Agenda
Brownfield Redevelopment Authority Board of Directors

City of Kalamazoo

Thursday, January 16, 2025 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 December 19, 2024

D. PUBLIC COMMENTS

E. DIRECTOR COMMENTS

F. NEW BUSINESS

1. Adoption of a Resolution Approving the Development and Reimbursement Agreement Relating to 3625 W Michigan Avenue, in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.
(ACTION: Motion to adopting a Resolution approving the Development and Reimbursement Agreement relating to 3625 W Michigan Avenue, in substantially the form attached, subject to any non-substantive changes approved by the chairperson and to form by legal counsel.)

G. UNFINISHED BUSINESS

H. COMMUNICATIONS AND ANNOUNCEMENTS

I. STAFF REPORTS AND UPDATES

1. 116 W Cedar - EGLE Environmental Justice Grant

J. ADJOURNMENT

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY BOARD MEETING
Thursday, December 19, 2024
Community Planning and Economic Development
245 N. Rose Street, Kalamazoo, MI 49007

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

MEMBERS ABSENT: Kyle Gulau; Nathan Bolton; Alonzo Wilson; Torean Greeley

CITY COMMISSIONERS/CITY STAFF PRESENT: Jamie McCarthy (Development Manager); Jerrid Burdue (EDC Liaison/Neighborhood Business & Special Projects Coordinator); *Jessica Wood (Attorney, Dickinson Wright); David Stegink (Fishbeck, Consultant); Jared Chambers (Business Specialist); Heidi Waffle (Brownfield Project Assistant);
*Attorney Wood attended the meeting virtually.

Meeting was called to order at 8:25 AM by Chair Middleton.

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

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

APPROVAL OF MINUTES: Director Gurnee moved approval of minutes from the meeting of November 21, 2024 as presented; seconded by Director Novotny. Motion approved by voice vote unanimously.

PUBLIC COMMENTS

None.

DIRECTOR'S COMMENTS

Director Novotny shared it feels like every year he has been on the board that he sees the board get better, more streamlined, and more educated.

NEW BUSINESS

1. 2023 Brownfield Tax Increment Revenue Capture Summary & 2024 Grant Projects Summary (Presentation – No Action).

Ms. McCarthy shared a summary of 2023 brownfield tax capture. She further explained adopted plans, 2024 disbursement payments, and the amount of funds paid to the state brownfield redevelopment fund.

Ms. McCarthy shared about EGLE Brownfield Redevelopment Grants and Loans. Harrison Circle grant was closed out in 2024 – 100% grant expensed. 315 E Frank continued to make great progress this year. Now they are finalizing documentation for their due care compliance. 530 S Rose has construction wrapping up currently. They have capping and landscaping that has to happen in the spring. River's Edge was a big milestone this year with the 2024 groundbreaking. The bulk of construction will likely occur in 2025. Brewster Hotel project has completed demolition and started site preparation. They are working with EGLE on how to expend the rest of the grant dollars and how they can move forward.

Director Schipper thanked Ms. McCarthy for sharing and that it was nice to see the year's summary.

*Director Novotny left the meeting.

Director Gurnee mentioned that EGLE Loans did not seem to be present in the re-cap. He wondered if there were opportunities to use that and keep it in mind as they talk to developers. They are less competitive. If they are also applying for a grant, those get discussed at the same time as a loan.

2. Local Brownfield Revolving Fund Policy Framework (Discussion Item – No Action).

Ms. McCarthy said she wants to get the board's input on ideas they want to see in the LBRF Policy. She explained how the ways the LBRF can be utilized have changed recently. She talked about grants versus loans for the LBRF. She opened the conversation up for the board to communicate their needs or wants for the LBRF.

Director Middleton said it is important to him that they find some kind of focus for the policy that they are filling a gap and making this money the most useful as possible. He mentioned keying into particular needs of the Economic Strategy. He wants to be consistent and fair in the way they are dispersing the money. He proposed thinking about what types of projects they want to generally support, without restricting themselves too much.

Director Gurnee explained that a grant to him means investing money and assuming they will never see that return of dollars. If it is recoverable, he thinks the BRA should be the last in line to receive the recovered funds if it is a grant. The developer should get paid out first in those situations, and the board can recognize their return on investment through the economic impact. The loans option gives the framework for recovering LBRF funds.

Director Hess shared a prime example was when they built the round-a-bout.

