

Agenda

Brownfield Redevelopment Authority

Board of Directors

City of Kalamazoo



Thursday, March 21, 2024

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 meeting on February 15, 2024

D. PUBLIC COMMENTS

E. DIRECTOR COMMENTS

F. NEW BUSINESS

1. Update from Rivers Edge Development Project

(NO ACTION)

2. Adoption of a Resolution Accepting the Third Amendment to the Purchase and Sale Agreement for 116 W Cedar Street and Authorize the Chair to Sign.

(ACTION: Motion to Adopt a Resolution Accepting the Third Amendment to the Purchase and Sale Agreement for 116 Cedar Street and Authorize the Chair to Sign).

3. Approval of an EGLE Brownfield Grant Proposal for up to \$1,000,000 in Support of Brewsters Redevelopment Project and Authorize the Chair to Sign

(ACTION: Motion to Approve an EGLE Brownfield Grant Proposal for up to \$1,000,000 in Support of Brewsters Redevelopment Project and Authorize the Chair to Sign)

4. Adoption of a Resolution Accepting the First Amendment to the Right of First

Refusal Agreement with Republic Services of Michigan Hauling, LLC and Authorize the Chair to Sign.

(ACTION: Motion to Adopt a Resolution Accepting the First Amendment to the Right of First Refusal Agreement with Republic Services of Michigan Hauling, LLC and Authorize the Chair to Sign).

5. Approval of a Month-to-Month Contract Extension with Fishbeck, Inc. for up to 6-Month Period and Authorize Staff to begin the RFP Process for a New Brownfield Consulting Contract.

(ACTION: Motion to Approve a Month-to-Month Contract Extension with Fishbeck, Inc. for up to 6 Months and Authorize Staff to begin the RFP Process for a New Brownfield Consulting Contract).

G. UNFINISHED BUSINESS

H. COMMUNICATIONS AND ANNOUNCEMENTS

I. STAFF REPORTS AND UPDATES

J. ADJOURNMENT

**CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY BOARD MEETING
Thursday, February 15, 2024
Community Planning and Economic Development
245 N. Rose Street, Kalamazoo, MI 49007**

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

MEMBERS ABSENT: Qianna Decker; Nathan Bolton

CITY COMMISSIONERS/CITY STAFF PRESENT: John Weiss (Attorney, Dickinson Wright); Jamie McCarthy (Sustainable Development Coordinator); PJ Thuringer (Economic Development Supervisor); Logan Mulholland (Fishbeck, Consultant); Jared Chambers (Business Specialist); Heidi Gartley (Brownfield Project Assistant)

Meeting was called to order at 7:51 AM by Chair Novotny.

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

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

APPROVAL OF MINUTES: Director Ferraro moved approval of minutes from the meeting of January 18, 2024 as presented; seconded by Director Bair. Motion approved by voice vote unanimously.

PUBLIC COMMENTS

None.

DIRECTOR'S COMMENTS

Chair Novotny shared he will abstain from Item 1 under New Business, as he is involved with the Zone 32 Project.

Directors Greeley and Schipper shared they will also abstain from Item 1 due to involvement with the project.

NEW BUSINESS

1. Approval of a Letter of Intent between the Kalamazoo Brownfield Redevelopment Authority and Bogan Developments LLC related to a Property for the Redevelopment Project Zone 32 Phase 2 and Authorize the Department Director to Sign.

Ms. McCarthy shared information on the project, as found in the agenda packet.

Director Gurnee asked for clarification on environmental site assessments needed. Ms. McCarthy explained the assessments for Phase 1 and Phase 2 of the Zone 32 development.

Director Gulau asked about the purchase price. Ms. McCarthy shared staff is obtaining an appraisal.

Director Ferraro mentioned the development may be too far along at this point, but the library branch displaced from the Douglas Community Center would be a great addition in this cluster of development.

*Director Schipper arrived at 8:01 AM.

Director Ferraro moved Approval of a Letter of Intent between the Kalamazoo Brownfield Redevelopment Authority and Bogan Developments LLC related to a Property for the Redevelopment Project Zone 32 Phase 2 and Authorize the Department Director to Sign; seconded by Director Bair. A roll call vote was taken, and the motion passed unanimously. Chair Novotny, Director Greeley, and Director Schipper abstained.

2. Approval of a Letter from the Kalamazoo Brownfield Redevelopment Authority to the Michigan Economic Development Corporation Regarding Arcadia Loft's Dual Eligibility as Brownfield Property Authorizing the Chair to Sign.

Attorney Weiss shared information on the need for a dual eligibility letter, as found in the packet. The plan is not being amended, but the letter notes that the board recognizes the project also qualifies as functionally obsolete.

Director Middleton asked if an amendment will be needed in the future. Attorney Weiss stated not for this reason.

Ms. Trisha Kidd, representative of PlazaCorp, elaborated on the State Historic Preservation Office's (SHPO) concerns.

Director Hess moved Approval of a Letter from the Kalamazoo Brownfield Redevelopment Authority to the Michigan Economic Development Corporation Regarding Arcadia Loft's Dual Eligibility as Brownfield Property Authorizing the Chair to Sign; seconded by Director Schipper. A roll call vote was taken, and the motion passed unanimously.

UNFINISHED BUSINESS

None.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF REPORTS AND UPDATES

1. 266 E Michigan – First Amendment to Brownfield Plan (Adopted 2/5)

Ms. McCarthy shared that City Commission approved Coney Island's first amendment and they are working on getting state approval.

2. Financial Reports (2023 Year End – Present at March Board Meeting)

Ms. McCarthy shared financial reports will be presented soon. The drafts were shared with executive committee last month. Staff is working with management services to prepare these.

ADJOURNMENT: The meeting was adjourned at 8:15 A.M. by Chair Novotny.

Heidi Gartley
Recording Clerk

Chair Signature

Printed Name/Chair



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: March 21, 2024

SUBJECT: Update from Rivers Edge Development Project

RECOMMENDATION:

It is recommended the BRA discuss the project timeline with the developer representatives during today's meeting to better determine whether any action may be needed on or before the Board of Director's meeting on May 16, 2024 prior to the required closing date in the Agreement (May 31, 2024).

BACKGROUND:

In November 2023, the Board of Directors agreed to extend the closing date in the existing Purchase and Sale Agreement ("Agreement") for the parcel at 508 Harrison Street. The Agreement requires both parties to close on the sale of the parcel by May 31, 2024, as requested by the River Caddis to allow time for purchaser to close on MSHDA financing. Purchaser agreed to give BRA an update on the project progress at the March 2024 brownfield meeting.

FISCAL IMPACT:

No fiscal impact at this time.



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: March 21, 2024

SUBJECT: Adoption of a Resolution Accepting the Third Amendment to the Purchase and Sale Agreement for 116 W Cedar Street and Authorize the Chair to Sign.

RECOMMENDATION:

It is recommended the BRA adopt the resolution accepting the third amendment to the purchase and sale agreement extending the investigation period for 116 West Cedar Street to June 29, 2024 and authorizing the chair to sign.

BACKGROUND:

On August 15, 2023 the BRA and purchaser signed the second amendment to the Purchase and Sale Agreement ("Agreement") to extend the investigation period by an additional 12 months. This period is set to expire on March 31, 2024. The purchaser has made progress towards its redevelopment plans and continues to meet regularly with City staff and state partners. Both parties wish to request an extension to provide additional time for property and project investigations. The third amendment to the Agreement extends the investigation period to June 29, 2024.

FISCAL IMPACT:

There is no fiscal impact anticipated at this time.

**CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY**

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A
THIRD AMENDMENT TO A PURCHASE AND SALE AGREEMENT WITH
116 WEST CEDAR LLC AND BURDICK@CEDAR LLC**

Boardmember _____, supported by Boardmember _____,
moved the adoption of the following resolution:

WHEREAS:

1. On September 15, 2022, the BRA and 116 West Cedar LLC and Burdick@Cedar LLC (collectively "Purchaser") signed the First Amendment to Purchase and Sale Agreement to extend the Investigation Period by an additional 12 months to end March 31, 2023 at 5:00 p.m. Eastern Daylight Time; and
2. On August 15, 2023, the BRA and Purchaser signed the Second Amendment to the Purchase and Sale Agreement on August 15, 2023, to extend the Investigation Period by an additional 12 months to end March 31, 2024 at 5:00 p.m. Eastern Daylight Time; and
3. Since signing the Second Amendment to the Purchase and Sale Agreement, Purchaser has made progress toward its redevelopment plans and the BRA and Purchaser desire to further extend the Investigation Period.

RESOLVED:

1. That the Third Amendment to Purchase and Sale Agreement between the Authority and the Purchaser is approved; and
2. That the Chairperson of the Board of Directors of the Authority is authorized and directed to execute the approved Agreement for and on behalf of the Authority; and
3. That all resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

YEAS: Boardmembers _____

NAYS: Boardmembers _____

ABSTAIN: Boardmembers _____

ABSENT: Boardmembers _____

RESOLUTION DECLARED ADOPTED.

Dated: March 20, 2024

_____, Secretary

CERTIFICATION

I, the undersigned duly qualified and acting Secretary of the City of Kalamazoo Brownfield Redevelopment Authority, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Directors of the Brownfield Redevelopment Authority at a meeting held on March 20, 2024, and that public notice of said meeting was given pursuant to, and in accordance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

Dated: March 20, 2024

_____, Secretary

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

The City of Kalamazoo Brownfield Redevelopment Authority, a Michigan public corporate body, whose address is 241 West South Street, Kalamazoo, Michigan 49007, (the “BRA”) and 116 WEST CEDAR, LLC a Michigan domestic limited liability company, having an address at 750 Trade Centre Way, Suite 100, Portage, Michigan 49002 (“116 West Cedar”), BURDICK@CEDAR, LLC, a Michigan domestic limited liability company, having an address at 4200 West Centre Avenue, Portage, Michigan 49024 (“Burdick@Cedar”), (collectively the “**Purchaser**”) entered a Purchase and Sale Agreement dated September 27, 2021 (hereinafter, the “**Agreement**”), for the Premises described and located at 116 West Cedar Street, Kalamazoo, MI 49007.

BACKGROUND

- A. On September 15, 2022, the BRA and Purchaser signed the First Amendment to Purchase and Sale Agreement to extend the Investigation Period by an additional 12 months to end March 31, 2023 at 5:00 p.m. Eastern Daylight Time.
- B. On August 15, 2023, the BRA and Purchaser signed the Second Amendment to the Purchase and Sale Agreement on August 15, 2023, to extend the Investigation Period by an additional 12 months to end March 31, 2024 at 5:00 p.m. Eastern Daylight Time.
- C. Since signing the Second Amendment to the Purchase and Sale Agreement, Purchaser has made progress toward its redevelopment plans and the BRA and Purchaser desire to further extend the Investigation Period.
- D. Both BRA and Purchaser agree to enter this Third Amendment to Purchase and Sale Agreement:
 - 1. The first sentence of Section 4, Investigation Period at page 2 of the Agreement, is amended to read:

“The ‘**Investigation Period**’ commences on the Effective Date of this Agreement and expires on June 28, 2024 at 5:00 p.m. Eastern Daylight Time.”
 - 2. In all other regards the Agreement is unchanged and affirmed by the parties.
 - 3. This Amendment becomes effective on the last signature date set forth below.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Third Amendment to Purchase and Sale Agreement.

[Signatures by the authorized representatives of the parties are on the following page.]

City of Kalamazoo Brownfield Redevelopment Authority

Jason Novotny, Chairperson

Dated: _____

116 W. CEDAR, LLC

Roger E. Hinman, Manager

Dated: _____

BURDICK@CEDAR, LLC

Joseph L. Gesmundo, Manager

Dated: _____



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: March 21, 2024

SUBJECT: Approval of an EGLE Brownfield Grant Proposal for up to \$1,000,000 in Support of Brewsters Redevelopment Project and Authorize the Chair to Sign

RECOMMENDATION:

It is recommended the BRA approve an EGLE Brownfield Grant Proposal for up to \$1,000,000 for brownfield eligible activities at 5135 and 5147 Portage Road for Brewsters Redevelopment Project.

BACKGROUND:

5135 Portage Road, LLC (Developer) plans to redevelop the former gasoline station and restaurant properties located at 5147 and 5135 Portage Road into a 93-room, 4-story hotel with a ground floor footprint of approximately 24,000 square feet (79,000 sq ft total). The ground floor will consist of a lobby, seating area, a small kitchen for breakfast and patron service, an in-ground pool, storage and service rooms, and offices and the upper 3 floors will consist of standard hotel rooms.

This site has had multiple redevelopment interest over the years that have failed to convert into viable projects due to legacy petroleum contamination on the site. For this project to be successful, it must address/eliminate the vapor intrusion (VIA) exposure pathway for the redevelopment of the site by addressing petroleum contaminated source soils related to the former gasoline station. These contaminated soils will be removed from the location of the future building (extending horizontally and vertically beyond the foundation walls as well) extending to a depth of 5-6 feet and disposed of at a licensed Type II landfill. In total, it is estimated that 8,200 tons of petroleum contaminated soils will need to be removed from the site.

Total private investment is \$23,862,664. The City of Kalamazoo BRA will assist by seeking EGLE Brownfield Grant Funding on behalf of the project and 5135 Portage Road, LLC, to cover eligible environmental costs related to the removal of petroleum contaminated soils to eliminate the VIA exposure pathway. The project is also seeking brownfield TIF to assist in covering eligible activities and site preparation costs. The grant estimated costs could be up to \$1,000,000

depending on the total volume of contaminated soil removal and disposal, once soil testing is confirmed. Additional eligible activity costs are still being evaluated.

FISCAL IMPACT:

The BRA would incur costs to administer the grant over 12 to 24 months. The grant budget provides up to 3% of grant costs to be allocated for administration, or \$30,000.

BROWNFIELD GRANT AND LOAN PROJECT PROPOSAL

I. PROJECT NAME AND LOCATION

Project Name:	Brewster's Redevelopment		
Project Address:	5135 and 5147 Portage Road		
Project City:	Kalamazoo		
Project County:	Kalamazoo	Project Zip Code:	49002
State Senate District:	19	State House District:	41

II. APPLICANT INFORMATION

Applicant Name:	City of Kalamazoo Brownfield Redevelopment Authority		
Applicant Address:	241 West South Street		
Applicant City:	Kalamazoo	Applicant Zip Code:	49007
APPLICANT CONTACT INFORMATION			
	Applicant Signing Authority Contact	Applicant Project Contact	Project Consultant (if applicable)
Name:	Jason Novotny	Jamie McCarthy	
Title:	BRA Chair	BRA Staff Liaison	
Phone:	(269) 337-8789	(269) 337-8789	
Email:	novotnyjason@gmail.com	mccarthyj@kalamazoocity.org	

III. FUNDING REQUEST

Amount Requested:	\$1,000,000
Funding Source:	☒ RPF ☒ 201 ☐ Site Assessment
Funding Type:	☒ Grant ☐ Loan ☐ Either

IV. GENERAL PROJECT INFORMATION

Previous use(s):	Gasoline filling station (5147 Portage Road) and restaurant (5135 Portage Road)
Current use(s):	Vacant
Proposed new use(s):	Hotel
Known or suspected contaminants:	<u>Soil-</u> Benzene, ethylbenzene, toluene, isopropyl benzene, n-butylbenzene, sec-butylbenzene, 1,3,5-trimethylbenzene, 1,2,4-trimethylbenzene, and xylenes <u>Groundwater-</u> Benzene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene, naphthalene, and isopropyl benzene

PROJECT SUMMARY

Provide one paragraph below that summarizes the redevelopment, the environmental challenge that needs to be addressed, and how the brownfield funding will be used to address that challenge.

