Brownfield Redevelopment Authority
Board of Directors Meeting
September 17, 2020
Immediately following EDC Board Meeting, 7:30 AM
Virtual Zoom meeting

Agenda

A. Call to Order

B. Roll Call and Motion to Excuse Absent Members (Action: Motion to excuse absent members)

C. Adoption of Formal Agenda (Action: Motion to approve formal agenda)

D. Approval of Minutes for Meeting on August 20, 2020 (Action: Motion to approve the meeting minutes of August 20, 2020)

E. New Business

1. Update on engagement efforts for Eastbank/433 Ampersee re-use concepts; presentation by Dr. Michelle Johnson (NO ACTION).

2. Approval of the proposed budget for Funds 709 and 243 for the BRA budget for fiscal year 2021 (ACTION: Motion to approve the budget for Fund 709 and 243 for the Brownfield Redevelopment Authority for fiscal year 2021).

3. Approval of a Purchase and Sale Agreement between 619, LLC and the City of Kalamazoo BRA for the property at 316 E North Street (ACTION: Motion to approve the Purchase and Sale Agreement between 619, LLC and the City of Kalamazoo BRA for the property at 316 E North Street and authorize the chair to sign).

F. Old Business

1. Approval of the first amendment to the Brownfield Plan Development Agreement with GTW DEPOT, LLC for the project located at 421 and 427 E Michigan Avenue (ACTION: Motion to approve the first amendment to the Brownfield Plan Development Agreement with GTW DEPOT, LLC and authorize the chair to sign).

G. Communications and Announcements

H. Staff Updates

J. Citizen Comments

K. Directors’ Comments

L. Adjournment
MEMBERS PRESENT: Nathan Bolton; James Escamilla; Keva
Novotny; Patti Owens; Lucas Middleton; Jamauri Bogan; Vice Mayor Patrese Griffin; Fritz Brown

MEMBERS ABSENT: Jasmine Vedua

CITY COMMISSIONERS/CITY STAFF PRESENT: Joe Agostinelli (Consultant to the BRA); Richard Cherry (Deputy City Attorney); Rebekah Kik (Planning and Economic Development Director); Jamie McCarthy (Development Coordinator); Antonio Mitchell (Community Investment Manager); Beth Cheeseman (Executive Administrative Assistant); Marcy Dix (Program Finance Supervisor)

PUBLIC PRESENT: Mr. David Stegink, Envirolec Technologies; Mr. Derek Wissner, Memories Bridal & Evening Wear

Meeting was called to order at 7:30 AM by Chair Nathan Bolton.

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

APPROVAL OF AGENDA:
Director Owens moved the approval of the agenda; supported by Director Novotny. Motion approved by voice vote unanimously.

APPROVAL OF THE MINUTES OF JULY 16, 2020: Director Owens moved the approval of the minutes; supported by Director Hess. Motion approved by voice vote unanimously.

NEW BUSINESS

1. Public hearing for the City of Kalamazoo Revised Brownfield Redevelopment Plan, Amendment 8 (NO ACTION).

   - Presentation by staff

Ms. McCarthy reported that they did not add new chapters to the plan. In this case, they looked at the projects they needed to update to make them more accurate. They have decided to review the plan on an annual basis. Southwest Michigan First updated the TIF tables for every chapter and the tables at the end of the document. Some chapters in the plan were removed. The projects in these chapters (10, 13, 15, 18, 19, and 20) were complete and TIF was paid out or no project ever materialized. Some chapters were modified because there were changes to the project or more information was available. Ms. McCarthy spoke about Chapters 28 and 39 where the DDA was originally putting
forth some TIF capture. They are now looking at how the BRA can capture instead. Mr. Agostinelli is working with MEDC and PlazaCorp regarding the Exchange project (Chapter 28) to see what school capture can be added to that project. He explained that capturing school tax would shorten the BRA plan, pay developer back faster and get the property back on the tax rolls faster. Attorney Cherry revised the agreement for the Depot project (Chapter 39). Ms. McCarthy shared that Chapters 47 and 50 are projects that haven’t been built yet.

Ms. McCarthy explained that Brownfield Plans go to the Brownfield Authority for the public hearing and then it goes to the City Commission for approval. She said the BRA can’t capture any more than what is specified in the plan. Ms. McCarthy said the commitment to a developer is what gets negotiated in the developer agreement. That’s where the board pulls out the Incentives policy, evaluates and rates the project against the guidelines, and then says if the project qualifies for reimbursement for eligible activities and for how many years. Mr. Agostinelli would then build a TIF table. She said they are changing numbers in this plan to give the Board ability to negotiate the development agreement. Ms. McCarthy said that the developer asked them to add two adjacent parcels obtained from the railroad in Chapter 50.