Ms. McCarthy asked for input about limits or caps for some of these programs. Do they want to see something specific in the policy or set year to year?

Director Middleton asked if we should make some consideration broadly in the policy in terms of what portion of the fund they're willing to commit to these efforts, so they have a more general sense of what's available on a year to year basis.

Director Gurnee said he worries if they choose and change the dollar amount every year it moves the target for their stakeholders. He also understands they can change their policy if it needs to be changed. He is more in favor of setting a policy saying what their caps are now knowing what they have in the LBRF funds and what the market is like, knowing they can take action in the future if need be. They could share with this with folks and create a program where they can give answers based on policy.

UNFINISHED BUSINESS

None.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF REPORTS AND UPDATES

1. December 2 – City Commission Approved Act 381 Brownfield Plan for Bronco Commons.

Ms. McCarthy shared the next steps the developer is working on for agreements and their MSHDA workplan.

ADJOURNMENT: The meeting was adjourned at 9:12 A.M. by Chair Middleton.

Heidi Waffle 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: January 16, 2025

SUBJECT: Adoption of a Resolution Approving the Development and Reimbursement Agreement Relating to 3625 W Michigan Avenue, in Substantially the Form Attached, Subject to any Non-Substantive Changes Approved by the Chairperson and to Form by Legal Counsel.

RECOMMENDATION:

It is recommended the BRA Board adopt the Resolution approving the Development and Reimbursement Agreement.

BACKGROUND:

On November 21, 2024 the BRA held a public hearing and approved the implementation of the Act 381 Brownfield Plan for the housing development project located at 3625 W. Michigan Avenue in Kalamazoo. The City Commission adopted the Brownfield Plan on December 2, 2024. The project proposes to demolish a blighted and vacant property and redevelop it for the purposes of market rate and workforce housing. Within the project, there are anticipated to be 42 income-qualified units, including 16 income-qualified studio apartments, 15 income-qualified one-bedroom apartments, and 11 income-qualified two-bedroom apartments. The Development and Reimbursement Agreement requires the Developer perform annual monitoring and reporting of these units' rental rates and household incomes for an 18-year period. The rental rates will be affordable for households earning 70-90% of the Area Median Income for Kalamazoo County residents.

FISCAL IMPACT:

The Development and Reimbursement Agreement commits the BRA to capture and reimburse the developer for actual expenses incurred up to $11,773,928 or 18 years, whichever occurs first. The BRA costs for administration, up to $1,132,756 will be covered by Tax Increment Revenues from the plan.

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY

A RESOLUTION APPROVING THE DEVELOPMENT AND REIMBURSEMENT AGREEMENT BETWEEN THE BROWNFIELD REDEVELOPMENT AUTHORITY AND KALAMAZOO REALTY HOLDINGS, LLC RELATING TO AN ACT 381 BROWNFIELD PLAN FOR 3625 W MICHIGAN AVENUE

Minutes of a regular meeting of the City of Kalamazoo Brownfield Redevelopment Authority ("BRA") held on January 16, 2025 at 7:45 a.m., local time at 245 N. Rose Street, Ste. 100 in Kalamazoo, Michigan.

PRESENT: ____

____

ABSENT: ____

The following resolution was offered by Member______________and seconded by Member______________.

RECITALS:

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

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

C. B. The Authority and the City have designated certain properties that have conditions of environmental contamination, blight, obsolescence, or meet the definition of "Housing Property" under Act 381 as appropriate sites for creating a Plan.

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

E. Developer owns property in the City located at 3607, 3619, and 3625 West Michigan Avenue, Kalamazoo, Michigan 49006 (the "Property") and legally described on the attached Exhibit A of the Development Agreement.

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

G. Developer intends to redevelop the 9.565 acres of land at the Property where a vacant senior assisted living facility currently exists. The Developer will demolish the existing structure and associated infrastructure and prepare the site for redevelopment. The Developer will construct a new, approximately 50,000 square foot, three-story residential building with 214 rental apartment units. Amenities included with the construction of the building include a clubhouse and community office area, fitness center, pool, outdoor recreation facilities, and electric vehicle charging stations. These investments are expected to create sixteen (16) studio residential units reserved for households with income at or below 70% of Area Median Income ("AMI"), fifteen (15) 1-bedroom residential units reserved for households with incomes at or below 80% AMI, and eleven (11) 2-bedroom residential units reserved for households with income at or below 95% AMI and will increase the property tax base within the City (the "Project").

