Agenda
Brownfield Redevelopment Authority
Board of Directors

City of Kalamazoo

Thursday, June 15, 2023 7:45 AM

CPED Main Conference Room - 245 N. Rose Street, Suite 100

A. CALL TO ORDER/ROLL CALL

B. ADOPTION OF FORMAL AGENDA

C. APPROVAL OF MINUTES

1. Approval of minutes from the BRA special meeting of May 4, 2023.

2. Approval of minutes from the BRA meeting of May 18, 2023.

D. PUBLIC COMMENTS

E. DIRECTORS' COMMENTS

F. NEW BUSINESS

1. Public Hearing for an Act 381 Brownfield Plan for the redevelopment project at 215 E. Michigan Avenue (No Action).
   - Open Public Hearing
   - Presentation of Brownfield Plan Summary
   - Public Comment Period
   - Board Discussion
   - Close Public Hearing

2. Adoption of a Resolution approving the implementation of the Act 381 Brownfield Plan for 215 E. Michigan Avenue and recommend approval by City Commission.

3. Adoption of a Resolution approving a Development and Reimbursement Agreement between BRA and 215 EM Partners and authorize the Chair to sign.

4. Adoption of a Resolution approving a Grant Agreement between BRA and 530 S Rose LDHA LP for an EGLE Brownfield Redevelopment Grant and authorizing the Chair to sign.

G. UNFINISHED BUSINESS

H. COMMUNICATIONS AND ANNOUNCEMENTS

I. STAFF REPORTS AND UPDATES

J. ADJOURNMENT

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY BOARD MEETING
SPECIAL MEETING
Thursday, May 4, 2023
Community Planning and Economic Development
245 N. Rose Street, Kalamazoo, MI 49007

MEMBERS PRESENT: Nathan Bolton; Sharon Ferraro; Kevan Hess; Andrew Schipper; Lucas Middleton; Rachel Bair; Qianna Decker; Kyle Gulau

MEMBERS ABSENT: Jason Novotny; Torean Greeley; Michael Gurnee

CITY COMMISSIONERS/CITY STAFF PRESENT: Jamie McCarthy (Sustainable Development Coordinator); PJ Thuringer (Economic Development Supervisor); Logan Mulholland (Fishbeck, Consultant); Jared Chambers (Business Specialist); Beth Cheeseman (Executive Administrative Assistant)

Meeting was called to order at 8:16 AM by Director Hess.

MOTION TO EXCUSE ABSENT MEMBERS: Director Schipper moved to excuse absent members; seconded by Director Gulau. Motion approved by voice vote unanimously.

Director Hess announced that Item F. 4 was removed from the agenda.

APPROVAL OF AGENDA: Director Bolton, moved the approval of the agenda as amended; seconded by Director Ferraro. Motion approved by voice vote unanimously.

APPROVAL OF MINUTES: Director Gulau moved the approval of the minutes from March 16, 2023; seconded by Director Schipper. Motion approved by voice vote unanimously.

PUBLIC COMMENTS

None.

DIRECTOR'S COMMENTS

Director Gulau said that in their subcommittee and strategy session they talked about moving the Local Brownfield Revolving Fund into a higher interest bearing account. He requested a status update. Ms. McCarthy shared that the money is in managed funds with the City. She wanted to look into it more and then will put out a memo to committees. Ms. McCarthy assured Directors that the funds are in interest bearing accounts. She said there have been interest deposits in the accounts, and she will get that information to them.

NEW BUSINESS

1. Public Hearing for the 4th Amendment to the Revised Brownfield Plan for Scattered Site Infill Housing

Ms. McCarthy explained that this project got started to support scattered site infill housing in multiple neighborhoods in the City. She said they have been working with Fishbeck and monitoring whether the length and term of the plan would have to change over time as they continue to add properties. Ms. McCarthy shared that with the addition of these parcels, the plan will stay at 10 years. She said the idea has been to reimburse the non-profit partner for all of the eligible activities they've requested within that 10 year time frame. Ms. McCarthy stated that the plan includes eight new single-family homes builds this year – Clinton (3), Phelps (1), Krom (1), N. Rose (2), and Summit (1). She explained that they would like to remove 2349 Shelter Point from the plan. The property was sold to an adjacent neighbor with no plans for development on that lot. Ms. McCarthy said, with eight properties added, there is an estimate of $105,805 of eligible activities to be reimbursed to KNHS. The City will be reimbursed for demolition. The five year capture to LBRF is an estimated $485,253, and BRA would receive $121,000 in Admin fees.

Mr. Matt Milcarek, KNHS, gave a brief overview of how many homes they have built and sold. He shared that they introduced an ADA accessible model and would be building several more of those. Mr. Milcarek said they would be building primarily in Edison and Northside, and one in Douglas in the next year. They plan to continue building the models they have with the addition of a three bedroom with a detached garage. They will also be piloting a pre-approved plan for the City - a three bedroom single story with a basement.

Director Hess asked how buyers applied for properties, how they are financed, and how KNHS selected contractors. Mr. Milcarek said their buyers go through their home ownership course. Once they have mortgage pre-approval, they are placed on the wait list, then meet with a coach monthly until the home is built. He said they encourage them to pursue options on the market too – instead of just waiting for a house to be built. Mr. Milcarek said that all of the financing is through the private market. They select contractors through the Home Builders Association. He said they meet as a team with the builders and disseminate who will get each lot. The builders fee is set at 10% of cost to build and it is the same for each builder. It is not a competitive building process. Mr. Milcarek said they also bring new builders in through the City's minority contractor efforts.

Director Gulau asked how Brownfield helps their proforma. Mr. Milcarek said they have found a lot of underground debris from previously demolished structures. Brownfield has been a huge part of softening the financial blow as they discover the need for debris removal. Director Gulau asked if the TIF payments would be assigned to the new owner or go back to KNHS. Mr. Milcarek confirmed that the TIF payment comes back to KNHS.

Director Gulau wondered if there was anyone else in state doing this. Ms. McCarthy said she didn't know the answer to that. She shared that they had been selected to give a presentation at the National Brownfields Conference on this project and how TIF can help. She said it feels like small numbers, but the impact is pretty remarkable. Director Gulau thought this was an awesome project to have in the community.

Directors Middleton and Hess agreed that it is a great program. Director Hess said that affordable housing is desperately needed. He also recounted the benefits of the program. Selling the properties to KNHS helped minimize the amount Brownfield would be spending on property maintenance/clean up. The program helped remove blight and revitalize neighborhoods. The program provided opportunities for people to buy these homes. The houses were built as energy efficient homes, and KNHS was able to utilize minority contractors. Director Hess said he was in full support of this going forward.

Commissioner Decker thanked Mr. Milcarek for talking about the applicants' process. She shared that they have financial literacy classes the next Tuesday and Wednesday if anyone was interested. Mr. Milcarek encouraged Directors to reach out if anyone wanted more information, attend a class, or meet with any of the KNHS Directors.

2. Adoption of a Resolution Approving the Implementation of the 4th Amendment to the Revised Brownfield Plan for Scattered Site Infill Housing

Ms. McCarthy stated that this was a standard resolution, and she would bring forward a revised development agreement at a later time.

Director Gulau moved adoption of a Resolution Approving the Implementation of the 4th Amendment to the Revised Brownfield Plan for Scattered Site Infill Housing; seconded by Commissioner Decker.

A roll call vote was taken, and the motion passed unanimously.

3. Approval of TIF Reimbursement Request #2 from Kalamazoo Neighborhood Housing Services for single family infill housing projects completed in Kalamazoo, Michigan

Ms. McCarthy said the developer submitted a reimbursement packet with all of the required documentation.

Ms. Mulholland said the original request was around $122,000. After further conversation with their contractors, and evaluating the documentation, the request went down to $104,000. She said the biggest decrease was that the spreadsheet had a contingency calculation with no related documentation. Ms. Mulholland said some items were billed together (such as driveways and sidewalks) and had to be separated as only one charge was eligible. She also spoke about eligible activities she recommended adding.

Director Gulau asked how they measure the negative or positive economic impact in the community around them. Ms. McCarthy said she does include these houses in the end of year report for increase in taxable value. She noted that there is one contractor trying to do infill housing on their own. However, they are hard to build without partners. Director Gulau wondered if they could keep an eye on the appraisal gap to measure in future years. Ms. McCarthy said that was a great point, and she would bring that up to Sharilyn Parsons. Director Hess and Ms. McCarthy also talked about the pre-permitted plans the City is putting together and possibly using that as a Brownfield tool.

