownfield Plan for the Brownfield Plan costs approved by the~~ Authority.

Deleted: Exhibit A

(c) The Developer shall comply fully with all local ordinances, state and federal laws, and all applicable local, state and federal rules and regulations. Nothing in this Agreement shall abrogate the effect of any local ordinance.

(d) This Agreement does not obligate the City to issue any permit required by law to implement the Development.

(e) Noncompliance with this Agreement or discovery of material irregularities at any time are regarded as material breaches of this Agreement. The Authority, in addition to any other remedy provided by law, may do one or more of the following:

- (i) withhold future payments to the extent such reimbursed payments relate directly to the noncompliance with the Agreement;
- (ii) recover reimbursement payments already disbursed to the extent such reimbursed payments relate directly to the noncompliance with the Agreement; or
- (iii) terminate this Agreement.

3. Capture of Taxes. The City shall, during the term of this Agreement, collect all Tax Increment Revenues from the Property and transmit 100% of the eligible incremental local tax revenues (with the exception of the City Voted Debt millage and District Library Voted Debt Millage, the DIA and Detroit Zoo Operating Millages) generated from real and personal property to reimburse the Developer for the costs of eligible activities. Such reimbursement shall not be more than the tax increment revenues captured during the duration of the Brownfield Plan from the taxable improvements located on the Property, including both real property and personal property. Nor shall the total amount of reimbursement be for more than the reasonable and necessary cost of the eligible activities approved by the Authority or otherwise permitted by the Act.

4. Submission of Costs. Before requesting any reimbursement, the Developer shall pay and submit an affidavit of payment for the reasonable and necessary costs of the eligible activities that have been approved by the Authority. For those Eligible Costs for which the Developer seeks reimbursement from

the Authority, the Developer shall submit to the Authority such of the following as may be required by Authority representatives:

- (a) a written statement detailing the costs,
- (b) a written explanation as to why reimbursement is appropriate under the Plan and this Agreement,
- (c) copies of invoices from the consultants, contractors, engineers, attorneys or others who provided such services,
- (d) copies of Full Unconditional Lien Waiver(s) from the vendor(s) documenting that the invoice was actually paid;
- (e) if, not already submitted, copies of the contract with the contractor or supplier providing the services or supplies for which reimbursement is sought;
- (f) a statement from the engineer and project manager overseeing the work recommending payment; and
- (g) any other documentation reasonably requested by the Authority, in a format and on such forms approved by the Authority, with the Developer's request for reimbursement to assist the Authority in determining whether the work was performed as approved..

The Authority in its sole discretion may accept copies of cancelled checks and a Full Unconditional Lien Waiver in satisfaction of Paragraphs (c) through (e) above if the Developer submits a written explanation as to why an invoice and/or contract is not available along with copies of cancelled checks and a Full Unconditional Lien Waiver. All documentation related to the request for reimbursement shall be submitted after the completion of each approved eligible activity. Prior to reimbursement payments being initiated, the Developer shall submit to the Authority a report of the results of the eligible activities performed. Such results shall include, without limitation, any abatement reports, demolition and disposal documentation, supplemental environmental investigation reports, and response activity reports. In addition, the Developer shall submit construction lien waivers from the contractors and subcontractors for the approved eligible activities prior to any payments being initiated. The Developer may submit a reimbursement request including such information whenever it is available even though Tax Incremental Revenues for the reimbursement may not be available for many years thereafter. The Developer and Authority agree that no reimbursement requests will be accepted by the Authority after December 31, 2026.