5135 Portage Road, LLC (the developer) plans to redevelop the former gasoline station and restaurant properties located at 5147 and 5135 Portage Road, Kalamazoo, Michigan into a 93-room, 4-story hotel with a ground floor footprint of approximately 24,000 square feet (79,000 sq ft total). Ground floor will consist of a lobby, seating area, a small kitchen for breakfast and patron service, an in-ground pool, storage and service rooms, and offices and the upper 3 floors will consist of standard hotel rooms.

To address/eliminate the VIA exposure pathway for the redevelopment of the Site, petroleum contaminated source soils related to the former gasoline station will be removed from the location of the future building (extending horizontally and vertically beyond the foundation walls as well) extending to a depth of 5-6 feet and disposed of at a licensed Type II landfill. In total it is estimated that 8,200 tons of petroleum contaminated soils will need to be removed from the site.

Total private investment is \$23,862,664. The City of Kalamazoo BRA desires to obtain EGLE Brownfield Grant Funding, on behalf of the developer 5135 Portage Road, LLC, to cover eligible environmental costs related to the removal of petroleum contaminated soils to eliminate the VIA exposure pathway.

Does the property have any of the following:

A liable party known to have caused or contributed to a release at the site?	☒ Yes	☐ No
Known environmental actions or enforcements by a regulatory agency?	☐ Yes	☒ No
A liable party undertaking corrective actions at the site?	☐ Yes	☒ No
Known environmental liens?	☐ Yes	☒ No
Known legal, access, or title issues?	☐ Yes	☒ No
Deed restriction, land, or resource use restriction?	☐ Yes	☒ No

Provide a detailed explanation for any Yes answers above:

The Site is listed as an Open Lust Site. Site ID Number 0-017931 The open releases were filed on May 5, May 8, and June 10, 1997.

Provide any other relevant information regarding property ownership and operations, if applicable:

The current owner of the Property (Phillip R Mott Trust) never operated the site as a gasoline station and is not responsible for the releases.

V. PROPERTY AND OWNERSHIP INFORMATION

CURRENT OWNER

Parcel ID#:	10-02-215-005	10-02-215-006	
Property Address:	5147 Portage Road	5135 Portage Road	
Latitude & Longitude (to 8 digits):	42.242150, -85.559746	42.242596, -85.559478	
Current Zoning:	CC (community commercial district)	CC (community commercial district)	
Proposed Zoning:	Commercial	Commercial	
Acreage:	0.487	1.87	
Property Acquisition Type (inheritance, purchase, tax reversion, other):	Into Trust	Into Trust	
Date of Acquisition:	7/18/2017	7/18/2017	
Did the Current Owner Complete a Baseline Environmental Assessment (BEA)?	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☐ No
Current Owner Name:	Phillip R Mott Trust	Phillip R Mott Trust	
Current Owner Address:	16400 S 21 st Street, Vicksburg, MI	16400 S 21 st Street, Vicksburg, MI	
Current Owner Email and Phone:	info@mottfarms.com	info@mottfarms.com	
Name and Address of Occupant:	Vacant	Vacant	
Operations at the Property:	Vacant	Vacant	
Date Operations Began:	7/18/2017	7/18/2017	

FUTURE OWNER ☐ N/A - Ownership will not change

Parcel ID#:	10-02-215-005	10-02-215-006	
Future Owner Name:	5135 Portage Road, LLC	5135 Portage Road, LLC	
Future Owner Address, City, State, Zip:	4200 W. Centre Avenue, Portage, MI 49024	4200 W. Centre Avenue, Portage, MI 49024	
Future Owner Email and Phone:	gdobson@avbinc.com (269) 217-5477	gdobson@avbinc.com (269) 217-5477	
How will the property be acquired? (purchase, tax inversion, inheritance, other)	Purchase	Purchase	

VI. PROPERTY USE AND ENVIRONMENTAL CONDITIONS

PROPERTY HISTORY

List the current and former uses of the property below, including dates, owners (if known), and potential contaminants associated with each property use.

Parcel ID / Property Address	Date Range (Year)		Property Use	Potential Contaminants and/or Recognized Environmental Conditions (RECs)	Property Owner
	From	To			
10-02- 215-005 / 5147 Portage Road	Approximately 1972	1997	Gasoline station	Open LUST site w/ VOCs, SVOCs	Unknown
	1997	2004	Vacant	Open LUST site w/ VOCs, SVOCs	Angela W Siegel, Trustee
	2004	2017	Vacant	Open LUST site w/ VOCs, SVOCs	Phillip R Mott
	2017	Present	Vacant	Open LUST site w/ VOCs, SVOCs	Phillip R Mott Trust
10-02- 215-006 / 5135 Portage Road	1991	2004	Restaurant	Petroleum groundwater contamination from 5147 Portage Road	Unknown
	2004	2017	Restaurant	Petroleum groundwater contamination from 5147 Portage Road	Linda Bielfield & Stephen R Bloom
	2017	2023	Restaurant	Petroleum groundwater contamination from 5147 Portage Road	Phillip R & Mardee J Mott
	2023	Present	Vacant	Petroleum groundwater contamination from 5147 Portage Road	Phillip R Mott Trust

ENVIRONMENTAL RISKS

Known Contaminants:	Soil- Benzene, ethylbenzene, toluene, isopropyl benzene, n-butylbenzene, sec-butylbenzene, 1,3,5-trimethylbenzene, 1,2,4-trimethylbenzene, and xylenes Groundwater- Benzene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene, naphthalene, and isopropyl benzene
Pathways of Concern:	☐ Groundwater/Surface Water Interface (GSI) ☐ Drinking Water ☒ Volatilization to Indoor Air ☐ Ambient Air ☐ Direct Contact ☐ Unknown

PETROLEUM INFORMATION						
Were underground storage tanks (USTs) ever located on the property?				☒ Yes	☐ No	☐ Suspected
Are USTs <u>currently</u> present on the property?				☐ Yes	☒ No	☐ Suspected
Has a UST release been reported for the property?				☒ Yes	☐ No	
Summarize known UST information below.						
Tank ID #	Size	Contents	Installation Date	Removal Date	Status (active, removed, etc.)	Release ID #
UTK-043194-15	6,000-gallon	Gasoline	1/1/1962	5/5/1997	Removed	REL-0284-97 (exact UST unknown)
UTK-048766-15	4,000-gallon	Gasoline	1/1/1962	5/6/1997	Removed	REL-0296-97 (exact UST unknown)
UTK-095629-15	10,000-gallon	Gasoline	1/1/1962	5/5/1997	Removed	
UTK-039527-15	1,200-gallon	Fuel oil	Unknown	6/9/1997	Removed	REL-0400-97
UTK-036430-15	550-gallon	Used motor oil	1/1/1962	5/7/1997	Removed	
UTK-095203-15	550-gallon	Used oil	1/1/1962	5/7/1997	Removed	
HAZARDOUS SUBSTANCE INFORMATION						
Was there ever a non-UST related release of a hazardous substance on the property?				☐ Yes	☐ No	☒ Unknown
Summarize known hazardous substance release information below.						
Date of Release	Description of Release			Status	Release ID #	
6/10/1997	Unknown quantity of fuel oil from UTK-039527-15			Open (Approved Partial Closure)	REL-0400-97	
5/8/1997	Most likely from UTK-036430-15 or UTK-095203-15			(Approved Partial Closure)	REL-0296-97	
5/5/1997	Most likely from UTK-043194-15 or UTK-095629-15			(Approved Partial Closure)	REL-0284-97	

To the best of your knowledge, did the applicant cause or contribute to contamination that is known or may be discovered at the project site?	☐ Yes ☒ No, did NOT cause or contribute to contamination ☐ May have caused or contributed to contamination
To the best of your knowledge did the developer cause or contribute to contamination that is known or may be discovered at the project site?	☐ Yes ☒ No, did NOT cause or contribute to contamination ☐ May have caused or contributed to contamination ☐ Not Applicable/No developer

ENVIRONMENTAL CONDITION OF THE PROPERTY

Provide one paragraph below that summarizes the redevelopment, the environmental challenge that needs to be addressed, and how the brownfield funding will be used to address that challenge:

AVB plans to redevelop the site with the construction of an approximately 79,000 square-foot (total), slab-on-grade (with below grade pool), four-story hotel with associated parking. Extensive environmental investigations have been conducted at the Site since the first release was identified in 1997. The extensive environmental investigations have identified the presence of benzene, ethylbenzene, toluene, isopropyl benzene, n-butylbenzene, sec-butylbenzene, 1,3,5-trimethylbenzene, 1,2,4-trimethylbenzene, and xylenes, in soil and benzene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene, naphthalene, and isopropyl benzene in the groundwater at concentrations in excess of EGLE Part 201 GRCC and the Non-Residential Volatilization to Indoor Air Pathway (VIAP) Screening Levels. Refer to EGLE Facility ID 00017931 for a summary of all the historical documentation related to the releases.

The contaminant conditions represent a potential for unacceptable health exposures and a hindrance to redevelopment. Brownfield funding will be utilized to address the vapor intrusion exposure pathway through the removal of affected media from a buffer zone that extends six feet beyond any planned feature in areas where petroleum contamination exists. The total planned excavation work would remove approximately 8,300 tons of soil from the site, 4,900 tons would be removed from the gasoline station parcel to bring the property to grade (currently about 6-feet above grade), and an additional 3,400 ton would be removed around the footprint of the building to a max depth extent of 6-feet. Brownfield funding will be used for the correct management and/or disposal of all soils generated from on-site redevelopment activities. Groundwater has been observed at approximately 30-ft bgs, so dewatering should not be a problem at this site.

Previous investigations into the environmental conditions at the site have detailed the extent of contamination in the upper 5-ft of soil and at soils greater than 15-ft bgs thoroughly; however, studies have largely neglected to depict the 10-ft between. This depth range is where the bottom of the buffer zone would sit, so determining the required excavation depth would take additional sampling of the soils at the property. There additional investigation is necessary to determine the extent of impact in the soils from ground surface to 10-ft bgs.

The above site conditions have primarily been demonstrated with older and incomplete data. Grant funds will be utilized to thoroughly evaluate the soils in the gap (0 to 10-ft bgs) and the remove/disposal of the necessary impacted soils.

PROPOSED ENVIRONMENTAL ACTIONS WITH GRANT/LOAN FUNDING		
Check all that apply.		
☐ Hazardous Material Survey ☒ BEA ☒ Excavation	☒ Assessment/Investigation ☒ Due Care Planning ☒ Soil Transport/Disposal	☐ UST Removal ☒ Demolition ☐ Vapor Mitigation
☐ Other (please describe):		
• Site assessment related to acquisition of the Site for the new developer. This includes a Phase I ESA and Baseline Environmental Assessment (BEA). • Demolition and asbestos abatement of the restaurant structure (approximately 5,721 sf ft) standing on the northern portion of the site. Demolition includes exterior site demolition (asphalt/concrete surfaces). • Excavate and properly dispose of soils within the former gasoline station area (southern parcel of the Site) to bring this area to grade (this area is approximately 6 feet above existing grade of the northern parcel). It is estimate that 4,900 tons of petroleum impacted soils will need to be excavated and properly disposed of. This is not considered as standard development cost as the soils are impacted and will need to be disposed of at Licensed Type 2 Landfill and not re-used on the Site. • Soil investigation (vertical profiling) to determine the extent of impacted soils within an unevaluated gap from ground surface to 10-feet bgs. This evaluation will further help to determine contamination hot spots/sources areas and determine the extent of excavation needed. • Excavate and properly dispose of contaminated soils in the area of the future building footprint and extending to an approximate depth of 6-feet to eliminate the VIA exposure. It is estimated that 3,400 tons of contaminated soils will be necessary to dispose of at a Licensed Type 2 Landfill. Equivalent backfill will be utilized to bring the Site back to the appropriate grade for construction. This is not considered as standard development cost as the removal and disposal of the soils are necessary to eliminate the VIA exposure pathway. • Once the excavation is completed Verification of soil remediation testing will be necessary to ensure that the contaminated soils in the area of the future building footprint are removed. VSR sampling will be conducted in accordance with the Sampling Strategies and Statistics Training Manual for Part 201 Cleanup Criteria (S3TM), 2002.		
Provide maps showing contamination relative to the building footprint and/or the development plan (see checklist in Section XII): See appended Figures: • Site Plan w/ Cross Section Location – A map showing the current condition of the site, historic boring and well locations, former gasoline station features, and an outline of the planned development footprint. • Site Plan w/ Analytical Data – The figure described above with callout boxes for identified contaminants. • Site Plan w/ Eligible Activities Outlined • Layout Sheet – A detailed plan of the future development • Gas Station Overlay – A site map with historic gasoline station features with a site plan overlay. • Concept 8- Overlay map show future redevelopment and current site features		
DEMOLITION		
If a grant or loan will be used for demolition (buildings, site features, etc.), answer the following questions: Does the structure impede the proposed environmental response activities? ☐ Yes ☒ No		

Does the structure present a health or safety threat? ☐ Yes ☒ No

Does the structure impede the reuse of the property? ☒ Yes ☐ No

Do the environmental activities exceed the cost of demolition? ☒ Yes ☐ No

The property is currently developed with an asphalt surface parking lot and a restaurant structure that will need to be removed to facilitate redevelopment activities.

VII. ECONOMIC AND REDEVELOPMENT INFORMATION

Capital Investment:
\$ 23,862,664

Permanent Jobs Created: Full Time = 5 FTE
Part Time =

Current State
Equalization Value (SEV):
\$ 474,900 (2023
combined)

Anticipated post redevelopment SEV: \$ 3,350,000

Provide a brief summary of how the redevelopment project will result in economic benefits including but not limited to job creation and increased tax base:

The site is located along a 5-lane road near I-94 and also in close proximity to the Kalamazoo/Battle Creek International Airport. The placement of a hotel in this area could help increase tourism in the area. The project could also help support business traffic for major employers nearby (Zoetis, Stryker, Pfizer). Restaurants and shops in the area of this hotel could also see greater traffic from the increased transient population.

DEVELOPER'S EXPERIENCE

Is there a developer committed to the project? ☒ Yes ☐ No

Developer's Name: 5135 Portage Road, LLC

Provide a brief summary of the developer's business experience, including any other businesses, terms and conditions of their participation in the project, bankruptcies, and civil or criminal enforcement actions related to environmental violations:

This developer has built the 400 Rose Street building in Kalamazoo, the Trade Centre Mixed-Use Development in Portage, Corner @ Drake Development in Oshtemo, and Greenspire Tall Timbers in Portage, all four of which were Brownfield projects. They have been involved in no litigation over the last five years and have never filed for bankruptcy.

☐ N/A - Project does not have developer

DEVELOPER'S PROJECT FINANCING

Summarize the sources of your total capital investment and the status of the financing.