Commissioner Decker added that when new homes are built in an area, they need to think about individual property taxes being raised. She thought even if it is not raised significantly, it may be too much. Commissioner Decker wondered if they could make funds available for assistance in some way. Ms. McCarthy thought doing a tax study for those blocks would be a good idea.

Director Ferraro moved approval of TIF Reimbursement Request #2 from Kalamazoo Neighborhood Housing Services for single family infill housing projects completed in Kalamazoo, Michigan; seconded by Director Bair.

A roll call vote was taken, and the motion passed unanimously.

UNFINISHED BUSINESS

None.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF REPORTS AND UPDATES

1. 2023 National Brownfields Conference

Ms. McCarthy said the 2023 National Brownfields Conference will be in Huntington Place in Detroit. They have money in the budget for Board members to attend. Ms. McCarthy said she will send a save the date notice for Tuesday, August 8 – Friday, August 11. She stated that the agenda was being finalized and there would be hundreds of sessions. Ms. McCarthy shared that the City presentation about infill housing would be held on that Friday.

2. 530 S. Rose EGLE Grant Proposal (update)

Ms. McCarthy reported that they put in an early draft of the EGLE grant proposal for this property. EGLE came back and gave feedback on the scope of the project and what needed to be done on that site. SME is the consultant and changed the scope and figures in response to EGLE feedback. The new grant is just shy of $340,000. Ms. McCarthy explained that EGLE was doing their vetting on May 18 and would ask for full grant proposals. She asked if the Board would give approval for staff to put in that grant proposal as long as there is no significant change in scope or dollar amount. That would speed up the approval process to May instead of waiting until June. No concerns were voiced by the Directors.

ADJOURNMENT: 8:48 a.m.

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Beth Cheeseman
Recording Clerk

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Chair Signature

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Printed Name/Title

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY BOARD MEETING
Thursday, May 18, 2023
Community Planning and Economic Development
245 N. Rose Street, Kalamazoo, MI 49007

MEMBERS PRESENT: Nathan Bolton; Sharon Ferraro; Michael Gurnee; Kevan Hess; Jason Novotny; Lucas Middleton; Torean Greeley; Rachel Bair; Kyle Gulau

MEMBERS ABSENT: Andrew Schipper; Qianna Decker

CITY COMMISSIONERS/CITY STAFF PRESENT: Jamie McCarthy (Sustainable Development Coordinator); PJ Thuringer (Economic Development Supervisor); Beth Cheeseman (Executive Administrative Assistant); Logan Mulholland (Fishbeck, Consultant); Antonio Mitchell (Director, Community Planning and Economic Development)

Meeting was called to order at 8:09 AM by Director Hess.

MOTION TO EXCUSE ABSENT MEMBERS: Director Greeley moved to excuse absent members; seconded by Director Gurnee. Motion approved by voice vote unanimously.

APPROVAL OF AGENDA: Director Middleton, moved the approval of the agenda as presented; seconded by Director Bolton. Motion approved by voice vote unanimously.

APPROVAL OF MINUTES: Minutes from the Special Meeting of May 4, 2023 will be brought forward at the June meeting.

PUBLIC COMMENTS

None.

DIRECTOR'S COMMENTS

None.

NEW BUSINESS

1. Adoption of a Resolution Approving the Brownfield Plan Development Agreement between the Brownfield Redevelopment Authority and 19 Props, LLC and Authorizing the Chair to Sign.

Ms. McCarthy introduced Ms. Trisha Kidd and Mr. Matt Bastos from PlazaCorp. She indicated they would be available for any questions as they discussed this development agreement. Ms. McCarthy said this was adopted by the City Commission at their February meeting. They were excited that the project was able to offer rental rates below market rate, but they wanted City staff to facilitate additional affordable rates. She stated that in this development agreement the project committed to about 40% of the units to be offered at workforce housing rate (80-120% AMI). They also committed to offer three of their 82 units at 60% AMI. Ms. McCarthy said that DEGA agreed to step aside on this project for 15 years. Right now, the Brownfield Plan and development agreement would offer the developer 10 years of reimbursement (~$780,875) with 5 years of capture to LBRF (~$437,000). BRA Admin Fees are estimated at just over $101,000. She stated that this would largely cover the demolition and abatement work that has to happen in this project. Ms. McCarthy shared that they are converting commercial space and/or adding floors to get the 82 units and they are reactivating the first floor for a restaurant space. She mentioned that the development agreement follows standard language and was reviewed by Dickinson Wright. Ms. McCarthy stated that Dickinson Wright helped work out the affordability commitment – which is for the 10 years of TIF capture. She said the project is anticipated to create about 25 new jobs. It is also a $25 million investment.

Director Gulau requested clarification about this going before the City Commission. Ms. McCarthy explained that the Brownfield Plan did go before the City Commission. The development agreement is finalizing the BRAs commitment to reimburse the developer. She explained the timeline for the Brownfield Plan – first a public hearing before the BRA and then approval from the City Commission. Ms. McCarthy said she sometimes presents them together as a package deal, but for this one, the City is still working on the Neighborhood Enterprise Zone (NEZ). Director Gulau noted that the NEZ would double the length of reimbursement time. Ms. McCarthy stated that NEZ would cap taxes for a certain number of years (~12 years). There was some discussion regarding what risks the BRA would take on because of NEZ. Director Hess asked if they will have to vote on an amendment if NEZ comes along. Ms. McCarthy thought they would have to create an amendment. She suggested staff take a close look at that and bring to Projects and Finance Committee whatever amendment they feel is needed.

CPED Director, Mr. Antonio Mitchell, shared that the 400 Rose project was NEZ. He said they need to talk more about the stacking approach of using NEZ, BRA, DDA/DEGA. Director Mitchell said they will provide some examples of how that works.

Director Bolton asked for clarification regarding 19 Props LLC vs. PlazaCorp. Mr. Bastos stated that PlazaCorp is technically a management company. 19 Props LLC is the owner, but the same people own both. Ms. McCarthy stated that 19 Props LLC is used on the legal agreements.

Director Ferraro moved adoption of a Resolution Approving the Brownfield Plan Development Agreement between the Brownfield Redevelopment Authority and 19 Props, LLC and Authorizing the Chair to Sign; seconded by Director Gurnee.

A roll call vote was taken, and the motion passed unanimously.

2. Public Hearing for the 11th Amendment to the City's Revised Brownfield Plan

Ms. McCarthy shared that the City's Brownfield Plan has 51 Chapters. She said that staff regularly go through and manage that plan. Ms. McCarthy had three chapters to bring to them.

Chapter 42 - *315 E Alcott St.*

The Health Department had been leasing this building from PlazaCorp, and they had the opportunity to purchase the building. The BRA sold them the adjacent property at 311 E. Alcott. The parking and building have been combined into one parcel. That property is tax exempt and won't be eligible for TIF capture. The sale helped take care of any existing TIF liability. This board signed a release with PlazaCorp saying the agreement was satisfied. BRA got reimbursed through the sale for eligible activities for which the authority had paid. They also paid off the associated EGLE grant, so there is no debt. They are now in a position to remove the chapter from the plan.

Chapter 49 – *303 N. Rose* & **Chapter 51** – *180 E. Water Street*
Eligible property boundaries were cleaned up in these chapters. They included right of way (ROW) work that wasn't specified so the BRA could reimburse for eligible activities paid for in the ROW.

There is no significant fiscal impact to these projects, except technically BRA won't be receiving the same estimated admin funds from the Chapter 42 project.

3. Adoption of a Resolution Approving the Implementation of the 11th Amendment to the City's Revised Brownfield Plan and Recommend Adoption by the City Commission

Director Novotny announced that he would abstain due to project involvement.

Ms. McCarthy mentioned that if they adopt this resolution, it will go to the City Commission in June. None of these changes will impact any development agreements.

Director Bolton moved adoption of a Resolution Approving the Implementation of the 11th Amendment to the City's Revised Brownfield Plan and Recommend Adoption by the City Commission; seconded by Director Gurnee.

A voice vote was taken, and the motion passed. Director Novotny abstained.

4. Approval to submit an EGLE Brownfield Redevelopment Grant on Behalf of 530 S. Rose Street and Authorize the Chair to Sign

Ms. McCarthy said they had meetings with EGLE staff who suggested a scope change for this project. It was originally a $450,000 grant request that would cover some soil removal and disposal and a vapor intrusion mitigation system. After access to more soil assessment data on the site, everyone agreed to a change in scope whereby the first 3-3.5' of soil would be removed from the site from property line to property line. She stated that the necessary clean fill would be brought on site. Ms. McCarthy said that changed the grant request to $338,540. She indicated there was a summary of the break down by activity. The BRA staff administering the project would be receiving up to $8,340. Ms. McCarthy said they would track their time against that. She said the State did a pre-vetting of this proposal two weeks ago and gave them feedback. Ms. McCarthy stated that EGLE was doing a formal vetting that day. She wanted to get permission to have the chair sign off and submit this proposal so it would not be delayed one month. This project has multiple layers of funding, MSHDA, and City Home dollars with a lot of deadlines.

