



BROWNFIELD REDEVELOPMENT AUTHORITY

BOARD MEMBERS

Gary Kiesgen, Chairman

Glenn Eckert, Vice Chair

James Yarema

Zenon Kwik, Treasurer

Michael Smith, Secretary

**A REGULAR MEETING OF THE
BROWNFIELD REDEVELOPMENT AUTHORITY**

February 14, 2024 at 10:30 A.M.

Township Conference Room, 2nd Floor

City of Warren

One City Square

Warren, MI 48093

AGENDA

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. ADOPTION OF AGENDA**
- 4. APPROVAL OF MINUTES (September 19, 2023)**
- 5. FINANCIAL REPORT**
- 6. NEW BUSINESS**
 - A. Request to Approve Addendum No. 1 to Development and Reimbursement Agreement - Macomb South SOM, LLC and Warren 10 Mile Residential LLC (Mary Michaels/Tom Bommarito)**
 - Motion to approve the Addendum No. 1 to Development and Reimbursement Agreement - Macomb South SOM, LLC and Warren 10 Mile Residential LLC
- 7. OLD BUSINESS**
- 8. LIST OF BILLS (Attached)**
- 9. AUDIENCE PARTICIPATION/ GOOD OF THE ORDER**
- 10. ADJOURNMENT**

**Tom Bommarito, Director
Economic and Community Development
EDC, DDA, TIFA, CDBG**

**MEETING MINUTES
BROWNFIELD REDEVELOPMENT AUTHORITY
CITY OF WARREN**

MEETING HELD ON Thursday, September 19, 2023

A regular meeting of the Brownfield Redevelopment Authority of the City of Warren was called to order at 10:00 a.m. on Thursday, September 19, 2023, in the Township Meeting Room located on the 2nd floor of Warren City Hall.

BOARD MEMBERS PRESENT

Gary Kiesgen
Zenon Kwik
Glenn Eckert
Mike Smith

BOARD MEMBERS ABSENT

James Yarema

ALSO PRESENT

Tom Bommarito, Economic Development Director
Dylan Clark, Economic Development
Tiffany Nawrocki, DDA/TIFA Assistant
Mary Michaels, Chief Assistant City Attorney
Ron Wuerth, A.I.C.P., Planning Director

1. CALL TO ORDER

The meeting was called to order at 10:22 a.m.

2. ROLL CALL

3. ADOPTION OF AGENDA

Motion:

A motion was made by Mr. Kiesgen, supported by Mr. Kwik, to adopt the September 19, 2023 agenda.

No opposition, motion passed

4. APPROVAL OF THE MINUTES (June 29, 2023)

Motion:

A motion was made by Mr. Kwik, supported by Mr. Eckert, to approve the minutes from the June 29, 2023 Brownfield meeting.

B.R.A. Minutes – September 19, 2023

No opposition, motion passed

5. FINANCIAL REPORT

None

6. NEW BUSINESS

- A.** Request for Approval of Proposed Amended and Restated Development Agreement - NP Mound Industrial, LLC (Mary Michaels/Tom Bommarito)

Mr. Bommarito informed the board that this amended agreement was checked by EGLE and our City Attorney's Office. Chief Assistant City Attorney, Mary Michaels, stated that there was a cost increase for this project from \$28,693,000.00 to \$31,708,000.00. Overall, this has become a 200 million dollar project.

Motion:

A motion was made by Mr. Eckert, supported by Mr. Kiesgen, to approve the amended and restated development agreement for NP Mound Industrial, LLC.

ROLL CALL:

The motion carried unanimously as follows:

Mr. Eckert	Yes
Mr. Kiesgen	Yes
Mr. Kwik	Yes
Mr. Smith	Yes

No opposition, motion passed

- B.** Request for Approval of Amended and Restated Development and Reimbursement Agreement - Macomb South SOM LLC and Warren 10 Mile Residential, LLC (Mary Michaels/Tom Bommarito)

Tom Bommarito requested that the board motion to table this item.

