



AGENDA
CHARTER TOWNSHIP OF MERIDIAN
BROWNFIELD REDEVELOPMENT AUTHORITY
October 15, 2020 8AM

1. CALL MEETING TO ORDER
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES
 - A. August 20, 2020 regular meeting
 - B. September 24, 2020 special meeting
4. PUBLIC REMARKS
5. NEW BUSINESS
 - A. Pine Village reimbursement agreement
6. OLD BUSINESS
7. PROJECT UPDATES
8. PUBLIC REMARKS
9. ADJOURNMENT

NEXT MEETING: November 19, 2020 at 8AM

Zoom meeting ID#: 847 5147 7557

Zoom meeting Password: 5151

Individuals with disabilities requiring auxiliary aids or services should contact:
Principal Planner Peter Menser, 5151 Marsh Road, Okemos, MI 48864 or 517.853.4576 - Ten Day Notice is Required.
Meeting Location: Zoom web conference application

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CHARTER TOWNSHIP OF MERIDIAN
BROWNFIELD REDEVELOPMENT AUTHORITY
REGULAR MEETING MINUTES

DRAFT

August 20, 2020

Held via Zoom web conferencing application

517-853-4560, 8:00 A.M.

PRESENT: Township Manager Frank Walsh, Chair Jeff Theuer, Vice-Chair Ned Jackson, Dave Premoe, John Matuszak, Jade Sims

ABSENT: Joyce Van Coevering

STAFF: Treasurer Phil Deschaine, Director of Community Planning and Development Mark Kieselbach, Economic Development Director Ken Lane, Information Technology Director Stephen Gebes, Principal Planner Peter Menser

OTHER: Dave Van Haaren from Triterra, Ruthie Doering from Triterra, Bret Stuntz from SME, Janet Michaluk from EGLE, Jeff Buck from Hudson Senior Living, Jessica DeBone from PM Environmental, Township Attorney Matt Kuschel

1. Call meeting to order

Chair Theuer called the regular meeting to order at 8:01 a.m.

2. Approval of Agenda

Director Matuszak moved to approve the agenda as written.

Supported by Director Jackson.

VOICE VOTE: Motion carried unanimously.

3. Approval of Minutes

Director Premoe moved to approve the minutes from July 16, 2020.

Supported by Manager Walsh.

VOICE VOTE: Motion carried unanimously.

4. Public Remarks – None

5. New Business

A. Pine Village brownfield plan

Principal Planner Menser provided background information on the Pine Village project and noted that for this project Triterra is serving as the consultant for the applicant and SME will be serving as the Township's brownfield consultant. Dave Van Haaren from Triterra, consultant for the applicant, provided a summary of the proposed brownfield plan. Applicant Jeff Buck from Hudson Senior Living provided a description of the project and review process to date. Ruthie Doering from Triterra provided an overview of the contamination discovered on site and the testing Triterra used to identify and quantify it. She noted historically the property was used as a dry cleaner. BRA Board discussion included the following:

- The five percent interest proposed in the plan totals approximately \$800,000.
- Interest proposed does not match current rates of market.

- Proposed interest rate too high and doesn't match those proposed in other communities.
- Community interest in having buildings razed as soon as possible.
- Majority of waste on site is non-hazardous (4500 cubic yards non-hazardous compared to 1500 tons of hazardous waste).
- Concern that most of plan is non-hazardous waste. Response from applicant noting disposal of hazardous waste is 10 times higher than non-hazardous waste.
- Belief that 15% contingency is too high and that it should be closer to 10%.
- Existing tenants have leases that impact start of building demolition.
- Asbestos found in floors and ceiling tiles in building.
- SME statement that 5% interest rates is standard and that 15% contingency is typical in other communities.
- Belief that reimbursement agreement could be used to establish demolition timeline and that Township can abolish plan if demolition doesn't commence within two years.

Manager Walsh moved to approve the Pine Village brownfield plan subject to the interest being capped at two percent.

Supported by Director Matuszak.

Speaking to his motion, Manager Walsh noted the Pine Village proposal is a good development and noted his appreciation for the additional building demolition beyond the structure at 1673 Haslett Road. Dave Van Haaren from Triterra said the rest of the Haslett Village Square development is still eligible to submit a separate brownfield plan and that the Pine Village plan does not disqualify it from doing so.