☐ N/A - Project does not have a developer

Source of Funding	Estimated Amount	Status of Approval
Investors and Private Equity	22,184,136	In process
Deferred Development Fee Investment	678,528	In process
EGLE Brownfield Grant	1,000,000	In process

TOTAL =		\$23,862,664	
TAX INCREMENT FINANCING (TIF)			
Will the project use Brownfield TIF?	☒ Yes ☐ No		
If Yes, identify all sources that apply:	☒ EGLE ☐ MEDC ☒ Local		
PURCHASE AND DEVELOPMENT AGREEMENTS			
Is there a purchase agreement in place?	☒ Yes ☐ No ☐ N/A		
Status of purchase agreement:	Executed		
Status of development agreement:	Draft		
As a requirement of EGLE funding, is the developer willing to enter into a development agreement with the applicant?	☒ Yes ☐ No ☐ NA		
Has the project received site plan approval?	☐ Yes ☒ No If no, explain: In progress		
SCHEDULE			
Provide a summary schedule for the completion of the proposed eligible activities: Demolition/Asbestos Abatement- June/July 2024 (as soon as possible) Soil Investigation and Site Assessment- June/July 2024 (as soon as possible) Soil Excavation, Removal and Disposal- June-/October 2024 VSR Sampling- October 2024 (ASAP once excavation is completed) Progress through <i>Identify the dates redevelopment is expected to begin and be completed:</i> Estimated Start Date: 7/1/2024 Estimated Completion Date: 12/31/2025			

VIII. COMMUNITY OUTCOMES	
Will existing infrastructure be reused?	☒ Yes ☐ No
Please describe: Existing utilities are available in the municipal right-of-way, from which connections will be made to the new building. The project site is serviced by an existing sidewalk system which allows patrons walkable or non-motorized access to restaurants and shops in this commercial corridor and is within 200 feet of a Metro bus stop.	
Is the community in which the project is located disadvantaged, disproportionately burdened by pollution, or facing other significant challenges?	☒ Yes ☐ No
If yes, explain:	

- The project site is located in Census Tract 18.02 (CT1802), representing a population of 4,486 residents who are disproportionately burdened by pollution. CT1802 is in the 98th percentile for Environmental Conditions: Environmental Effects according to the MiEJScreen Tool due to the following factors: Proximity to Cleanup Sites (75th percentile), Proximity to Hazardous Waste Facilities (100th percentile), Impaired Water Bodies (73rd percentile), Proximity to Solid Waste Sites and Facilities (74th percentile), Lead Paint Indicator (66th percentile), Proximity to RMP Sites (90th percentile), and Wastewater Discharge Indicator (96th percentile). CT1802 also contains a higher population of sensitive populations (Population under the age of 5, 84th percentile) who are disproportionately impacted by these environmental conditions.

Does the project fit into the community's development plans?

☒ Yes

☐ No

Please explain: The area is zoned as commercial, which is consistent with the redevelopment (Hotel). The project is in alignment with the City of Kalamazoo's community development plans (Imagine Kalamazoo 2025) by ensuring development is in an established commercial node and does not infringe on residential neighborhoods or greenspace.

COMMUNITY BENEFITS

Provide a brief summary of how the redevelopment project will result in social or other community benefits, not described elsewhere, including but not limited to; addressing blight, public safety and health concerns, placemaking, urban infill, walkability, incorporation of sustainable and energy efficient development measures, and intentional strategies to support equitable development and assist disadvantaged communities:

The project supports the City of Kalamazoo's strategic and neighborhood goals by ensuring commercial development is taking place in an established commercial node that does not infringe on residential neighborhoods or displace residents. The project adds to the economic vitality of the City of Kalamazoo supporting business traffic for major employers nearby (Zoetis, Stryker, Pfizer) and tourism with its proximity to the Kalamazoo/Battle Creek International Airport. The project supports responsible development of environmentally challenged land and eliminates a property that is moving towards a blighted condition.

The project supports shared prosperity with new job creation, resulting in a minimum of five new jobs which would primarily be service jobs, maintenance, and managerial positions. Additional job creation would come from construction work and suppliers to the new hotel. The property is within 200 feet of a Metro bus stop which allows those without an independent means of transportation to effectively commute to these new jobs.

The project will not impact air or water quality or have adverse impacts on noise pollution or traffic patterns. The project area is already completely urbanized and there will be no loss of natural resources. The project site is already on a 5-lane commercial corridor (Portage Road) which has recently been improved in this area. Noise in the area is predominantly related to nearby I-94 and the project will not increase noise or vehicular traffic in this commercial corridor. The site is also in close proximity to the airport.

Additional public improvements include the possibility of burying electrical service which would eliminate power poles, remove line-of-sight obstacles for motorists, and improve the streetscape. The project will incorporate low impact building improvements through the incorporation of energy efficient HVAC units, water heaters, and building materials. Several parking spaces will be equipped with electric vehicle charging stations. Stormwater management systems will be designed to minimize impact to existing environmental conditions.

IX. LOCAL COMMITMENT

LOCAL CONTRIBUTIONS TO THE PROJECT

Describe the local contributions to the project, including but not limited to; other funding sources provided or supported, use of TIF, tax abatements, other grants and incentives, land contribution, reduced purchase price, utility or right-of way work, staff time committed to the project:

The City of Kalamazoo and its Brownfield Redevelopment Authority (BRA) are willing to commit staff time and resources to manage this grant for the benefit of the property, public health, the environment, and the City of Kalamazoo.

As noted in the project financing table above, this project has attracted significant private financing. Additionally, the City of Kalamazoo and its Brownfield Redevelopment Authority (BRA) are anticipated to support the project with a Brownfield Plan. The total benefit of this is still to be determined. Additionally, the developers have engaged the City of Kalamazoo to pursue a local tax abatement, but any benefit to the project is unknown at this time.

X. CERTIFICATION

The undersigned, as the representative of the applicant, certifies that the no government employee, or member of the legislative, judicial, or executive branches, or member of the Grantee's Board of Directors, its employees, partner agencies, or their families shall benefit financially from the grant or loan.

The undersigned, as the representative of the applicant, certifies that the information provided in this application and its attachments is true and complete to the best knowledge and belief of the applicant and the undersigned.

Jason Novotny
Typed name of Applicant's Representative

Signature

Title

Date

☒ I agree to the use of electronic signatures with EGLE

Please submit the proposal electronically to

EGLE-Brownfields@michigan.gov

Please call 517-242-9276 with questions.

#mibrownfields

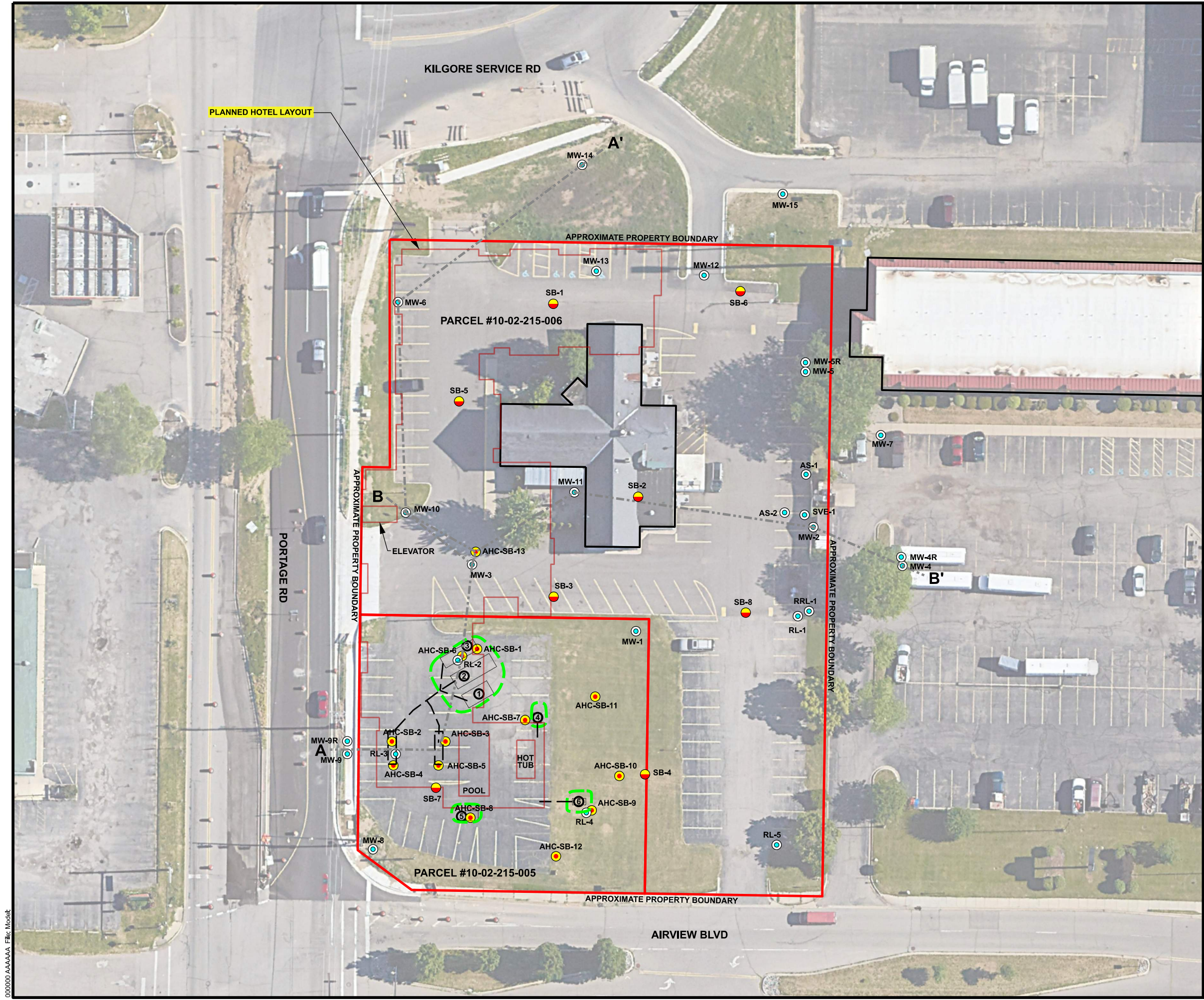
www.michigan.gov/eglebrownfields

Budget Table and Required Attachments

REQUIRED ATTACHMENTS			
Please complete the following checklist and attach the supporting documentation.			
#	DESCRIPTION	ATTACHED?	COMMENTS
1	Budget Table	☒ Yes ☐ No	
2	Site Maps: Map(s) showing the location of the project area, site boundaries, existing structures, etc.	☒ Yes ☐ N/A	
	Map(s) showing the location of known contaminants, recognized environmental concerns [including contaminant boundaries (when known)], and contaminant concentrations.	☒ Yes ☐ N/A	
	Map(s) showing proposed development in relation to contaminants.	☒ Yes ☐ N/A	
	Map(s) showing site development plans.	☒ Yes ☐ N/A	
3	Analytical data summary tables.	☒ Yes ☐ N/A	
4	Agreements Purchase Agreement	☒ Yes ☐ N/A	
	Development Agreement	☐ Yes ☐ N/A	In Process
5	Site Photos High quality, publishable digital photos of the site. Please also provide these electronically in jpg format.	☒ Yes ☐ N/A	
6	Describe other attachments provided:		

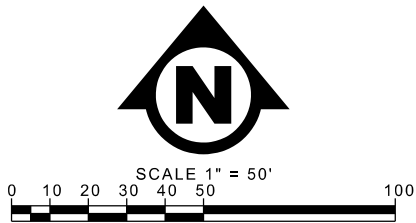
BUDGET TABLE									
Provide the project budget in the table below. Change, add, or delete activities as appropriate for the project. Column specific notes provided below table.									
Column Specific Notes:									
EGLE RPF Grant: This funding can only be used for Refined Petroleum Fund related contamination. Talk to your brownfield coordinator to confirm appropriate funding source.									
EGLE 201 Grant: This funding can be used for non-petroleum sites. Talk to your brownfield coordinator to confirm appropriate funding source.									
EGLE Loan: This funding can be used for refined petroleum or non-petroleum sites with redevelopment potential.									
Tax Increment Financing (TIF) tied to EGLE Loan: If TIF is proposed to reimburse the loan, that portion of the TIF will also be reflected in the loan amount.									
Other TIF: Any TIF dollars that will NOT be used to reimburse the EGLE loan, including non-EGLE TIF would be reflected here.									
Local Funds: Any funding the community is contributing to the project.									
Developer Funds: Funds the developer is investing into the project.									
Other: Include other federal, state, private, etc. dollars that are not already reflected.									
TASK (Activity)	TOTAL Expected Cost	Proposed Funding Mechanism							
		EGLE RPF Grant	EGLE 201 Grant	EGLE Loan	TIF tied to EGLE Loan	Other TIF (not tied to EGLE Loan)	Local Funds (public)	Developer Funds (private)	Other Funds (list sources)
Assessment/Investigation									
Site assessment (Phase I/II)	\$ 16,500	\$ 16,500							
Baseline environmental assessment (BEA)	\$ 5,000	\$ 5,000							
Lead, asbestos, and mold survey									
Post Excavation Verification of Soil Remedialiton (VSR) Testing and/or soil gas testing	\$ 65,000	\$ 65,000							
Assessment/Investigation Sub-Total	\$ 86,500	\$ 86,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Activities that cannot exceed the total cost of environmentally related activities (50/50 Rule) as defined in Part 196									
Demolition	\$ 150,000	\$ 150,000							
Abatement	\$ 50,000	\$ 50,000							
50/50 Rule Sub-Total	\$ 200,000	\$ 200,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Due Care									
Transport/disposal of contaminated soils and Equivalent Backfill	\$ 555,000	\$ 555,000							
Due Care Sub-Total	\$ 555,000	\$ 555,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Response Activity									
Vapor Intrusion Mitigation									
Response Activity Plan for Vapor Intrusion Mitigation System									
Response Activity Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other									
Contingency (up to 15% of grant/loan)	\$ 123,000	\$ 123,000							
3rd Party Environmental Oversight (up to 5% of grant/loan)									
Administration (up to 3% of grant/loan)	\$ 30,000	\$ 30,000							
EGLE Project Sign (grant/loan requirement)	\$ 500	\$ 500							
Grant Closeout Report (grant/loan requirement)	\$ 5,000	\$ 5,000							
Capital Investment	\$ 22,862,664								
TOTAL	\$ 23,862,664	\$ 1,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

NOTE: If grant/loan funded activities are planned to be performed by the project developer's consulting firm, EGLE expects that the applicant will hire its own environmental oversight professional. Exceptions will be considered in low-risk situations on a case-by-case basis. The environmental oversight professional's fees are eligible for reimbursement with the proposed grant or loan. Please include an environmental oversight professional in the budget if applicable.