Director Hess pointed out that the Brownfield grant on the financing page showed a lesser amount than what they are requesting. Ms. McCarthy stated that they are receiving the smaller amount, but she will double check that the numbers are accurate.

Director Gulau asked if a 12% contingency was standard. Ms. McCarthy indicated that 10-15% is often used. Director Gurnee said they do have a policy on that. He wondered if MSHDA was involved in the conversation. Ms. McCarthy said there were two new EGLE reviewers working with MSHDA. Director Gurnee stated that MSHDA has their own environmental process. He noted that the grant is separate from occupancy. They will want to make sure that when the grant is done, they can still use the building for its intended purposes. Director Gurnee said it was concerning to him that they only have one groundwater sample. He wants to make sure they understand the full scope of what is out there. Director Gurnee recommended making sure MSHDA is involved early because they will do their own environmental review.

Director Gurnee moved approval to submit an EGLE Brownfield Redevelopment Grant on Behalf of 530 S. Rose Street and Authorize the Chair to Sign; seconded by Director Gulau.

A roll call vote was taken, and the motion passed unanimously.

UNFINISHED BUSINESS

None.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF REPORTS AND UPDATES

Ms. McCarthy announced they are in the process of hiring a part-time Brownfield Project Assistant. They offered the position to Ms. Heidi Gartley. She is currently a part-time Assessor in Hastings and helps out in a small township. She was looking for another part-time job. The job offer is conditional pending a background check and drug screening. Ms. McCarthy hopes to onboard her in June.

Ms. McCarthy shared that there was a Senate Bill 129 circulating about expanding the Brownfield Act to include more housing assistance. She said it was passed by the Senate and was moving on to the House. Ms. McCarthy said she hoped to get Dickinson Wright at a meeting to explain the bill and the implications for the Brownfield Authority. It would potentially expand the kinds of projects that would come forward to them and how they can assist.

ADJOURNMENT: 8:38 a.m.

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Beth Cheeseman
Recording Clerk

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Chair Signature

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Printed Name/Title

BRA Board of Directors Staff Report

City of Kalamazoo

TO: Brownfield Redevelopment Authority Board of Directors

FROM: Antonio Mitchell, Director of Community Planning and Economic Development
Prepared by: Jamie McCarthy, BRA Staff Liaison

DATE: June 15, 2023

SUBJECT: Public Hearing for an Act 381 Brownfield Plan for the redevelopment project at 215 E. Michigan Avenue (No Action).

SUMMARY:

See Agenda Report, Item F-2

BACKGROUND:

See Agenda Report, Item F-2

FISCAL IMPACT:

See Agenda Report, Item F-2

RECOMMENDATION:

No Action Necessary

Community Planning and Economic Development Department | 245 N. Rose Street, Ste 100, Kalamazoo, MI 49007
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BRA Board of Directors Staff Report

City of Kalamazoo

TO: Brownfield Redevelopment Authority Board of Directors

FROM: Antonio Mitchell, Director of Community Planning and Economic Development
Prepared by: Jamie McCarthy, BRA Staff Liaison

DATE: June 15, 2023

SUBJECT: Adoption of a Resolution approving the implementation of the Act 381 Brownfield Plan for 215 E. Michigan Avenue and recommend approval by City Commission.

SUMMARY:

The Brownfield Plan includes both local and State school tax capture (62% local, 38% State). The plan includes the following:

- **Eligible Activities**: Developer eligible activities include EGLE-eligible site assessments and hazardous materials survey ($21,100), MSF-eligible demolition ($54,000), lead & asbestos abatement ($78,000), infrastructure improvements ($5,000), site preparation ($19,500), as well as, contingence ($23,475), interest ($42,848), and work plans ($20,000).

- **Capture Period**: 17 years plus additional 5 years for LBRF; estimated capture and reimbursement periods include:
  - First 11 years school tax capture only (due to OPRA tax abatement) to developer
  - Next six years of capture of state and local taxes to developer (total $263,923)
  - Final five years of capture to the LBRF (total $115,771)
  - BRA will receive up to 10% administrative fee during the entire capture period (total $21,847)

- **Jobs**: The project is estimated to create 20 new FTE and employ up to 50 construction jobs/contractors
- **Activation and Use**: The project will bring the functionally obsolete building into compliance with all modern health and safety codes and activate an unoccupied commercial building into a vibrant public dining space at street level with outdoor amenities along the Michigan Avenue commercial corridor in the urban core of Kalamazoo

BACKGROUND:

The redevelopment project is located on eligible property consisting of a single parcel which is 0.153 acres in size and is located at 215 E. Michigan in the City of Kalamazoo, Kalamazoo County (Parcel Identification Number 06-15-378-098). The City of Kalamazoo Assessor, Aaron P. Powers, has determined that the property can no longer function the way it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or super adequacies in design. The functionally obsolete nature of the property qualifies the site as eligible property under Act 381.

The building is a former bank space that has been vacant for more than 10 years. The redevelopment project proposes to rehabilitate the building for use as a new restaurant space on the first floor and prepare the second floor, to the extent possible, for a future unidentified use. The project will connect to new outdoor amenities like the Haymarket Plaza.

FISCAL IMPACT:

The cost to administer the Brownfield Plan will be paid for by generation of new Tax Increment Revenues (TIR). BRA is projected to receive up to $21,847 in administrative fees, reimburse developer for eligible activities and partial interest costs for an amount not-to-exceed $263,923, and capture an estimated $115,771 into the Local Brownfield Revolving Fund.

RECOMMENDATION:

It is recommended the BRA adopt the Resolution approving implementation of the 215 E. Michigan Avenue redevelopment project and recommend approval by City Commission.

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY

A RESOLUTION APPROVING THE IMPLEMENTATION OF AN ACT 381 BROWNFIELD PLAN FOR 215 E. MICHIGAN AVENUE AND RECOMMENDING ADOPTION BY THE CITY COMMISSION

Minutes of a regular meeting of the City of Kalamazoo Brownfield Redevelopment Authority ("BRA") held on May 15, 2023 at 7:45 a.m., local time at 245 N. Rose Street, Ste. 100 in Kalamazoo, Michigan.

PRESENT: ____

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ABSENT: ____

The following resolution was offered by Member______________and seconded by Member______________.

RECITALS:

A. The City has created the City of Kalamazoo Brownfield Redevelopment Authority (the "Authority"), under the provisions of Act 381, Public Acts of Michigan, 1996, as amended ("Act 381").

B. Under Resolution No. 08-16, the City Commission delegated the public hearing process to the Authority regarding any future proposed Act 381 Brownfield Plan, including proposed Act 381 Brownfield Plan for 215 E. Michigan Avenue.

C. A public hearing was held by the Authority on May 15, 2023, on the Brownfield Plan for 215 E. Michigan Avenue, Kalamazoo; notice of the public hearing was given to all taxing authorities levying ad valorem or specific taxes against any parcels within the Brownfield Plan, as required by Act 381.

D. Following the public hearing on the 215 E. Michigan Avenue Brownfield Plan, the Authority, in consideration of any comments heard at the public hearing or written communications received at or prior to the public hearing, determines that the Brownfield Plan constitutes a public purpose in that:

a. It meets all requirements of Section 13 of Act 381.

b. The proposed method of financing the costs of eligible activities of the 215 E. Michigan Avenue Brownfield Plan is feasible, and the Authority has the authority to arrange the necessary financing.

c. The description of eligible activities and their estimated costs are reasonable and necessary to carry out the purposes of Act 381, and

d. The amount of captured taxable value estimated to result from the 215 E. Michigan Avenue Brownfield Plan is reasonable.

THEREFORE, IT IS RESOLVED THAT:

The City of Kalamazoo Brownfield Redevelopment Authority approves the implementation of the Act 381 Brownfield Plan for 215 E. Michigan Avenue in Kalamazoo and recommends the City Commission adopt a resolution approving this Brownfield Plan.

AYES: ____

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NAYS: ____

RESOLUTION DECLARED.