H. The total capital investment on the project is expected to be approximately $40 million.

I. The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities, including asbestos, mold, and lead surveys; environmental due diligence and investigation for due care compliance; asbestos abatement and demolition; site preparation; infrastructure improvements; costs associated with financing gap for income restricted rental units; and preparation of brownfield plans, work plans, and implementation, which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Developer's Eligible Costs shall not exceed $11,773,928.00, inclusive of contingency as described in the Plan.

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

THEREFORE, IT IS RESOLVED THAT:

The City of Kalamazoo Brownfield Redevelopment Authority approves the Redevelopment and Reimbursement Agreement for 3625 W. Michigan Avenue in Kalamazoo and authorizes the Chair to sign.

AYES: ____

____

NAYS: ____

RESOLUTION DECLARED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the Brownfield

Redevelopment Authority at a regular meeting held on January 16, 2025. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

____

Rachel Bair
Secretary

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development and Reimbursement Agreement (the "Agreement"), is entered into on ________, 20__ between the **CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY**, a Michigan public body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, MCL 125.2651 et seq. ("Act 381"), whose address is 241 W. South St., Kalamazoo, Michigan 49007 (the "Authority"), and **Kalamazoo Realty Holdings, LLC**, a Michigan limited liability company, whose address is 4655 W Chase Avenue, Lincolnwood IL 60712 (the "Developer").

RECITALS

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

B. The Authority and the City have designated certain properties that have conditions of environmental contamination, blight, obsolescence, or meet the definition of "Housing Property" under Act 381 as appropriate sites for creating a Plan.

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

D. Developer owns property in the City located at 3607, 3619, and 3625 West Michigan Avenue, Kalamazoo, Michigan 49006 (the "Property") and legally described on the attached Exhibit A.

E. On December 2, 2024, the City Commission of the City approved the Brownfield Plan for the Property, attached as Exhibit B (the "Plan"). The Developer will combine all parcels into a single parcel no later than March 1, 2025 such that the Property qualifies as an "Eligible Property" under the terms of Act 381.

F. Developer intends to redevelop the 9.565 acres of land at the Property where a vacant senior assisted living facility currently exists. The Developer will demolish the existing structure and associated infrastructure and prepare the site for redevelopment. The Developer will construct a new, approximately 50,000 square foot, three-story residential building with 214 rental apartment units. Amenities included with the construction of the building include a clubhouse and community office area, fitness center, pool, outdoor recreation facilities, and electric vehicle charging stations. These investments are expected to create sixteen (16) studio residential units reserved for households with income at or below 70% of Area Median Income ("AMI"), fifteen (15) 1-bedroom residential units reserved for households with incomes at or below 80% AMI, and eleven (11) 2-bedroom residential units reserved for households with income at or below 95% AMI and will increase the property tax base within the City (the "Project").

G. The Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities, including asbestos, mold, and lead surveys; environmental due diligence and investigation for due care compliance; asbestos abatement and demolition; site preparation; infrastructure improvements; costs associated with financing gap for income restricted rental units; and preparation of brownfield plans, work plans, and implementation, which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Developer's Eligible Costs shall not exceed $11,773,928.00, inclusive of contingency as described in the Plan.

H. The parties are entering into this Agreement to establish the terms and conditions for the reimbursement of Developer's Eligible Costs from Tax Increment Revenues under Act 381.

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

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

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

3. Term of Agreement. Pursuant to the Plan the Authority shall capture the Tax Increment Revenues generated from real and personal property taxes allowed by law on the Property. Capture will begin in the first full calendar year after the year the Project is completed, which occurs once a final certificate of occupancy is obtained, and will continue until the earlier of:

3.1 Full reimbursement to the Authority of its Administrative Costs, plus reimbursement to the Developer of the Property under this Agreement, plus an additional amount captured by the Authority for an additional five (5) full years of tax capture to be designated for the Local Brownfield Revolving Fund ("LBRF"); or

3.2 23 years. With five of the 23 years designated for LBRF only.

4. Evidence of Ownership. Prior to the execution of this Agreement, Developer shall provide to the Authority each of the following: (a) evidence satisfactory to the Authority that the Developer has acquired fee simple title to the Property, which evidence shall include (without limitation) a copy of a recorded deed to the Property in favor of the Developer; and (b) a copy of a commitment for owner's title insurance with respect to the Property (the "Commitment"), which Commitment shall show the Developer as record owner of the Property, shall reflect that all material conditions to the issuance of a policy thereunder have been satisfied, and shall otherwise be in form and substance satisfactory to the Authority.

