This meeting is being conducted electronically in order for members, staff, and the public to comply with the Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order issued by Robert Gordon, Director of the Michigan Department of Health and Human Services, on October 29, 2020.

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 October 15, 2020 (Action: Motion to approve the meeting minutes of October 15, 2020)

E. New Business

   1. Approval of a Purchase and Sale Agreement between Innovative Design Properties, LLC and the Brownfield Redevelopment Authority (BRA) for the properties at 809, 813, and 817 Porter Street (ACTION: Motion to approve the Purchase and Sale Agreement between Innovative Design Properties, LLC and the BRA for the properties at 809, 813, and 817 Porter Street and authorize the chair to sign).

   2. Approval of a Development Agreement between 266 Michigan Ave Kalamazoo, LLC and the Brownfield Redevelopment Authority (BRA) for the development project at 266 E. Michigan Avenue (ACTION: Motion to approve the Development Agreement between 266 Michigan Ave Kalamazoo, LLC and the BRA for the development project at 266 E. Michigan Avenue and authorize the chair to sign).

F. Old Business

G. Communications and Announcements

H. Staff Updates

   - OMA and Conflict of Interest Memo

J. Citizen Comments

K. Directors’ Comments

L. Adjournment
MEMBERS PRESENT: Nathan Bolton; Kyle Gulau; Jason Novotny; Patti Owens; Lucas Middleton; Jamauri Bogan; *Vice Mayor Patrese Griffin; Fritz Brown

MEMBERS ABSENT: Kevan Hess; James Escamilla

CITY COMMISSIONERS/CITY STAFF PRESENT: Richard Cherry (Deputy City Attorney); Jamie McCarthy (Development Coordinator); Beth Cheeseman (Executive Administrative Assistant); Trina Clark (Code Admin Records Clerk/Cashier); Antonio Mitchell (Community Investment Manager); Rebekah Kik (Director of Community Planning and Economic Development)

PUBLIC PRESENT: Kevin McGraw, John McGraw, Adam Patton, Michael Flynn, Michael Driver, Robert Koerner, Rachel Foster

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

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

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

APPROVAL OF THE MINUTES OF SEPTEMBER 17, 2020: Director Owens moved the approval of the minutes; seconded by Director Gulau. Motion approved by voice vote unanimously.

*Vice Mayor Patrese Griffin logged into the meeting at this time.

NEW BUSINESS

1. Approval of a Purchase and Sale Agreement between River Caddis Development, LLC and the BRA for the property at 508 Harrison Street (ACTION: Motion to approve the Purchase and Sale Agreement between River Caddis Development, LLC and the BRA for the property at 508 Harrison Street and authorize the chair to sign).

Ms. McCarthy stated that the City put out an RFP in 2017 and River Caddis was awarded this opportunity based on their proposal. The proposal was for a multi-phase development with an estimated $12.5-25 million invested in the site with over 135,000 square feet of building space. It had residential and retail space. The residential portion was to be a mixed-income rental with 111 rental units. Eighty of the units would be at a 60% AMI or less rental rate. Ms. McCarthy said some benefits to the community and the BRA were the affordable housing, revenue from the sale of the property and the increase to the tax base. Since that time, the developers had to work through some concerns
from MSHDA about the idea of getting LIHTC. She said they have been finalizing details of the purchase agreement since last fall when their LOI expired. The purchase agreement uses the most recent property appraisal which puts the value of property is $880,000 dollars. Because 50% of their proposed rental rates are affordable, the BRA incentive policy allows a discount of 50%. This brings the purchase price of the property to $377,920. This agreement is conditional on the developer receiving MSHDA’s LIHTC which will ensure the long-term affordability of those units. The investigation period ends June 1st, which could be extended with the approval of this board and the developer’s wishes to go forward with the project.

Attorney Cherry stated that, because they gave a significant discount on the property, they want to ensure that the proposed type of project gets built. It was decided that they won’t close on the property until LIHTC is awarded. Attorney Cherry said they talked about a reverter in the purchase agreement, but that may have created issues preventing River Caddis from closing on financing. He said they normally give 365 days for an investigation period. Since the project has been in the works since 2017, they felt June 1st with an option to extend that period (with approval of the BRA) would be appropriate.