<u>CERTIFICATE</u>

The foregoing is a true and complete copy of a resolution adopted by the Brownfield Redevelopment Authority at a regular meeting held on May 15, 2023. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

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Elizabeth Cheeseman
Recording Secretary

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY

A RESOLUTION APPROVING THE BROWNFIELD PLAN DEVELOPMENT AND REIMBURSEMENT AGREEMENT BETWEEN THE BROWNFIELD REDEVELOPMENT AUTHORITY AND 215 EM PARTNERS, LLC RELATING TO AN ACT 381 BROWNFIELD PLAN FOR 215 E MICHIGAN AVENUE

Minutes of a regular meeting of the City of Kalamazoo Brownfield Redevelopment Authority ("BRA") held on June 15, 2023 at 7:30 a.m., local time at 245 N. Rose Street, Ste. 100 in Kalamazoo, Michigan.

PRESENT: ____

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ABSENT: ____

The following resolution was offered by Member______________and seconded by Member______________.

RECITALS:

A. The Authority, and the City of Kalamazoo (the "City"), have determined that brownfield redevelopment constitutes the performance of an essential public purpose which protects and promotes the public health, safety and welfare.

B. The City has established a Brownfield Redevelopment Authority and the Authority, and the City have adopted a Brownfield Plan specifically for this site (the "Plan"), pursuant to the provisions of Act 381.

C. The Authority and the City have designated certain properties that have conditions of environmental contamination, blight or obsolescence as appropriate sites for creating a Plan.

D. Act 381 permits the use of the real and personal property tax revenues generated from the increase in value (the "Increment") to brownfield sites constituting Eligible Property under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs of conducting Eligible Activities (these costs are referred to as "Eligible Costs") and permits the reimbursement to Developer of Eligible Costs it has incurred.

E. Developer currently owns property in the City commonly known as 215 E. Michigan Avenue, Kalamazoo, Michigan 49007, Parcel ID 06-15-378-098 (the "Property") and legally described on the attached Exhibit A of the Development and Reimbursement Agreement (the "Agreement").

F. The Property has been included in the Plan and qualified as an "Eligible Property" under the terms of Act 381.

G. Developer intends to rehabilitate commercial space on the first floor that has been vacant for over 10 years. The project will establish a new use in the building as a public restaurant space with outdoor amenities.

H. The total capital investment on the project is expected to be approximately $4 million. These investments are expected to create at least 20 new full-time equivalent positions paying an average wage of $15 per hour.

I. The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities including site assessment and baseline environmental assessment activities, lead and asbestos abatement, demolition, public infrastructure, site preparation, Brownfield Plan/Work Plan Preparation, and simple interest and which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals.

J. The parties are entering into this Agreement to establish the procedure for the reimbursement from Tax Increment Revenues under Act 381 as amended.

THEREFORE, IT IS RESOLVED THAT:

The City of Kalamazoo Brownfield Redevelopment Authority approves the Brownfield Plan Redevelopment Agreement for 215 E. Michigan Avenue in Kalamazoo and authorizes the Chair to sign.

AYES: ____

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NAYS: ____

RESOLUTION DECLARED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the Brownfield Redevelopment Authority at a regular meeting held on June 15, 2023. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

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Elizabeth Cheeseman
Recording Secretary

BROWNFIELD PLAN DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS BROWNFIELD PLAN DEVELOPMENT AND REIMBURSEMENT AGREEMENT (the "Agreement"), is entered into on _____________, 2023, between the **CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY,** a Michigan public body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, MCL 125.2651 et seq. ("Act 381"), whose address is 245 N. Rose, Suite 100, Kalamazoo, Michigan 49007 (the "Authority"), and **215 EM PARTNERS, LLC**, a Michigan limited liability company, whose address is 241 E. Michigan Avenue, Kalamazoo, Michigan 49007 (the "Developer").

RECITALS

A. The Authority, and the City of Kalamazoo (the "City"), have determined that brownfield redevelopment constitutes the performance of an essential public purpose which protects and promotes the public health, safety and welfare.

B. The City has established a Brownfield Redevelopment Authority and the Authority, and the City have adopted a Brownfield Plan specifically for this site (the "Plan"), pursuant to the provisions of Act 381.

C. The Authority and the City have designated certain properties that have conditions of environmental contamination, blight or obsolescence as appropriate sites for creating a Plan.

D. Act 381 permits the use of the real and personal property tax revenues generated from the increase in value (the "Increment") to brownfield sites constituting Eligible Property under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs of conducting Eligible Activities (these costs are referred to as "Eligible Costs") and permits the reimbursement to Developer of Eligible Costs it has incurred.

E. Developer currently owns property in the City commonly known as 215 E. Michigan, Kalamazoo, MI 49008, Parcel ID 06-15-378-098; 06-83-022-029; 06-84-022-029 (the "Property") and legally described on the attached Exhibit A.

F. The Property has been included in the Plan and qualified as an "Eligible Property" under the terms of Act 381.

G. Developer intends to redevelop and renovate the Property, which is functionally obsolete, into a commercial space occupied by a casual taco restaurant and taqueria. The total capital investment on the project is expected to be approximately $4 million. These investments are expected to create at least 20 new full-time equivalent positions paying an average wage of $15 per hour. Commencement of construction of the project is intended to begin within six months of the Effective Date of this Agreement and be completed within 18 months thereafter (Together, this description constitutes the “Project”).

H. The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities including site assessment and baseline environmental assessment activities, lead and asbestos abatement, building demolition, public infrastructure, site demolition, site preparation, Brownfield Plan/Work Plan Preparation, simple interest (capped at 20% of the non-interest Eligible Activities), and contingency and which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Developer's Eligible Costs shall not exceed $263,923 (including $21,100 in environmental expenses, $156,500 in non-environmental expenses, 42,848 in simple interest, and $43,475 in other local-only expenses as set forth in the Plan), over a period of not-to-exceed 17 years and/or actual expenses incurred and documented to the Authority's satisfaction.

I. The parties are entering into this Agreement to establish the procedure for the reimbursement from Tax Increment Revenues under Act 381 as amended.

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements set forth herein, the parties agree as follows:

1. Recitals. The above recitals are acknowledged as true and correct, and are incorporated by reference into this Paragraph.

2. The Plan. The Plan, approved by the Authority and the Kalamazoo City Commission, is attached as Exhibit B and incorporated as part of this Agreement. To the extent provisions of the Plan or this Agreement conflict with Act 381, Act 381 controls.

3. Term of Agreement. Pursuant to the Plan, the Authority shall capture and reimburse the Developer that amount of Tax Increment Revenues generated from real and personal property taxes allowed by law on the Eligible Property. At any time before the date that is four (4) years after the date of this Agreement, and after the completion of the Project, Developer may give to the Authority written notice directing the Authority to commence the capture of such Tax Increment Revenues (the "Capture Commencement Notice"). Completion of the Project shall be deemed achieved once a temporary or final certificate of occupancy is obtained for the Project. Capture will begin in the first full year after Developer's delivery of the Capture Commencement Notice, and will continue until the earlier of:

3.1. Full reimbursement to the Authority of its Administrative Costs, plus reimbursement to the Developer of the Property as outlined in the Plan, including reimbursement of Eligible Costs for those Eligible Activities set forth in Paragraph 5, plus an additional amount captured by the Authority for an additional five full years of tax capture ("Additional Authority Amount") such Additional Authority Amount to be designated for the Local Brownfield Revolving Fund "Local Fund"; or

3.2. Up to 22 full years. With five of the 22 years designated for Local Brownfield Revolving Fund (LBRF) capture only.

4. Evidence of Ownership. Not later than the date of delivery of the Capture Commencement Notice, Developer shall provide to the Authority each of the following: (a) evidence satisfactory to the Authority that the Developer has acquired fee simple title to the Property, which evidence shall include (without limitation) a copy of a recorded deed to the Property in favor of the Developer; and (b) a copy of a commitment for owner's title insurance with respect to the Property (the "Commitment"), which Commitment shall show the Developer as record owner of the Property, and shall otherwise be in form and reasonably substance satisfactory to the Authority.

5. Eligible Activities. The Developer shall diligently pursue completion of the Eligible Activities summarized in the Plan and set forth in this Paragraph. The Authority shall, in accordance with the terms of this Agreement, reimburse the Developer for Eligible Costs incurred on or after the date of the inclusion of this Project in the Plan. For purposes of this Agreement, "Eligible Costs" means costs incurred in conducting Eligible Activities including environmental due diligence and due care activities, site assessment and baseline environmental assessment activities, lead and asbestos abatement, building demolition, public infrastructure, site demolition, site preparation, Brownfield Plan/Work Plan Preparation, simple interest, and a contingency amount, and which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals, and/or any other Eligible Activities permitted under Act 381 and summarized in the Plan. Additionally, the Authority shall reimburse the Developer for any Eligible Costs which were incurred on or after the date that is five (5) years before the date of the inclusion of this Project in the Plan, subject to the requirements and process set forth in this Agreement.