Motion:

A motion was made by Mr. Eckert, supported by Mr. Kwik, to table item 6B: Request for Approval of Amended and Restated Development and Reimbursement Agreement - Macomb South SOM LLC and Warren 10 Mile Residential, LLC

No opposition, motion passed

- C.** Application for Kum & Go Convenience Store and Fueling Facility (Tom Bommarito/Mary Michaels)

Patrick Bell, Environmental Consultant with G2 Consulting Group, informed the board that Kum & Go is looking to develop three parcels of property, two of which are currently developed. One is a vacant bakery that use to be a gas station and the other is a former Comerica Bank that is now vacant as well. After completing some environmental investigations, G2 has discovered some significant contamination related to the former underground storage tanks systems that use to be on the gestation property. They pulled the tanks but left all the contamination when they vacated the property. Upon investigation, they discovered potentially “free product” left in the soil, which is a health and safety hazard. They plan to remove it from the site and properly dispose of it. They are also going to be installing chemically impervious utilities and a passive barrier (liners and vents) beneath the building to capture and discharge any substance above the human occupation zone. In total, they are asking for \$831,758.00, which includes a contingency of around \$99,000.00. EGLE would not be supervising this project but they will be reviewing the baseline environmental assessment.

Mary Michaels (Attorney’s Office) then asked Mr. Bell if there is migration. Mr. Bell stated that there could be but they need to perform an extra investigation to be sure. If there is migration contamination, Mr. Bell stated that they would go through the EGLE process of notifying adjacent property owners of the issue. Macomb County would be notified, as well as the City of Warren.

Dylan Clark (CED) asked Mr. Bell if they would be able to get an air permit. Mr. Bell stated there is no air permit needed for passive venting.

Planning Director Ron Wuerth recommended that G2 and Kum & Go contact Fraser and Sterling Heights, the bordering municipalities, to inform them of what is going on at their boarder.

Motion:

A motion was made by Mr. Eckert, supported by Mr. Kiesgen, to accept and approve the application and plan for Kum & Go Convenience Store and Fueling Facility.

ROLL CALL:

The motion carried unanimously as follows:

Mr. Eckert	Yes
Mr. Kiesgen	Yes
Mr. Kwik	Yes
Mr. Smith	Yes

No opposition, motion passed

7. OLD BUSINESS

None

8. LIST OF BILLS

Motion:

A motion was made by Mr. Kwik, supported by Mr. Kiesgen, to approve paying the September 19, 2023 List of Bills.

ROLL CALL:

The motion carried unanimously as follows:

Mr. Kwik	Yes
Mr. Kiesgen	Yes
Mr. Smith	Yes
Mr. Eckert	Yes

No opposition, motion passed

9. AUDIENCE PARTICIPATION/ GOOD OF THE ORDER

None

10. ADJOURNMENT

Motion:

A motion was made by Mr. Kwik, supported by Mr. Eckert, to adjourn the meeting at 10:40 a.m.

No opposition, Motion passed

X 

Gary Kiesgen
Brownfield Chairperson

X 

Thomas Bommarito
Brownfield Director

COPY



January 30, 2024

Mr. Tom Bommarito, Director
Brownfield Redevelopment Authority
City of Warren

CITY ATTORNEY'S OFFICE

One City Square, Suite 400
WARREN, MI 48093
(586) 574-4671
FAX (586) 574-4530
www.cityofwarren.org

Re: Addendum No. 1 to Development and Reimbursement Agreement

Dear Mr. Bommarito:

Attached please find the above-referenced addendum pertaining to the mixed-use development at 13041 Ten Mile Rd.

The initial agreement, dated January 29, 2019, provided for the reimbursement of tax increment finance revenues to Warren Ten Mile State LLC according to the Brownfield Plan for the eligible costs associated with an office development up to \$1,194,125.00. Warren Ten Mile State assigned agreement to Macomb South SOM LLC.


Macomb South SOM LLC submitted an amended Brownfield plan to include Phase II improvements for a multi-family residential development. Council approved the amended plan on July 25, 2023, but afterward, Macomb South SOM LLC assigned its rights in the Phase II development to another affiliate, Warren Ten Mile Residential LLC.

The attached agreement will amend the original reimbursement agreement to increase the maximum reimbursement to \$2,856,551.00, which the net of a Phase I reduced activity cost of \$681,424.00, and Phase II cost of \$2,075,034. The TIF reimbursement will be sent to each entity for their respective site work; Macomb South SOM for Phase I office improvements, and Warren Ten Mile Residential LLC for Phase II multi-family residential improvements.

Macomb South SOM and Warren Ten Mile Residential are commonly owned and controlled, so formal assignment of the Plan to add Warren Ten Mile Residential is not required. The name of the developing entity is not a mandatory element of a plan under the Brownfield Redevelopment Finance Act, Act 381 of 1996. We will send Council an informational notice of the addition of the commonly controlled entity responsible for Phase II. If the rights or obligations are ultimately transferred to an unaffiliated entity, a formal assignment will be processed for approval.