- Public comment period

Director Bolton opened the public comment portion of the public hearing.

No comments.

Director Bolton closed the public comment portion of the public hearing.

- Board discussion

Director Bolton asked how much sooner the Exchange project would be on the tax rolls if the BRA captures instead of the DDA. Mr. Agostinelli estimated that it could be 18 months. If the MEDC allows for school capture on those additional activities, it would accelerate the process because the DDA could only capture local taxes.

Vice Mayor Griffin asked if there was a specific portion of the plan that Southwest Michigan First was reviewing. Mr. Agostinelli explained that his co-worker, Jared, reviewed the spreadsheet side and he did some technical cleanup of the plan. He said there was a lot of out-of-date information in the plans. They reviewed the plan chapter by chapter, making sure it reflected current information and that the chapters were consistent with each other. He reported that there had been some significant changes in millages that exist in the City and they updated the tables to reflect that. Ms. McCarthy showed an example of table that was updated and explained the numbers.

Vice Mayor Griffin thanked them for their explanation. She said that she is interested in the diversity and equity lens of the organization that reviewed the plans. She said that impacts the way things are viewed and the outcomes. Vice Mayor Griffin asked about the diversity of Southwest Michigan First’s organizational makeup. She commented that she was not questioning expertise, but they’ve found that some components could have been caught if the company had an equity lens at the beginning. Vice Mayor Griffin stated that is something she will always ask about and she hoped that was given consideration since equity is a part of the Master Plan 2025.

Director Owens asked Mr. Agostinelli to clarify why developers were able to opt out of school tax capture in the past. Mr. Agostinelli said that it is important to note that school tax capture holds local schools harmless. The taxes everyone pays at the local level go into a bucket at the state level. The local school district is held harmless. He said that, in the past, the City has not wanted to pursue school tax capture because there were different rules around the use of the Local BRA Revolving Fund if school taxes were captured. That was the impediment to capturing school taxes. Mr. Agostinelli said the Local BRA Revolving Fund rules have changed and it is not as problematic to capture school taxes anymore.
2. Consideration of a recommendation the BRA adopts a resolution approving the implementation of City’s Revised Brownfield Redevelopment Plan, Amendment 8 and recommending adoption by the City Commission (ACTION: Motion to approve the resolution approving implementation of City’s Revised Brownfield Redevelopment Plan, Amendment 8 and recommending adoption by the City Commission).

Director Brown moved to approve the resolution approving implementation of City’s Revised Brownfield Redevelopment Plan, Amendment 8 and recommending adoption by the City Commission; supported by Director Owens.

Director Owens said she appreciated Jamie’s thoughtful explanation of what they are doing and why.

Vice Mayor Griffin asked again about the diversity of the group that reviewed the plan.

Mr. Agostinelli said that they didn’t make any policy decisions. They just updated financial information. He said that it is a fair point that a lot of organizations need work on their diversity and that Southwest Michigan First needs to work on that. He will take that point back to their leadership.

Ms. McCarthy said that it is an excellent question and a way to look deeper at diversity and equity considerations. She said that Southwest Michigan First reviewed the math, but it was not a visionary plan. Ms. McCarthy stated it is the board that makes the decisions on the types of projects approved. They discern what the project means to the community, how inclusive the developers are, what neighborhoods are affected, and if the projects are meeting the needs of the neighborhoods. Ms. McCarthy said they have some requirements like the City’s Ex-Offender policy. She said they will look at the incentives policy later this fall and it is a good opportunity to think about diversity and equity.

Vice Mayor Griffin thanked them for their answer. She emphasized that every instance is important – it’s always needed.

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

OLD BUSINESS

3. Approval of payment for improvements at Haymarket Plaza in the amount $12,190 from Fund 243 Local Brownfield Revolving Fund (ACTION: Motion to approve payment for improvements at Haymarket Plaza in the amount $12,190 from Fund 243 Local Brownfield Revolving Fund).

Director Owens asked about the BRA Board’s policy when they are voting on a project that involves members of the board.

Attorney Cherry agreed that if any members have a financial tie to the decision of the vote, then they would need to abstain from discussion and vote. After discussion it was determined that Director Brown would excuse himself from the call and Ms. McCarthy would email him when he could return.