5. Eligible Activities. The Developer shall diligently pursue completion of the Eligible Activities summarized in the Plan and set forth in this Agreement. The Authority shall reimburse the Developer for Eligible Costs actually incurred on or after the date of the inclusion of this Project in the Plan, unless otherwise agreed upon by the Authority and included in the Plan, and may include asbestos, mold, and lead surveys; environmental due diligence and investigation for due care compliance; asbestos abatement and demolition; site preparation; infrastructure improvements; costs associated with financing gap for income restricted rental units which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals.

6. Reimbursement Source. Subject to the terms and conditions of this Agreement and during its term, except as otherwise set forth in this Agreement, the Authority shall reimburse the Developer for its incurred Eligible Costs, as limited under this Agreement, from all available Tax Increment Revenues collected from the real and personal property taxes on the Property.

7. Reimbursement Process.

7.1 Cost Reimbursement Request. The Developer will provide sufficient documentation of the Eligible Costs incurred including the dates of each Eligible Activity, a complete description of the work, proof of payment, detailed invoices for the costs involved for each Eligible Activity, sworn statements, lien waivers and other back up documentation reasonably requested by the Authority; a written statement certifying to the Authority that all such costs are "Eligible Costs"; and a final certificate of occupancy to document Project completion. Failure to provide the above noted information when due, or within the time permitted by the Authority under Paragraph 7.2, may result in forfeiture of reimbursement, to the Developer by the Authority, for Eligible Costs that have not been requested within the timeframe and in the manner described herein.

7.2 Authority Staff Review. The Authority Staff shall review each reimbursement request within 60 days after receiving it. If Authority Staff determines that the documentation submitted by the Developer is not complete, then Developer shall cooperate in the Authority's review by providing, within thirty (30) days of the Authority's written request, any additional documentation of the Eligible Costs as deemed reasonable and necessary by the Authority in order to complete its review. Within 30 days following the receipt of such supplemental information, if applicable, the Authority shall make the determination of whether the costs are "Eligible Costs" for reimbursement. If the Developer wishes to challenge that determination, it shall provide written notice to the Authority within thirty (30) days of the determination, and the issue shall be brought to the Authority within forty five (45) days thereafter for a final determination. The Developer shall not have any further appeal rights to challenge the final determination of the Authority and shall not be entitled to any claim or cause of action against the Authority as a result of any determinations made in good faith regarding whether or not any cost submitted by the Developer constitutes an "Eligible Cost," and hereby grants the City and the Authority and their respective officers, agents and employees, a complete release and waiver of any claims or causes of action as a result of the foregoing.

7.3 Reimbursement. After both the summer and winter taxes are captured and collected on the Property, and contingent upon Developer's compliance with the terms herein, after settlement and Tax Increment Revenues are available for payment, the Authority shall reimburse its Eligible and Administrative Costs and pay approved Eligible Costs to the Developer from Tax Increment Revenues, that are generated from the Property in accordance with the Plan and Paragraph 7.

(a) The Authority shall first retain Tax Increment Revenues generated from the Property in an amount equal to 10% of the annual Tax Increment Revenues up to the maximum amount allowed annually for Administrative Costs under Act 381.

(b) When an Act 381 Work Plan is approved by the State of Michigan, the Authority will capture 50% of the State Education Tax to be held for the State Brownfield Redevelopment Fund ("SBRF"), in accordance with Section 13(b)(14) of Act 381.

(c) After retention of the Authority's portion of Local Tax Increment Revenues under subsection (a) and payment to Treasury of the SBRF Tax Increment Revenues under subsection (b), the remaining Tax Increment Revenues shall be used to reimburse the Developer for Eligible Costs during the term of this Agreement, until all of the amounts for which submissions have been made have been fully paid to the Developer, or the repayment obligation expires, whichever occurs first. The Developer shall not be entitled to receive any interest on amounts for which reimbursement is requested under this Agreement. The Developer shall not be entitled to reimbursement under this Agreement unless all real and personal property taxes have been timely and completely paid, including all penalties, interest and other amounts due in relation thereto when due. For purposes of this Agreement, to be timely paid, taxes must be paid before the date on which they can no longer be paid without penalties or interest. The repayment obligation under this Agreement shall expire upon the earlier of the full payment by the Authority to the Developer of all amounts due the Developer from the Tax Increment Revenues or 18 years from the beginning of Tax Increment Revenue capture.