Deleted; within ninety (90) days
Deleted; No later than receipt of a Certificate of Occupancy and pP

5. Payments. Payments to the Developer shall be made as follows:

- (a) Within 60 days of its receipt of the materials identified in paragraph 4 above, the Authority shall decide whether the payment request is for Eligible Costs and whether such costs are accurate. The Authority will determine the amount to be reimbursed, based upon the reasonable and necessary costs of the eligible activities approved by the Authority and the State or otherwise permitted by the Act in light of the actual costs presented in the Developer's submitted documentation. Such amount shall not exceed the amounts set forth in Section 5(d), subject to such amendments as may have been approved by the Authority, nor shall such costs be reduced by the Authority without good cause shown, such approvals not to be withheld unreasonably. If the Authority determines all or a portion of the requested payment is for Eligible Costs and is accurate, it shall see that the portion of the payment request that is for Eligible Costs and is accurate is processed as provided in subparagraph (b) below. If the Authority disputes the accuracy of any portion of any payment request or that any portion of any payment is for Eligible Costs, it shall notify the Developer in writing of its determination and the reasons for its determination. The Developer shall have 28 days to address the reasons given by the Authority and shall have an opportunity to meet with the Authority's representatives or, if the Authority

Board consents, to meet with the Authority's Board to discuss and resolve any remaining disputes. In doing so, the Developer shall provide the Authority a written response to the Authority's decision and the reasons given by the Authority. If the parties do not resolve the dispute in such a manner, it shall be resolved as provided in paragraph 6 below.

(b) Once it approves any request for payment as Eligible Costs and approves the accuracy of such costs, the Authority shall pay to the Developer the amounts for which submissions have been made pursuant to paragraph 4 of this Agreement as the Authority receives Tax Increment Revenues as directed by the Brownfield Plan, until all of the amounts for which submissions have been made have been fully paid to the Developer, or the repayment obligation expires, whichever occurs first.

(c) The repayment obligation under this Agreement shall expire upon the payment by the Authority to the Developer of all amounts due to the Developer under this Agreement on or December 31, 2026, whichever occurs first.

(d) The amount to be reimbursed under this Agreement shall:

(1) The BRA will use captured taxes as referred to in (3) to reimburse the Developer for Eligible Costs total amount not to exceed \$ 1,045,000,

(2) The amount of Eligible Costs to be reimbursed with the capture of taxes levied for school operating purposes ("School Taxes") is estimated to be \$0.

(3) The amount of Eligible Costs to be reimbursed with the capture of taxes not levied for school operating purposes ("Local Taxes") is estimated to be \$ 1,045,000.

(4) Upon payment to Developer of total reimbursements as outlined above being met, or expiration of the Plan, reimbursements to Developer shall cease.

(e) The sole source for any reimbursement shall be such Tax Increment Revenues. To the extent permitted by law, such reimbursements, once approved by the Authority under subparagraph (b) above shall be and remain valid and binding obligations of the Authority until paid or until expiration of the time for payment as provided in subparagraphs (c) and (d) above. However, the Developer shall bear any risk of a change in law prohibiting reimbursement at the time Tax Increment Revenues are available for reimbursement to the Developer for costs that were Eligible Costs at the time the Authority approved them. In no event shall the Developer be reimbursed for any approved eligible costs that have been or will be reimbursed or credited against other obligations by any other governmental entity.

(f) If any of the Property is substantially destroyed by fire or natural events or causes as determined by the Building and Engineering Department Director of the City, this Agreement shall terminate unless reconstruction occurs at an equal or greater taxable value within twelve (12) months of the date of the loss. No payments shall be made during the period of reconstruction. Payments shall resume when the reconstruction is substantially complete as determined by the Building and Engineering Department Director of the City.

(g) In addition to any other remedies provided in this Agreement, if any payment made by the Authority is determined to be improper or outside of the scope of its obligations under this Agreement, or in the event of the Developer's breach or default of this Agreement, the Developer shall, at the request of the Authority, repay or return any monies paid by the Authority that are directly related to said breach, default or improper payment.

6. Dispute As To Eligible Costs. If there is a dispute over whether a cost submitted by the Developer is an "Eligible Cost," the dispute shall be resolved by an independent qualified professional chosen by mutual agreement of the parties. If the parties are unable to agree upon a professional, then each party (the City, the Authority, and the Developer) shall appoint an

independent qualified professional to review the Authority's decision, provided that each party chooses a professional that has not been directly employed by or provided services to that party for a period of two (2) years before the date of proposed appointment. If and to the extent that two of the three qualified professionals so selected agree that costs submitted are eligible pursuant to the Brownfield Plan and was previously approved by the Authority, this shall constitute an award, and the Developer shall be reimbursed those costs in accordance with this Agreement. In addition, any such award may be used as the basis for the Wayne County Circuit Court rendering judgment that such award constitutes a final decision under statutory arbitration.