ROLL CALL VOTE: 6-0 to approve plan subject to interest capped at two percent.

B. Haslett Marathon brownfield reimbursement agreement

Principal Planner Menser provided an introduction to the reimbursement agreement, noting it mirrors in format and content the agreement template used in other recent projects.

Director Matuszak moved to approve the reimbursement agreement.

Supported by Director Premoe.

ROLL CALL VOTE: 7-0 to approve.

6. **Old Business - None**

7. **Project Updates**

Several BRA Board members had questions for the Township Manager regarding projects, which included the following:

- The new Farmers' Market is nearing completion.
- Buildings in the Village of Okemos project must be demolished by December 15, 2020.
- The Township's local road paving program is 75% completed.
- The 2021 budget will soon be submitted to the Township Board.

- Replenishment of the redevelopment fund is a priority in the 2021 budget.
- The redevelopment fund request discussed at a recent EDC meeting was denied however the applicant may re-apply.
- The Township is working on getting a portion of Powell Road paved to support the construction of homes at Silverstone.
- The ladder truck purchase by the Fire Department is happening soon.

8. **Public Remarks - None**

9. **Adjournment**

The meeting was adjourned at 9:26 a.m.

Respectfully Submitted,

Peter Menser
Principal Planner

CHARTER TOWNSHIP OF MERIDIAN
BROWNFIELD REDEVELOPMENT AUTHORITY
SPECIAL MEETING MINUTES

DRAFT

September 24, 2020

Held via Zoom web conferencing application

517-853-4560, 8:00 A.M.

PRESENT: Township Manager Frank Walsh, Chair Jeff Theuer, Dave Premoe, John Matuszak,
ABSENT: Joyce Van Coevering, Jade Sims, Vice-Chair Ned Jackson

STAFF: Treasurer Phil Deschaine, Director of Community Planning and Development Mark
Kieselbach, Information Technology Director Stephen Gebes, Principal Planner Peter
Menser

OTHER: Township Attorney Matt Kuschel, Clerk-Elect Deborah Guthrie, John Peckham, Will
Randle, Joe Goodsir, Remo Mark Grua

1. **Call meeting to order**

Chair Theuer called the regular meeting to order at 8:00 a.m.

2. **Approval of Agenda**

Director Matuszak moved to approve the agenda as written.

Supported by Director Premoe.

VOICE VOTE: Motion carried unanimously.

3. **Public Remarks** – None

4. **New Business**

A. 2360 Jolly Road assignment agreement

Principal Planner Menser provided an introduction to the assignment agreement between the new owners of 2360 Jolly Road and the BRA. Township Attorney Matt Kuschel described in detail the assignment agreement document, noting it will transfer the existing approved brownfield plan from the current property owner to the new owner. BRA Board discussion included the following:

Director Premoe moved to approve the 2360 Jolly Road assignment agreement.

Supported by Director Matuszak.

ROLL CALL VOTE: 4-0 to approve.

5. **Old Business - None**

6. **Project Updates**

Township Manager Frank Walsh provided updates on recent projects, which included the following:

- Amber Clark has been hired as the new Neighborhood and Economic Development Director. Ms. Clark starts her employment with the Township on September 28, 2020.
- The Township Board discussed and approved the Pine Village brownfield plan at its special meeting on September 22, 2020.

7. **Public Remarks - None**

8. **Adjournment**

The meeting was adjourned at 8:34 a.m.

Respectfully Submitted,

Peter Menser
Principal Planner

BROWNFIELD REIMBURSEMENT AGREEMENT

THIS BROWNFIELD REIMBURSEMENT AGREEMENT (“Agreement”) is made between Hudson Senior Living, LLC, with its address at 280 W. Maple Road, Suite 230, Birmingham, MI 48009 (“Developer”), and the MERIDIAN TOWNSHIP BROWNFIELD REDEVELOPMENT AUTHORITY (“MTBRA”), established by the Charter Township of Meridian pursuant to the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended, being MCL 125.2651 *et seq.*, (“Brownfield Act”) with its address at 5151 Marsh Road, Okemos, Michigan 48864.