(d) The Developer shall be reimbursed for the Financing Gap only after documentation of Income Restricted Units and Income Qualified households is provided to the Authority pursuant to Section 9. If the Developer cannot demonstrate that at least 42 Units meet the Income Restrictions and Income Qualifications required by the approved Brownfield Plan and this Agreement on the date of initial occupancy and each subsequent June 15, the Authority shall reduce that year's annual reimbursement in proportion to the number of units without Income Qualified households. The Developer many demonstrate that those units are filled with Income Qualified households in the subsequent reporting year and reimbursement for the Financing Gap for that Income Restricted Unit or Units will be restored associated with the tax year for which sufficient documentation is reported.

(e) Notwithstanding any other provisions of this Agreement, the Developer's Eligible Costs shall not exceed $11,773,928.00

(f) Notwithstanding any other provisions of this Agreement, the use of Tax Increment Revenues shall be conditioned upon the MSHDA approval of the use of Tax Increment Revenues realized from Educational Taxes to pay Eligible Costs and, if approved by the MSHDA for a specific time period, the use of other Tax Increment Revenues to pay for Eligible Costs shall be limited to the same time period.

7.4 Method of Reimbursement. Any reimbursement to be paid to Developer under this Agreement for Eligible Costs shall be distributed by check payable to and delivered by certified mail (or through electronic transfer if available through Developer) to:

Kalamazoo Realty Holdings, LLC
4655 W Chase Ave
Lincolnwood IL 60712

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

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

8.2 Property Tax Appeal: In the event the Developer, or any other owner of real estate on the Property, files an appeal with the Michigan Tax Tribunal, related to the taxable value of Property, the Authority shall do the following:

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

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

8.3 Reduction of Property Assessments: If the Authority (i) incurs costs on behalf of the Developer with respect to the Project, site or application and (ii) the Developer initiates, participates in or supports any proceeding or process which results in a reduction of the tax increment capture for the Project from that originally projected and along the same term as contained within the Plan, the Developer indemnifies and will fully reimburse the Authority within thirty (30) days of notification from the Authority as to the amount and the due date for all costs, expenses or reduction in revenue from what was projected as the tax increment capture.

9. Responsibilities of Developer. In consideration of the inclusion of the Property into the Plan and the resulting financial benefits, which it expects to receive, Developer agrees to the following:

9.1 Project. At its sole expense, Developer shall use its best and good faith efforts to conduct the activities described in the Plan and to demolish the existing buildings on the Property and construct the Project. Subject to matters beyond the reasonable control of Developer (e.g., war, acts of God, exceptional health concerns for which a "stay at home" or "shelter in place" order is issued by an applicable governmental authority, etc.) ("Force Majeure"), Developer shall commence the Project on a date ("Commencement Date") that is within six (6) months of full execution of this Agreement. Developer shall use commercially reasonable efforts to substantially complete the Project to the point of receiving a Certificate of Occupancy within twenty four (24) months after the Commencement Date. Under no circumstances shall the Authority have any responsibility or liability for remediation or redevelopment of the Property, or for conducting any "Eligible Activities" at the Property, except for its obligations under this Agreement to provide funds to the extent available as permitted in Paragraph 7 hereof with respect to payments from Tax Increment Revenues.

9.2 Affordability Housing Requirement; Deed Restrictions. The Developer shall construct and make available for rent at least sixteen (16) Income Restricted Studio Units which shall be rented at rates affordable to households at or below 70% AMI, fifteen (15) Income Restricted 1-Bedroom Units which shall be rented at rates affordable to households at or below 80% AMI, and eleven (11) Income Restricted 2-bedroom Units which shall be rented at rates affordable to houses at or below 95% AMI according to MSHDA annual Income and Rent Limits for Kalamazoo County (the "Affordable Housing Requirement").

Developer shall ensure that the Notice of Deed Restriction and the Notice of Development and Reimbursement Agreement, included as Exhibit D, are recorded at the County Register of Deeds within thirty (30) days of the Project receiving a Certificate of Occupancy. The Affordable Housing Deed Restriction shall match the proposed AMI levels in the Affordable Housing Requirement and be executed by Developer prior to any Tax Increment Revenues are received. The duration of Affordable Housing Requirement shall be 18 years after a Certificate of Occupancy is received for the Project.