7. Assignment of Future Reimbursement Revenue. The Developer may assign its reimbursement rights under this Agreement via a written instrument, a copy of which must be provided to the Authority no later than thirty (30) days prior to such assignment. However, any such right to reimbursement shall always remain contingent upon material compliance with all aspects of this Agreement on the part of the Developer and any of its assigns, successors, transferees, and heirs. This Agreement shall run with the land constituting the Property and shall be binding upon and inure to the benefit of the Developer and the Authority as well as their respective assigns, successors, transferees, and heirs.

8. Adjustments. If, due to an appeal of any tax assessment or reassessment or any other reason, the Authority is required to reimburse any Tax Increment Revenues, the Authority may deduct the amount of any such reimbursement from any amounts due and owing the Developer or, if all amounts due the Developer under this Agreement have been fully paid, the Authority may invoice the Developer for the amount of such reimbursement and the Developer shall pay the Authority such invoiced amount within 30 days of the Developer's receipt of the invoice from the Authority. Nothing in this agreement shall limit the right of the Developer to appeal any tax assessment.

9. Obligation to Fund Eligible Activities. The Developer shall pay for the Eligible Costs with its own funds and receive reimbursement from the Authority by available Tax Increment Revenues. It is anticipated that there will be sufficient available Tax Increment Revenues to pay for all Eligible Costs under this Agreement. However, if for any reason increased Tax Increment Revenues from the Development do not result in sufficient revenues to satisfy such obligations, the Developer agrees and understands that it will have no claim or further recourse of any kind or nature against the City or the Authority and the Developer shall assume full responsibility for any such loss or costs.

10. Access for Inspection. Employees and agents of the Authority and the City are authorized to enter upon the Property following a minimum of one (1) business day notice to the Developer for the purpose of inspecting the work related to the authorized eligible activities and making determinations that such work is being performed in accordance with the Brownfield Plan in a workmanlike manner.

11. Indemnification. The Developer shall defend, indemnify, and hold the City and the Authority, and their agents, representatives, and employees (hereinafter "Indemnified Persons") harmless from any loss, expense (including reasonable legal counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising from or on account of the acts or omissions of the Developer, its officers, employees, agents or any persons acting on its behalf or under its control, in implementing the eligible activities described in the approved work plans or arising in any way from this Agreement, including but not limited to, claims for damages, reimbursement or set-off arising from, or on account of, any contract, agreement or arrangement between the Developer and any person for the performance of eligible activities or the terms of this Agreement, including claims on account of construction delays.

12. Insurance. During construction, the Developer and any contractor or subcontractor shall provide and maintain comprehensive general liability insurance with limits of one million dollars (\$1,000,000) combined single limit, for claims which may arise from the Developer's operations under this Agreement, naming the Authority and the City as additionally named insureds. Proof of such insurance

shall be provided to the Authority in care of the Authority's Administrator prior to initiating any redevelopment activities.

13. Termination. This Agreement shall terminate on the earlier to occur of: (a) the date on which the Authority is no longer authorized to capture tax increment revenues; (b) on the date the Brownfield Plan expires; (c) the date when the amount due under the Agreement has been paid; or (d) upon default of this Agreement by the Developer, including, without limitation, if the Development is not completed within sixty (60) months from the effective date of this Agreement; or (e) upon such other conditions as set forth in this Agreement.

14. Payment of Taxes. Developer or any of its successors or assigns of the Development shall pay all real and personal property taxes levied on any portion of the Development on or before the date the same are payable, before any additional interest penalty for late payment is applied.-

15. Miscellaneous.

(a) This is the entire agreement between the parties as to its subject. All previous negotiations, statements and preliminary instruments of the parties or their representatives are merged in this Agreement. It shall not be amended or modified except in writing signed by all the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. Any revision of this Agreement shall not be effective until the provision of a thirty (30) day notice by the City and the Authority to the other parties hereto so that this Agreement remains in full compliance with any applicable Federal, State or Local law or regulation.