The duration of the anticipated plan is estimated as 11 years, although the statutory period of 30 is reserved. The residential project is anticipated to create 200 construction jobs. If acceptable, please submit the proposed addendum to the Brownfield Authority for its meeting on January 31, 2024.

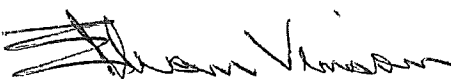
Respectfully,


Mary Michaels

Chief Assistant City Attorney

MM/vlt Ltr to T Bommarito DDA with Addendum No. 1 to Development & Reimb Agree – 13041 Ten Mile ID 103447

Read and concur:


Ethan Vinson, City Attorney

ADDENDUM NO. 1 TO DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS DEVELOPMENT AND REIMBURSEMENT ADDENDUM (the “Addendum”) dated _____, 2024, is entered into between the **CITY OF WARREN BROWNFIELD REDEVELOPMENT AUTHORITY**, (“the Authority”), an authority established pursuant to Act 381 of Public Acts of 1996, as amended (“the Act”), whose address is One City Square, Warren, Michigan 48093, and **MACOMB SOUTH SOM LLC** and **WARREN 10 MILE RESIDENTIAL LLC**, whose address is 30078 Schoenherr, Suite 300, Warren, Michigan 48088.

RECITALS

A. The Authority was created by the City of Warren (the “City”) pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of Michigan of 1996, as amended (“Act 381”), and, pursuant to Act 381, the Authority has adopted a Combined Brownfield Plan which was duly approved by the City Council of the City.

B. The Developer owns two parcels of property in the City located at 13007 and 13041 Ten Mile Rd., Parcel Nos. 12-13-23-451-006 and 12-13-23-451-007, Warren, Michigan (collectively, all such parcels are referred to as “the Property”). The Property is legally described in the attached Exhibit A. The property qualifies as an “Eligible Property” for capture of tax increment financing revenues, as provided in Act 381. The Property contains two development sites, to be referred to as “Phase I site” and “Phase II site”, which are legally described in Exhibit A.

C. On October 8, 2019, the City Council approved a Brownfield Plan under Act 381 for the Proposed Office Development located at 13041 Ten Mile Road, Warren, Michigan (“the Original Plan”), which included the construction of a 40,000 square foot office building. The office building and all associated with all improvements and activities were described in the original plan and is referred to as “Phase I”. The Original Plan included reimbursement of brownfield eligible costs associated with Phase I of the development, including a contingency amount. Phase I and the Improvements were intended to assist the redevelopment and reuse of the Property, increase the tax base within the City, create new jobs, and otherwise enhance the economic vitality and quality of life in the City.

D. The Authority and **WARREN TEN MILE STATE LLC** entered into a Development and Reimbursement Agreement dated January 27, 2019 for the reimbursement of the, tax increment revenues according to the Plan. The Agreement was later assigned to **MACOMB SOUTH SOM, LLC**, an entity controlled and owned in common with **WARREN TEN MILE STATE, LLC**. Such assignment is dated April 30, 2020, and all rights and obligations under the Agreement were assumed by **MACOMB SOUTH SOM LLC**. Phase I of the project has been completed. **MACOMB SOUTH SOM LLC** incurred a total of \$681,424 of Eligible Costs as defined in the Original Plan and acknowledges partial payment for these Eligible Costs, which shall be credited to Authority under Amended Plan.

F. In anticipation of the Phase II of the project, **MACOMB SOUTH SOM LLC** submitted an amendment to the Original Plan, Brownfield Plan Amendment #1 to account for

Eligible Costs for Improvements to construct the multi-family residential development component, with a total maximum reimbursement for Phase II through tax increment financing for the Eligible Costs up to the amount of \$2,075,034 (Phase II Eligible Amount).

G. MACOMB SOUTH SOM LLC assigned its interest in the Phase II site to its commonly controlled and owned entity, WARREN 10 MILE RESIDENTIAL LLC.

H. WARREN 10 MILE RESIDENTIAL LLC plans to redevelop the Phase II property as a multi-family residential complex, which includes the construction of 13 multi-family apartment buildings, 6 townhome apartment buildings, 59 on-site storage units, a clubhouse, associated parking and all associated improvements and activities described in the Brownfield Plan Amendment #1 (the Amended Plan) identified below and are collectively referred to as "Phase II".