Ms. McCarthy shared that this is a publicly owned alleyway. To the north, Catalyst is working on the 180 Water Street project. She said Treystar and Mr. Wissner own buildings off the alley. Treystar and Catalyst have been coordinating on the design of the alley portions adjacent to their buildings. Mr. Wissner wanted to join in and make his area look the same. He brought up to City staff that a rectangular piece at the end of the alley is City owned. Ms. McCarthy said the City agreed that Mr. Wissner should complete that small portion and they would talk about where it could come out of the budget. She said they talked to the Downtown Partnership, but they were already contributing toward the project. Public
Services budget was tight. Ms. McCarthy said that because it was a public project investing in the main right of way, they felt it would be an appropriate expense for the BRA. She said Mr. Wissner met with the different property owners. They talked about logistics and made sure the design elements matched. The rest of the alley way will be improved in 2021. Ms. McCarthy asked the Board for approval to reimburse Mr. Wissner from the Local Brownfield Revolving fund.

Director Owens stated her support of the request and explained that the timing was critical. They had people out there to pour concrete. In her opinion, it was well worth it because they will have a cohesive pedestrian access.

Mr. Wissner agreed there was a tight timeframe to decide whether to do this or miss the window. If they missed the window, the alternative would have been to go back a year or two later to repair the asphalt after the fact.

Director Bolton asked how much that would have cost if it had been done later. Director Owens said had they had waited; it would have been more expensive. They would have had to remobilize concrete as well as go back and get easements.

Mr. Wissner added that the alleyway now looks consistent with the exact mix of concrete and the exact same pour. They also don’t have trucks going down the new alleyway to risk cracking it.

Director Hess asked if there was a detailed invoice for documentation. Ms. McCarthy and Director Owens stated there are detailed invoices. Director Owens asked Ms. McCarthy to share that with the board.

Director Middleton agreed that it made sense to do it all at the same time. He asked what policy governs the expenditures from the revolving fund and how does this project align with those requirements.

Mr. Agostinelli responded that by statute the Revolving Fund money has to be spent on eligible activities on eligible properties. He explained that the statute allows for eligible activities to be incurred within the public right of way for public improvements that directly benefit eligible properties. This project benefits the 180 Water Street project.

Director Novotny moved to approve payment for improvements at Haymarket Plaza in the amount $12,190 from Fund 243 Local Brownfield Revolving Fund; supported by Director Owens. A voice vote was taken, and the motion passed unanimously.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF UPDATES

- 2020 YTD budget report

Ms. Marcy Dix, Program Financial Supervisor, reviewed the Local BRA Revolving Fund and the Operating Fund. The BRA Board voiced no questions or concerns.
CITIZEN COMMENTS

None.

DIRECTOR’S COMMENTS

Director Owens suggested they have an educational session for any board members who would like to understand TIF capture better and how the BRA’s money is being used. She suggested having Marcy Dix, Jamie McCarthy and Joe Agostinelli there to help explain these matters.

Director Novotny said he loved that idea and thought it would be helpful to have something visual like a flow chart color coded with roles and responsibilities. Director Hess said that when he was a new member, the retreat at the Radisson helped him. He added that they are all on the board for a different reason with different skill sets.

Ms. McCarthy said she will send out a Doodle poll.

Attorney Cherry suggested that it should be a workshop if several board members are involved.

Director Kik thought it was a great idea. She would like the workshop to cover TIF, the Incentives Policy, and how they spend their money.

Director Bolton said he went to the Parade of Homes and KNHS had a home on Stockbridge. They said they received money from the City. He wondered where that money come from.

Director Kik responded that it was a combination of LISC with FFE dollars. She said that partnership was happening again this year with the Micro-TIF the board and City Commission approved.

ADJOURNMENT: 8:49am

________________________
Beth Cheeseman,
Recording Secretary

________________________
Signature

________________________
Printed Name/Title
### Revenues

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<th>Source</th>
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<th>2020 Budget</th>
<th>2020 Projected</th>
<th>2021 Proposed</th>
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#### Total Resources

- **862,066**
- **2,229,533**
- **918,620**
- **1,856,397**

### Expenditures

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<th>Category</th>
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<th>2021 Proposed</th>
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<td>State Funding - EGLE- Harrison Circle</td>
<td>282,500</td>
<td>5,068</td>
<td>270,000</td>
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#### Total Expenditures