ID	Gallons	Contents	Removal Date
1	4,000	Gasoline	05/05/97
2	10,000	Gasoline	05/05/97
3	10,000	Gasoline	05/06/97
4	12,000	Fuel Oil	05/07/97
5	Est 500	Used Oil	05/07/97
6	Est 500	Used Oil	05/09/97

- LEGEND**
- MONITORING WELL LOCATION
 - SOIL BORING SAMPLE LOCATION
 - SOIL BROING LOCATION (DREISENGA)



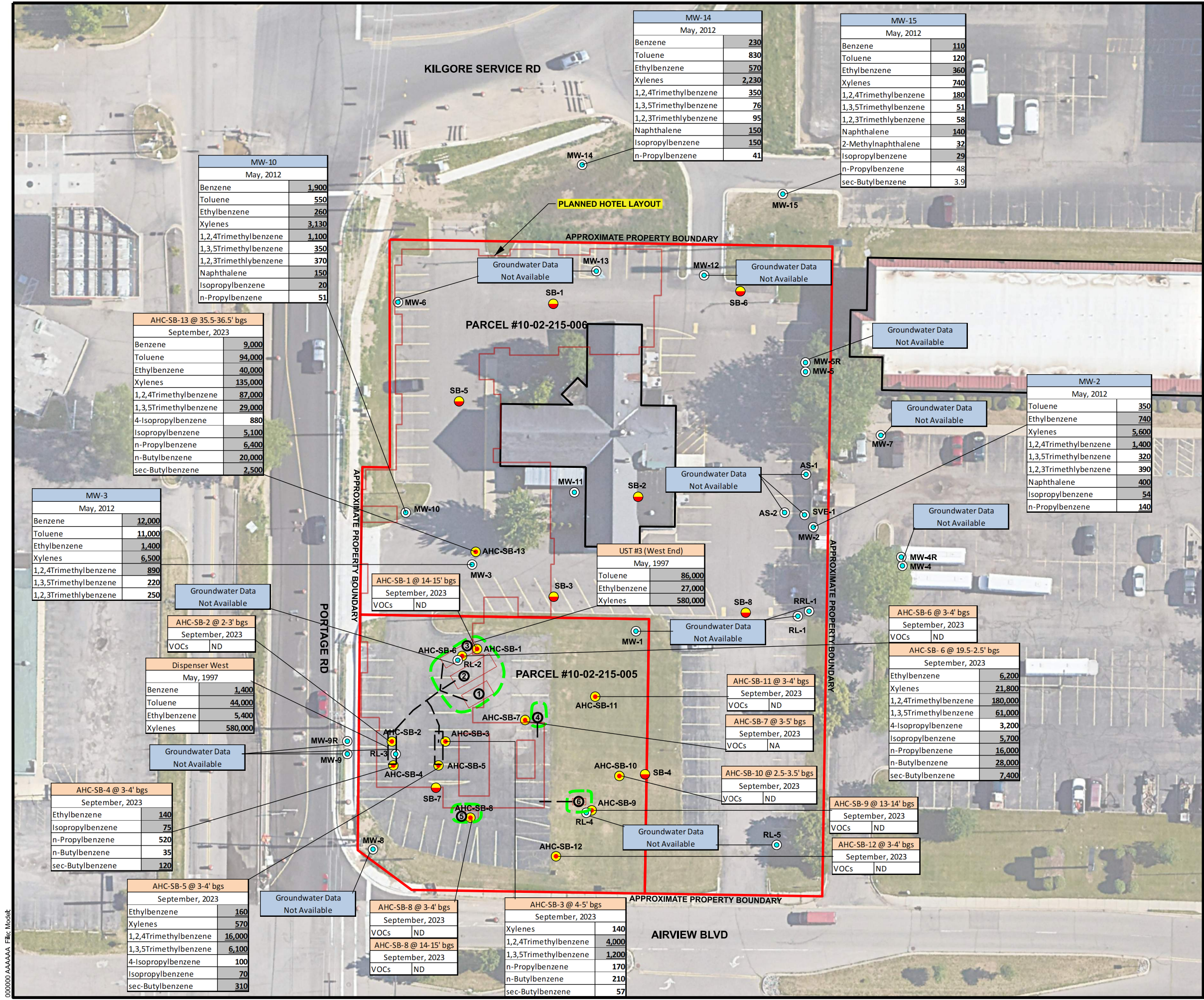
NOTE:
THIS IS NOT A PROPERTY BOUNDARY SURVEY, PROPERTY BOUNDARIES SHOWN ON THIS MAP
ARE BASED ON AVAILABLE FURNISHED INFORMATION AND ARE APPROXIMATE ONLY AND
SHOULD NOT BE USED TO ESTABLISH PROPERTY BOUNDARY LOCATION IN THE FIELD.

FORMER BREWSTERS
5135 & 5147 PORTAGE RD
PORTAGE, MI 49002
**SITE PLAN w/
CROSS SECTION LOCATION**



PROJECT NO.
232059
FIGURE No.

1



ID	Gallons	Contents	Removal Date
1	4,000	Gasoline	05/05/97
2	10,000	Gasoline	05/05/97
3	10,000	Gasoline	05/06/97
4	12,000	Fuel Oil	05/07/97
5	Est 500	Used Oil	05/07/97
6	Est 500	Used Oil	05/09/97

LEGEND

- MONITORING WELL LOCATION
- SOIL BORING SAMPLE LOCATION
- SOIL BORING LOCATION (DREISENGA)

NOTE:
UNITS FOR SOIL SAMPLES µg/kg
UNITS FOR GROUNDWATER SAMPLES µg/L
CONTAMINANTS UNDERLINED WHERE PRESENT ABOVE
GENERIC CLEANUP CRITERIA
CONTAMINANTS **SHADED** WHERE PRESENT ABOVE
VOLATILIZATION TO INDOOR ARE INHALATION
SCREENING LEVEL



SCALE 1" = 50'
0 10 20 30 40 50 100

NOTE:
THIS IS NOT A PROPERTY BOUNDARY SURVEY, PROPERTY BOUNDARIES SHOWN ON THIS MAP
ARE BASED ON AVAILABLE FURNISHED INFORMATION AND ARE APPROXIMATE ONLY AND
SHOULD NOT BE USED TO ESTABLISH PROPERTY BOUNDARY LOCATION IN THE FIELD.

FORMER BREWSTERS

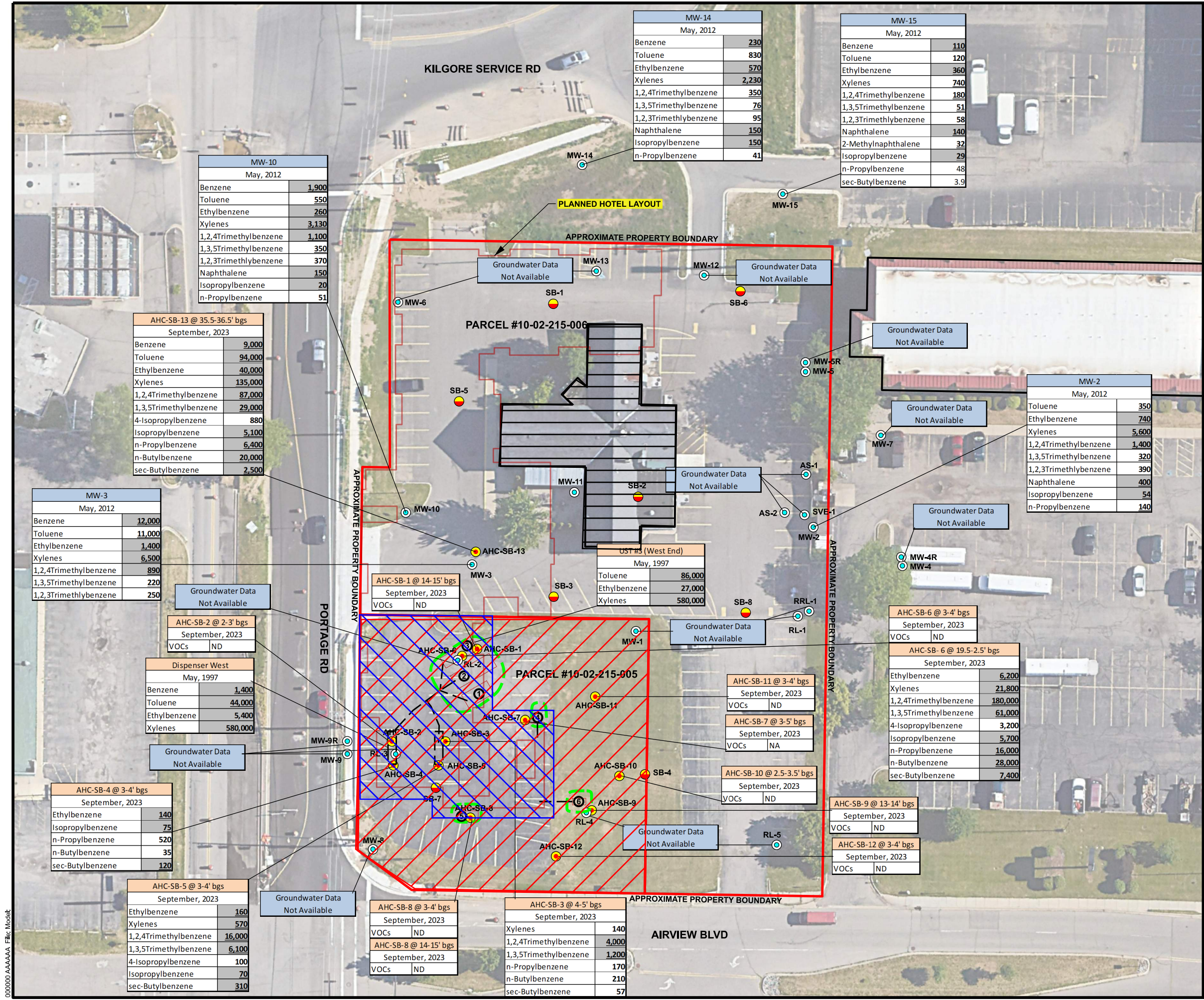
5135 & 5147 PORTAGE RD
PORTAGE, MI 49002

SITE PLAN w/
ANALYTICAL DATA



PROJECT NO.
232059
FIGURE NO.

2



ID	Gallons	Contents	Removal Date
1	4,000	Gasoline	05/05/97
2	10,000	Gasoline	05/05/97
3	10,000	Gasoline	05/06/97
4	12,000	Fuel Oil	05/07/97
5	Est 500	Used Oil	05/07/97
6	Est 500	Used Oil	05/09/97

LEGEND

- MONITORING WELL LOCATION
- SOIL BORING SAMPLE LOCATION
- SOIL BORING LOCATION (DREISENGA)

NOTE:
UNITS FOR SOIL SAMPLES µg/kg
UNITS FOR GROUNDWATER SAMPLES µg/L
CONTAMINANTS UNDERLINED WHERE PRESENT ABOVE
GENERIC CLEANUP CRITERIA
CONTAMINANTS **SHADED** WHERE PRESENT ABOVE
VOLATILIZATION TO INDOOR ARE INHALATION
SCREENING LEVEL

Upper Soil Excavation
(bringing Site to Grade),
4,900 tons

Deeper Soil Excavation
(6 feet below grade),
3,300 tons

Building Demolition



SCALE 1" = 50'
0 10 20 30 40 50 100

NOTE:
THIS IS NOT A PROPERTY BOUNDARY SURVEY, PROPERTY BOUNDARIES SHOWN ON THIS MAP
ARE BASED ON AVAILABLE FURNISHED INFORMATION AND ARE APPROXIMATE ONLY AND
SHOULD NOT BE USED TO ESTABLISH PROPERTY BOUNDARY LOCATION IN THE FIELD.

FORMER BREWSTERS

5135 & 5147 PORTAGE RD
PORTAGE, MI 49002

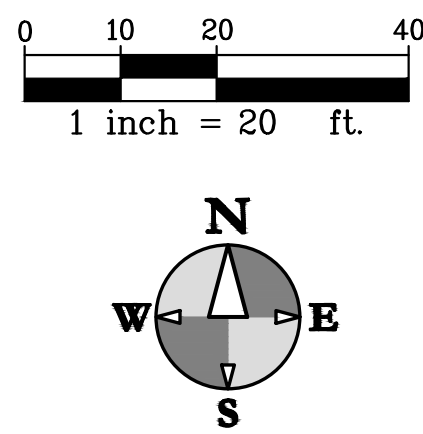
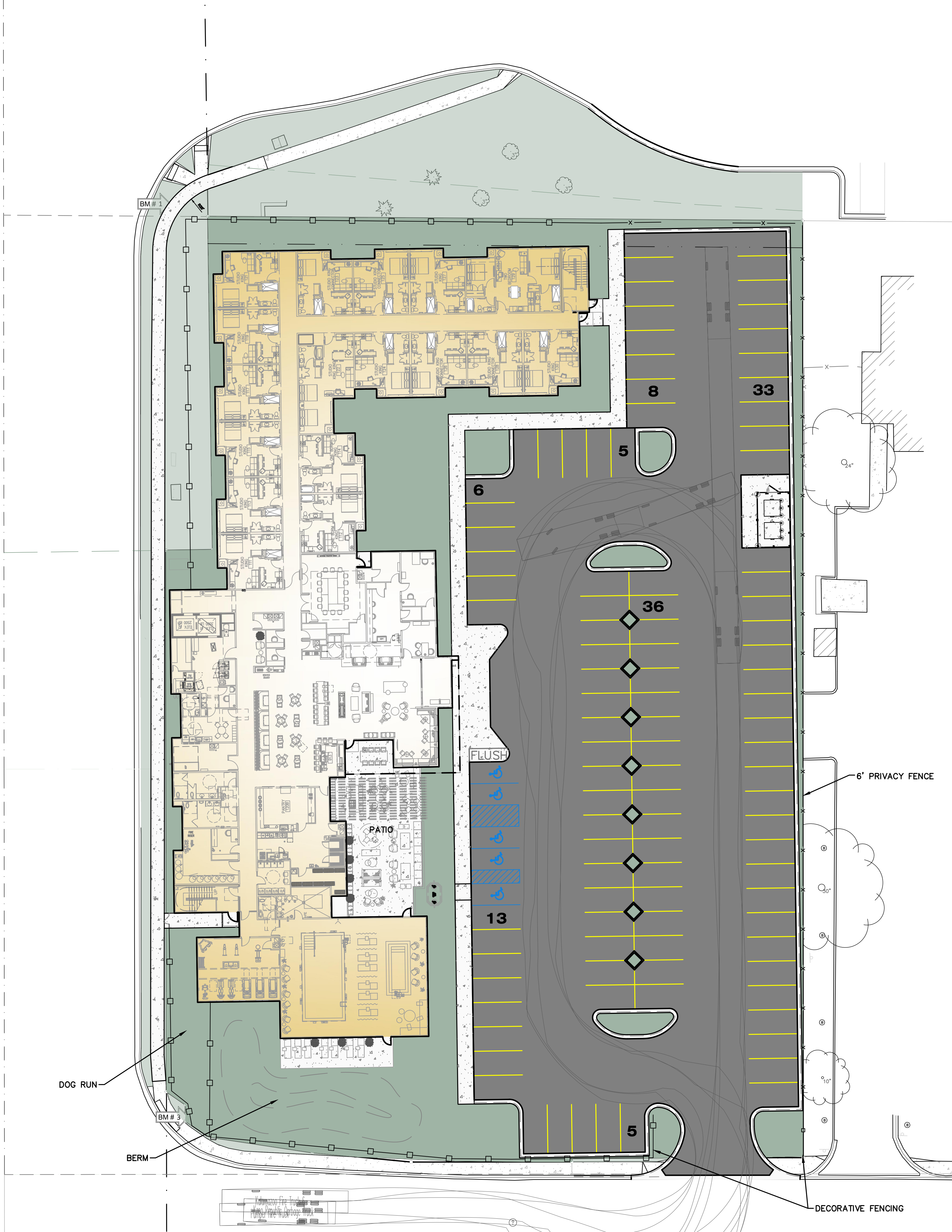
SITE PLAN WITH ELIGIBLE
ACTIVITIES



PROJECT NO.
232059

FIGURE No.

3



ZONING REQUIREMENTS

ZONING
THE SITE IS ZONED CC (COMMUNITY COMMERCIAL)
SETBACKS: FRONT - NOT LISTED
SIDES - 0'
REAR - 0'

PROPOSED USE
HOTEL
CONSTRUCTION TYPE ---

PARKING
TOTAL PARKING SPACES REQUIRED:
- 1 SPACES X HOTEL ROOM 98 ROOMS
- 1 SPACE PER EMPLOYEES = 5 SPACES

TOTAL SPACES REQUIRED = 103
TOTAL PARKING PROVIDED = 106 SPACES
BARRIER FREE SPACES REQUIRED = 5
BARRIER FREE SPACES = 5 PROVIDED
ALL BARRIER FREE SPACES DESIGNED PER ADA REQUIREMENTS

TYPICAL PARKING SPACE DIMENSION = 9'X18'



ALL UTILITIES AS SHOWN ARE APPROXIMATE LOCATIONS DERIVED FROM ACTUAL MEASUREMENTS AND AVAILABLE RECORDS. THEY SHOULD NOT BE INTERPRETED TO BE EXACT LOCATION NOR SHOULD IT BE ASSUMED THAT THEY ARE THE ONLY UTILITIES IN THE AREA.