RECITALS

A. The primary purpose of the MTBRA, pursuant to the Brownfield Redevelopment Financing Act, is to encourage the redevelopment of contaminated, functionally obsolete, and blighted property within the Charter Township of Meridian (“Township”) by providing financial and tax incentives, without which the redevelopment would not be economically feasible.

B. Developer is the owner and/or has control of the property commonly known as 1655-1673 Haslett Road and 1659 Raby Road, Haslett, MI 48840 (the “Eligible Property”), as more fully and legally described in the approved Brownfield Plan approved by MTBRA on August 20, 2020 and by the Township on September 22, 2020 pursuant to the Brownfield Act (“Plan”), attached as **Exhibit A**. The Eligible Property is included in the Brownfield Plan as a “Facility” and “adjacent and contiguous” and “Eligible Property” due to the presence on the Eligible Property of certain hazardous substances as described in the Brownfield Act, as amended, and is therefore commonly referred to as a “brownfield.”

C. The Eligible Property is defined in Attachment A to the Plan, specifically sheets 7 and 8, Parcels A and B, with a proposed easement. The Eligible Property includes the parcel that Developer is developing as a senior residential project (the “Property”), which Property is legally described on **Exhibit B** attached hereto. Developer is applying to the Township for a tax split which establishes the Property as a separate tax parcel and the new tax parcel as approved by the Township shall constitute the only portion of the Eligible Property that will have a captured

taxable value from which Tax Increment Revenues shall be captured in accordance with and subject to the terms and conditions of this Agreement.

D. Developer plans to redevelop the Property as a mixed-use development, including a senior residential building and retail/business spaces (the “Improvements”) as described in the Plan. The Improvements are expected to create temporary construction jobs and new full-time jobs, increase the tax base within the Township, and otherwise enhance the economic vitality and quality of life within the Township. Developer will undertake Eligible Activities as defined in the Brownfield Redevelopment Financing Act.

E. In order to make the Improvements on the Property, the Developer will incur costs associated with Eligible Activities, including Pre-Approved Activities, Department Specific Activities, Asbestos Assessment and Abatement, Demolition, and Preparation and Implementation of a Brownfield Plan, each of which will also require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The reimbursement obligations to be paid the Developer associated with the Eligible Activities, including contingencies and interest, are estimated to be \$2,595,332.

F. The MTBRA plans to capture the increase in the real property taxes resulting from the redevelopment of the Property (and not from the balance of the Eligible Property) and use these funds to reimburse Developer pursuant to the Plan and the Act. Eligible Activities and the costs of any activity may be adjusted after the date the Plan is approved by the MTBRA and the Township, so long as the reimbursement does not exceed the combined total of all Eligible Activity costs to Developer in the Plan.

G. The MTBRA has incurred and will incur certain expenses in the preparation and approval of the Brownfield Plan and will incur expenses in the administration of the Brownfield Plan (the “Administrative Costs”), for which it may seek reimbursement from Tax Increment Revenues, and to fund a local site remediation revolving fund pursuant to the Brownfield Act.

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

AGREEMENTS

NOW, THEREFORE, the parties agree with each other as follows:

1. **Definitions.** Unless otherwise specifically indicated, the words and phrases used in this Agreement shall have the definitions attributed to them in Section 2 of the Brownfield Redevelopment Financing Act, as of the effective date of this Agreement.

2. **The Plan.** The Brownfield Plan approved by the MTBRA and as approved by the Township Board (“Plan”) on September 22, 2020 is incorporated herein by reference. To the extent provisions of the Plan, and any amendment to the Plan, or this Agreement conflicts with the Brownfield Redevelopment Financing Act, the Act controls.

3. **Effective Date and Term.** This Agreement is effective as of the last signature below and shall remain in effect for the duration of the Plan or until the costs of Eligible Activities, as outlined in the Plan, and all other costs and expenses are reimbursed or paid as provided for in the Plan.

4. **Tax Capture.** Pursuant to the Plan and amendments thereto, the MTBRA shall capture the Tax Increment Revenues collected from Local Taxes imposed on eligible real property and personal property for such period of time as required for paying costs of Eligible Activities to the Developer, to pay for administrative costs, to fund the local brownfield revolving fund, and any other allowed expenditure under the Plan and the Brownfield Act. In accordance with Sections 7(2) and 13(2) of the Brownfield Act (MCL 125.2657(2), MCL 125.2663(2)), the MTBRA determines that the captured taxable value of all portions of the Eligible Property other than the Property will be zero. Accordingly, the Tax Increment Revenues will be collected only from the

Local Taxes imposed on the Property, and not from the Local Taxes imposed on the remainder of the Eligible Property.