- **1,491,589.37**
- **2,229,533.00**
- **928,707.83**
- **1,856,397.00**

Revenue over (under) expenditures

- **-629,524**
- **0**
- **-10,087**
- **0**
### BROWNFIELD REDEVELOPMENT AUTHORITY

Local Brownfield Revolving Fund

2021 Propose Budget

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<th>Revenues</th>
<th>2019 Actual</th>
<th>2020 Budget</th>
<th>2020 Projected</th>
<th>2021 Proposed</th>
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<td>Transfer from BRA</td>
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Revenue Over (Under) Expenditures | 1,992,996 | 0 | 414,921 | 0 |
To:       BRA Board of Directors  
From:  Rebekah Kik, Director of Community Planning & Economic Development  
Prepared by:  Jamie McCarthy, Sustainable Development Coordinator  
Date:  September 14, 2020  
Subject:  Approval of the Purchase and Sale Agreement with 619, LLC for the property at 316 E. North Street

Background

In 2002 BRA acquired, through the delinquent tax foreclosure process and under a quit claim deed from the State of Michigan, a parcel of real property in the City located at 316 East North Street (“BRA Parcel”). On October 31, 2017 Developer acquired the parcel at 619 Porter Street, including the building and appurtenances, which is adjacent to the BRA Parcel (“Developer Parcel”). Additionally, Developer acquired three adjacent parcels from the railroad and BRA added these parcels to the most recent amendment of the Brownfield Plan.

Developer intends to redevelop and improve all parcels by redeveloping the site with the existing building for mixed-use purposes. The BRA parcel will be used for parking and other infrastructure improvements. Staff recommend the sale of the BRA parcel to Developer to allow for continued revitalization of the surrounding area and to eventually place the BRA parcel back onto tax rolls.

Staff recommend a sale price of $15,279.00 for the parcel which aligns with the true cash value provided by the City of Kalamazoo Assessor’s Office.

Recommendation

It is recommended that the BRA approve the Purchase and Sale Agreement with 619, LLC for the property located at 316 E. North Street and authorize the chair to sign.

Attachments

Agreement
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into effective as of ______________________ _______, 2020 (the “Effective Date”), by and between 619, LLC or its assigns, (“Purchaser”) and City of Kalamazoo Brownfield Redevelopment Authority (“BRA”), a Michigan public body corporate whose address 241 W. South Street, Kalamazoo Michigan 49008 (BRA) (“Seller”).

Background

A. Seller is the owner of real property located in the City of Kalamazoo, Michigan, having a common address of 316 E. North St, Kalamazoo Michigan (the “Property”).

B. Purchaser desires to purchase from Seller, and Seller desires to convey to Purchaser, all of Seller’s right, title and interest in and to the Property, all subject to the terms and conditions set forth below.

Agreement

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Property. Purchaser shall purchase from Seller and Seller shall sell to Purchaser the Property. The “Property” shall include: (i) fee simple, marketable title to the land described on Exhibit A (the “Land”); (ii) the building, structures, improvements and fixtures located on the Land, if any (collectively, the “Improvements”); and (iii) all of the Seller’s right, title and interest, in and to (a) any easements, rights, privileges, appurtenances and any other rights that benefit the Land or Improvements, (b) any oil, gas, and minerals in, under and that may be produced from the Land, and (c) any prescriptive easements and/or rights of adverse possession in and to the streets, drives, alleys, rights-of-way (whether public, private, abandoned or vacated), and land located adjacent to the Land. These rights to prescriptive easements and/or rights of adverse possession shall not apply to streets, drives, alleys, rights-of-ways or property held by the City of Kalamazoo.

2. Purchase Price. The purchase price for the Property shall be Fifteen Thousand Two Hundred Seventy-Nine dollars ($15,279.00) (the “Purchase Price”). The Purchase Price, less the Deposit (as defined herein), and adjusted by other charges and credits as set forth herein, shall be delivered at Closing.

3. Deposit. Purchaser shall deliver $1,527.90 (the “Deposit”) to Devon Title Agency, 3250 W Centre Ave #2, Portage, Michigan 49024 (the “Title Company”) which equals ten percent of the purchase price, by wire transfer or certified, cashier’s or corporate check, within Ten (10) business days after the Effective Date of this Agreement. The Deposit shall be applied to the Purchase Price if the Closing occurs. If the Closing does not occur, the Deposit shall be disbursed as provided below.
4. **Investigation Period.**