6. Reimbursement Source. During the term of this Agreement and except as otherwise set forth in this Agreement, the Authority shall reimburse the Developer for its Eligible Costs, in accordance with the process herein, and as limited under this Agreement, from all available (actually captured) Tax Increment Revenues collected from the real and personal property taxes on the Property.

7. Reimbursement Process.

7.1. Cost Reimbursement Request. Before December 31 of the year after Developer provides the Capture Commencement Notice, the Developer will provide sufficient documentation of the Eligible Costs incurred including the dates of each Eligible Activity, a complete description of the work, proof of payment, detailed invoices for the costs involved for each Eligible Activity, sworn statements, lien waivers from Developer's general contractor (to include verification that all applicable subcontractors were paid in full) and other back up documentation reasonably requested by the Authority; a written statement certifying to the Authority that all such costs are Eligible Costs; and a final or temporary certificate of occupancy to document completion of the Project or such other certificate as is required under any tenant lease for the applicable portion of the Project in order for Developer to turnover such space to its tenant. The information and documentation described in the preceding sentence comprise the "Completed Request".

Failure to provide the above noted information when due, or within the time permitted by the Authority under Paragraph 7.2, shall not extend the term of the Agreement and consequently may result in foregone reimbursement, to the Developer by the Authority, for Eligible Costs.

7.2. Authority Staff Review. The Authority Staff shall review each reimbursement request within 30 days after receiving it. If Authority Staff determines that the documentation submitted by the Developer is not a Completed Request, then Developer shall reasonably cooperate in the Authority's review by providing, within 30 days of the Authority's written request, any additional documentation of the Eligible Costs as is reasonable and necessary by the Authority in order to complete its review. Within 45 days following the receipt of such supplemental information, the Authority shall make the determination of whether the costs are eligible for reimbursement. If the Developer wishes to challenge that determination, it shall provide written notice to the Authority within 15 days of the Authority Staff's written determination, and the issue shall be brought to the Authority within 45 days thereafter for its determination. The Developer shall not be entitled to any claim or cause of action for consequential damages against the Authority as a result of any determinations made in good faith regarding whether or not any cost submitted by the Developer constitutes an "Eligible Cost," and hereby grants the City and the Authority and their respective officers, agents and employees, a complete release and waiver of any such claims or causes of action as a result of the foregoing. Any dispute arising out of a request for reimbursement shall not affect Developer's right to receive reimbursements as to the undisputed portions of the Completed Request.

7.3. Reimbursement. Before July 31 of the year after Developer delivers a Capture Commencement Notice (and as property taxes are received each subsequent year) after both the summer and winter taxes are captured and collected on the Property, the Authority shall reimburse its Administrative Costs and pay approved Eligible Costs to the Developer from Tax Increment Revenues that are generated from the Property in accordance with the Plan and Paragraph 7 to the extent that taxes have been captured and are available in that fiscal year. The Authority shall receive ten (10) percent of Tax Increment Revenues each year until its Administrative Costs are fully reimbursed, unless a lower percentage is otherwise designated by the Authority.

In the event that there are insufficient Tax Increment Revenues available in any given year to reimburse all of Developer's Eligible Costs, as described in Paragraph 5, then the Authority shall reimburse the Authority or Developer only from available Tax Increment Revenues. The Authority shall make additional payments, on an annual basis as property taxes are received, toward the Developer's remaining unpaid Eligible Costs during the term of this Agreement. Except as otherwise provided in this Agreement, the Developer shall not be entitled to receive any interest on amounts for which reimbursement is requested under this Agreement. The Developer shall not be entitled to reimbursement under this Agreement unless all real and personal property taxes have been timely and completely paid, including all penalties, interest and other amounts due in relation thereto when due. For purposes of this Agreement, to be timely paid, taxes must be paid before the date on which they can no longer be paid without penalties or interest. The repayment obligation under this Agreement shall expire upon the earlier of the full payment by the Authority to the Developer of all amounts due to the Developer from the Tax Increment Revenues or up to 17 full years from the beginning of Tax Increment Revenue capture. Notwithstanding anything herein to the contrary, if there is a reduction of the Tax Increment Revenue capture for the Project from that projected, then the Authority shall, in good faith, consider requests from the Developer to extend the term of this Agreement and/or the capture and reimbursement term to allow for the full reimbursement to Developer for all of the Developer's Eligible Costs, unless the reduction of the Tax Increment Revenue capture is the result of a tax appeal.

7.4. Method of Reimbursement. The Authority will reimburse the Developer for

Eligible Costs as follows:

Checks shall be payable to and delivered by certified mail (or through electronic transfer if available through Developer) to:

215 EM Partners, LLC
241 E. Michigan Avenue
Kalamazoo, Michigan 49007

8. Adjustments. The parties acknowledge that adjustments regarding the amount of Tax Increment Revenue paid to the Developer may occur under any of the following circumstances:

8.1. Audit or Court Ruling: In the event that a state agency of competent jurisdiction conducting an audit of payments made to the Developer under this Agreement or a court of competent jurisdiction determines that any portion of the payments made to the Developer under this Agreement is unlawful, the Developer shall pay back to the Authority that portion of the payments made to the Developer within 30 days of the determination made by a state agency or the court as the case may be. However, the Developer shall have the right, before any such repayment is made, to appeal on its or the Authority's behalf, any such determination made by a state agency or court as the case may be. If the Developer is unsuccessful in such an appeal, the Developer shall repay the portion of payments found to be unlawful to the Authority within thirty (30) days of the date when the final determination is made on the appeal. The Developer shall be responsible for payment of all of the City's and Authority's legal fees associated with any determination of whether a cost for which reimbursement is requested constitutes an "Eligible Cost" and all of the City's and Authority's legal fees associated with the review or determination of such issues by any state agency or court.

8.2. Property Tax Appeal: In the event the Developer, or any other owner of real estate on the Property, files an appeal related to the taxable value of parcels of property included in the Brownfield Plan, the Authority shall do the following:

(a) The Authority will hold the Tax Increment Financing Reimbursement payments in a separate account for the Authority until the pending appeal is adjudicated;

(b) Once any tax appeals are adjudicated, the Authority will either return the funds held in escrow to the local unit in compliance with any tax appeal rulings or will make payments pursuant to Section 7 of this Agreement.

8.3. Reduction of Property Assessments. If the Authority (i) incurs Costs on behalf of the Developer with respect to the Project, Site or Application and (ii) the Developer initiates, participates in or supports any proceeding or process which results in a reduction of the tax increment capture for the Project from that projected and along the same term as contained within the Plan, then the provisions under Paragraph 3 will require a redetermination regarding the amount of Tax Increment Revenues that the Authority previously paid to Developer (the excess amount determined to have been paid is the "Excess Amount") as a result of such lower assessments. If that amount is less than the actual amount of Tax Increment Revenues that the Authority has already paid to the Developer, the Excess Amount shall be offset against future reimbursements to Developer of Eligible Costs.

9. Responsibilities of Developer. In consideration of the inclusion of the Property into the Plan and the resulting financial benefits, which it expects to receive, and the Authority's commitments to capture of Tax Increment Revenue and to assist the Developer in the Project, Developer agrees to the following:

9.1. Project. At its sole expense, the Developer shall use its best efforts to conduct the activities described in the Plan and to construct the Project. Notwithstanding anything herein to the contrary, the Developer’s obligation to commence construction of the Project shall be subject to Developer’s determination, in its business discretion, that the Project is viable. The total capital investment on all phases of the project is expected to be approximately $4 million. Subject to matters beyond the reasonable control of the Developer (e.g., war, acts of God, failure to obtain governmental approvals, governmental restrictions, exceptional health concerns for which a "stay at home" or "shelter in place" order is issued by an applicable governmental authority, etc.) ("Force Majeure"), the Developer shall commence construction of the Project on a date (the "Commencement Date") that is within six months of the effective date of this Agreement. The Developer shall use commercially reasonable efforts to substantially complete the Project to the point of obtaining a certificate of occupancy within 18 months after the Commencement Date. Under no circumstances shall the Authority have any responsibility or liability for remediation or redevelopment of the Property, or for conducting any "Eligible Activities" at the Property, except for its obligations under this Agreement to provide funds to the extent available as permitted in Paragraph 7 hereof with respect to payments from Tax Increment Revenues.