5. **Eligible Activities.** Developer shall diligently pursue all efforts necessary to complete the Eligible Activities set forth in the Plan, and as it may be amended. No activities that would otherwise be Eligible Activities, if completed after December 31, 2022 shall be considered Eligible Activities for the purposes of reimbursement under this Agreement. If, due to the COVID-19 pandemic or other causes beyond Developer's reasonable control, the MTBRA will not unreasonably withhold its consent to Developer's request for an extension of the foregoing completion date. Any such extension shall be memorialized by written amendment of this Agreement.

6. **Reimbursement Source.** Developer shall be reimbursed for its costs for Eligible Activities solely from the Tax Increment Revenues collected from Local Taxes imposed on the Property and all improvements and personal property within the Property representing property improvements in accordance with the Plan and this Agreement.

7. **Shortfall in Captured Taxes.** The MTBRA or the Township shall not be responsible for reimbursing any costs if Tax Increment Revenues through the duration of the Plan are insufficient to cover said costs. Developer shall not have any further recourse of any kind or nature against the Township or MTBRA but in the event that Local Taxes or Tax Increment Revenues are insufficient to reimburse all costs, the Developer assumes financial responsibility for any unreimbursed shortfall. The MTBRA shall not be required to capture any portion of the Tax Increment Revenues or Captured Taxable Value of the Eligible Property other than the Property. Developer expressly agrees that it will only be reimbursed with available funds from the Property, even if the revenues are insufficient to reimburse all costs.

8. **Payment of Administrative Expenses.** The administrative or operating expenses of the MTBRA, as identified in the Plan, shall be paid first from available Tax Increment Revenues prior to any reimbursement commencing with the first year of capture under the Plan. The MTBRA shall document actual administrative and operating expenses and the balance between

documented costs and annual Tax Increment Revenues shall be transferred to reimburse the Developer for the actual costs of Eligible Activities.

9. Adjustments. If, due to an appeal of any tax assessment or reassessment of any portion of the Property or for any other reason the MTBRA is required to reimburse any Tax Increment Revenues to the Township or any other tax levying jurisdiction, the MTBRA may deduct the amount of any such reimbursement, including interest and penalties, from any amounts due and owing Developer, in the amounts, the order, and proportions of amounts due and owing as set forth in the Plan. If all amounts due Developer under this Agreement have been fully paid or the MTBRA is no longer obligated to make any further payments to the Developer, the MTBRA shall invoice Developer for the amount of such reimbursement and Developer shall pay the MTBRA such invoiced amounts within 30 days of Developer's receipt of the invoices.

10. Transfer of Real Property. In the event that Developer transfers ownership of all or part of the Property prior to being reimbursed in full for approved costs of Eligible Activities under the Plan, the Plan may be further amended as it relates to reimbursement of incomplete activities or other Eligible Activities, on the parcel or parcels of real property that have been transferred. Amendments to the Plan shall be subject to the limitations and procedures governing amendments to Plans set forth in the Brownfield Redevelopment Financing Act. This Agreement shall be modified to reflect any such amendments to the Plan.

11. MTBRA Review. The MTBRA may exercise review of the Project for the purpose of verifying that the activities, invoices and accounting of the Developer are accurate, reasonable and constitute Eligible Activities under this Agreement. Developer has commenced preparation for its obligations and will pursue permits and approvals in good faith and commence the Project, the Plan, and this Agreement within a reasonable time and will thereafter diligently proceed with such work. The Developer will provide any authorized representative of the MTBRA access to or copies of data, reports, testing or sampling results, invoices or other such documents reasonably necessary for such review. The MTBRA, EGLE, or MEDC, shall also be given access to the Property in order to review any Eligible Activities or perform any other obligations under this Agreement. The MTBRA shall give the Developer at least 24 hours' notice, except in

the case of an emergency or exigent circumstance. Except for the right to review the Developer's compliance with this Agreement, nothing in this Agreement shall be interpreted to give the MTBRA any right to exercise control over the performance of Eligible Activities by the Developer. It is expressly understood and agreed that the Developer, and its subcontractors, and sub-subcontractors are independent parties.