   a. **Property Investigations.** The “Investigation Period” shall commence on the Effective Date of this Agreement and shall expire Three Hundred Sixty-Five (365) days thereafter at 5:00 p.m. Eastern Daylight Time. During the Investigation Period, Purchaser and/or its agents and representatives, shall have the right to enter the Property and have the Property and improvements located thereon inspected, surveyed, evaluated, analyzed, tested, appraised and/or assessed for any matter whatsoever that Purchaser reasonably considers as a significant detriment to its intended use; Seller’s title to the Property; market value; soil conditions, including without limitation the surface and subsoil composure and load bearing capacity; location of flood plains; presence of wetlands and necessary mitigation, if any; storm water drainage systems; presence of environmental contamination, including without limitation a Phase I and Phase II environmental assessment; health and safety conditions; access to utilities; access to public roads; signage; zoning; compliance with laws; codes and ordinances, and any other matter desired by Purchaser. During the Investigation Period, Purchaser shall also have confirmed that the zoning classification of the Property is sufficient to permit Purchaser’s intended use of the Property, and Purchaser shall be entitled to investigate and commence proceedings to obtain any and all permits, approvals, variances, vacations, easements, releases, wetlands, and other discretionary authorizations or entitlements necessary or appropriate for Purchaser's intended use (collectively, the “Rights and Approvals”). Seller agrees to cooperate with Purchaser in all such proceedings and/or efforts to secure the Rights and Approvals, in such manner as Purchaser may reasonably request, including the filing of any applications therefor.

   b. **Property Materials.** Not later than ten (10) days following the Effective Date, Seller shall deliver to Purchaser all of the following materials to the extent in Seller’s possession or control: (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; and (iii) copies of all development, site plan and zoning approvals; copies of any and all notices, correspondence, and/or documentation in Seller’s possession relating to the Second Amended Party Wall and Reciprocal Easement Agreement dated June 17, 1984, recorded in Liber 1212, page 91 (the “Party Wall Agreement”).

   c. **Title and Survey.** Promptly following the Effective Date, Purchaser, at Purchaser’s expense, shall obtain an ALTA standard title insurance commitment, issued by the Title Company, showing the condition of Seller’s title to the Property and any easements benefiting or burdening the Property, together with complete and legible copies of all recorded documents listed as Schedule B-1 matters or as special Schedule B-2 exceptions (collectively, the “Title Commitment”). Further, Purchaser may, at Purchaser’s expense, obtain a current ALTA or other survey of the Property which locates the boundaries
of the Property, all improvements on the Property, any easements, or rights of way affecting or benefiting the Property and any encroachments across the boundaries of the Property that is in form and substance acceptable to Purchaser or Purchaser’s lender, if any (the “Survey”). Following Purchaser’s receipt of both the Title Commitment and Survey, Purchaser shall notify Seller of any physical or other defects disclosed that Purchaser deems unacceptable and Seller shall make commercially reasonable efforts to cure or remove any such unacceptable defects not later than twenty (20) days following Purchaser’s notice. If Seller does not cure or remove such defects within that 20-day period, Purchaser may either (i) cancel and terminate this Agreement at any time prior to the Closing, in which case the full amount of the Deposit shall be immediately refunded to Purchaser, or (ii) waive such defects and continue the transactions contemplated by this Agreement. The recorded instruments listed on Schedule B-2 of the Title Commitment as approved by the Purchaser by the delivery of its Notice to Proceed (or as otherwise modified by Title Company and approved by Purchaser before the Closing Date) shall be deemed the “Permitted Exceptions.” Notwithstanding anything herein to the contrary, Seller (without notice or objection from Purchaser) shall discharge on or before Closing all liens and judgments securing any monetary obligation that may be discharged by the payment of an ascertainable, fixed sum of money (and the same shall not be deemed Permitted Exceptions).

5. Right to Terminate.

If Purchaser is satisfied with its investigation of the Property (including, without limitation, the condition of title), then before the expiration of the Investigation Period, Purchaser may provide a written notice (“Notice to Proceed”) to Seller, in which case the Investigation Period shall be deemed expired, and the parties shall proceed to Closing in accordance with this Agreement. At any time prior to Closing, if Purchaser is reasonably dissatisfied with the Property or any conditions thereon or matters related to the Property, including without limitation any matters or conditions contemplated in Section 4, or if Purchaser is otherwise dissatisfied with the Property for any other reason or for no reason, all in Purchaser’s sole and absolute discretion, then Purchaser shall be permitted to terminate this Agreement by delivery of written notice of termination to Seller. If Purchaser terminates this Agreement by written notice to Seller on or before the expiration of the Investigation Period or if Purchaser (at its option) fails to give a Notice to Proceed, then this Agreement shall be deemed terminated, the Deposit, shall be immediately refunded to Purchaser, and neither party shall have any further liability to other under this Agreement.

6. Closing. The purchase and sale of the Property as contemplated by this Agreement shall be consummated (the “Closing”) at the offices of the Title Company, upon the date which is thirty (30) days following the expiration of the Investigation Period (the “Closing Date”) as evidenced by the Notice to Proceed. However, either party will have the right to extend the closing date for an additional 30 days to complete unexpected matters discovered during the Investigation Period, or to satisfy any
contingency for Closing. At Closing, Seller shall make the Seller Deliveries described in Section 7 and Purchaser shall make the Purchaser Deliveries described in Section 8.