9.2. Employment Opportunities. To make every reasonable effort to work with the City and community employment agencies to hire city residents for new employment opportunities created by the Project, and to encourage the local contracting of employment opportunities through re-entry employment programs. Regardless of Developer's ability to hire city residents it shall make every reasonable effort to follow, and to cause any contractors hired to perform work on the Project, to follow the City's "Ex-Offender Purchasing" policy regarding hiring new employees who will work on the Project. A copy of this policy is attached as Exhibit C and Developer will provide a copy of it to its general contractor prior to performing any work on the Project.

9.3. Ordinances. Develop the Property, including landscaping and all other improvements required for the Project, in compliance with all local ordinances, site plan reviews, and this Agreement. The redevelopment of the Property shall be subject to all zoning approvals. This Agreement does not obligate any governing municipality to grant any such approvals.

9.4. Project Sign. Place on the Property during rehabilitation/redevelopment a development sign provided by the Authority to promote the Project and the Authority's participation in it. Upon completion of the Project, the sign will be returned to the Authority.

9.5. Promotion and Marketing. Permit the Authority to cite or to use any renderings or photographs or other materials of the Project as an example of private/public partnership and brownfield site redevelopment.

9.6. Cooperation. Assist and cooperate with the Authority in providing information that the Authority may require in providing necessary reports to governmental or other agencies, including, but not limited to, information regarding the amount of Developer expenditures and capital investments, jobs created, and square footage developed or rehabilitated with respect to the Project.

10. Responsibilities of the Authority. In consideration of the preceding commitments of Developer the Authority further agrees to:

10.1. Agency Contacts. Provide Developer with appropriate service/employment agency contacts for the identification of City residents to interview for potential employment; and

10.2. Tax Increment Revenues. To utilize Tax Increment Revenue to reimburse Developer for Eligible Costs incurred by Developer in completing the Project subject to actual capture and as limited and detailed in this Agreement.

11. Developer's Representations, Warranties and Covenants. The Developer hereby makes the following representations, warranties and covenants:

11.1. Eligible Property. To Developer's knowledge and belief, the Property is "eligible property" as defined in Act 381 and is eligible for the capture of Tax Increment Revenues pursuant to Act 381.

11.2. Eligible Costs. The Developer will only submit for reimbursement under Paragraph 7 hereof such costs that it has reasonably determined are Eligible Costs within the meaning of Act 381.

11.3. Due Authorization. The representatives signing this Agreement are duly authorized by the Developer to enter into this Agreement.

12. Events of Default. Each of the following shall constitute an event of default:

12.1. Any representation or warranty made by the Developer in this Agreement proves to have been incorrect or incomplete in any material respect when made or deemed to be made.

12.2. The Developer fails to observe or perform any covenant or agreement contained in this Agreement for 30 days after written notice thereof shall have been given to the Developer by the Authority.

12.3. The Developer abandons or withdraws from the reuse and redevelopment of the Property.

12.4. The Developer fails to pay when due any funds which are required to be paid to the Authority pursuant to this Agreement, including but not limited to its real and personal property taxes as set forth in Paragraph 7 hereof, and such failure continues for thirty (30) days after written notice from the Authority.

12.5. The Developer terminates its existence in order to avoid its obligations under this Agreement.

13. Remedies upon Default.

13.1. If any event of default as defined above shall occur and be continuing for 30 days after written notice of default from the Authority (or such additional time as may be reasonably necessary to cure the default at issue provided that Developer has commenced such cure within the initial thirty (30) days and is proceeding in good faith to cure), the Authority shall have the right, but not the obligation, to exercise any of the following rights and remedies either individually or concurrently:

(a) Terminate this Agreement effective immediately upon notice to the Developer;

(b) All other remedies available at law or in equity;

(c) In addition, if the Developer fails to substantially complete the Project within the timelines required by this Agreement (but subject to Force Majeure), or if Developer otherwise defaults prior to substantial completion of the Project, Developer shall pay back to the Authority (within thirty (30) days following demand by the Authority) any amounts paid to Developer as reimbursement for Eligible Costs with respect to such incomplete phase of the Project pursuant to the terms of this Agreement or otherwise; and

(d) Withhold, suspend or rescind reimbursement to Developer for Eligible Costs from Tax Increment Revenue as set forth in Paragraph 5 until Developer has cured such default to the satisfaction of the Authority. Any such action by the Authority shall not under any circumstances extend the time period under subparagraph 3.2 unless specifically approved by the Authority.

(e) The Authority is responsible for its own cost and expenses including attorney fees incurred by the Authority to enforce its rights under this Agreement.

13.2. If the Authority fails in any material respect to perform or provide the Incentives, and such failure continues for a period of thirty (30) days after written notice from Developer to the Authority specifying the alleged default (or such additional time as may be reasonably necessary to cure the default at issue provided that the Authority has commenced such cure within the initial thirty (30) days and is proceeding in good faith to cure), the Developer shall have the option to exercise one or any combination of remedies under this Agreement or otherwise available at law or in equity, including without limitation, to withhold or suspend the performance of all or any of the commitments under Paragraph 9. The Developer is responsible for its own cost and expenses including attorney fees incurred by Developer to enforce its rights under this Agreement.

14. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in Act 381. In the event that there is legislation enacted in the future which alters or affects the amount of Tax Increment Revenues subject to capture, Eligible Properties, or Eligible Activities, then the Developer's rights and the Authority's obligations under this Agreement may be modified accordingly by agreement of the parties.

15. Freedom of Information Act. Developer stipulates that all petitions and documentation submitted by Developer shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, MCL 15.231 et seq., and no claim of trade secrets or other privilege or exception to the Freedom of lnformation Act will be claimed by Developer as it relates to this Agreement or petitions and supporting documentation.

16. Plan Modification. The Plan and this Agreement may be modified to the extent allowed under the Act by mutual agreement of the parties.

17. Notices. All notices and other communications required or permitted under this Agreement shall be in writing, shall be deemed given when delivered, and shall be sent by personal delivery, overnight courier, or registered mail, return receipt requested, to the following addresses (or any other address that is specified in writing by either party):

If to Developer:

215 EM Partners, LLC
241 E. Michigan Avenue
Kalamazoo, Michigan
49007

If to the Authority:

City of Kalamazoo
Brownfield
Redevelopment Authority
241 West South Street
Kalamazoo, Michigan
49007

With copy to:

Jessica L. Wood,
Dickinson Wright PLLC
200 Ottawa Avenue NW, Suite 1000
Grand Rapids, Michigan 49503

18. Indemnification. Developer shall defend, indemnify and hold harmless the Authority and the City, and any of their respective past, present and future members, officials, employees, agents or representatives from all losses, demands, claims, judgments, suits, costs and expenses (including without limitation the costs and fees of attorneys or other consultants) arising from or related to (i) the capture and use of Tax Increment Revenue paid to Developer as a reimbursable payment under this Agreement made in excess of the amount of tax increment revenues the Authority is determined by the State or court to be allowed by law to use for that reimbursement, and (ii) the Project.

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

20. Binding Effect/Third Parties. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors, but it may not be assigned by any party without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned or delayed. The Developer may make a collateral assignment of this Agreement to any institutional lender in connection with any financing for the Project. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement.

21. Waiver. No failure of either party to complain of any act or omission on the part of the other party, no matter how long this same may continue, is considered as a waiver by that party to any of its rights hereunder. No waiver by either party, expressed or implied, of any breach of any provision of this Agreement is considered a waiver or a consent to any subsequent breach of this same or other provision.

22. Authorization. Each of the parties represents and warrants to the other that this Agreement and its execution by the individual on its behalf are authorized by the board of directors or other governing body of that party.

23. Entire Agreement. This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

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

25. Estoppel. At the request of Developer, the Authority will, within twenty (20) days after request, deliver to Developer, or anyone designated by Developer, an estoppel certificate stating that, as of the date of the certificate, Developer: (i) has performed all of its undertakings under this Agreement; (ii) has met all of its obligations for capital investment, square footage or job creation criteria; (iii) has substantially completed the Project in accordance with project plans or satisfied the requirements set forth in the approved site plan; (iv) has fulfilled commitments under Paragraph 9; and (v) is otherwise not in default under this Agreement, if all the above are true. Further, the Authority shall indicate that the Agreement is in full force and effect and is unmodified; or if modified, Developer has complied with all modifications and that Developer is not in default under the Agreement; or if Developer is in default, stating the nature of the default.