12. Reimbursement Process. Developer shall only seek reimbursement for actual costs to perform the Eligible Activities, in accordance with the approved Plan.

A. Estimates Submitted Before Activities. Prior to the initiation of Eligible Activities, the Developer shall submit information to the MTBRA that includes, when applicable:

- i. Estimates of quantities and cost for remediated soil or water based on characterizations provided by the Developer's environmental consultant, engineers, or architects;
- ii. Contract cost proposals from qualified and certified contractors for the environmental and non-environmental Eligible Activities to be conducted;
- iii. A schedule of Eligible Activities and estimates of tasks, hours; and
- iv. Costs for project oversight, administration and reporting.

B. Request for Reimbursement Submission Required After Activities. At any time after Developer incurs previously estimated costs for Eligible Activities, Developer may submit to the MTBRA requests for cost reimbursement for Eligible Activities paid by and on behalf of the Developer. All requests shall be in a form approved by MTBRA. The Request for Reimbursement shall identify whether the Eligible Activities are:

- i. Pre-Approved Activities;
- ii. Department Specific Activities;
- iii. Asbestos Assessment and Abatement Activities;
- iv. Demolition Activities;
- v. Brownfield Plan Preparation and Implementation; or

- vi. Other Eligible Activities permitted under the Act, which shall be identified by Developer.
- C. Reimbursement Request Requirements. The Request for Reimbursement shall describe each individual activity claimed as an Eligible Activity and the associated costs of each individual activity. The Request for Reimbursement shall include:
- i. How the Eligible Activities are consistent with the Plan;
 - ii. Documentation of the costs incurred sufficient to determine whether the costs incurred were for Eligible Activities;
 - iii. Lien waivers, if available;
 - iv. Proof of payment and detailed invoices for the costs incurred; and
 - v. Be signed and notarized by a duly authorized representative of Developer that the representations, facts and documentation included therein are accurate.
- D. MTBRA Right of Approval. Developer acknowledges and agrees that the MTBRA shall have the right to review, approve or deny each Request for Reimbursement in accordance with the terms of this Agreement.
- E. MTBRA Review. MTBRA or its authorized committee or agent shall review a Reimbursement Request within sixty (60) days after its receipt. Developer shall cooperate in MTBRA's review by providing information and documentation to supplement the Request for Reimbursement as deemed reasonable and necessary by MTBRA or its subcommittee or agent. Any and all line items in a Reimbursement Request which are not objected to by MTBRA at its next regularly scheduled meeting after 60 days shall be approved for payment as provided for herein. MTBRA may object to some lines or items within a Request for Reimbursement without objecting to the entire Request, in which case those lines or items not objected to shall be considered approved.
- F. Insufficiency Determination. MTBRA may object to any Reimbursement Request or any portion, line, or item of any Request for Reimbursement, may determine that

insufficient information has been provided, may dispute any portion of any payment request or Request, or may dispute the eligibility of any cost or activity of any Request for Reimbursement, if the MTBRA determines that the cost or activity is not consistent with the Plan or the Act. MTBRA shall notify the Developer in writing of its determination and the reasons for its determination. The Developer then has thirty (30) days in which to provide supplemental information or documents in support of any costs deemed ineligible. During this thirty (30) day period, an authorized representative of the MTBRA and Developer shall, upon the request of either party, promptly meet to discuss the information, documentation, or other conditions are required for approval of the objected request and the MTBRA shall, in good faith, review and reconsider any rejected item in light of the additionally submitted documentation.