FIELD WORK PERFORMED BY:
HURLEY & STEWART, LLC

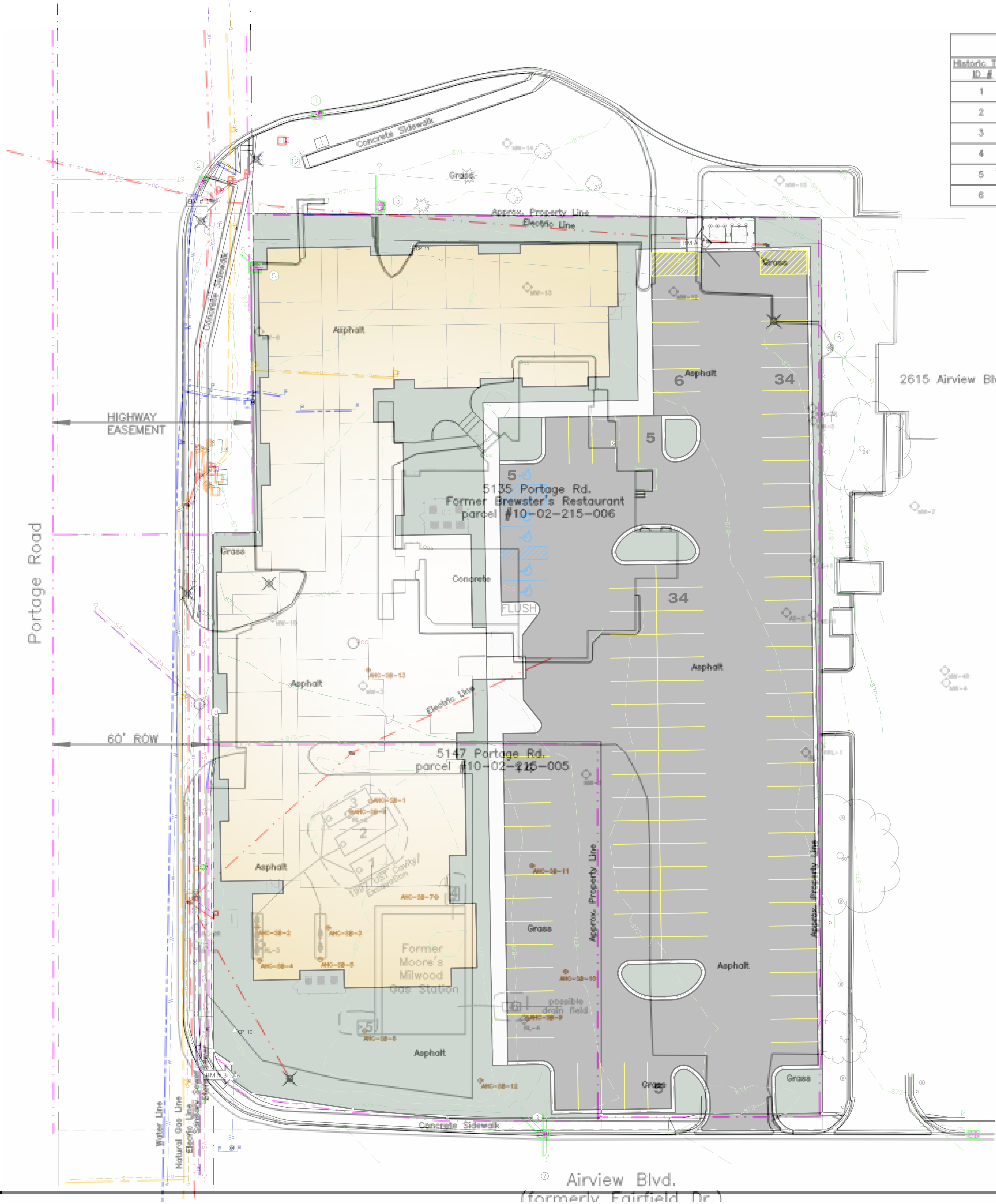
hurley & stewart
hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No. 23-082D	P.M.	Draft LAD	QA/QC	00/00/00
ISSUED FOR/REVISIONS:				
1	OWNER REVIEW			1/25/24
2				
3				
4				

LAYOUT SHEET
BREWSTERS REDEVELOPMENT
H&G

Sheet Title:
Project:
Client:

1/25/24
Sheet
C-1



Historic Tank ID #	Size
1	500
2	500
3	500
4	500
5	500
6	500

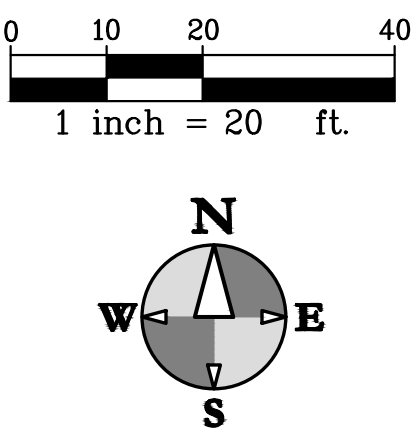
ZONING REQUIREMENTS

ZONING
THE SITE IS ZONED CC (COMMUNITY COMMERCIAL)
SETBACKS: FRONT - NOT LISTED
SIDES - 0'
REAR - 0'

PROPOSED USE
HOTEL
CONSTRUCTION TYPE ---

PARKING
TOTAL PARKING SPACES REQUIRED:
- 1 SPACES X HOTEL ROOM 96 ROOMS
- 1 SPACE PER EMPLOYEES = 5 SPACES

TOTAL SPACES REQUIRED = 101
TOTAL PARKING PROVIDED = 103 SPACES
BARRIER FREE SPACES REQUIRED = 5
BARRIER FREE SPACES = 5 PROVIDED
ALL BARRIER FREE SPACES DESIGNED PER ADA REQUIREMENTS
TYPICAL PARKING SPACE DIMENSION = 9'X18'



ALL UTILITIES AS SHOWN ARE APPROXIMATE LOCATIONS DERIVED FROM ACTUAL MEASUREMENTS AND AVAILABLE RECORDS. THEY SHOULD NOT BE INTERPRETED TO BE EXACT LOCATION NOR SHOULD IT BE ASSUMED THAT THEY ARE THE ONLY UTILITIES IN THE AREA.
FIELD WORK PERFORMED BY:
HURLEY & STEWART, LLC

hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.	23-0850	P.M.	Drft.	LAD	QA/QC	00/00/00
ISSUED FOR/REVISIONS:	1	OWNER REVIEW				12/14/23
2						
3						
4						

CONCEPT 8
BREWSTERS REDEVELOPMENT
CLIENT

Sheet Title:
Project:
Client:

12/14/23
Sheet
8

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") dated June 9, 2023, by and between PHILLIP R MOTT TRUST ("Seller") and AMERICAN VILLAGE DEVELOPMENT, V. LLC a Michigan Limited Liability Company ("Purchaser") as follows:

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN THE PARTIES AGREE AS FOLLOWS:

1. Property. Seller agrees to sell and Purchaser agrees to purchase the real property located at 5135 Portage Road, Kalamazoo, Michigan 49002 and 5147 Portage Road, Kalamazoo, Michigan 49002 (the "Property") which is further described as:

Parcel ID 10-02-215-006 and Parcel ID 10-02-215-005 and as shown on the attached Exhibit "A".

The Property shall include the land and building, all improvements, fixtures and appurtenances thereon; all easements rights, any other rights that benefit the Property; and other similar items located at the Property that are used in connection with the Property. The Property shall include any and all rights to divisions under the Michigan Land Division Act.

2. Purchase Price. The purchase price for the Property shall be [REDACTED] (the "Purchase Price"). The Purchase Price, less the Deposit defined below, and adjusted by other charges and credits as set forth herein, shall be delivered at Closing in immediately available funds subject to the terms and conditions of this Agreement.

3. Deposit. Within five (5) business days of the execution of this Agreement, Purchaser will deliver to Sun Title Company located at 925 S. Burdick, Kalamazoo, MI 49006 ("Title Company") the sum of [REDACTED] (the "Deposit"). Subject to the rights of Purchaser to terminate and receive a refund of the Deposit as provided herein, the Deposit shall be nonrefundable. The Deposit shall be credited against the Purchase Price at Closing.

4. Investigation Period. The "Investigation Period" shall commence on the date of this Agreement and shall expire upon the earlier of (i) five (5) days advance written notice by Purchaser that it desires to voluntarily expire the Investigation Period, or (ii) 5:00 p.m. Eastern time on the [REDACTED] day after the commencement of the Investigation Period. During the Investigation Period, Purchaser and/or its agents and representatives, shall have the right to enter the Property (with advance reasonable notice to Seller) and have the Property and improvements located thereon inspected, surveyed, evaluated, analyzed, tested, appraised and/or assessed for any matter whatsoever, including but not limited to, condition of improvements including structure, plumbing and mechanical systems and the presence of wood destroying insects; Seller's title to the Property; the service agreements related to the Property; market value; soil conditions; location of flood plains; presence of wetlands and necessary mitigation, if any; storm water drainage systems; presence of environmental contamination; health and safety conditions; access to utilities; special assessments; access to public roads; signage; zoning; compliance with laws, codes and ordinances and any other matter desired by Purchaser.

Seller has delivered, or will deliver within five (5) days of executing this Agreement, to Purchaser (i) all surveys, drawings, site plans, topography plans and any other drawings or plans related to the Property; (ii) copies of all engineering reports, soil studies, drainage studies, environmental assessments or reports, and wetland and floodplain studies; (iii) copies of all service agreements currently in place with regard to the Property, if any; (iv) copies of all development, site plan and zoning approvals. The foregoing (i) through (iv) are collectively referred to as the "Property Reports". Seller agrees to cooperate with Purchaser to have the Property Reports updated, renewed, or certified to Purchaser, at Purchaser's cost, if so desired by Purchaser. Additionally, in the event that any of the Property Reports are available in electronic format, Seller agrees to provide or assist Purchaser in obtaining any of these reports in electronic format. In the event Seller has not yet delivered all of the Property Reports to Purchaser, it agrees to do so within five (5) business days after the Effective Date of this Agreement.

During the Investigation Period, Purchaser shall be permitted to apply for and attempt to obtain any entitlements or governmental approvals as Purchaser sees fit in its sole discretion. Such governmental approvals related to Property shall include but are not limited to; partial or full building demolition approvals, building retrofit / improvement approvals, zoning, site plan approvals, and receipt of all licenses and permits necessary or desirable by Purchaser. Seller agrees that during the term of this Agreement Seller will not oppose any applications Purchaser may desire to submit to any governmental authorities related to obtaining any approvals, permits, zoning approvals, or information upon the request of Purchaser.

Purchaser agrees to pay all costs and expenses associated with the Purchaser's inspections conducted pursuant to this Section 4, and Purchaser further agrees to repair and restore any damage to the Property and/or to any portions thereof resulting from or arising out of the Purchaser's investigations. Purchaser and Seller agree to work together in good faith to determine the timing of Purchaser's inspections at the Property.

Purchaser may extend this Investigation Period and Agreement for up to [REDACTED] if there are environmental issues that need to be resolved in Purchaser's sole discretion, by giving Seller [REDACTED] per month for each one-month extension. [REDACTED]

5. Right to Terminate; Refundability of Deposit. [REDACTED]

[REDACTED]. In the event Purchaser terminates this Agreement pursuant to its rights under this Section, and the Termination Notice is delivered on or before the expiration of the Investigation Period, then the full amount of the Deposit shall be immediately refunded to Purchaser. In the event Purchaser terminates this Agreement pursuant to its rights under this Section, and the Termination Notice is delivered after the expiration of the Investigation Period, then the full amount of the Deposit shall be immediately released to Seller. Upon such termination, all rights and obligations of the parties hereunder shall immediately and forever terminate with the exception of those rights and obligations that are expressly intended to survive termination of this Agreement.

6. Closing. The sale shall be closed at the offices of the Title Company or as otherwise agreed to by the parties upon within ten (10) business days from the expiration of the Investigation Period (the "Closing Deadline"). At Closing, Seller shall make the Seller Deliveries described herein and Purchaser shall make the Purchaser Deliveries described herein.

7. Seller's Closing Deliveries. At the Closing, Seller shall deliver to Title Company for delivery to Purchaser, the following items, which shall be in a form and substance satisfactory to Purchaser:

A. A Warranty Deed in a form acceptable to Purchaser conveying to Purchaser title to the property executed and acknowledged by Seller in recordable form;

B. A standard owner's policy of title insurance from the Title Company that is acceptable to Purchaser in an amount not less than the Purchase Price insuring the Purchaser as owner of fee simple, indefeasible title to the Property with full extended coverage over all general exceptions and subject only to the lien of ad valorem property taxes not yet due and payable and any exceptions to title approved by Purchaser in its sole discretion and such other endorsements ordered and paid for by Purchaser (the "Title Policy");

C. An affidavit of ownership as required by the Title Company in order to induce the title company to omit the standard exceptions from its policy of owner's title insurance;

D. A certificate in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying as to the non-foreign status of a transferor;

E. Seller shall deliver possession of the Property to Purchaser at Closing.

F. A Certificate certifying that Seller's representations and warranties are true and correct;

G. Evidence of termination of any service agreements effecting the Property except to the extent that Purchaser desires to continue any such service agreements in which case Seller shall deliver an Assignment of such service agreements; and

H. Such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Seller.

8. Purchaser's Closing Deliveries. At Closing, Purchaser shall deliver to the Title Company for disbursement to Seller, the Purchase Price adjusted by the Deposit and other credits and debits as set forth on the Closing Statement to be prepared by Title Company, a Certificate certifying that all of Purchaser's representations and warranties are true and correct, and such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Purchaser.

9. Closing Costs and Prorations. Seller shall pay (i) all transfer and/or conveyance taxes assessed in connection with the Closing, (ii) the premium for the Title Policy (excluding the cost of any other endorsements), and (iii) one half (1/2) of Title Company's closing fee in connection with this transaction. Purchaser shall pay (i) all recording costs for recordation of the deed, (ii) the cost of any endorsements issued with the Title Policy and (iii) one half (1/2) of Title Company's closing fee in connection with this transaction; and (iv) all costs and expenses associated with the Purchaser's inspections conducted pursuant to this Agreement. The amount of the Deposit shall be credited against the Purchase Price. Seller shall be responsible for and pay all past due taxes at or prior to Closing. Rents, additional rent, and other income from the Property shall be prorated as of the date of Closing. The amount of all security deposits and prepaid rents, if any, under the Leases shall be credited against the Purchase Price. All bills or costs related to any Service Agreements shall be paid by Seller up to the date of Closing. All bills for utility service to the Property that are Seller's responsibility under the Leases shall be paid by Seller up to the date of Closing. Taxes for the year of Closing shall be prorated on a calendar-year basis and shall be payable in arrears. Seller shall be solely and exclusively responsible for payment in full of all special assessments against the Property. Other regular and customary costs and expenses related to the Property shall also be prorated based on the date of Closing. To the extent appropriate for the adjustment of the foregoing amounts to achieve the requirements of this Section, the terms of this Section shall survive Closing.

10. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser, which representations and warranties shall survive Closing, that as of the date hereof, and on the date of Closing:

A. Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms hereof. Seller has the right, power, and authority to enter into all of the agreements, assignments, and other documents contemplated by this Agreement. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto.

B. Seller has not received any notice of, and has no knowledge of, existing violations on the Property or any portion thereof of any zoning, building, fire, health, pollution, environmental protection, hazardous or toxic substance, or waste disposal law or ordinance.

C. There are no leases, agreements, rights of first refusal, rights of first offer, options, or other instruments or agreements in effect with respect to the Property to which Seller is a party.

D. With the exception of any disclosed service agreements, there are no agreements, obligations, or other rights of third parties against the Property.