26. Definitions. The following capitalized terms are used in this Agreement with the following meanings:

"Administrative Costs" means the Authority's out-of-pocket costs associated with the Project (including reasonable attorney fees and costs, environmental consulting fees and costs, and similar fees and costs) as well as the Authority's indirect costs associated with the Project (including allocation of the fixed costs of the Authority staff);

"Brownfield Plan" is defined by Section 2(e) of Act 381;

"Due Care Activities" is defined by Section 2(m) of Act 381;

"Eligible Activities" is defined by Section 2(o) of Act 381;

"Eligible Property or Properties" is defined by Section 2(p) Act 381;

"Tax Increment Revenues" is defined by Section 2(ss) of Act 381, and, for purposes of this Agreement, includes school taxes and local (non-school) taxes.

[Signatures appear on the following pages)

In witness of their intent to be legally bound by the terms of this Agreement, each of the parties has set forth its signature below by its duly authorized representative.

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

____

By: ____________________________

Its: _____________________________

215 EM PARTNERS LLC

____

By: ____________________________

Its: _____________________________

EXHIBITS:

A (Legal Description of Property)
B (Copy of Brownfield Plan)
C (Ex-Offender Purchasing)

4893-2703-8826 v2 [105916-1]

EXHIBIT A

LEGAL DESCRIPTION

Parcel ID: 06-15-378-098

276 ORIGINAL PLAT OF THE TOWN (NOW CITY) OF KALAMAZOO, Liber 6 of Plats Page 8; Commencing on the north line of East Michigan Avenue at a point South 60 degrees West 264.81 feet from the west line of North Edwards Street; thence North 30 degrees West 100 feet parallel with the west line of North Edwards Street; thence South 60 degrees West 66.83 feet parallel with the north line of East Michigan Avenue; thence South 30 degrees East 100 feet parallel with the west line of North Edwards Street to the north line of East Michigan Avenue; thence North 60 degrees East 66.83 feet along the north line of East Michigan Avenue to the point of beginning.

Parcel ID: 06-83-022-029 (OPRA)

Parcel ID: 06-84-022-029 (OPRA)

BRA Board of Directors
Staff Report

City of Kalamazoo

TO: Brownfield Redevelopment Authority Board of Directors

FROM: Antonio Mitchell, Director of Community Planning and Economic Development
Prepared by: Jamie McCarthy, BRA Staff Liaison

DATE: June 15, 2023

SUBJECT: Adoption of a Resolution approving a Grant Agreement between BRA and 530 S Rose LDHA LP for an EGLE Brownfield Redevelopment Grant.

SUMMARY:

EGLE vetted the current grant proposal on May 18, 2023 and invited the BRA to submit a final grant application. The project received positive feedback during vetting and has been selected as a finalist for funding. The attached Grant Agreement between BRA and 530 S Rose LDHA LP ("Developer") is a required supporting document for the grant application. The agreement includes terms and conditions upon which BRA will reimburse Developer for qualifying project expenses following an award from EGLE and separate approval by BRA and City Commission.

The level of funding support will be decided by EGLE upon receipt of a final grant application. Staff anticipates the award of a grant from EGLE in the amount of $338,540, including an administration cost of $8,340, to facilitate due care planning and contaminated fill removal and disposal at the site. The 3-year grant must be awarded and accepted no later than September 15, 2023. The funding would be distributed to the BRA on a reimbursement basis to address environmental conditions associated with the redevelopment of the parcel into affordable senior apartments.

BACKGROUND:

FISCAL IMPACT:

The cost to administer the EGLE Grant is provided as a line item in the grant budget. If awarded, the BRA would receive up to $8,340 in cost reimbursement to cover administrative time spent on the project.

RECOMMENDATION:

Community Planning and Economic Development Department | 245 N. Rose Street, Ste 100, Kalamazoo, MI 49007
Voice: (269) 337-8744 | Fax: (269) 337-8513 | www.kalamazoocity.org

It is recommended the BRA adopt the Resolution approving the Grant Agreement between the BRA and 530 S Rose LDHA LP for an EGLE Brownfield Redevelopment Grant and authorize the Chair to sign.

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY

A RESOLUTION APPROVING A GRANT AGREEMENT WITH 530 S ROSE LDHA LP FOR A PROJECT AT 530 S ROSE STREET, KALAMAZOO, MICHIGAN

Minutes of a regular meeting of the Board of Directors of the City of Kalamazoo Brownfield Redevelopment Authority, held on June 15, 2023, at 7:45 a.m., local time at 245 N. Rose Street, Ste. 100 in Kalamazoo, Michigan.

PRESENT: ____

ABSENT: ____

The following resolution was offered by Member ____________ and supported by Member __________________.

RECITALS:

A. The City of Kalamazoo Brownfield Redevelopment Authority ("AUTHORITY") is submitting an application to receive a Brownfield Redevelopment Grant ("Grant") from the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") to support 530 S ROSE LDHA LP (Developer) in the development of a new affordable senior housing project. The vacant 0.5 acre parcel is identified as Parcel No. 06-22-114-030.

B. The Authority anticipates the award of a Grant from EGLE in the amount of $338,540, including an administration cost of $8,340, to facilitate due care planning and contaminated fill removal and disposal and to address other environmental conditions associated with the redevelopment of a former residential property located at 530 S. Rose St., Kalamazoo, MI 49007, within the Vine Neighborhood (the "Property").

C. The Authority will, in turn, award up to $330,200 of the EGLE Grant proceeds (the "Grant Proceeds") to Developer for reimbursement of eligible costs in order to further the redevelopment the Property, which is currently a surface parking lot, into a five-story affordable senior housing project, all as further detailed in the Project Proposal and Budget Table (the "Project"). The administration cost is payable to the Authority, which will act as Grant Administrator, as permitted by the EGLE Grant Agreement.

D. The Grant application is consistent with the goals and objectives of BRA, under the powers granted to it under Act 381, in redeveloping contaminated sites.

THEREFORE, IT IS RESOLVED:

1. The BRA Board of Directors authorizes its Chairperson to sign and submit the Agreement to EGLE as part of the Brownfield Redevelopment Grant application and its supporting documentation. This authorization includes, without limitation, the ability to negotiate and execute the EGLE Agreements relating to the acceptance and use of the Grant; and to negotiate and execute any contracts or other documents necessary to implement the provisions and intent of this resolution on behalf of the BRA.

2. If the Grant is awarded and accepted by the BRA, BRA staff is directed to administer and oversee the work undertaken for the Due Care Activities - subject to the provisions of the Agreement and EGLE Agreement and in compliance with EGLE rules and regulations – to ensure such Grant funds are properly allocated for the purposes set forth in the EGLE Grant application.

3. The use of the Grant funds are consistent with the obligations of the parties who have signed the Agreement and the Project is further consistent with current zoning designations and with the Master Plan for the City of Kalamazoo.

AYES, Directors ____

NAYS, Directors ____

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

I certify that (i) the above is a true and complete copy of a resolution adopted by the Board of Directors of the City of Kalamazoo Brownfield Redevelopment Authority at a regular meeting held on June 15, 2023; the meeting was conducted and public notice of it was given to and in full compliance with the Michigan Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976); and minutes of the meeting were kept will be available as required by the Act.

____
Elizabeth Cheeseman
Recording Secretary

530 S. ROSE PROJECT GRANT AGREEMENT

This **530 S. ROSE PROJECT GRANT AGREEMENT** ("Agreement") is entered into between the City of Kalamazoo Brownfield Redevelopment Authority, a Michigan public body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, MCL 125.2651 *et seq*., whose address is 245 N. Rose Street, Suite 100, Kalamazoo, MI 49007 (the "Authority"), and 530 Rose Limited Dividend Housing Association Limited Partnership, a Michigan limited partnership whose address is 102 S. Main Street, Mount Pleasant, MI 48858 ("Developer") (collectively, the "Parties").

RECITALS

A. The Authority agreed to assist and support Developer in seeking state incentives. To that end, Developer and Authority have collaborated to apply for a Brownfield Grant ("Project Proposal") from the Michigan Brownfield Redevelopment Program established under the auspices of the State of Michigan Department of Environment, Great Lakes & Energy ("EGLE"). The Project Proposal is attached as Exhibit A. The Project Proposal includes a proposed budget ("Budget Table"), which is attached as Exhibit B.

B. The Authority anticipates the award of a grant from EGLE (the "EGLE Grant") in the amount of $338,540, including an administration cost of $8,340, to facilitate due care planning and contaminated fill removal and disposal and to address other environmental conditions associated with the redevelopment of a property located at 530 S. Rose St., Kalamazoo, MI 49007, near downtown Kalamazoo (the "Property").

C. The Authority anticipates execution of an EGLE Brownfield Grant Agreement (the "EGLE Grant Agreement"), which will outline the terms and conditions of the EGLE Grant and which, upon execution, is incorporated herein by reference.