I. On July 25, 2023, the Warren City Council approved the Amended Plan. The Plan was approved for MACOMB SOUTH SOM LLC.

J. Developer MACOMB SOUTH SOM LLC intends to assign the Phase II of the Amended Plan to WARREN 10 MILE RESIDENTIAL LLC, another entity under common control and ownership, and wishes to amend the Agreement to incorporate the Amended Plan, and to assign all rights and obligations for Phase II of the Amended Plan to Developer WARREN 10 MILE RESIDENTIAL LLC.

K. The rights and responsibilities for Phase I of the Amended plan shall remain with MACOMB SOUTH SOM LLC.

L. The Authority has incurred and projects that it will incur certain eligible administrative expenses associated with the Amended Plan (the "Administrative Costs"), and for which it seeks reimbursement from Tax Increment Revenues (as defined below) other than Educational Taxes (the "Local Tax Increment Revenues").

M. Prior to reimbursement of all amounts due to MACOMB SOUTH SOM LLC and WARREN 10 MILE RESIDENTIAL LLC, all amounts payable to the Authority as Administrative Costs from applicable Tax Increment Revenues (as defined below) and 10% of tax increment revenues will be deposited into the Authority's local brownfield revolving fund.

N. In accordance with Act 381 and subject to the terms of this Agreement, the parties desire to use the property tax revenues that are generated from an increase in the taxable value of the real and personal property resulting from the Project redevelopment of the Property to which the Authority is entitled to receive (the "Tax Increment Revenues") to reimburse both MACOMB SOUTH SOM LLC and WARREN 10 MILE RESIDENTIAL LLC for their respective portion of Eligible Costs, to pay the Authority for Administrative Costs, to pay Treasury the SET 3 Mills Tax Increment Revenues and to fund a local site remediation revolving fund pursuant to Act 381. Eligible Costs are defined that those costs approved for reimbursement under the Plan, unless disallowed by the State of Michigan approving authority.

L. The parties are entering into this Agreement to establish the requirements and procedures for such reimbursement and funding.

TERMS AND CONDITIONS

Therefore, in consideration of the promises of the parties as provided in this Agreement, the parties agree as follows:

1. Capture of Taxes. During the term of this Agreement, the Authority shall capture all Tax Increment Revenues from the Property and use those Tax Increment Revenues as provided in this Agreement and the Amended Plan.

2. Plan. MACOMB SOUTH SOM LLC and WARREN 10 MILE RESIDENTIAL LLC both agree to this Agreement, and that is subject to its completion of the activities and development described the Amended Plan. The Amended Plan, which replaces the Original Plan dated July 19, 2019, and updated September 27, 2019, as approved by the Warren City Council, October 8, 2019, is entitled the City of Warren Brownfield Redevelopment Authority Brownfield Plan Amendment #1 ("Amended Plan") dated May 11, 2023. The Amended Plan includes any amendments to the Table as provided in this Agreement or amendments approved by the Authority. The Plan is attached as Exhibit B, and incorporated by reference and made a part of this Agreement. To the extent that provision of the Amended Plan directly conflicts with this Agreement, the terms and conditions of this Agreement will control. Developer shall provide notice to the Authority of Project Completion, and any supporting documentation that the Authority or its Director may request. It is understood that the Eligible Costs for the Eligible Project costs are reimbursed only upon submission and verification by the City. The total Eligible Amount will be reduced by any unverified Cost. No payment shall be made to Developer after the earlier of completion of Phase I and Phase II, and 30 years from first capture under the Original Plan, regardless of whether all Eligible Costs are reimbursed. In the event Project Completion is delayed, the estimated Tax Increment Revenue Capture Estimates attached to the Plan as Table 2 will be amended, and upon approval of the Authority's Director, will be included replace Table 2 of the attached Plan and become a part of the Plan and incorporated into this Agreement. To the extent provisions of the Brownfield Plan or this Agreement conflict with Act 381, as amended, Act 381, will control, provided, however, the Act will not be relied upon by Developer to expand or increase the Eligible Costs or Eligible Amount.

3. This Addendum is subject to WARREN 10 MILE RESIDENTIAL LLC obtaining site plan approval from the Planning Commission for Phase II, consistent with the Project Description in the Amended Plan.