- E. Seller has no knowledge of any persons or entities claiming a right to possession of the Property.
- F. The Seller has good and marketable fee simple title to the Property, free and clear of any and all liens and other encumbrances other than any exceptions to title approved by Purchaser in its sole discretion.
- G. The execution and delivery of, and the performance of all obligations under this Agreement by Seller do not and will not require any consent or approval of any person or entity, and do not and will not result in a breach of any agreement or instrument to which Seller is a party.
- H. There is no litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against or involving Seller or the Property, and Seller does not know or have reason to know of any grounds for any such litigation, proceeding or investigation, which could have an adverse impact on Purchaser, the Seller or the Seller's title to or use of the Property, either before or after Closing.
- I. Seller represents and warrants that, to the best of Seller's knowledge, information and belief, the Property and Seller: (i) are in full compliance with all requirements of federal, state, and local environmental, health, or safety laws, regulations, and administrative or judicial decrees, as amended (the "Environmental Laws"); (ii) are not the subject of and have not at any time in the past, been the subject of any "Superfund" evaluation or investigation; and (iii) are not the subject of any federal or state investigation or administrative proceeding evaluating whether any remedial action is necessary to respond to a release of any Hazardous Substance (as defined below). "Hazardous Substance" means any toxic or hazardous waste, pollutants or substances, including, but without limitation, asbestos, PCB's, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et. seq.*, and any other hazardous or toxic substances or pollutants regulated under other applicable Environmental Laws.
- J. With the exception of the Property Reports that have been delivered to Purchaser, there are no reports, studies, appraisals, engineering reports, correspondence, agreements with governmental authorities, wetland studies or reports, flood plain studies, service agreements, or reports and/or other written information related to the Property of which Seller is aware or that are in Seller's possession or control.

In addition to the Indemnification remedies set forth herein, if prior to the Closing, Purchaser shall discover that any of Seller's representations and warranties are incorrect, Purchaser, at its option, shall have the right to terminate this Agreement by giving written notice to Seller with no liability on its part and recover from Seller all reasonable costs and expenses necessarily incurred and actually paid by Purchaser as a result of Seller's breach of such representations and warranties and shall receive from Seller a refund of the Deposit.

11. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller, which representations and warranties shall survive Closing, that as of the date hereof, and on the date of Closing:

- A. Purchaser has the full power and authority to execute, deliver and perform this Agreement and all of Purchaser's obligations under this Agreement; and
- B. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Purchaser are and shall be duly authorized to sign the same on Purchaser's behalf and to bind Purchaser thereto; and
- C. Purchaser hereby discloses that its principals and employees are licensed Real Estate Brokers in the State of Michigan.

12. Indemnification.

- A. Seller agrees to indemnify and hold Purchaser harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature, including but not limited to, all expenses related thereto, including, without limitation, court costs and attorney's fees for matters arising from or related to the inaccuracy or breach of any of Seller's representations and warranties.
- B. Purchaser agrees to indemnify and hold Seller harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature, including but not limited to, all expenses related thereto, including, without limitation, court costs and attorney's fees for matters arising from or related to the inaccuracy or breach of any of Purchaser's representations and warranties.
- C. In the event either party hereto receives notice of a claim or demand for which the other party may be entitled to indemnification pursuant to this Section, such party shall promptly give notice thereof to the other party. The indemnifying party shall immediately take such measures as may be reasonably required to properly and effectively defend such claim, and may defend same with counsel of its own choosing and approved by the other party (which approval shall not be unreasonably withheld or delayed). In the event the indemnifying party refuses to defend such claim or fails to properly and effectively defend such claim, then the other party may defend such claim with counsel of its own choosing at the expense of the indemnifying party. In such event, the indemnified party may settle such claim without the consent of the indemnifying party. It is expressly stipulated, covenanted, and agreed that the provisions of this Section shall survive the Closing.

13. Use of the Property. Seller warrants and covenants that it shall not, without Purchaser's written consent, (i) grant, convey or enter, any easement, lease, license or other legal or beneficial interest in or to the Property, or (ii) enter into any contract, service contract, option agreement to transfer, convey or encumber the Property or any portion thereof. Seller further warrants that, upon receipt of any knowledge or notice of any threatened or pending (i) condemnation, (ii) action in lieu of condemnation, (iii) zoning change, (iv) assessment, (v) lien, (vi) claim, (vii) encumbrance, or (viii) similar matter that may affect the Property, its operation or development, Seller shall promptly notify Purchaser thereof.

14. Condemnation; Casualty. Purchaser shall have the right to terminate this Agreement if any part of the Property is destroyed without fault of Purchaser or any part of the Property is taken or is threatened to be taken by eminent domain. Purchaser shall give written notice of Purchaser's election to terminate this Agreement within ten (10) business days after Purchaser receives written notice from Seller of any such damage or threatened condemnation. In the event of such a termination by Purchaser, Title Company or Seller shall immediately refund to Purchaser the Deposit and the rights and obligations of the parties hereunder shall terminate.

15. Default and Remedies.

A. Purchaser's Default; Seller's Remedy. If the Purchaser fails to deliver the Termination Notice and fails to close on the purchase of the Property, due to Purchaser's material default under the Agreement, and provided that the Seller is not otherwise in material default of this Agreement, then Seller shall be entitled, to the full amount of the Deposit, as liquidated damages, as Seller's sole and exclusive remedy, and upon payment to Seller of such amount, this Agreement and all rights and obligations of the parties shall terminate. The parties agree that it would be impracticable and extremely difficult to ascertain the actual damages suffered by Seller as a result of Purchaser's failure to complete the purchase of the Property and that under the circumstances existing as of the date of this Agreement, the liquidated damages provided for in this Section represents a reasonable estimate of the damages which Seller will incur as a result of such failure. The parties acknowledge that the payment of such liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to Seller.

B. Seller's Default; Purchaser's Remedies. In the event Seller fails to timely perform any material act, or provide any material document or information required to be provided by Seller, or in the event any Representation and Warranty made by Seller pursuant to this Agreement is untrue when made, then Purchaser shall be entitled to either (i) terminate this Agreement, demand a refund of the Deposit and seek Purchaser's actual damages arising from Seller's breach; or (ii) seek specific performance of this Agreement, and seek Purchaser's actual damages.

16. Attorneys' Fees. The prevailing party in any legal proceeding brought under or with relation to this Agreement or transaction shall be entitled to recover court costs, reasonable attorneys' fees, and all other litigation expenses from the non-prevailing party.

17. Sale and Assignment of Agreement. Purchaser may assign all of its rights and obligations under this Agreement to any person or entity upon terms and conditions determined by Purchaser in its sole discretion. Upon delivery of written notice to Seller and Title Company together with a copy of such assignment, Purchaser shall be forever released and discharged from any and all obligations under this Agreement and Purchaser's assignee shall be entitled and subject to all rights and obligations set forth in this Agreement.

18. Exchange. Either party shall have the right, at its option, to consummate the transactions contemplated in this Agreement pursuant to a transaction that is structured to qualify as a like-kind exchange of property within the meaning of §1031 of the Internal Revenue Code of 1986, as amended, including what is known as a "reverse" like kind exchange. The parties agree to cooperate with one another in effecting a qualifying like-kind exchange through a trust or other means as determined by the party that requests that the transaction be effected through a qualifying like-kind exchange; provided, however, that the party desiring such treatment, shall bear all additional transaction costs and all reasonable costs and expenses incurred by the other party that are attributable to the closing of a qualifying exchange.

19. Marketing and Promotion. Seller acknowledges that Purchaser intends to market and promote the lease or sale or use of the Property during the period that precedes Closing of this Agreement. Seller agrees to accommodate such marketing and promotion of the Property by Purchaser and shall reasonably cooperate with Purchaser's showings and requests related to the Property.

20. Marketing for Sale. Upon execution of this Agreement, Seller shall discontinue all marketing of the Property for sale. Seller further agrees that Seller shall not engage in any negotiations related to any other offers or back-up offers to purchase the Property. Under no circumstances shall Seller accept any back-up offers related to the Property.

21. Further Assurances. The parties each agree to execute, acknowledge, deliver and do all such further acts, instruments and assurances, and to take all such further action before or after the closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions, rights and obligations set forth herein and contemplated hereby. Such assurances shall include working together in good faith and cooperating, both prior to and after closing, with regard to achieving the prorrations contemplated hereby. This provision shall survive closing.

22. Miscellaneous.

A. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

B. This Agreement shall be governed by and construed under the laws of the state in which the Property is located.

C. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

D. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

E. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the conveyance of the Property and all other matters contained herein and constitutes the sole and entire agreement between Seller and Purchaser with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

F. All notices, payments, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective upon personal delivery, or upon the second (2nd) business day after being deposited in the United States mail, postpaid and registered or certified with return receipt requested; or when sent by private courier service for same-day delivery or one day after being sent by private courier service for next-day delivery. The time period in which a response to any notice, demand, or request must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept delivery or inability to deliver because of changed address, of which no notice has been given, shall constitute receipt of the notice, demand, or request sent. Any such notice, demand, or request shall be sent to the respective addresses set forth below:

To Seller: Phillip R. Mott Trust, Attn: Mardee Mott, 16400 S. 21st Street, Vicksburg, MI 49097

To Purchaser: American Village Development V, LLC Attn: Greg Dobson, 4200 W. Centre Ave., Portage, Michigan 49024

G. This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

H. If any date of performance hereunder falls on a Saturday, Sunday or legal holiday, such date of performance shall be deferred to the next day which is not a Saturday, Sunday or legal holiday.

I. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision is severed and deleted from this Agreement.

J. While several members of the Purchaser are licensed real estate associate brokers and salespersons in the State of Michigan, and the Purchaser is represented therefore by a licensed broker in the State of Michigan, no commissions are to be paid by the Purchaser. The Seller is represented by Jeff Crystal of Kalamazoo Commercial Real Estate and any commissions due Kalamazoo Commercial Real Estate will be paid by Seller through a separate agreement.

23. **By signing below, Purchaser acknowledges having read and received a copy of this Agreement.**

[signatures to follow on next page]

Purchaser: AMERICAN VILLAGE DEVELOPMENT V, LLC

Purchaser: Gregory A. Dobson
Gregory A. Dobson

Purchaser's Address: Per Section 22 F of this Agreement

Bus. Phone: 269.329.3636

E-Mail: gdobson@avbinc.com

Purchaser gives Seller until 5:00 PM EST (time) 6/12/23 (date), to obtain Seller's written acceptance or counter offer, if any.

SELLER'S ACCEPTANCE

Date: 6-9-2023, 3:00 (time)

24. The above Offer is hereby accepted: AS WRITTEN

Maudie J. Mott Trustee

By signing below, Seller acknowledges having read and received a copy of this agreement. If this Agreement is signed by Seller without any modifications, this becomes the Effective Date of this Agreement.

Seller gives Purchaser above named until _____ (time) _____ (date), to obtain Purchaser's written acceptance or counter offer, if any.

Witness: [Signature]

Seller: PHILLIP R. MOTT TRUST

Seller: Maudie J. Mott Trustee
(Note: Please sign as you wish your name to appear on the final papers.)

Seller's Address: _____

Bus. Phone: 269-649-0458 Fax: _____

E-Mail: info@mottfarms.com

PURCHASER'S ACCEPTANCE

Date: _____, _____ (time)

25. Purchaser acknowledges receipt of Seller's acceptance of Purchaser's offer. If the acceptance was subject to changes from Purchaser's offer, the Purchaser agrees to accept those changes, all other terms and conditions remaining unchanged. If this Agreement is signed by the Purchaser without any modifications, this becomes the Effective Date of this Agreement.

Witness: _____

Purchaser: _____

Purchaser: _____

SELLER'S ACCEPTANCE

Date: _____, _____ (time)

26. Seller acknowledges receipt of a copy of the Purchaser's acceptance of the counter-offer (if Seller made a counter-offer).