Mr. Kevin McGraw, River Caddis, shared that this is a very challenged site, but they are not letting go. He said several things slowed them down. MEDC and MSHDA were originally both offering support of this project. A year and a half into it, MEDC pulled their support. Then MSHDA said they would deny the site because of the active heat treatment plant next door. The site flooded twice. River Caddis found that the heat treatment plant site was badly contaminated. Mr. McGraw reported that it took a year to get a purchase agreement with the heat treatment plant. He said they can share details of that with Attorney Cherry if desired. Mr. McGraw said they brought in Standard Companies to assist with the affordable housing aspect of the project. MSHDA confirmed that River Caddis buying the heat treatment plant and expanding into 4% or 9% was acceptable to them. Mr. McGraw stated they are ready to go. He added that because of the bad soils, they will put in Geopiers for all the buildings. They will have to dewater the site and they believe the water has PFAS.

Mr. Adam Patton gave more information about the environmental state of the site. He said it has a long industrial history dating back decades. That has resulted in soil and groundwater contamination which includes petroleum contamination, chlorinated solvents and metals. He said they will need to install a vapor intrusion mitigation system, dewater the site and treat the water. Stormwater management will be important on this site. There is also asbestos on the site that needs to be abated.

Mr. Robert Koerner said they’ve been able to pre-score their application based on the MSHDA scoring standards. They’ve engineered a deal that MSHDA says is competitive based on previous scoring. He said they have a high degree of certainty they will be competitive going into this round. By spring of 2021 he believes they should have all their approvals from MSHDA.

Mr. Mike Flynn reviewed the site plan, indicating it is different from the original RFP and response.

Director Bogan asked how long the units would remain affordable. Mr. Koerner stated that the use requirement imposed by MSHDA on all their developers is a minimum of 30 years.

Director Owens believes this is a great project and that affordable housing is much needed.

Director Bolton asked if there was any opportunity for MEDC to become involved in the project again. Mr. McGraw said people from MEDC indicated they might be able to come back into the project. He is hopeful that will happen.

Director Novotny asked about project scoring changed from past reviews to now. Mr. Koerner said the scoring criteria is being drafted for next year. They think it will be similar to past scoring criteria and they think they will continue to score well.
Ms. McCarthy commented on the schedule from River Caddis. She said it looks like a pretty aggressive schedule. They will want to get together, look at public meetings that are required and determine if the proposed schedule is possible. Mr. McGraw agreed that would be a good idea.

Attorney Cherry suggested an amendment to motion in the agenda. In addition to purchase agreement, he asked to include allowing staff to negotiate an access agreement and sign on the board’s behalf.

Director Bolton read the motion with the addition.

Director Owens moved to approve the Purchase and Sale Agreement between River Caddis Development, LLC and the BRA for the property at 508 Harrison Street and authorize the chair to sign and authorize staff to negotiate an access agreement and authorize the chair to sign; Director Novotny seconded the motion.

Roll call vote was taken. Fritz Brown’s microphone was not working. He gave a thumbs up to vote in the affirmative. The vote passed unanimously.

2. Approval of a Purchase and Sale Agreement between Bogan Developments, LLC and the BRA for the property at 315 E. Frank Street (ACTION: Motion to approve the Purchase and Sale Agreement between Bogan Developments, LLC and the BRA for the property at 315 E. Frank Street and authorize the chair to sign).

Ms. McCarthy said that Jamauri Bogan is the developer of this project and a BRA board member. Director Novotny spoke up and said his firm has worked to assist this project. He said he would abstain from action on this item.

Ms. McCarthy said the BRA acquired this parcel along with others in 2009 and 2010. It was a heavy industrial site. The BRA put in money to demolish two vacant, dilapidated commercial structures on the site. Ms. McCarthy said Mr. Bogan is interested in doing a mixed-use project for market rate and affordable housing. He is also interested in bringing a community space to the neighborhood and has been working closely with the Neighborhood Association. Mr. Bogan wants to build four duplexes, two-units each. They would have a combination of two and three-bedroom units. He would have a community space, office space and a residential unit as well. The BRA incentive policy allows matching his 50% affordable units with a 50% property price reduction. The BRA can offer Mr. Bogan a purchase price of $23,790. This agreement is conditional on obtaining funding for the purchase of the property and maintaining affordability. The Investigation period ends one year after the purchase agreement.