4. WARREN 10 MILE RESIDENTIAL LLC estimates that Phase II will be complete in the January 2027, subject to reasonable extension which may be authorized by the Brownfield Director.

5. Submission of Costs. For those Eligible Costs and Work Plan Costs and Contingencies for which the Developer seeks reimbursement from the Authority, upon completion of the portion of the Project that has been completed, the Developer shall submit to the Authority, in written form, following completion of the Project.

- (1) a written statement detailing the costs;

(2) a written explanation as to why they are Eligible Costs, Contingencies or Work Plan Costs;

(3) copies of invoices from contractors, engineers or others who provided such services, or, for the Developer's personnel for whose services reimbursement is being sought, detailed time records showing the work performed by such individuals; and

(4) any other information which may be required by the Authority or their respective auditors.

It is agreed the tax increment finance revenues (TIF) for Eligible Costs, Work Plan costs and Contingencies, and any other Eligible Activity under the Agreement and this Addendum will not exceed the total Eligible Amount of \$2,856,551 for both Phase I and Phase II, and the recapture term will not exceed the term set forth in the Amended Plan. The Eligible Amount is allocated among each developer for eligible activities for their respective improvements with captured tax increment revenues on the Phase I site or Phase II site. MACOMB SOUTH SOM LLC is eligible for reimbursement of TIF revenues up to the maximum amount of \$681,424 for Phase I Eligible Activities. MACOMB SOUTH SOM LLC acknowledges receipt of prior payments pursuant to the Original Plan for Phase I Eligible Activities, to be credited to the Authority from such maximum amount. Under the Amended Plan for Phase II, Developer WARREN TEN MILE RESIDENTIAL LLC is eligible to be reimbursed TIF revenues up to the amount of \$2,075,034.

6. Verification of Eligible Costs and Work Plan Costs. The Authority will review and verify the submitted Eligible Costs and Work Plan and Contingency costs, and upon verification, within forty-five (45) days of receipt of the same, will approve them, unless reasonable extensions are necessary. Developer will cooperate and submit any additional records or information reasonably needed for the Authority to complete its review and will make its property accessible upon reasonable prior written notice for an on-site inspection by the Authority as needed to verify compliance with the Plan. The Authority's administrative Director or Controller shall identify in writing or by electronic message to Developer's address in the Section 14, any costs deemed ineligible for reimbursement and the basis for the determination. The Developer has 45 days to provide supplemental information or documents to support the eligibility of the cost. Within 30 days, the Authority will make the final decision on the disputed cost, and the Developer may appeal the Authority's decision in accordance with the law.

7. Payments.

(a) The Tax Increment Revenues received by the Authority shall be paid annually to the Developer to reimburse it for Eligible Costs and Work Plan Costs, as provided in this Agreement and the Plan, commencing with the first full tax payment following project completion of Phase I. No payments will be made for Phase II improvements until completion of Phase II. Notice of project completion will be provided to the Authority. The Authority will issue payment by the April 30 following Developer's full payment of summer and taxes levied the previous year, unless reasonable extensions are necessary, notice of which is provided to Developer. Payments will be sent directly to the Developer addressed as stated in Section 14, unless notice of a change or new address is provided to the Authority in accordance with Section 14. Local Tax Increment Revenues generated from the Property shall first be retained by the Authority in an amount of \$5,000 annually for Administrative Costs under Act 381 for all Authority projects. An additional 10% of Local Tax Increment Revenues generated from the

Property shall be retained by the Authority annually for the Local Brownfield Revolving Loan Fund. After retention of such local Tax Increment Revenues, Tax Increment Revenues shall be used to reimburse the Developer for Eligible Costs and Work Plan Costs. The Authority shall have no obligation to reimburse the Developer for Eligible Costs or Work Plan Costs or any other costs from Tax Increment Revenues captured and received by the Authority after the earlier of: (i) payment of the Phase I Eligible Amount and the Phase II Eligible Amount, or (ii) the period provided in the Plan, subject to amendments as provided below. It is understood that no interest shall be included in any tax increment revenues reimbursed to Developer or otherwise owed to Developer by the Authority or the City.

(b) Payments remaining owed for Phase I Eligible costs up, shall be made to MACOMB SOUTH SOM LLC by the Authority for completion of the Eligible Activities for Phase I of the project. Reimbursement for costs associated with Phase II of the project will be made to WARREN 10 MILE RESIDENTIAL LLC, provided that the expenses are deemed eligible for reimbursement by the authority.