Witness: _____

Seller: _____

Seller: _____

Exhibit A
The Property

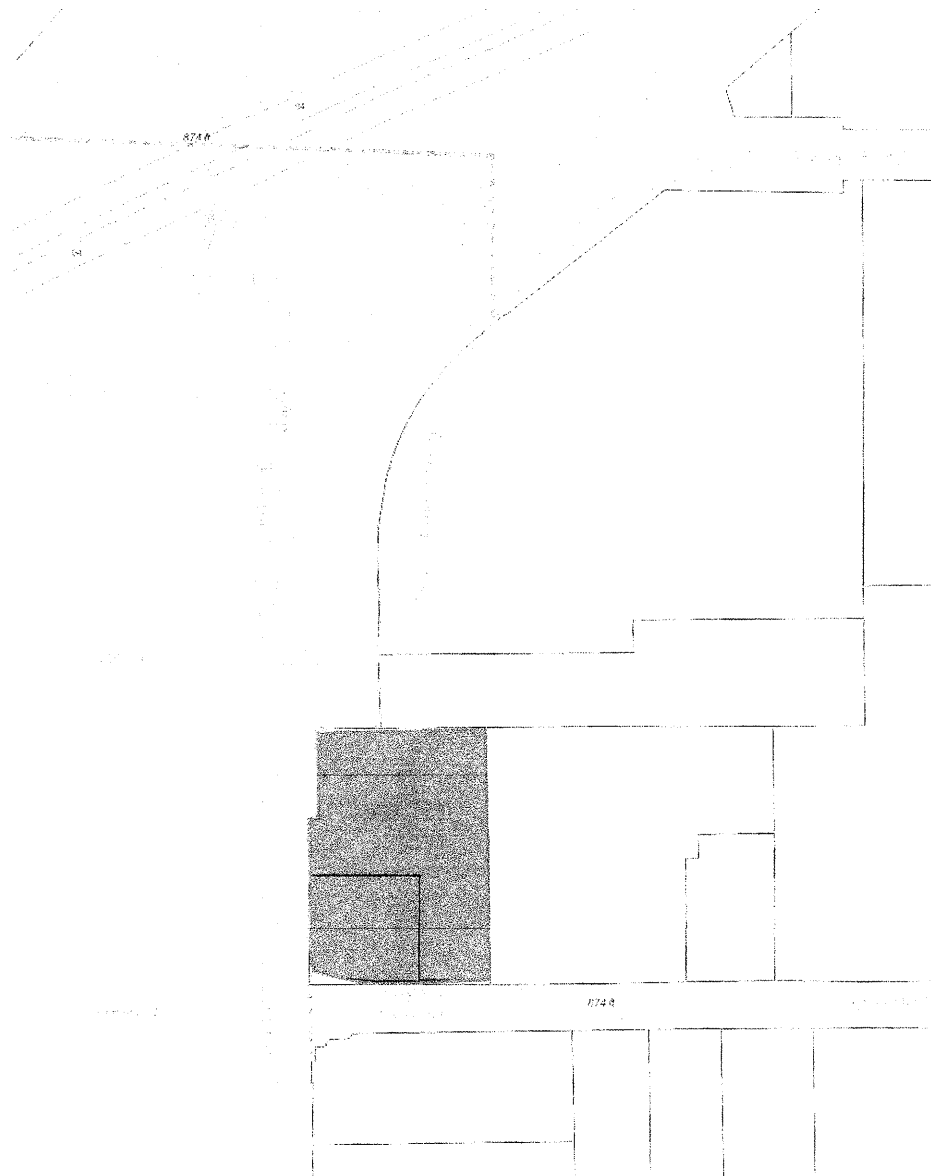


Table 2

**Former Brewster's Restaurant - 5135 Portage Road, Portage, MI
Summary of Groundwater Analytical Results**

	Volatile Organic Compounds															
	benzene µg/l	toluene µg/l	ethyl- benzene µg/l	xylenes µg/l	MTBE ug/l	1,2,4-TMB ug/l	1,3,5-TMB ug/l	1,2,3-TMB ug/l	naph- thalene µg/l	2-methyl naphthalene µg/l	1,2-DCA µg/l	EDB µg/l	isopropyl benzene ug/l	n-propyl benzene ug/l	sec-butyl benzene ug/l	Other VOCs µg/l
Tier 1 (Residential) Risk Based Screening Levels																
Drinking Water - Residential	5.0 (A)	790 (E)	74 (E)	280 (E)	40 (E)	63 (E)	72 (E)	--	520	260	5.0 (A)	0.05 (A)	800	80	80	Varies
Groundwater Surface Water Interface	200 (X)	270	18	41	7,100 (X)	17	45	--	11	19	360 (X)	5.7 (X)	28	ID	ID	Varies
Groundwater Volatilization to Indoor Air - Residential	5,600	5.3E+5 (S)	110,000	1.9E+5 (S)	4.7E+7 (S)	56,000 (S)	61,000 (S)	--	31,000 (S)	25,000 (S)	9,600	2,400	56,000 (S)	ID	ID	Varies
Water Solubility	1.75E+06	526,000	169,000	186,000	4.68E+07	55,890	61,150	--	31,000	2.46E+04	8.52E+06	4.20E+06	5.60E+04	NA	NA	Varies
Flammability and Explosivity	68,000	61,000	43,000	70,000	ID	56,000 (S)	ID	--	--	ID	2.50E+06	ID	29,000	ID	ID	Varies
Residential VIAP Screening Levels (September 4, 2020)	28	41,000	74	2,000 (J)	3.30E+05	670 (JT)	470 (JT)	1,200 (JT)	4.4	66	41	3.8	15	6,100 (DD)	8,100	Varies
October, 2011 (AHC - Contaminant Investigation)																
MW-2	<100	230	920	6,500	<100	1,500	360	420	<500	<500	<100	<100	<100	150	<100	<RL
MW-3	20,000	18,000	2,300	11,000	<200	1,200	310	360	<1,000	<1,000	<200	<200	<200	<200	<200	<RL
MW-10	1,600	630	270	2,500	<100	850	290	<100	<500	<500	<100	<100	<100	<100	<100	<RL
MW-14	160	440	380	1,260	<20	250	44	59	<100	<100	<20	<20	<100	30	<20	<RL
MW-15	170	170	570	860	<10	270	83	79	110	<50	<10	<10	110	65	<10	<RL
MW-17	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
MW-18	1.1	4	2.6	14	<5	3.4	<1	<1	<1	<5	<1	<1	<1	2.6	<1	<RL
RL-6	<1	<1	<1	<3	76	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
RL-7	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
October, 2011																
MW-2	<100	230	920	6,500	<100	1,500	360	420	<500	<500	<100	<100	<100	150	<100	<RL
MW-3	20,000	18,000	2,300	11,000	<200	1,200	310	360	<1,000	<1,000	<200	<200	<200	<200	<200	<RL
MW-10	1,600	630	270	2,500	<100	850	290	<100	<500	<500	<100	<100	<100	<100	<100	<RL
MW-14	160	440	380	1,260	<20	250	44	59	<100	<100	<20	<20	<100	30	<20	<RL
MW-15	170	170	570	860	<10	270	83	79	110	<50	<10	<10	110	65	<10	<RL
MW-17	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
MW-18	1.1	4	2.6	14	<5	3.4	<1	<1	<1	<5	<1	<1	<1	2.6	<1	<RL
MW-19	1.8	3.1	7.9	10	<5	2.7	<1	<1	<1	<5	<1	<1	<1	2.1	<1	<RL
RL-6	<1	<1	<1	<3	76	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
RL-7	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
Feburary, 2012																
MW-2	<50	230	430	2,750	<50	1,200	280	330	310	<250	<50	<50	50	110	<50	<RL
MW-3	17,000	15,000	1,800	9,900	<200	1,300	340	370	<1,000	<1,000	<200	<200	<200	<200	<200	<RL
MW-10	2,100	660	270	2,590	<20	900	290	300	120	<100	<20	<20	<20	41	<20	<RL
MW-14	160	260	440	1,450	<10	310	54	79	110	<50	<10	<10	110	33	<10	<RL
MW-15	3.0	5.4	41	126	<1	43	14	11	13	9.5	1.0	1.0	13	7.1	<1	<RL
MW-17	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
MW-18	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
MW-19	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
RL-6	1.0	<1	<1	<3	7.0	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
RL-7	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
May, 2012 - Gannett Fleming																
MW-2	<50	350	740	5,600	<50	1,400	320	390	400	<250	<50	<50	54	140	<50	<RL
MW-3	12,000	11,000	1,400	6,500	<200	890	220	250	<1,000	<1,000	<200	<200	<200	<200	<200	<RL
MW-10	1,900	550	260	3,130	<20	1,100	350	370	150	<100	<20	<20	20	51	<20	<RL
MW-14	230	830	570	2,230	<20	350	76	95	150	<100	<20	<20	150	41	<20	<RL
MW-15	110	120	360	740	<1	180	51	58	140	32	<1	<1	29	48	3.9	<RL
MW-17	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
MW-18	1.4	1.5	5.5	<3	<5	1.5	<1	<1	<1	<5	<1	<1	<1	1.3	<1	<RL
MW-19	<1	<1	<1	<3	<5	1.3	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
RL-6	<1	<1	<1	<3	76	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL
RL-7	<1	<1	<1	<3	<5	<1	<1	<1	<1	<5	<1	<1	<1	<1	<1	<RL

Notes: 1)Groundwater samples were collected by Gannett Fleming Inc.

2) (<) - Indicates not detected, followed by the detection limit (RL). (na) - Indicates parameter was not analyzed.

3) All laboratory extractions and analyses were performed within the required period.

4) Results are **bolded** where detected, and underlined where above one or more applicable RBSL; Results are SHADED where present at concentrations in excess of the Residential VIAP Screening Levels

5) Tier 1 Residential RBSLs for applicable pathways from EGLE-RRD Cleanup Criteria Requirements for Response Activity (October 12, 2023). Residential Volatilization to Indoor Air Pathway (VIAP) Screening Levels from EGLE-RRD September 4, 2020); A request for VI Site-Specific Target Levels is included in the Appendices of the Initial Assessment Report, dated January 22, 2024.

6) (A) - Michigan Drinking Water Standard; (E) - Value represents Aesthetic Drinking Water Value; (J) - Hazardous substance may be present in several isomer forms; (T) - Refer to the Federal Toxic Substances Control Act (TSCA), 40 C.F.R. 761, Subpart D, and 40 C.F.R. 761, Subpart G, to determine the applicability of TSCA cleanup standards; (DD) - Hazardous substance causes developmental effects; (X) - Not protective for surface water used as drinking water source; (G) - Criterion is pH or hardness dependant. (S) - Indicates criterion exceeds the Water Solubility for the compound, and therefore defaults to the Water Solubility Criteria.

Table 1 Former Brewster's Restaurant - 5135 Portage Road, Portage, MI Summary of Soil Analytical Results																
	Volatile Organic Compounds															
	benzene ug/kg	toluene ug/kg	ethyl- benzene ug/kg	xylene ug/kg	1,2,4-TMB ug/kg	1,3,5-TMB ug/kg	4-Isopropyl toluene ug/kg	Isopropy benzene ug/kg	n-propyl benzene ug/kg	n- butylbenzene ug/kg	sec- butylbenzene ug/kg	All Other VOCs ug/kg	PNAs ug/kg	Lead mg/kg	Cadmium mg/kg	Chromium mg/kg
Tier 1 (Residential) RBSLs																
Statewide Default Background	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Varies	Varies	21	1.2	18
Drinking Water Protection	100	16,000	1,500	5,600	2,100	1,800	--	9,100	1,600	1,600	100	Varies	Varies	700	6.0	30
Groundwater/Surface Water Interface	4,000 (X)	5,400	360	980	570	1,100	--	3200	ID	ID	7,200 (X)	Varies	Varies	6.0E+6 (G,X)	(G,X)	3.3
Volatilization to Indoor Air Inhalation	1,600	330,000 (C)	87,000	6.3E+6 (C)	4.3E+6 (C)	2.6E+6 (C)	--	4.00E+05 (C)	ID	ID	2,100	Varies	Varies	NLV	NLV	NLV
Direct Contact	180,000	5.0E+7 (C)	2.2E+7 (C)	4.1E+8 (C)	3.2E+7 (C)	3.2E+7 (C)	--	2.5E+07 ©	2.5E+06	2.5E+06	91,000	Varies	Varies	400	550	2,500
Soil Saturation Criteria (Csat)	400,000	250,000	140,000	150,000	110,000	94,000	--	390,000	1.0E+07	390,000	1.20E+06	Varies	Varies	NA	NA	NA
Residential VIAP Screening Levels (September 4, 2020)	1.7 (M)	3,700 nc	12 (M)	280 (J)	150 (JT)	100 (JT)	--	3.8 (M)	1,800 (DD)	550	0.82 (M)	Varies	Varies	NA	NA	NA
May, 1997 (Earth Resources International, L. C.)																
UST #3 (West End)	<1000	86,000	27,000	580,000	--	--	--	--	--	--	--	--	--	--	--	--
UST #4 (North)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
UST #4 - (Piping)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
UST #4 (South)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Dispenser - West	1,400	44,000	5,400	580,000	--	--	--	--	--	--	--	--	--	--	--	--
August, 2007 (Barr UST Closure Report)												MTBE				
TANK1 (East Btm @ 14-15')	<50	<100	<53	<153	<100	<100	--	--	--	--	--	<250	<330	--	--	--
TANK1 (West Btm @ 14-15')	<50	<100	<50	<150	<100	<100	--	--	--	--	--	<250	<330	--	--	--
TANK2 (East Btm @ 14-15')	<50	<100	<50	<150	<100	<100	--	--	--	--	--	<250	<330	--	--	--
TANK2 (West Btm @ 14-15')	<50	<100	<55	<155	<100	<100	--	--	--	--	--	<250	<330	--	--	--
DISP-1 (Vent @ 6-7')	<50	<100	<50	<150	<100	<100	--	--	--	--	--	<250	<330	--	--	--
DISP-2 (3-4')	<50	<100	<50	<150	<100	<100	--	--	--	--	--	<250	<330	--	--	--
DISP-3 (3-4')	<50	<100	<50	<150	<100	<100	--	--	--	--	--	<250	<330	--	--	--
DISP-4 (3-4')	<50	<100	<51	<151	<100	<100	--	--	--	--	--	<250	<330	--	--	--
Middle Pipe-1 (2-3')	<50	<100	<51	<151	<100	<100	--	--	--	--	--	<250	<330	--	--	--
Middle Pipe-2 (2-3')	<50	<100	<52	<152	<100	<100	--	--	--	--	--	<250	<330	--	--	--
September, 2023 - (American Hydroeology)																
AHC SB-1 (14-15')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	--	--	--
AHC SB-2 (2-3')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	--	--	--
AHC SB-3 (4-5')	<50	<50	<50	140	4,000	1,200	<50	<50	170	210	57	<RL	--	--	--	--
AHC SB-4 (3-4')	<50	<50	140	<150	<50	<50	<50	75	520	35	120	<RL	--	--	--	--
AHC SB-5 (3-4')	<50	<50	160	540	15,000	6,100	100	70	<50	<50	310	<RL	--	--	--	--
AHC SB-6 (3-4')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	--	--	--
AHC SB-6 (19.5-20.5')	<100	<100	6,200	21,800	180,000	61,000	3,200	5,700	16,000	28,000	7,400	<RL	--	--	--	--
AHC SB-7 (3-5')	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	<RL	--	--	--	--
AHC SB-8 (3-4')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	7.60	<0.2	4.60
AHC SB-8 (14-15')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	2.60	<0.2	3.80
AHC SB-9 (13-14')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	2.80	<0.2	2.10
AHC SB-10 (2.5-3.5')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	6.10	<0.2	7.70
AHC SB-11 (3-4')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	--	--	--
AHC SB-12 (3-4')	<50	<50	<50	<150	<50	<50	<50	<50	<50	<50	<50	<RL	--	--	--	--
AHC SB-13 (35.5-36.5')	9,000	94,000	40,000	135,000	87,000	29,000	880	5,100	6,400	20,000	2,500	<RL	--	--	--	--
Notes: 1) Soil Borings AHC SB-1 through AHC SB-13 were advanced by American Hydro Corporation(AHC) 2) < - Indicates not detected, followed by detection limit; (RL) - Indicates below laboratory reporting limit; (▼) - Indicates a saturated sample that cannot be compared to Tier 1 Residential RBSLs. 3) (na) - Indicates parameter not analyzed. (--) - Indicates not applicable 4) Tier 1 RBSLs from EGLE-RRD Operational Memorandum #1, June 25, 2018; Residential Volatilization to Indoor Air Pathway (VIAP) Screening Levels from EGLE-RRD (September 4, 2020); A request for VI Site-Specific Target Levels is included in the Appendices of the Initial Assessment Report, dated January 22, 2024. 5) Results are bolded where detected, and <u>underlined</u> where above one or more applicable RBSL; Results are SHADED where present at concentrations in excess of the VIAP Screening Levels 6) (DATA) - Insufficient physical chemical paramters to calculate a VIAP SL. Health-based soil vapor value should be used to evaluate risk; (G) - GSI criterion depends on pH or water hardness or both of the receiving surface water. (M) - The (X) - The GSI criterion shown in the generic cleanup criteria tables is not protective for surface water that is used as a drinking water source; (DD) - Hazardous substances cause developmental effects; (EE) - The hazardous substance may cause adverse human health effects for less than chronic exposures (i.e. short-term or acute); (MM) - Hazardous substance is a carcinogen with a mutagenic mode of action; (J) - Hazardous substance may be present in several isomer forms. Isomer-specific concentrations must be added together for comparison to criteria; (JT) - Hazardous substance may be present in several isomer forms																









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: March 21, 2024

SUBJECT: Adoption of a Resolution Accepting the First Amendment to the Right of First Refusal Agreement with Republic Services of Michigan Hauling, LLC and Authorize the Chair to Sign.

RECOMMENDATION:

It is recommended the BRA adopt the resolution accepting the First Amendment to the Right of First Refusal Agreement with Republic Services of Michigan Hauling, LLC and authorize the Chair to sign.

BACKGROUND:

In May 2019 the BRA entered into a Right of First Refusal Agreement ("Agreement") with Republic Services of Michigan Hauling LLC parcels within the 100 block and 200 block of East North Street in the Northside neighborhood. Both Republic and City staff wish to extend this Agreement for an additional 5-year term. It includes the following parcels:

- 100 E North Street
- 131 E Ransom Street
- 200 E North Street
- 216 E North Street
- 614 N Edwards Street
- 612 N Edwards Street
- 201 E Ransom Street
- 209 E Ransom Street

FISCAL IMPACT:

The amendment to this Agreement will cost the BRA \$100 to extend for an additional 5 years.

**CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY**

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A FIRST
AMENDMENT TO A RIGHT OF FIRST REFUSAL AGREEMENT WITH
REPUBLIC SERVICES OF MICHIGAN HAULING LLC**

Boardmember _____, supported by Boardmember _____,
moved the adoption of the following resolution:

WHEREAS:

1. Owner and BRA are parties to that certain Right of First Refusal Agreement dated May 16, 2019, recorded as Document No. 2019-015875 in the real property records for Kalamazoo County, Michigan, a copy of which is attached hereto as Exhibit "A" and incorporated herein (the "ROFR Agreement"), wherein Owner granted to BRA a right of first refusal on certain real property owned by Owner located in Kalamazoo, Michigan, more particularly described in the ROFR Agreement; and
2. BRA and Owner desire to extend the term of the ROFR Agreement for a period of 5 years in accordance with the terms and provisions of this Agreement.