9.3 Employment Opportunities. Developer shall make every reasonable effort to work with the City and community employment agencies to hire City residents for new employment opportunities created by the Project, and to encourage the local contracting of construction and site related work. Regardless of the Developer's ability to hire City residents, it shall make every reasonable effort to follow, and to cause any contractors hired to perform work on the Project, to follow the City's "Ex-offender Purchasing Policy" and "Non-discrimination Policy" regarding hiring employees who will work on the Project. A copy of the policies are attached as Exhibit C.

9.4 Compliance with Laws. Developer shall at all times comply with all federal, state, and local laws and regulations in connection with the Project and its leasing activities, including, but not limited to, compliance with the Landlord-Tenant Act, Act 348 of 1972, as amended, and the Revised Judicature Act of 1961, Act 236 of 1961, as amended. The redevelopment of the Property shall be subject to all zoning approvals. This Agreement does not obligate any governing municipality to grant any such approvals.

9.5 Project Sign. Developer shall place on the Property during rehabilitation/redevelopment a development sign to promote the Project and the Authority's participation in it utilizing a logo or any artwork provided by the Authority. Such sign must be in compliance with the City's Zoning Ordinance.

9.6 Promotion and Marketing. Developer shall permit the Authority to cite or to use any renderings or photographs or other informational materials of the Project as an example of private/public partnership and brownfield site redevelopment.

9.7 Income and Rent Documentation and Reporting.

(a) The Developer shall monitor and annually provide evidence to the Authority and/or a third party providing verification services to the Authority that Income Restricted Unit rents are consistent with the Income and Rent Limits set forth in Section 9.1 of this Agreement and that Income Restricted Units are occupied by the appropriate Income Qualified households.

(b) Renters or owners must provide eligibility upon initial occupancy and each year thereafter. Developer shall demonstrate to the Authority that renters/owners occupying Income Restricted units meet income limits by certifying renters or owners using the MSHDA Missing Middle Housing Program – 1040 Worksheet Tentant Income Certification or Owner Income Certification Form or as otherwise approved by MSHDA or the Authority.

(c) The Developer shall provide on an annual basis, no later than June 15 each year during the term of reimbursement, a report to the Authority, including but not limited to, for the preceding calendar year, pursuant to the reporting requirements under Section 16 of Act 381:

1. Total Investment and new capital investment since the prior year's report;
2. Square footage of the new construction or renovation, including whether the space is residential, commercial, or other use;

3. New jobs created;

4. Total number of housing units and total number of Income Restricted Units, indicating the number rented to residents at or below 120% of AMI;

5. Number of Income Restricted Units rented during the annual reporting period;

6. Number of Income Qualified renting households assisted during the annual reporting period;

7. Income Restricted Unit rental rates; and

8. Racial and socioeconomic data on the individuals purchasing or renting the Income Restricted Units, or if this data is not available, racial and socioeconomic data on the census tract in which the housing units are located.

(d) Other information required to be reported to the State of Michigan to verify compliance with Act 381, unless that information is readily available to the City of Kalamazoo Treasurer.

9.8 Payment of Authority Legal and Professional Fees. To the extent the following costs and fees are not paid to the Authority from Tax Increment Revenues, the Developer shall reimburse the Authority for its legal and professional fees and disbursements incurred in connection with the review, approval and administration of the Plan for this Project, including any further amendments thereto; the preparation and negotiation of this Agreement, as it may be amended from time to time; and all documents and matters related thereto, including future expense. Developer shall reimburse the Authority for such expenses within 30 days from the date that the Authority sends an invoice and request for payment to Developer, provided Developer shall be eligible for reimbursement for such expenses to the extent permitted by Act 381.

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

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

10.2 Cooperation. Reasonably and in good faith cooperate with the Developer to obtain any governmental approvals required to close the transaction contemplated by this Agreement, including but not limited to work plan approval by the Michigan State Housing Development Authority.

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

11.1 Eligible Property. The Property is “Eligible Property” as defined in Act 381 and is eligible for the capture of Tax Increment Revenues pursuant to Act 381.

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

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

12. Events of Default. Each of the following shall constitute an event of default (each a “Default”):

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

12.2 The Developer fails to observe or perform any covenant or term contained in this Agreement.

12.3 The Developer abandons or withdraws from the Project or indicates its intention to do so.

12.4 The Developer fails to pay any funds within 30 days of the date due which are required to be paid to the Authority pursuant to this Agreement, including but not limited to its real and personal property taxes as set forth in Paragraph 7 hereof.