(b) This Agreement and the rights and obligations under this Agreement except as previously noted, are up-assignable and non-transferable without the consent of the other parties. It shall, however, be binding upon any successors or permitted assigns of the parties.

(c) This Agreement shall become effective when approved and executed by the Authority and the Developer.

(d) All parties had input into the drafting of this Agreement and all had the advice of legal counsel before entering into this Agreement. In the event any ambiguity of any language in this Agreement arises, such ambiguity shall not be construed against any party.

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

(f) Notices shall be complete when delivered by personal delivery, by courier or delivery service (such as UPS, FedEx or other service) or by certified mail, return receipt requested to the addresses first written above. If any party refuses to accept delivery when presented, delivery shall be deemed to have occurred at the time of such refusal. Any such notice and communication shall be addressed as follows:

If to Authority: City of Plymouth Brownfield Redevelopment Authority
201 S. Main Street
Plymouth, MI 48170
Attn: John Scanton, City Finance Director
(734) 453-1234

Deleted: Mark Christiansen

If to Developer: Curtis-Plymouth, LLC
990 Pierce Street
Birmingham, MI 48009
Attn: Mark Menuck
(248) 730-0300

(g) This Agreement shall be governed by the laws of the state of Michigan. To the extent permitted by law, the jurisdiction and venue for any action brought pursuant to, arising from or to enforce any provision of this Agreement shall be solely in the state courts in Wayne County, Michigan.

By signing below, all parties represent and warrant their authority to enter into this agreement on behalf of their respective organizations. The parties have signed this Agreement as of the date first written above.

CURTIS-PLYMOUTH LLC

CITY OF PLYMOUTH BROWNFIELD
REDEVELOPMENT AUTHORITY

By: _____ By: _____

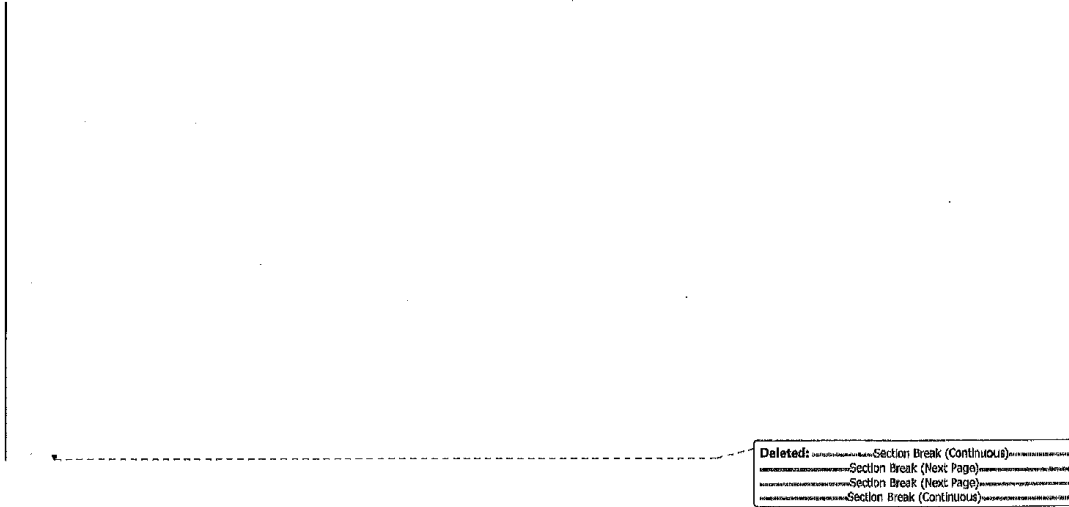
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EXHIBIT A
BROWNFIELD PLAN

EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY

Proposed Starkweather School Site Development



8. OTHER MATTERS

There were no other matters before the board.

9. ADJOURNMENT

A motion to adjourn was offered at 3:51 p.m. by Sincock and seconded by S. Anderson.

MOTION PASSED