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 (collectively, the “**Seller Deliveries**”): (a) Covenant Deed in a form acceptable to Purchaser conveying to Purchaser fee simple, marketable title to the Property, subject only to the Permitted Exceptions, executed and acknowledged by Seller in recordable form (the “**Deed**”); (b) an affidavit of ownership as required by the Title Company in order to induce the Title Company to omit the standard exceptions from the Title Policy; (c) a certificate in such form as may be required by the Internal Revenue Service under Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued theretofore that section, certifying as to the non-foreign status of a transferor; (d) an assignment of Seller’s right, title and interest in and to any and all rights under the Party Wall Agreement which are vested in or granted to the owner of the Developer Site (as defined in the Party Wall Agreement); and (e) 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 credits and debits as set forth on the Closing Statement to be prepared by Title Company and such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Purchaser (collectively, the “**Purchaser Deliveries**”).

9. **Taxes.** Seller shall be responsible for and pay at or prior to Closing all taxes and assessments that are due and payable for the Property as of the Closing Date. Taxes for the calendar year of Closing shall be prorated as of the Closing Date on a calendar year basis and shall be based on taxes coming due and payable in the calendar year of Closing. Seller shall be solely and exclusively responsible for payment in full of all special assessments against the Property, if any.

10. **Closing Costs and Pro-rations.**

   a. **Closing Costs.** At Closing, Seller shall pay the following: (i) all transfer and/or conveyance taxes assessed in connection with the Closing; (ii) all costs related to Seller’s professionals and consultants; and (iii) one half of the Title Company's closing fee in connection with this transaction.

   b. At Closing, Purchaser shall pay the following: (i) all recording costs for recordation of the Deed; (ii) all costs and expenses associated with the Purchaser’s inspections conducted pursuant to this Agreement and Purchaser’s professionals and consultants; (iii) the cost of any endorsements issued with the Title Policy, if requested by Purchaser; and (iv) one half of the Title Company’s closing fee, the premium for the owner’s Title Policy (including removal of standard exceptions) and the Title Company’s search and examination fees.
11. Use of the Property; Covenants, Representations & Warranties.

a. During the term of this Agreement, Seller 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. After the Effective Date and until the earlier of the termination of this Agreement or the Closing, Seller shall suspend all activities utilized by Seller to market the Property for sale other than in connection with the transaction contemplated by this Agreement and shall not enter into any agreement with any other person or entity for the sale or lease of the Property.

b. Seller, to the best of its knowledge, represents and warrants to Purchaser, as of the date of this Agreement and until the Closing Date, as follows:

i. there are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or threatened regarding the Property;

ii. the person signing this Agreement on behalf of Seller has full power and authority to enter into this Agreement, and to perform, or through performance by City employees who assist Seller, all of Seller's obligations under this Agreement;

iii. Seller is not a party to any agreement, written or oral, which affects the Property in any manner other than this Agreement;

iv. Seller is not in default under any agreement affecting the Property, nor to Seller's knowledge does any fact or situation exist which, with the giving of notice or the passage of time, or both, would put the Seller in default under any agreement affecting the Property; and

v. with respect to the Party Wall Agreement, Seller has not requested that any other party consent to any of the following, and no other party has requested that Seller consent to any of the following, and Seller has not consent to any of the following: (a) any snow removal, maintenance and/or repair contract relating to the property that is subject to the Party Wall Agreement; and (b) the making of any additions, alterations or improvements to any property that is subject to the Party Wall Agreement.

The foregoing representations and warranties shall be deemed remade at Closing.

12. 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. If Purchaser exercises that right, the Title Company shall immediately refund the Deposit to Purchaser and the rights and obligations of the parties under this Agreement shall terminate.
13. **Broker Commissions.** Seller and Purchaser each represents and warrants to the other that it has dealt with no broker, finder or other person regarding the sale or purchase of the Property. Therefore, no broker, finder or other person is entitled to any commission or a finder's fee.

14. **Default and Remedies.**

   a. **Purchaser’s Default; Seller’s Remedy.** If the Purchaser fails to terminate this Agreement as permitted, and thereafter fails to close on the purchase of the Property, due to Purchaser’s material default under the Agreement - provided 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.

   b. **Seller’s Default; Purchaser’s Remedies.** If Seller fails to timely perform any material act, or provide any material document or information required to be provided by Seller, or if any covenant made by Seller is breached or any representation or warranty made by Seller pursuant to this Agreement is untrue, then Purchaser shall have the option to either: (i) terminate this Agreement and receive from the Title Company the full amount of the Deposit and seek Purchaser’s actual damages arising from Seller’s breach, or (ii) seek specific performance of this Agreement.