- G. Mediation of Disputes. Any disputes relating to Reimbursement Requests under this paragraph 12 or Eligible Activities that cannot be resolved within 30 days thereafter shall be submitted to non-binding mediation with a mediator mutually agreed upon by the parties. If the parties cannot agree upon a mediator, then a mediator will be selected in accordance with the rules of the American Arbitration Association. However, any request for equitable, injunctive, or mandamus relief is not required to be submitted to mediation. If mediation is unsuccessful, the parties may enforce their rights through litigation in a court of competent jurisdiction.
- H. Waiver of Liens. The Developer shall also provide written proof to the MTBRA of waiver of liens by any consultant, contractors, and subcontractors performing services or providing materials for the Improvements or Eligible Activities under the Plan prior to any Tax Increment Revenue reimbursement.
- I. Litigation or Pending Litigation. The MTBRA's reimbursement obligations under this Agreement are contingent on the requirement that there shall be no action, suit, proceeding or investigation pending before any court, public board, or body to which the Developer, the Township, or the MTBRA is a party contesting the validity or

binding effect of this Agreement or the validity of the Plan or which could result in an adverse decision which would have a material adverse effect upon the ability of the MTBRA to collect and use Tax Increment Revenues to pay the obligations; a material adverse effect upon the ability of the Developer to conduct Eligible Activities; or any other material adverse effect on the Developer's or the MTBRA's ability to comply with the obligations and terms of this Agreement, or the Plan; provided, however, if such proceeding is dismissed or resolved in favor of Developer, the Township or MTBRA, as applicable, this Agreement, and MTBRA's reimbursement obligations shall continue in full force.

J. Interest on Cost Advances. The MTBRA will reimburse the Developer's advances for costs of Eligible Activities with interest if the buildings on the Eligible Property are demolished and all building debris removed with appropriate surface seeding or other restoration of the surface within the timeframes below:

- i. Three percent (3.0%) simple interest if completed on or before May 1, 2021;
- ii. Two and one half percent (2.5%) simple interest if completed on or before July 1, 2021;
- iii. Two percent (2.0%) simple interest if completed on or before September 1, 2021;
- iv. One and one half percent (1.5%) interest if completed on or before November 1, 2021; or
- v. Without interest if completed after November 1, 2021.

Any seeding or resurfacing of disturbed areas must be restored or reseeded to the reasonable specifications of MTBRA.

13. Payment of Approved Reimbursement Requests. After the taxes are captured and collected, the MTBRA shall reimburse Developer for approved costs of Eligible Activities from the Tax Increment Revenues available in accordance with this Agreement, the Plan, and the Brownfield Act less administrative and other expenses as set forth in this Agreement and the

Plan. Payment is anticipated twice a year, within sixty (60) days after the summer and winter taxes are captured and collected. In the event there are insufficient funds available from Tax Increment Revenue to fully reimburse Developer for approved costs at a particular time then MTBRA's repayment obligation shall carry forward to the next period in which Tax Increment Revenues are available and repayment shall be made at that time. The MTBRA shall not be responsible for reimbursing any costs if Tax Increment Revenues are insufficient to cover said costs.

For Developer, checks shall be made payable to: Hudson Senior Living, LLC

Delivered to the following address: 280 W. Maple Road, Suite 230
Birmingham, Michigan 48009
By certified mail

14. Expiration of Reimbursement Obligation. The reimbursement obligation under this Agreement shall expire at the earliest of the following:

- A. Payment by MTBRA to the Developer of all amounts due to Developer under this Agreement;
- B. Expiration of the reimbursement period plus 2 years (i.e. 2037) as defined in the Plan;
or
- C. Expiration of the reimbursement period as defined in the Brownfield Act.

15. Maximum Reimbursement Amount. The amount to be reimbursed under this Agreement shall not exceed the following, whichever is less:

- A. The actual costs incurred by Developer for Eligible Activities in the Plan which have been approved for reimbursement by the MTBRA in accordance with this Agreement, together with interest thereon as specified in the Plan; or
- B. \$2,595,332, which includes the interest thereon as specified in the Plan.

16. Delinquent Real Property Taxes. The MTBRA may withhold reimbursement of Eligible Activities or payment of Tax Increment Revenues if there are any delinquent real property taxes outstanding for the Property regardless of the tax year or if the Property falls out of substantial compliance with the approved site plan or any of the conditions of approval of the

site plan unless lack of substantial compliance is beyond the control of Developer. Upon payment of all delinquent real property taxes or cure of site plan deficiencies, the MTBRA shall effectuate reimbursement of available Tax Increment Revenues for approved costs of Eligible Activities provided all other terms under this Agreement are met.