(c) Unless it disputes whether such costs are Eligible Costs or Work Plan Costs or the accuracy of such costs, the Authority shall, after approval of the Authority Board, pay to the Developer the amounts for which submissions have been made pursuant to paragraph 2 of this Agreement within 30 days after the Authority Board has approved such payment provided Tax Increment Revenues have been received from which the submission may be wholly or partially paid, in annual installments according the Plan, up to the Eligible Amount. If a partial payment is made by the Authority because of insufficient Tax Increment Revenues, the Authority shall make additional payments toward the remaining amount within 30 days of its receipt of additional Tax Increment Revenues until the Eligible Amount has been fully paid to the Developer or the period allow in the Plan or as otherwise provided by this Agreement, whichever occurs first. It is understood that no payment will be made while The Developer has received written notice of a default in a term of this Agreement and has not cured such default. It is further understood that the Authority is not obligated to reimburse the Developer for any approved Eligible Costs during any period of time that the Developer is delinquent in the payment of real or personal property taxes imposed on the Property. However, once the real or personal property taxes imposed on the Property are no longer in delinquency, the Authority shall reimburse Developer for Eligible Costs from the Tax Increment Revenues.

Payment will be made by check from the Authority and delivered by first-class or certified mail to the Developer representative identified in Section 14, or hand-delivered to Developer's representative.

8. Termination. This Agreement may be terminated as to a defaulting Developer that fails to fulfill a material obligation under this Agreement, after 30 days' notice of such default from the Director of Community, Economic and Downtown Development (Director), and the Developer fails to cure the default. If the default is of such a nature that it cannot be cured within 30 days, Developer will, within the 30 days of the notice of default, provide notice to the Director of the measure that will be taken to cure the default, and will diligently proceed to cure the default within at least 30 days thereafter, unless extended for good cause. Upon termination, the defaulting Developer will not be entitled to any further TIF revenues under the Plan, such projected amounts remaining under the Plan going forward will be stricken from the Plan, and such part of the Plan will be abolished, and no further payments will be reimbursed to the

defaulting Developer. The parties reserve all of their rights by law. Material obligations, under this Section, are defined to include 1) the failure to pay taxes; 2) failure to complete the Project; 3) failure to provide statements and reports; 4) an unconsented assignment; 5) failure to comply with Section 9 of this Agreement; 6) failure to materially achieve the job creation standard, or 5) failure to cure at least three non-material violations, after written notice and opportunity to cure within 30 days. It is understood that the default and remedies will apply to each site of Phase I and Phase II separately, and to the Developer responsible for such Phase, provided, however the failure to complete the Phase II improvements may result in termination of this Agreement and abolition of Plan and Plan payments as to both Developers, so long as MACOMB SOUTH SOM LLC and WARREN TEN MILE RESIDENTIAL LLC are commonly owned and controlled, pursuant to Section 19, MACOMB SOUTH SOM LLC is responsible to either seek an approval to a Plan amendment or complete Phase II should WARREN TEN MILE RESIDENTIAL LLC fail to perform its obligation to complete Phase II. In the event that there is a transfer of ownership for Phase II, the obligations of this Agreement will also transfer to the new entity.

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

10. Development. The Developer WARREN TEN MILE RESIDENTIAL LLC shall commence work on the Project as soon as possible, and upon commencement, shall proceed diligently to completion. Phase II shall be completed within three years of the execution of this Agreement, subject to reasonable extensions for good cause approved by the Director. The Developer shall perform all activities and develop the Property in accordance with the approved Amended Plan, and applicable codes, ordinances, and shall keep the construction site clean and orderly, with no overnight parking or unnecessary idling or idling after construction hours. Developer shall use its best efforts to achieve the job creation standard set forth in the Amended Plan for the duration of the Plan, proof of which the Developer will provide to the Authority upon written request. Developer MACOMB SOUTH SOM LLC remains responsible for the job creation and retention standards in the Plan for Phase I.

11. Compliance with Laws; Restrictions. Developer shall ensure that all activities, development, occupancy and use of and upon the Property shall comply with all laws, site plan approval conditions, regulations and codes, and hours of construction, transportation and unloading, loading and other trucking will be restricted to hours permitted by the local ordinance. Developer agrees that the Property shall not be used for any adult businesses, as defined in Section 14.02 of the City of Warren Code of Zoning Ordinances, a pawn shop, car business,

including used car lot, or for the use, growth, cultivation, distribution, testing, processing or manufacturing of marihuana, including medicinal marihuana.