RESOLVED:

1. That the First Amendment to Purchase and Sale Agreement between the Authority and the Purchaser is approved; and
2. That the Chairperson of the Board of Directors of the Authority is authorized and directed to execute the approved Agreement for and on behalf of the Authority; and
3. That all resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

YEAS: Boardmembers _____

NAYS: Boardmembers _____

ABSTAIN: Boardmembers _____

ABSENT: Boardmembers _____

RESOLUTION DECLARED ADOPTED.

Dated: March 20, 2024

_____, Secretary

CERTIFICATION

I, the undersigned duly qualified and acting Secretary of the City of Kalamazoo Brownfield Redevelopment Authority, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Directors of the Brownfield Redevelopment Authority at a meeting held on March 20, 2024, and that public notice of said meeting was given pursuant to, and in accordance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

Dated: March 20, 2024

_____, Secretary

FIRST AMENDMENT TO RIGHT OF FIRST REFUSAL AGREEMENT

THIS FIRST AMENDMENT TO RIGHT OF FIRST REFUSAL AGREEMENT (“**Amendment**”) is made this ____ day of _____, 2024 (the “**Effective Date**”), by **REPUBLIC SERVICES OF MICHIGAN HAULING, LLC**, a Michigan limited liability company, whose address is 18500 North Allied Way, Phoenix, AZ 85054, Attn: Chief Legal Officer (“**Owner**”) and **CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY**, a Michigan public body corporate, whose address is 241 West South Street, Kalamazoo, MI 49007 (“**BRA**”).

Recitals:

A. Owner and BRA are parties to that certain Right of First Refusal Agreement dated May 16, 2019, recorded as Document No. 2019-015875 in the real property records for Kalamazoo County, Michigan, a copy of which is attached hereto as Exhibit “A” and incorporated herein (the “**ROFR Agreement**”), wherein Owner granted to BRA a right of first refusal on certain real property owned by Owner located in Kalamazoo, Michigan, more particularly described in the ROFR Agreement; and

B. BRA and Owner desire to extend the term of the ROFR Agreement for a period of 5 years in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the sum of \$100.00, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and BRA agree as follows:

1. The above recitals are true and correct, and are incorporated by reference.
2. The first sentence of Paragraph 2 of the ROFR Agreement is hereby amended by deleting the words “If within 5 years of the date of recordation of this Agreement” and replacing same with “If on or before June 6, 2029”.
3. Paragraph 3 of the ROFR Agreement is hereby amended by
 - (a) replacing the notice address for Republic Services, Inc. to:

“With a copy to: Republic Services, Inc.
18500 North Allied Way
Phoenix, AZ 85054
Attn: Chief Legal Officer”

and (b) adding the following to the notices for BRA:

“With a copy to: Dickinson Wright
200 Ottawa Ave., N.W.
Suite 900
Grand Rapids, MI 49503-2427
Attn: John A. Weiss, Esq.”

4. Paragraph 9 of the ROFR Agreement is hereby deleted and replaced with the following:

“9. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors until June 6, 2029. If not exercised prior to June 6, 2029, this Agreement shall expire unless extended by a written document signed by authorized representatives of each party and filed with the Register prior to the expiration date.”

5. This Amendment shall be filed with the Register of Deeds for Kalamazoo County, Michigan (the “**Register**”).

6. Electronic signatures and email “.PDF” copies of this Amendment and any signatures hereon shall be considered for all purposes as originals. This Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

7. Except as hereby amended, the ROFR Agreement shall remain unchanged in full force and effect. If there is any conflict between the terms and provisions of the ROFR Agreement and the terms and provisions of this Amendment, this Amendment shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have signed this Amendment as of the Effective Date.

OWNER:

**REPUBLIC SERVICES OF MICHIGAN
HAULING, LLC**

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____ of Republic Services of Michigan Hauling, LLC, a Michigan limited liability company, on behalf of such company.

Notary Public

My Commission Expires:

BRA:

**CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY**

By: _____

Name: _____

Title: Chair, Board of Directors

STATE OF MICHIGAN)

) ss.

County of Kalamazoo)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, Chair of the Board of Directors of Kalamazoo Brownfield Redevelopment Authority.

Notary Public

My Commission Expires:

This instrument drafted by:

David A. Reed, Esq.

Spotts Fain

411 E Franklin Street, Suite 600

Richmond, VA 23219

When recorded return to:

Exhibit “A”
ROFR Agreement

[See attached]

RECEIVED

2019 JUN -7 PM 1:12

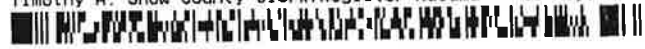
COUNTY OF KALAMAZOO

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Pages: 1 of 6 ROR

ASK SERVICES INC

Timothy A. Snow County Clerk/Register Kalamazoo County, MI



① **RIGHT OF FIRST REFUSAL AGREEMENT**

THIS RIGHT OF FIRST REFUSAL AGREEMENT ("Agreement") is made this ^{as of} 16th day of May, 2019 (the "Effective Date"), by **REPUBLIC SERVICES OF MICHIGAN HAULING, LLC**, a Michigan limited liability company, whose address is 18500 North Allied Way, Phoenix, AZ 85054, Attn: General Counsel ("Owner") and **CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY**, a Michigan public body corporate, whose address is 241 West South Street, Kalamazoo, MI 49007 ("BRA").

Recitals:

A. Owner is the fee simple owner of certain real property located in Kalamazoo, Michigan, more particularly described on Exhibit A, attached hereto and made a part hereof (the "Property"); and

B. Owner has agreed to grant BRA a right of first refusal on the Property, in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the sum of \$100.00, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and BRA agree as follows:

1. The above recitals are true and correct, and are incorporated by reference.
2. If within 5 years of the date of recordation of this Agreement, Owner receives a bona fide arm's length offer to purchase the Property which is acceptable to Owner (the "Offer") from any third party other than:
 - an entity which is under the direct or indirect control of Owner; or
 - an entity controlled by or under common control with Owner or its ultimate parent; or
 - any entity which succeeds to all or substantially all of the stock or assets of Owner; or
 - to a successor entity in a merger or acquisition transaction (the "Transferee").

Owner shall send a notice of the Offer (the “**Transfer Notice**”) to BRA. The Transfer Notice shall set forth the exact terms of the Offer, together with a copy of the Offer, and shall state Owner’s desire to sell the Property on the terms and conditions of the Offer. Thereafter, BRA shall have the right and option to purchase the Property at the price and upon the terms and conditions specified in the Offer.

If BRA desires to exercise its option, it shall give notice (the “**Counter Notice**”) to that effect to Owner within 30 days after receipt of the Transfer Notice. The Counter Notice shall include a letter from the BRA stating its agreement to perform the terms and conditions of the Offer that the Owner and BRA will finalize within 30 days under a separate Sale and Purchase Agreement approved and signed by an authorized representative of each party. The Counter Notice shall also set forth a date not later than 90 days from the date of service of the Counter Notice on which the closing shall be held. BRA’s failure to give a timely Counter Notice (or notice of its refusal to purchase) is considered a waiver of its option to purchase the Property pursuant to the Offer but is not considered a waiver of its option to purchase the Property pursuant to any modification to the Offer or any future offers.

3. All notices, requests, demands or other communications (collectively called “**Notices**”) required under this Agreement shall be in writing, signed by an authorized representative, and delivered (i) in person, (ii) by certified or registered mail, with return receipt requested, or (iii) by a recognized overnight or daytime courier, addressed to the following:

If to Owner: Republic Services of Michigan Hauling, LLC
832 Langsdale Avenue
Indianapolis, IN 46202
Attn: Ben Pearson, Director- Business Development

With a copy to: Republic Services, Inc.
18500 North City Way
Phoenix, AZ 85054
Attn: General Counsel

And to: Spotts Fain
411 East Franklin Street, 6th Floor
Richmond, VA 23219
Attn: David A. Reed

If to BRA: City of Kalamazoo
Brownfield Redevelopment Authority
c/o James K. Ritsema, City Manager
241 West South Street
Kalamazoo, MI 49007

With a copy to: The Office of the City Attorney
241 West South Street
Kalamazoo, MI 49007

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ASK SERVICES INC

Timothy A. Snow County Clerk/Register Kalamazoo County, MI



Notice is considered to have been given on the date of delivery, if delivered personally; on the date of mailing, if sent with all postage prepaid by certified or registered mail with return receipt requested; or on date of delivery to a recognized overnight or daytime courier. Each party shall notify the other of any changes in the person or the address for the receipt of Notices.

4. All provisions of this Agreement are, if applicable and otherwise not expressly excepted, construed as covenants running with the Property, subject to the 5-year term of this Agreement described in Paragraph 9. Except for those entities listed in Paragraph 2, the parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not a party to this Agreement. BRA may not assign its rights and interest in this Agreement.

5. If either party violates, breaches or otherwise fails to abide by the terms of this Agreement (a “**Default**”) and fails to correct that Default within 10 days from the date that party receives a notice of Default from the non-defaulting party, then the non-defaulting party shall have the right to proceed at law or in equity to: (i) recover any and all damages arising from the violation, breach or failure; or (ii) prevent continued or further defaults of this Agreement.

6. If the non-defaulting party institutes any legal action or proceeding for the enforcement of any right or obligation, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7. All rights, remedies, and privileges (collectively the “**Rights**”) granted in this Agreement are considered cumulative and a party's exercise of any Rights shall neither constitute an election of remedies, nor preclude that party from exercising any other additional Rights.

8. This Agreement shall be filed with the Register of Deeds for Kalamazoo County, Michigan (the “**Register**”).

9. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors for a period of 5 years from the date this Agreement is recorded. If not exercised prior to that fifth anniversary date, this Agreement shall expire unless extended by a written document signed by authorized representatives of each party and filed with the Register prior to the expiration date.

[Signature Page Follows]

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Pages: 3 of 6 ROR

ASK SERVICES INC

Timothy A. Snow County Clerk/Register Kalamazoo County, MI



IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

OWNER:

**REPUBLIC SERVICES OF MICHIGAN
HAULING, LLC**

By: 
Name: Adrienne W. Wilhoit
Title: Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 14th day of May, 2019, by Adrienne W. Wilhoit, the Vice President of Republic Services of Michigan Hauling, LLC, a Michigan limited liability company, on behalf of such company.


Notary Public

My Commission Expires:

July 15, 2022



EXHIBIT A

DESCRIPTION OF THE PROPERTY

Those certain lots, pieces or parcels of land located in the City of Kalamazoo, MI, commonly known as the following street addresses and Kalamazoo County Parcel Numbers:

100 E North Street (Parcel No. 06-15-192-009)

ORIGINAL PLAT BLK 37 LOTS 1, 2, 3, 4, 5, & 6; ALSO N 1/2 OF VAC BUTLER CT LYING S OF & ADJ TO SD LOTS 1 THROUGH 6; ALSO LOTS 8, 9, 10, 11, & 12, & S 1/2 OF VAC BUTLER CT LYING N OF & ADJ TO SD LOTS

131 E Ransom Street (Parcel No. 06-15-192-007)

1726 ORIGINAL PLAT BLK 37 LOT 7. ALSO S 1/2 OF VACATED BUTLER CT LYING N OF & ADJACENT TO SD LOT.

200 E North Street (Parcel No. 06-15-188-001)

ORIGINAL PLAT Lots 1 & 2, Blk 38. ORIGINAL PLAT Lots 1 & 2, Blk 38.

216 E North Street (Parcel No. 06-15-189-003)

1754 ORIGINAL PLAT LOT 3, BLK 38.

614 N Edwards Street (Parcel No. 06-15-193-013)

1783 ORIGINAL PLAT N 50.12 FT OF LOT 12, BLK 38.

612 N Edwards Street (Parcel No. 06-15-193-012)

1784 ORIGINAL PLAT N 38 FT OF S 105 FT OF LOT 12, BLK 38.

201 E Ransom Street (Parcel No. 06-15-193-112)

1785 ORIGINAL PLAT S 67 FT OF LOT 12, BLK 38.

209 E Ransom Street (Parcel No. 06-15-193-001)

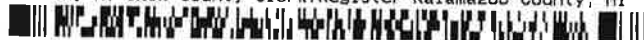
1782 ORIGINAL PLAT, LOT 11, BLOCK 38

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Pages: 6 of 6 ROR

ASK SERVICES INC

Timothy A. Snow County Clerk/Register Kalamazoo County, MI





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: March 21, 2024

SUBJECT: Approval of a Month-to-Month Contract Extension with Fishbeck, Inc. for up to 6-Month Period and Authorize Staff to begin the RFP Process for a New Brownfield Consulting Contract.

RECOMMENDATION:

It is recommended the BRA approve a month-to-month extension with Fishbeck, Inc. for up to 6 months and authorize staff to begin the RFP process for a new brownfield consulting contract.

BACKGROUND:

The BRA signed the original contract with Envirologic Technologies, Inc. (now Fishbeck, Inc.) in 2021 to provide brownfield technical consulting services. The 1-year contract has been extended on an annual basis for two additional terms and will expire on March 31, 2024. Following City of Kalamazoo purchasing best practices, the attached agreement provides a month-to-month extension to Fishbeck, Inc. for up to six months conditioned upon fixed billable rates. Staff will work with the Purchasing Team at the City to begin the Request for Proposal (RFP) process to solicit bids for a new consulting contract. Staff anticipates bringing forward a list of responsive bidders, scoring criteria, and recommendation from a committee to the BRA during their regular board meeting in May 2024. The new consulting contract would be awarded on an annual basis with the option to extend, not to exceed 5 consecutive years before re-bidding the contract.

FISCAL IMPACT:

This month-to-month contract cost has been approved in the 2024 budget for Fund 243 as part of Professional & Contractual Services and will be covered under the existing Purchase Order with Fishbeck, Inc.



Purchasing Division
241 West South Street
Kalamazoo, MI 49007-4796
Phone: 269.337.8020
Fax: 269.337.8500
www.kalamazoocity.org

MONTH-TO-MONTH CONTRACT EXTENSION

March 8, 2024

Fishbeck, Inc.
David Stegink, VP
2960 Interstate Parkway
Kalamazoo, MI 49048

Sent via email: dstegink@fishbeck.com

PROJECT: Brownfield Redevelopment Consulting Services
REFERENCE #: 91843-003.2

This is to advise you that the contract extension for the project referenced above expires March 31, 2024. It is the City's intent to extend this contract on a month-to-month basis while we are working on a new contract.

If you are willing to extend the contract on a month-to-month basis for up to a six-month period at the current prices, please sign and return this letter to the Purchasing Division.

If you should have any questions, please contact me at (269) 337-8445.

Sincerely,

A handwritten signature in blue ink that reads 'Michelle Emig'.

Michelle Emig
Purchasing Division Manager

FIRM: _____

SIGNED: _____

NAME: _____

DATE: _____

(Type or Print)



Purchasing Division
241 West South Street
Kalamazoo, MI 49007-4796
Phone: 269.337.8020
Fax: 269.337.8500
www.kalamazoocity.org

MONTH-TO-MONTH CONTRACT EXTENSION

March 8, 2024

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David Stegink, VP
2960 Interstate Parkway
Kalamazoo, MI 49048

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If you are willing to extend the contract on a month-to-month basis for up to a six-month period at the current prices, please sign and return this letter to the Purchasing Division.

If you should have any questions, please contact me at (269) 337-8445.

Sincerely,

A handwritten signature in blue ink that reads 'Michelle Emig'.

Michelle Emig
Purchasing Division Manager

FIRM: _____

SIGNED: _____

NAME: _____

DATE: _____

(Type or Print)