Attorney Cherry mentioned that Director Bogan is also interested in other BRA properties. after this purchase agreement, they will negotiate a right of first refusal for the other properties because he is doing a phased approach.

Director Bogan shared he is the CEO of Bogan Developments, he has his MBA and is a licensed realtor with ReMax Advantage of Portage. He said he just completed his pre-license work for his builder’s license. He gave an overview of his project. Phase I is eight residential units and a multi-use space. There will be four duplexes with two units each - four market rate and four affordable. There will be a 2500 square foot mixed use space. 2000 square feet will be allocated toward the Youth Development Center and his office. He said he will be the Property Manager and heavily involved in the Youth Development Center. Director Bogan said he has been working closely with Mr. Greg Dobson and Mr. Joe Gesmundo from AVB and his architect, Director Novotny. He said there will be three more phases. Director Bogan said his next step is approval from the board then LISC will release pre-development funds that will allow him to cover beginning expenses. He will work with Ms. McCarthy on TIF and he will complete his financing packet. His goal is for shovels to go in the dirt on March 1, 2021.

Directors Brown, Owens, and Gulau expressed support for Director Bogan’s project.
Vice Mayor Griffin said it was exciting to see new projects coming up. She wondered if he saw this project blending with the Northside or if it would be Rivers edge. Vice Mayor Griffin explained that perception from a resident may be that pieces of the Northside are being changed into things that are not the Northside – that they will not be able to move into these. She asked Director Bogan if his development would be part of the community, establishing a new community, or leaning towards Rivers edge?

Director Bogan stated that he hopes to be the connector of Northside and Rivers edge. He thought it will look different, but it will touch both. He indicated that a blend of people makes a great neighborhood. They can have that collaboration and conversation which changes everything.

Vice Mayor Griffin said she is very excited to have a community center in that area.

Director Bolton said he was encouraged by the project.

Director Gulau moved to approve the Purchase and Sale Agreement between Bogan Developments, LLC and the BRA for the property at 315 E. Frank Street and authorize the chair to sign; seconded by Director Brown.

A roll call vote was taken, and the motion passed. Directors Novotny and Bogan abstained.

Director Brown said that in the past, when it was his project, he was asked to leave the room and not hear discussion on the project. He asked that they have one policy for the future.

Ms. McCarthy commented that a breakout room wasn’t an option for the meeting that morning. Attorney Cherry said they don’t ask City Commissioners to leave the meeting, they ask them to abstain. He said they will get a policy to make it uniform.

OLD BUSINESS

1. Retreat Reflection: Updating the BRA Incentives Policy

Director Kik said she received a few comments on the Incentives Policy, and she wanted to be sure that she is interpreting them correctly. The worksheet for the developer helps to provide how they are tying the project to strategic vision goals, neighborhood planning goals, and what they’re trying to achieve. Director Kik said when a developer asks for many years of tax abatement, they want to calculate the value the project is bringing to the community.

She reviewed information she gathered from the retreat. Language was added to recognize hardships like the pandemic or economic downturn. This will give the board more of a say and be more empowered about how they are calculating TIF. An example was added showing a project in the $3-5 million dollar range. It was agreed that common definitions for terms and processes were needed. She asked the board to give feedback on what definitions they wanted to see. She did believe they should have a definition for eligible activities. Director Kik said she copied Strategic Vision Goals and sub goals for the board members to read and determine if they wanted to assign points values for those items. They had talked specifically about including three goals: Strengths Through Diversity, Shared Prosperity and Complete Neighborhoods goals. Those specific goals include sub goals of inclusion and equity values into the project.

Director Kik reported that in the original Incentives Policy they had the sales price discounted only for affordable housing units. She spoke about the possibility of job creation as an incentive. Director Kik reviewed the rest of the Policy and spoke about how it translated into the developer’s worksheet. She noted that they want to update this every year to be sure it aligns with affordable housing. She talked about accountability for hiring and retaining local
employees. Director Kik commented that staff can connect developers with networks of people for hiring. She spoke of the goal of Economic Vitality and how they can assist in bringing costs down for the developer to pass along to tenants. She also wondered what creative ways they can help move businesses from homes to bricks and mortar.