17. Tax Appeals. Developer and MTBRA have entered into the Plan and this Agreement in reliance on certain assumptions about the increase in taxable value of the Property created from the Improvements. The Developer, its successors and assigns, and on behalf of itself and any current or future tenants, expressly waives its rights to appeal property tax assessments under State law for the period commencing on the effective date of this Agreement until the expiration of the reimbursement period plus 2 years (i.e. 2037) as defined in the Plan, if the assessed valuation of the Property as completed is substantially consistent with the \$6,000,000 projected assessed value of the completed project identified in the Plan (which amount shall be phased in as the project is completed), subject to annual inflationary increases in taxable value as permitted by law. Developer also expressly acknowledges any tax appeal may impact the MTBRA's ability to reimburse the Developer's Eligible Activities or other obligations under this Agreement and expressly waives any claim against the MTBRA for reimbursement from Tax Increment Revenue that is reduced as result of any tax appeal filed by the Developer or any successor in title.

18. Insurance. The Developer or any contractor(s) or subcontractor(s) shall purchase and maintain insurance not less than the limits set forth below. The Developer or contractor(s) and subcontractor(s) shall maintain such other insurances as it deems appropriate for its own protection.

- A. Worker's Compensation. Worker's Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit. Coverage shall include the following
 - i. Contractual Liability;

- ii. Products;
- iii. Completed Operations;
- iv. Independent Contractors Coverage;
- v. Broad Form General Liability Endorsement or Equivalent.

- C. Motor Vehicle. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
- D. Contractor's Pollution Liability. Contractor's Pollution Liability Insurance provided by Contractors, subcontractors and site work contractors engaging in environmental response activities, covering any sudden and non-sudden pollution or environmental impairment, including clean-up costs and defense, with limits of liability of not less than \$1,000,000 per occurrence (with first party and third party coverage).
- E. Additional Insured. All policies issued or required under this Agreement or the Plan shall have an endorsement including the Charter Township of Meridian and the Meridian Township Brownfield Redevelopment Authority as additional insured.
- F. Cancellation Notice. It is understood and agreed that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change shall be sent to the MTBRA except for cancellation for non-payment of premium for which ten (10) days advanced written notice shall be given to the MTBRA.
- G. Proof of Insurance. The Developer shall make copies available to the MTBRA of any insurance policy (only if such insurance is carried by Developer), certificates of insurance, declarations, and endorsements for any policy upon request. If requested, certified copies of all policies will be furnished to the MTBRA.

19. Default. Upon the occurrence of an event of default, the non-defaulting party shall give written notice to the defaulting party, and the defaulting party shall have 30 days to cure the default. If the default is not cured within this time period, then the non-defaulting party may obtain any form of relief permitted under this Agreement, and any applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance of a court of competent jurisdiction. If the MTBRA, in its reasonable discretion, determines that any cure proposed by the Developer may take more than 30 days to complete, the MTBRA may permit the Developer to complete the cure in a time and manner agreeable to the MTBRA. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon default.

20. Accounting Procedures. Developer shall maintain the financial information and data used in support of the requests for reimbursement for Eligible Activities in accordance with generally accepted accounting principles consistently applied in accordance with its past practices. The MTBRA shall have access to these records during normal business hours, provided the MTBRA submits a request to the Developer to review the records with reasonable advance notice. The Developer's accounting procedures and internal financial controls shall conform to generally accepted accounting principles consistently applied in accordance with its past practices in order that the costs allowed by this Agreement can be readily ascertained and expenditures verified therefrom.

21. Permits. The Developer shall obtain and maintain all permits and licenses pertaining to the Project that are required by federal, state, or local law, rule, regulation, or ordinance and shall provide copies to the MTBRA, or allow its inspection, upon request. The Developer shall immediately advise the MTBRA of any suspension loss or surrender of any such permit or license. Nothing in this Agreement shall abrogate the effect of any local ordinance.

22. Audit of MTBRA. In addition to any other remedies provided in this Agreement, if any payment made by the MTBRA is determined by audit, the State of Michigan, or a court of appropriate jurisdiction to be improper or outside of the scope of 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 MTBRA, repay or return any monies paid by the MTBRA that are directly related to the breach, default or improper payment, within sixty (60) days of notice, given in writing by the MTBRA. Failure to remit said funds will result in a late fee penalty in the amount of an additional 10%, accrued annually from the date of notice of the outstanding balance.