D. The Authority will, in turn, award up to $330,200 of the EGLE Grant proceeds (the "Grant Proceeds") to Developer for reimbursement of eligible costs in order to further the redevelopment the Property, which is currently a surface parking lot, into a five-story affordable senior housing project, all as further detailed in the Project Proposal and Budget Table (the "Project"). The administration cost is payable to the Authority, which will act as Grant Administrator, as permitted by the EGLE Grant Agreement.

E. The Parties desire to document their agreement regarding disbursements of the Grant Proceeds to fund the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. <u>Recitals.</u> The above recitals are acknowledged as true and correct and are incorporated by reference into this paragraph.

2. <u>Compliance with EGLE Grant.</u> Developer represents and warrants to the Authority that Developer is eligible to receive the Grant Proceeds under the terms of the EGLE Grant

Agreement. Developer shall use the Grant Proceeds solely for the purposes specified in the EGLE Grant Agreement in connection with the development of the Project. Developer agrees to comply with all terms and conditions of the EGLE Grant Agreement. Developer shall provide to the Authority on a timely basis such information regarding the Project and the use of the Grant Proceeds as the Authority may request from time to time in order for the Authority to comply with the EGLE Grant Agreement's deliverables and reporting requirements.

3. Disbursement of Grant Funds. The Authority shall disburse the Grant Proceeds to Developer for reimbursement of eligible Project costs within 30 days of EGLE's approval of a reimbursement request. Developer shall in no event use any portion of the Grant Proceeds to pay costs not eligible for reimbursement under the EGLE Grant Agreement.

4. Deliverables and Reporting Requirements.

   a. Developer must complete and submit quarterly progress reports according to a form and format prescribed by EGLE and must include a narrative of the progress of the Project, including details regarding activities completed, documentation of milestones (including invoices and proof of payment), and photographs of on-site activities at the end of each quarter by the following dates: 10/1, 1/15, 4/15, 7/15.

   b. Developer shall provide a final project report in a format prescribed by EGLE. Developer shall submit the final status report, including all supporting documentation for expenses, along with the final project report and any other outstanding requirements, as soon as reasonably practicable, but in no case later than 15 days following the final completion of the Project.

   c. If fifteen percent (15%) or more of the Grant Proceeds are expended in a single quarter, payment requests may be submitted more than once during that quarter.

5. Developer Representations.

   a. Developer agrees to abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the performance of this Agreement.

   b. By acceptance of this Agreement, Developer commits to complete the Project consistent within the time period allowed and in accordance with the terms and conditions set forth in the EGLE Grant Agreement.

   c. All local, state, and federal permits, if required, are the responsibility of Developer.

   d. Developer shall be solely responsible to pay all applicable taxes and fees, if any, that arise from Developer's receipt of the Grant Proceeds.

   e. Developer is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports and other services submitted to EGLE under this Agreement. Developer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in drawings, designs, specifications, reports or other services.

f. EGLE's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Developer of responsibility for the technical adequacy of the work. EGLE's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or the EGLE Grant Agreement or of any cause of action arising out of the performance of this Agreement or the EGLE Grant Agreement.

g. Developer agrees to use the Grant Proceeds only for eligible expenses related to the scope of the work described in the EGLE Grant Agreement.

h. Developer acknowledges that it is a crime to knowingly and willingly file false information with EGLE for the purpose of obtaining this Agreement, the EGLE Grant Agreement, or any Grant Proceeds under this Agreement, and that any such filing may subject Developer, its agents, and/or employees to criminal and civil prosecution and/or termination of the EGLE Grant.

i. Developer shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq*.

6. Notices. Any notice or other communication under this Agreement is only effective if in writing, signed by an authorized representative of the party sending the notice, and delivered to the other party in person or either by certified mail, with return receipt requested, or first-class mail, in both cases with postage fully paid and mailed to:

FOR DEVELOPER:

530 Rose Limited Dividend Housing Association Limited Partnership
102 S. Main Street
Mt. Pleasant, MI 48858

FOR AUTHORITY:

City of Kalamazoo Brownfield Redevelopment Authority
c/o Jamie McCarthy
Its: Sustainable Development Coordinator
245 N. Rose Street, Suite 100
Kalamazoo, MI 49007

w/copies to the Authority's Attorney

Jessica Wood
Dickinson Wright PLLC

200 Ottawa Ave. NW
Suite 1000
Grand Rapids, MI 49503

7. Assignment. Developer may not assign any of its rights under this Agreement without the express written consent of the Authority.

8. Repayment of Grant Proceeds. If Developer shall default in the performance of any of its obligations under this Agreement, and fails to cure such default with thirty (30) days following written notice thereof from the Authority, then it shall be deemed an "Event of Default" by Developer under this Agreement. If an Event of Default by Developer results in a repayment obligation under the EGLE Grant Agreement whereby the Authority is required to repay all of any portion of the Grand Proceeds to EGLE, then Developer shall be responsible to reimburse the Authority for any such amounts required to be repaid to EGLE under the EGLE Grant Agreement; provided, however, that before making any repayment to EGLE under the EGLE Grant Agreement, the City shall first provide written notice to Developer of such repayment obligation and afford Developer all reasonable opportunities to address and cure the alleged failure or default giving rise to such repayment obligation prior to making any such repayment, including without limitation, the opportunity to seek to resolve such alleged failure or default directly with EGLE. Developer's repayment obligations shall include any and all cost and reasonable attorney fees that the Authority may incur to enforce such obligation of Developer pursuant to this Agreement.

9. Governing Law. This Agreement is governed under applicable Michigan law. Both parties had the assistance of or the opportunity to consult with legal counsel in the negotiation and preparation of this Agreement. Therefore, no construction or ambiguity of this Agreement is resolved against either party.

10. Suspension Clause. Upon an Event of Default by Developer under this Agreement, in addition to the remedy set forth in Paragraph 8, the Authority shall be permitted to withhold future disbursements of Grant Proceeds until such Event of Default is cured by Developer to the Authority's reasonable satisfaction.

11. Amendments. This Agreement may only be amended by the mutual agreement of the Parties, evidenced in writing.

12. Indemnity and Insurance. Developer shall maintain its current level of liability insurance, with the Authority as an additional named insured. Developer must comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement. Developer shall submit verification of insurance satisfactory to Authority prior to its first request for reimbursement. Developer shall indemnify and hold the Authority harmless for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by Developer under this Agreement if the liability is caused by Developer, or any employee or agent of Developer acting within the scope of their employment or

agency. Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Authority, its agents, or its employees as provided by law.

13. Access Agreement. Developer agrees to execute a separate access agreement for the Property.

14. Non-Discrimination. Developer shall comply with the Elliot Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national original, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Developer agrees to include in every subcontract entered into by Developer after the date hereof for the performance of Developer's remediation activities under this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

15. State Cancellation. The Parties acknowledge that the EGLE Grant Agreement may be cancelled by EGLE within 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the Authority, or upon mutual agreement by EGLE and the Authority. EGLE may honor requests for just and equitable compensation for all satisfactory and eligible work completed under the EGLE Grant Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the State. The parties agree that the Authority will be held harmless if EGLE cancels the EGLE Grant Agreement; provided, however, that the Authority shall provide prompt notice to the Developer of any such proposed termination and shall not voluntarily cancel the EGLE Grant Agreement until the Grant Proceeds have been fully disbursed to Developer.

16. Miscellaneous. The City and Developer each represents and warrants to the other that the person signing this Agreement on its respective behalf has the full consent and authority of its governing body. This Agreement shall bind and benefit the Authority, Developer, and their respective successors, assigns, heirs and personal representatives. This Agreement, including the grant application, contains all the representations and statements by the Authority and Developer to one another and expresses the entire understanding between the Parties. All prior or contemporaneous communications concerning the EGLE Grant are merged in and replaced by this Agreement. This Agreement may be signed in counterparts, which together shall comprise a single agreement, and the effective date for which shall be the date it is signed by both parties. By signing this Agreement, Developer is certifying that it is not an Iran-linked business, and that is contractors are not Iran-linked businesses, as defined in MCL 129.312. Each of the exhibits attached hereto is expressly incorporated herein and made a part of this Agreement. In the event of any inconsistency

between this Agreement and the exhibits attached hereto, this Agreement (without reference to such exhibits) shall govern.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the below date.

Dated: ____________

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

By:_________________________________
Kevan Hess
Its: Chair

Dated: ____________

530 ROSE LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP

By: PGJ Development LLC

Its: General Partner

By:_________________________________
____
Its: Authorized Representative