Director Kik confirmed for Director Gulau that the worksheet would be for the developer and the developer with assistance from the City. They intend this form to travel through the subcommittees and be presented with the developer presentation at the board level. Director Gulau asked if it could be an online form. Director Kik agreed that would be fantastic. Director Gulau mentioned that the domain KalamazooBrownfield.com is available. He thought having their own website would help with marketing.

Director Bogan asked if a developer meets the criteria of the neighborhood association, would that be another way to get a discount. Director Kik said she would try to outline what that could look like.

Ms. McCarthy added that they had talked about the flexibility of trading off TIF for an additional discount. If a project qualifies for both TIF and a discount, a developer could invest less capital and get less TIF or pay more for the property to get more TIF.

COMMUNICATIONS AND ANNOUNCEMENTS

None.

STAFF UPDATES

1. RFQ for brownfield consulting services

Ms. McCarthy said they have started to talk about what would be included in a Request for Qualifications (RFQ) for a consultant. She said they need an expert with a lot of experience working in TIF and other incentives. Ms. McCarthy said it needs to be someone who is a well-trained and experienced expert who verify if we’re doing everything properly, following statutes and making good decisions into the future. The person would be working in a review capacity. She said they hope to have the RFP out soon and have applications in front of the board in November. They hope for a consultant on board by the end of the year.

2. Committee for new board member selection

Ms. McCarthy said there is a Board vacancy. She asked them to start talking to their networks. The next two board members terming off is Fritz Brown, development experience, and James Escamilla, site development consulting. Ms. McCarthy informed them there is an application on the website. The Board Chair will need to appoint a subcommittee when they have applicants.

Mr. Antonio Mitchell shared that he had just hired a Community Investment Secretary, made an offer for the Developer Project Coordinator position, and was interviewing people for the Neighborhood Business and Special Projects Coordinator position. Later in the year, they will be interviewing for the Neighborhood Housing Specialist position. He felt they were moving in a good direction.
CITIZEN COMMENTS

Mr. David Beck said he had no comments. He was just interested in the board’s activities.

DIRECTOR'S COMMENTS

Director Gulau said he brought up the idea of reaching out to other BRAs in the State to get an idea of best practices elsewhere and how they compare to other Brownfields. He is interested in reaching out to a couple of those places. Director Gulau invited the other Directors to share any questions with him they would like him to ask.

ADJOURNMENT: 9:08 am

Beth Cheeseman, Recording Secretary

__________________________
Chair Signature

__________________________
Printed Name/Title
To: Brownfield Redevelopment Authority Board Members
From: Rebekah Kik, Community Planning & Economic Development Director  
Prepared by Jamie McCarthy, Sustainable Development Coordinator
Date: November 17, 2020
Subject: Approval of a Purchase and Sale Agreement with

BACKGROUND

In 2012 the Brownfield Redevelopment Authority (Authority) acquired, through the delinquent tax foreclosure process, three parcels of real property located at 809, 813, and 817 Porter Street (“BRA Parcels”) from the County Treasurer. All three parcels were vacant when acquired by the Authority. 809 and 813 Porter Street are shallow lots, 0.057 and 0.068 acres respectively, and not buildable as individual lots. 817 Porter Street is approximately 0.125 acres in size.

Innovative Design Properties, LLC owns and operates a commercial sign business at 333 E. Frank Street, which is adjacent to BRA Parcels. Innovative Design Properties, LLC (“Developer”) intends to redevelop and improve all parcels by combining the BRA Parcels with the existing parcel at 333 E. Frank Street. Combining these parcels will give the business adequate frontage on Porter Street to create a new access drive and parking lot – allowing the Developer to abandon the shared access drive from E. Frank. The second phase of the project includes expansion of the business by building a new structure on 817 Porter Street parcel. The expansion is expected to increase jobs (estimated to be 2 FTE) and tax revenues.