23. Indemnification and Hold Harmless. The Developer indemnifies, defends and holds harmless the MTBRA, the Township, and their officers, officials, employees, and agents from all claims, liability, damages, lawsuits, settlements, costs and expenses, including without limitation reasonable attorneys' fees, that are incurred as a result of any acts, errors, omissions or

negligence of the Developer, or its members, officers, directors, managers, affiliates, employees, agents, consultants, contractors or subcontractors related to its performance under this Agreement. This indemnification obligation includes any damages, amounts, costs and expenses, regardless of whether the same are in excess of any limits set forth in any policy of insurance of the Developer. The Developer hereby indemnifies the MTBRA, the Township, and any of the listed entities' officers, officials, employees and agents from all reasonable costs and expenses, including without limitation attorneys' fees, incurred in the enforcement of any obligation or claim against Developer that arises out of, in connection with, or relates to this Agreement. These indemnification provisions will survive the termination of this Agreement. In addition, if Developer assigns this Agreement, Developer's indemnification obligations for any acts or omissions that occurred prior to the date of assignment shall survive such assignment. Nothing contained in this Agreement shall be construed or interpreted as a waiver of any immunity provided under state or federal law, which immunities and protections afforded thereby are hereby acknowledged by the Parties to be in full force and effect.

24. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in the Brownfield Redevelopment Financing Act and the Michigan General Property Tax Act. In the event that there is legislation enacted in the future which restricts or adversely affects the amount of Tax Increment Revenues capturable, Eligible Properties, or Eligible Activities relating to already approved plans, then any of Developer's rights and the MTBRA's obligations under this Agreement may be eliminated or modified accordingly.

25. Freedom of Information Act. Developer stipulates that all Reimbursement Requests and documentation submitted by them shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being MCL 15.231 *et seq.* and no claim of trade secrets or other privilege or exception to the Freedom of Information Act will be claimed by it in relation to this Agreement, Requests for Reimbursement and supporting documentation.

26. Plan Modification. The Plan may be modified to the extent allowed under the Brownfield Act by mutual agreement in writing of the Parties.

27. Notices. All notices shall be given by registered or certified mail or by nationally recognized overnight courier service addressed to the parties at their respective addresses in this Agreement. Either party may change the address by written notice sent by registered or certified mail or by nationally recognized overnight courier service to the other party.

28. Assignment. Except as expressly provided below, this Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other party, which shall not be unreasonably withheld. Developer may assign its rights and obligations to an entity that is controlled by or under common control with Developer after review of such assignment by MTBRA's legal counsel and approval of the MTBRA's administrative staff, which approval shall not be unreasonably withheld or delayed. Developer may make a collateral assignment of Developer's rights under this Agreement, including the Tax Increment Revenues, to any lender that provides financing for the Property that is secured by a mortgage on the Property, without requiring the consent of the MTBRA. Developer shall provide the MTBRA with a copy of any such collateral assignment within 10 days of the execution thereof. Developer acknowledges and agrees that any such collateral assignment shall not modify or otherwise amend Developer's obligations under this Agreement, unless approved by the MTBRA.

29. Entire Agreement. This agreement supersedes all agreements previously made among the parties relating to the subject matter, if any. There are no other understandings or agreements between them concerning the subject matter except as contained herein.

30. Severability. If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement.

31. Non-Waiver, Time of the Essence. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a

waiver of that or any other right, unless otherwise expressly provided herein. Time is of the essence.

32. No Third Party Beneficiaries. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise in any consultant, contractors, subcontractors or any third parties. This Agreement shall not be construed to create any third party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

33. Headings. Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

34. Governing Law. This agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

35. Counterparts. This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

36. Binding Effect. Subject to the terms herein, the provisions of this agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

37. Authorization to Sign. The people signing on behalf of the parties to this Agreement certify by their signatures that they are duly authorized to sign this Agreement on behalf of the party they represent and that this Agreement has been authorized by the party they represent.

In witness whereof the parties have executed this agreement, by their duly authorized representatives, as of the last date set forth below.

MERIDIAN TOWNSHIP BROWNFIELD

REDEVELOPMENT AUTHORITY

October 8, 2020 draft

a public body corporate

HUDSON SENIOR LIVING, LLC

By: Jeffrey Theuer
Its: Chair

Date: _____

By:
Its: Authorized Representative

Date: _____