12.5 The Developer terminates its existence, admits its insolvency, or becomes a party to any judicial or administrative proceeding in bankruptcy, receivership, or reorganization.

12.6 Any material provision of this Agreement shall cease to be valid and binding on the Developer or shall be declared null and void; the validity or enforceability of such provision shall be contested or denied by the Developer; or the Developer denies that it is bound by this Agreement.

13. Remedies upon Default. In the event of a Default, the Authority shall notify the Developer in writing of the nature of the breach. If the Default occurs and remains uncured by the Developer for thirty (30) days after a notice of default, the Authority shall have the right, but not the obligation, to exercise any of the following rights and remedies either individually or concurrently:

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

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

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

(d) All other remedies available at law or in equity.

Immediately following a default by Developer, or following expiration or termination of this Agreement for any reason, Developer shall be solely responsible for all subsequent Project costs, including Eligible Costs, without contribution from Tax Increment Revenues collected by the Authority from taxes levied on the Property.

The remedies of the Authority hereunder are cumulative and the exercise of any one or more of the remedies provided for shall not be construed as a waiver of any other remedies of such party.

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

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

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

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

If to Developer:	____________________________ ____________________________ ____________________________
If to the Authority:	City of Kalamazoo Brownfield Redevelopment Authority 241 West South Street Kalamazoo, Michigan 49007
With copy to:	Authority Attorney

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

19. Third Party Management. Developer may enter into a contract with a third-party property management firm ("Property Manager"), which may, as part of its contract with Developer, perform certain services described in this Agreement. Developer acknowledges that it remains responsible for all obligations, liable for all defaults, and subject to all remedies under this First Amendment regardless of the performance of any Property Manager.

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

21. Binding Effect/Third Parties. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors, but it may not be assigned by any party without the prior written consent of the Authority and any other necessary parties. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement.

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

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

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

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

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

> "AMI" means Area Median Income and is the midpoint of a specific area's household income distribution;
>
> "Administrative Costs" means the Authority's out-of-pocket costs associated with the Project (including reasonable attorney fees and costs, environmental consulting fees and costs, and similar fees and costs), as well as the Authority's indirect costs associated with the Project (including allocation of the fixed costs of the Authority staff and/or any third party monitoring of rent and income restricted units.)
>
> "Brownfield Plan" is defined by Section 2(e) of Act 381;
>
> "Due Care Activities" is defined by Section 2(m) of Act 381;
>
> "Eligible Activities" is defined by Section 2(o) of Act 381;
>
> "Eligible Property" or "Eligible Properties" is defined by Section 2(p) Act 381;
>
> "Tax Increment Revenues" is defined by Section 2(ss) of Act 381, and, for purposes of this Agreement, includes school taxes and local (non-school) taxes.
>
> "Housing Development Activities Financing Gap" (the "Financing Gap") is a MSHDA Eligible Activity defined in Act 381 in part as reimbursement provided to a developer to fill a financing gap associated with the development of housing units priced for Income Qualified households.
>
> "Income Qualified" or "Income Qualifications" means household incomes at or below 120% of AMI for Kalamazoo County, as determined annually by MSHDA, and further defined in the Agreement.
>
> "Income Restricted Unit(s)" means residential rental units occupied by Income Qualified households.

“MSHDA” means the Michigan State Housing Development Authority.

[*Signature page follows*.]

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

CITY OF KALAMAZOO BROWNFIELD
REDEVELOPMENT AUTHORITY

By________________________________

Title________________________________

Date________________________________

____________________________, LLC,
as Developer

By________________________________

Title________________________________

Date________________________________

<u>EXHIBITS</u>**:**

A (Legal Description of Property)

B (Copy of Brownfield Plan)

C (Ex-offender Purchasing Policy)

D (Deed Restrictions)

E (Missing Middle Housing Program 1040 Worksheet)

EXHIBIT A

Property Legal Description

Parcel ID: 06-19-463-001

Legal Description:

G19-15 Section 19 T2S R11W Beg at a pt on the E li of the W 1/2 of the SE1/4 of Sect 19 at a pt S 0deg 17min 00sec W 196ft from the ctr li of West Michigan Avenue; th S 0deg 17min 00sec W 885.38ft alg the E li of the W 1/2 of the SE 1/4 of Sect 19 to the NLY right of way li of the NYC Railway; th N 80deg 50min 00sec W 515.42ft alg sd NLY right of way li; th N 0deg 17min 0sec E 558.94ft parallel to the E li of the W 1/2 of the SE 1/4 of Sect 19; th N 69deg 32min 30sec E 228.34ft parallel to the ctr li of West Michigan Avenue; th N 0deg 17min 00sec E 250ft parallel to the E li of the W 1/2 of the SE 1/4 of Sect 19 to the ctr li of West Michigan Avenue; th N 69deg 32min 30sec E 159ft; th S 0deg 17min 0sec W 140.33ft parallel to the E li of the W 1/2 of the SE 1/4 of Sect 19; th S 89deg 43min 00sec E 147ft to beg, exc that part in West Michigan Avenue. Also excluding com at the intersection of the E li of the W 1/2 of the SE 1/4 of Sect 19 and the ctr li of West Michigan Avenue; th S 70deg 26min 05sec W 157.19ft alg the ctr li of West Michigan Avenue; th S 01deg 10min 41sec W 35.29ft to the S li of West Michigan Avenue and the p.o.b. for this exclusion; th S 01deg 10min 41sec W 18.18ft; th S 70deg 26min 05sec W 159.0ft; th N 01deg 10min 41sec E 18.18ft to the S li of West Michigan Avenue; th N 70deg 26min 05sec E 159ft alg sd S li to p.o.b of this exclusion. Parcel contains approximately 9.164 Acres after the exclusion.

Parcel ID: 06-19-454-002

Legal Description:

G19-16A Section 19 T2S R11W Beg in the E li of the W 1/2 of the SE 1/4 of Sect 19 at a pt S 0deg 17min 0sec W 196ft of its intersection with the ctr li of West Michigan Avenue; th N 89deg 43min 0sec W 147ft; th N 0deg 17min 0sec W 140.33ft to sd ctr li; th NELY (measured N 69deg 32min 30sec E 158.3ft, recorded N 70deg 26min 05sec E 157.19ft) alg sd ctr li to the E li of the W 1/2 of the SE 1/4 of Sect 19; th S 0deg 17min 0sec E 196ft alg the E li of the W 1/2 of the SE 1/4 of Sect 19 to p.o.b, exc the E 68ft, also exc that part in West Michigan Avenue. Also excluding com at the intersection of the E li of the W 1/2 of the SE 1/4 of Sect 19 and the ctr li of West Michigan Avenue; th S 70deg 26min 05sec W 72.71ft alg the ctr li of West Michigan Avenue; th S 01deg 10min 41sec W 35.29ft to the S li of West Michigan Avenue and the p.o.b. for this exclusion; th S 01deg 10min 41sec W 18.18ft; th S 70deg 26min 05sec W 84.48ft; th N 01deg 10min 41sec E 18.18ft to the S li of West Michigan Avenue; th N 70deg 26min 05sec E 84.48ft alg sd S li to p.o.b of this exclusion.

Parcel ID: 06-19-454-001

Legal Description:

G19-16 Section 19 T2S R11W Beg at the intersection of the E li of the W 1/2 of the SE 1/4 of Sect 19 & the ctr li of West Michigan Avenue; th S 0deg 17min 0sec E 196ft alg sd E li; th N 89deg 43min 0sec W 68ft; th N 0deg 17min 0sec E 170.44ft to sd ctr li; th N 69deg 13min E 72.73ft alg sd ctr li to beg, exc that part in West Michigan Avenue. Also excluding com at the intersection of the E li of the W 1/2 of the SE 1/4 of Sect 19 and the ctr li of West Michigan Avenue; th S 70deg 26min 05sec W 72.71ft alg the ctr li of West Michigan Avenue; th S 01deg 10min 41sec W 35.29ft to the S li of West Michigan Avenue and the p.o.b. for this exclusion; th N 70deg 26min 05sec E 72.71ft alg sd S li to sd E li; th S 01deg 10min 41sec W 18.18ft alg sd E li; th S 70deg 26min 05sec W 72.71ft; th N 01deg 10min 41sec E 18.18ft to the S li of West Michigan Avenue and the p.o.b of this exclusion.

EXHIBIT B

Copy of Brownfield Plan

EXHIBIT C

Ex-offender Purchasing Policy

EXHIBIT D

Deed Restrictions and Notices

EXHIBIT F

Missing Middle Housing Program 1040 Worksheet