15. **Attorneys’ Fees.** The prevailing party in any legal proceeding brought under or with relation to this Agreement or transaction shall not be entitled to recover court costs, reasonable attorneys' fees or any other litigation expenses from the non-prevailing party.

16. **Authority.** The approval by the BRA is required before this Agreement is effective and binding. If such approval is not made within 30 days after Seller has signed this Agreement, it shall be deemed null and void and of no force and effect.

17. **Sale and Assignment of Agreement.** Purchaser may not assign its rights and obligations under this Agreement without the express written consent of Seller, which consent shall not be unreasonably denied, withheld or conditioned. However, Purchaser may assign all of its right, title and interest in this Agreement to an existing entity, or an entity subsequently formed provided that such entity is controlled by, controls, or is under common control with Purchaser. Further, Purchaser shall remain responsible to carry out the obligations of that entity unless released from all liability in writing by Seller.
18. **Conditions to Closing.** Purchaser’s obligation to close the purchase of the Property is contingent upon Purchaser’s reasonable satisfaction or waiver of the following:

   a. All representations and warranties of Seller set forth in this Agreement remain true as of the Closing Date.

   b. Seller has timely performed and complied with all its covenants, obligations, and responsibilities under this Agreement.

   c. The Title Company has issued to Purchaser an owner’s policy of title insurance (or a marked-up Title Commitment, binding the Title Company to issue its owner’s policy of title insurance) consistent with the Title Commitment as approved by the Purchaser by the delivery of its Notice to Proceed (or as otherwise modified by Title Company and approved by Purchaser before the Closing Date).

   d. Purchaser has received executed estoppel certificates, acceptable to Purchaser, from each party (other than Purchaser) to the Party Wall Agreement.

19. **Miscellaneous.**

   a. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

   b. This Agreement is governed by Michigan law. The parties further acknowledge that since each has had the opportunity for legal counsel to review the terms of this Agreement, no provisions shall be construed against one party under any rule of construction regarding the drafter or party responsible for the challenged provision.

   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. This Agreement and the exhibits to this Agreement contain all of the representations and statements by Seller and Purchaser to one another and express the entire understanding between them regarding this transaction. All prior and contemporaneous communications concerning this transaction are merged in and replaced by this Agreement. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

   e. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (a) on the same date as the date on which such notice is delivered personally, (b) on the date that is three (3) business days after the date on which such notice is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, (c) on the date that is one (1) business day after the date on which such notice is sent by nationally-recognized overnight courier services (such as Federal Express or any other similar courier service), (d) on the date of delivery by facsimile transmission with electronic confirmation, and, in each case, addressed as follows:
If to Purchaser: 619, LLC  
Jeffrey A. Nicholson  
200 W. Michigan Avenue, Suite 201  
Kalamazoo, Michigan 49007

With a copy to: Aaron M. Smith  
McShane & Bowie, PLC  
99 Monroe Avenue NW, Suite 1100  
Grand Rapids, Michigan 49503

If to Seller: City of Kalamazoo Brownfield Redevelopment Authority  
Community Planning & Economic Development  
241 W. South Street,  
Kalamazoo, Michigan 49008

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

g. If any date of performance 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.

h. In case a court of competent jurisdiction determines that one or more of the provisions contained in this Agreement is invalid, illegal or not enforceable, such invalidity, illegality or unenforceability shall not affect any other provisions. As a result, this Agreement shall be construed as if such invalid, illegal or unenforceable provision is severed and deleted from this Agreement.

i. No failure of either party to complain of any act or omission on the part of the other party, regardless how long that failure continued, is considered as a waiver by that party to assert any of its rights under this Agreement. And 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.

j. Each party 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

SELLER:
City of Kalamazoo Brownfield Redevelopment Authority

BY: Patti Owens

ITS: Chair

PURCHASER: ________________________

BY: _______________________________

BY: _______________________________
EXHIBIT “A”

[To be attached]
To: BRA Board of Directors

From: Rebekah Kik, Director of Community Planning & Economic Development
Prepared by: Jamie McCarthy, Sustainable Development Coordinator

Date: September 14, 2020

Subject: Approval of the first amendment to the Brownfield Plan and Development Agreement with GTW DEPOT, LCC

Background
In the Amended and Restated Brownfield Plan (26th Amendment) adopted in July 2015, the BRA approved up to $150,000 of TIF reimbursement for eligible activities for the redevelopment of 421 and 427 East Michigan Avenue Kalamazoo, Michigan (Property). On August 25, 2015, Developer (GTW DEPOT, LLC) and the BRA signed a Brownfield Plan Development Agreement (Agreement) for the Property.