12. Reporting. The Developer shall submit a written report in a form provided by the Authority to the Authority following the Project completion indicating as of such date the number of new jobs located at the Project, if any, the total private investment, description of the building constructed, and such other information as shall be required by such form.

13. Environmental; Certification. The Developer certifies to the City and the Authority that, to the best of its knowledge without any duty to further investigate the matter, the Developer, nor any of its members, is a liable party for any environmental contamination that existed on the Property at the time the Developer purchased the Property, and understands the City of Warren and the Authority Board relied upon this certification in entering into the Agreement and approving its Plan. Notwithstanding the foregoing, the Developer, for itself, its officers, employees, contractors and successors, holds harmless and indemnifies the City of Warren (the City), City of Warren Brownfield Redevelopment Authority (the Authority), and their officers, employees, members, committees and commissions, for and from any liability, demands, cause of action, claim or suit, for any injury or damage or violation of law or regulation, relating to or arising out of any environmental condition or contamination on or about the Property, or for any liability that may be imputed to the City due to its approval of the Plan, except to the extent any of the foregoing that may be due to contamination directly caused, in whole or in part, by the City. The indemnification obligations shall survive final reimbursement or abolishment of the Plan.

14. Interpretation. This is the entire agreement between the parties as to its subject. It shall not be amended or modified except in writing signed by 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.

15. Assignment; Binding Effect. This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other party, which shall not be unreasonably withheld, provided, however, the Developer may assign its interest in this Agreement to an affiliate without the prior written consent of the Authority, provided, any such assignee shall acknowledge to the Authority in writing on or prior to the effective date of such assignment its obligations upon assignment and assumption of the obligations under this Agreement provided, further, that the Developer may make a collateral assignment of the Tax Increment Revenues after review of such assignment and consent by Authority's legal counsel and approval of the Authority, which consent shall not unreasonably be withheld or delayed. As used in this paragraph, "affiliate" means any corporation, company, partnership, limited liability company, trust, sole proprietorship or other individual or entity which (a) is owned or controlled by the Developer, (b) owns or controls the Developer or (c) is under common ownership or control with the Developer. This Agreement shall be binding upon any successors or permitted assigns of the parties. Notwithstanding any assignment of the Agreement, Developer will remain obligated for the performance of the obligations attributed to Developer, provided that Developer's assignee shall be primarily obligated for the performance of the same.

Notice. All notices required under this Agreement shall be in writing and shall be deemed to have been given, whether actually received or not, if either delivered personally or mailed by email, fax, certified or registered mail, or overnight service to the parties as set forth below. Either party may change its address for notices, bills or statements by giving notice of such change as hereinabove set forth.

If to the Authority:

Tom Bommarito
Director of Economic Development,
City of Warren, Michigan
One City Square
Warren, Michigan 48093
tbommarito@cityofwarren.org

With a copy to:

Mary Michaels
Chief Assistant City Attorney
City of Warren, Michigan
One City Square
Warren, Michigan 48093
mmichaels@cityofwarren.org

If to Developer Macomb South SOM LLC and Warren Ten Mile Residential LLC:

Lorenzo Cavaliere
Warren 10 Mile State, LLC/Macomb South SOM LLC
30078 Schoenherr, Suite 300
Warren, Michigan 48088
lcavaliere@cavalierecompanies.com

With a Copy to:

Ryan Higuchi
4080 West Eleven Mile Rd
Berkley, Michigan 48072
Ryan.higuchi@pmenv.com

15. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one agreement. Faxed signatures, or scanned and electronically transmitted signatures on this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

16. Miscellaneous. This Agreement may not be amended, altered or modified unless done so in writing by the person against whom enforcement of any waiver, change, modification,

or discharge is sought. This Agreement and the exhibits to this Agreement contain all of the representations and statements by the parties to one another, and express the entire understanding between parties, with respect to the Brownfield Plan and Project. All prior and contemporaneous communications concerning the Brownfield Plan and Project are merged in and replaced by this Agreement.

17. WARREN TEN MILE RESIDENTIAL LLC shall be solely responsible for rights or obligations attributed or referred to WARREN TEN MILE RESIDENTIAL LLC individually.

18. MACOMB SOUTH SOM LLC shall be solely responsible for rights or obligations attributed or referred MACOMB SOUTH SOM LLC individually.