On September 28, 2015 the Downtown Development Authority ("DDA") signed an agreement with Developer to reimburse Developer $44,253.00 for "streetscape improvements" along and upon a public right-of-way ("DDA Agreement"). The funds were anticipated to come from tax increment revenues DDA was entitled to receive. The current balance due Developer under the DDA Agreement is $44,253.00, however, DDA is unable to meet this financial obligation under the DDA Agreement.

The streetscape improvements fall within the definition of an ‘infrastructure improvement’ and eligible activity for reimbursement under Act 381. To account for the DDA inability to meet its financial obligations under its DDA Agreement with Developer, staff recommend the BRA capture all eligible tax increment to fully reimburse Developer for up to $194,253.00, which includes the original $150,000 in the Brownfield Plan and the $44,253.00 owed by the DDA. It is anticipated that the BRA can reimburse Developer in the same period of 10 years established in the original Agreement.

Recommendation
It is recommended that the BRA approve the first amendment to the Brownfield Plan and Development Agreement with GTW DEPOT, LCC for a total up to $194,253 to reimburse eligible activities incurred by Developer.

Attachments
Agreement
FIRST AMENDMENT TO
BROWNFIELD PLAN DEVELOPMENT AGREEMENT

This Amendment is entered into between CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY (BRA), whose address is 241 W. South Street, Kalamazoo, Michigan 49007, and GTW DEPOT, LLC (Owner), a Michigan limited liability company, whose address is 200 West Michigan Avenue, Suite 201, Kalamazoo, Michigan 49007.

RECITALS:


B. On September 28, 2015 the Downtown Development Authority (“DDA”) signed an agreement with Developer to reimburse Developer $44,253.00, for “streetscape improvements” along and upon a public right-of-way (“DDA Agreement”). The funds were anticipated to come from tax increment revenues DDA was entitled to receive.

C. The current balance due Developer under the DDA Agreement is $44,253.00. However, DDA is unable to meet this financial obligation under the DDA Agreement.

D. The streetscape improvements falls within the definition of an ‘infrastructure improvement’ under Act 381, and therefore qualifies as an eligible activity for which BRA is authorized under Act 381 to reimburse Developer that portion of the total cost of the streetscape improvements within the boundaries of the Property.

E. To account for the DDA inability to meet its financial obligations under its DDA Agreement with Developer, the BRA agrees to amend its Agreement to include $44,253.00 owed to the Developer under the DDA Agreement provided that the Developer signs a release, releasing the DDA and the City of Kalamazoo of any further financial obligation under the DDA Agreement.

F. Paragraphs H and Paragraph 3 of the Agreement shall be amended to reflect a total Eligible Cost for the project to be no more than $194,253.00.

G. The $194,253.00 shall represent the $44,253.00 owed to the Developer under the DDA Agreement, plus the $150,000.00 found in the Brownfield Plan for the Property.

H. This First Amendment satisfies the requirements under Act 381 for reimbursing Developer its eligible costs for the streetscape improvements located within the Property and fulfills the purposes for which BRA was established.

NOW THEREFORE, in consideration of the above recitals and the below provisions, 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 Revised Brownfield Plan.** The Revised Plan, as it relates only to this Property will be amended when approved by the City Commission and then attached as Exhibit B and incorporated as part of this Agreement. To the extent provisions of the Revised Plan, as amended, or this Agreement conflict with Act 381, Act 381 controls.

3. **Term of Agreement.** Pursuant to the Plan the BRA shall capture that amount of TIR generated from local real and personal property taxes, including school taxes, allowed by law on the Property, beginning on December 31 in the year Developer completed the Project and continuing until the earlier of:

   3.1 full reimbursement of the Developer’s Eligible Costs for those Eligible Activities set forth in Paragraph 4 of the Agreement and this amendment, which shall not exceed $194,253.00; or

   3.2 10 years’ worth of actual TIR reimbursement.

Except for the above amendments, all the remaining paragraphs and provisions of the Agreement shall remain in full force and effect.

Dated: August ___, 2020

THE CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

By: ________________________________
   Nathan Bolton
   Its: Chair

Dated: August ___, 2020

GTW, L.L.C.

By: ________________________________
   Jeff Nicholson
   Its: Member