19. The Authority agrees to the assignment of the Amended Plan from MACOMB SOUTH SOM LLC to MACOMB SOUTH SOM LLC and WARREN 10 MILE RESIDENTIAL, LLC as to their respective Phase improvements, costs and projected reimbursements under the Amended Plan. For so long as MACOMB SOUTH SOM LLC and WARREN 10 MILE RESIDENTIAL LLC are commonly owned and controlled MACOMB SOUTH SOM LLC will perform any obligations not performed by WARREN 10 MILE RESIDENTIAL LLC and will cooperate with the Authority to redirect TIF payments in the manner mutually agreed upon by the Director and Developer, upon such occurrence.

20. **This Addendum shall supplement the Agreement.** Except as directly amended or supplemented in this Agreement, MACOMB SOUTH SOM shall remain obligated under the Agreement. WARREN TEN MILE RESIDENTIAL LLC affirms it shall be responsible for terms of this Addendum and the Amended Plan.

21. Except as provided in paragraph 19, MACOMB SOUTH SOM LLC assigns its rights and interests pertaining to the Phase II improvements in the Amended Plan to WARREN TEN MILE RESIDENTIAL LLC. WARREN TEN MILE RESIDENTIAL LLC agrees to be bound by, perform, and assumes all of MACOMB SOUTH SOM LLC's commitments, terms, representations, and conditions in the Amended Plan pertaining to Phase II, as though WARREN TEN MILE RESIDENTIAL LLC had submitted the Plan itself.

THEREFORE, this Agreement has been executed as of the date first written above.

WARREN TEN MILE RESIDENTIAL, LLC

By: _____
Lorenzo Cavaliere
Managing Member

MACOMB SOUTH SOM, LLC

By: _____
Lorenzo Cavaliere
Managing Member

**THE CITY OF WARREN BROWNFIELD
REDEVELOPMENT AUTHORITY**

By: _____
Chair

By: _____
Tom Bommarito, Director

12791196-3

EXHIBIT A

PROPERTY DESCRIPTION

Brownfield List of Bills - 02/14/2024
Required Formal Approval of the Following:

<u>PAYEE</u>	<u>DATE OF INVOICE</u>	<u>AMOUNT</u>	<u>DETAILS</u>
State of Michigan	09/25/23	31,888.00	Brownfield Redevelopment Fund
		<u>AMOUNT:</u>	<u>31,888.00</u>

September 25, 2023

Dylan Clark
City of Warren BRA
One City Square, Suite 215
Warren, MI 48903

Invoice: INV-0000434

Dear Dylan Clark,

Legislative changes occurred on December 28, 2012, permitting the State of Michigan to collect 3 out of the 6 mill State Education Tax annually on new Act 381 Work Plan projects to provide future funding for Brownfield Grants and Loans. The City of Warren BRA had Work Plan projects approved by the Michigan Strategic Fund (MSF) and/or the Department of Environment, Great Lakes, and Energy Quality (EGLE) after January 1, 2013.

Project Information is listed below:

Project Name	Site Number	Annual Report Metric Number	Amount Due
Lapari Foods	SITE-00001491	M-0000139915	\$11,320.00
Schoenherr 10 LLC - Meijer	SITE-00001585	M-0000139917	\$12,442.50
Star Warren LLC	SITE-00001471	M-0000139918	\$462.00
Warren 10 Mile	SITE-00001772	M-0000139920	\$147.50
(Regal Lanes Redevelopment) LECOM	SITE-00001848	M-0000140297	\$7,516.00
Total Amount Due			\$31,888.00

Please remit payment of above total amount within **60 days** of the date of this invoice. The Amount Due is calculated directly from information entered in the Portal, and submitted by your jurisdiction. If you feel the Amount Due is not accurate, please contact MEDC Brownfield Staff at brownfield@michigan.org or (517) 335-8126, to adjust your reporting.

****See page 2 for payment information****

Pay by Electronic Funds Transfer:

1. Send payment to:
 - a. Routing #072000326
 - b. Account #878375851
 - c. If a description field is available, please enter "Brownfield Redevelopment Fund"

Pay by Check:

1. Make checks payable to: "State of Michigan"
2. Please be sure to write "Brownfield Redevelopment Fund" on the memo line
3. Mail the remittance check to:

MEDC Finance Department
Michigan Economic Development Corporation
300 N. Washington Square
Lansing, MI 48913