The recommended sale price is $1,000.00 for the parcels which aligns with the City’s site lot program. The sale is conditional on combining all parcels with the 333 E. Frank Street parcel. Once combined the total taxable value is estimated to be approximately $15,000, which will add approximately $10,700 of value to the tax roll according to the City of Kalamazoo Assessor’s Office.

RECOMMENDATION

It is recommended that the BRA approve the Purchase and Sale Agreement with Innovative Design Properties, LLC for the properties located at 819, 813, and 817 Porter Street to allow for continued revitalization of the surrounding area and to place the parcels back on the tax roll.

ATTACHMENTS

Purchase and Sale Agreement
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into effective as of October __, 2020 (the “Effective Date”), by and between Innovative Design Properties LLC, 333 E. Frank Street, Kalamazoo Michigan 49007 or its assigns, (“Purchaser”) and City of Kalamazoo Brownfield Redevelopment Authority, 241 W. South Street, Kalamazoo Michigan 49008 (“Seller”).

Background

A. Seller is the owner of real property located in the City of Kalamazoo, Michigan, having a common address(es) of 809, 813, and 817 Porter 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.

C. Seller will agree to discount the Property in accordance with the City of Kalamazoo’s Side-Lot program, in exchange Purchaser agrees to combine his property with 809, 813, and 817 Porter Street properties to create one taxable parcel.

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 all of the Seller’s right, title and interest in and to: (i) 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 easements, rights, privileges, appurtenances and any other rights that benefit the Land or Improvements.

2. Purchase Price. The purchase price for the Property shall be One Thousand Dollars ($1,000.00) pursuant to the City of Kalamazoo’s Side-Lot program (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 to Sun Title (the “Title Company”) a deposit that equals ten percent of the purchase price, in this case One Hundred Dollars ($100.00), (the “Deposit”) 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 thirty (30) 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 the proposed project as detailed in Section ; 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 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.

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.

5. **Right to Terminate.**

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 on or before the expiration of the Investigation Period, then the Deposit, less the five percent administrative fee, shall be immediately refunded to Purchaser.

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”). 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 all of Seller’s right, title and interest in and 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; (e) 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 thereunder that section, certifying as to the nonforeign status of a transferor; and (f) 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 currently due and payable for the Property. Taxes for the 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-ration.

   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; 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. 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.

Purchaser covenants that it shall combine all three parcels 809, 813, and 817 Porter Street with the parcel, at 333E. Frank Street, to create one taxable parcel within ninety (90) days of Closing. If Purchaser fails to combine all three parcels with its parcel, Purchaser must pay Seller the market rate price determined by the City of Kalamazoo’s City Assessor for each of the three properties 809, 813, and 817 Porter Street, less the Purchase Price pursuant to this agreement.

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.**

**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. **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 representation or warranty made by Seller pursuant to this Agreement is untrue when made, 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 nonprevailing party.

16. **Authority.** The approval by the BRA board is required before this Agreement is effective and binding. If such approval is not made within 90 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
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

BY: ____________________________

ITS:

PURCHASER: Innovative Design Properties LLC

BY: [Signature] 4/1/2012

Credell Jackson

[Signature] Innovative Design Properties LLC
INTER-OFFICE MEMO

To: Brownfield Redevelopment Authority Board Members

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

Date: November 17, 2020

Subject: Approval of a Development Agreement between 266 Michigan Ave Kalamazoo, LLC and the Brownfield Redevelopment Authority for a Brownfield Plan at 266 E. Michigan Avenue

BACKGROUND

The proposed project includes the redevelopment of a historic building situated on an approximately 0.078 acre parcel located at 266 E. Michigan Avenue in the City of Kalamazoo, Michigan (the "Property"). The Property is located in the heart of downtown and comprised of a four-story building with approximately 14,000 square feet of commercial and vacant space. The first floor is commercial with an active restaurant tenant and the upper three floors are vacant and undeveloped. The City Assessor determined the building to be functionally obsolete. 266 Michigan Ave Kalamazoo, LLC ("Developer") proposes to redevelop the first floor into two commercial tenant spaces, the upper three floors into residential use creating 11 apartments comprising approximately 10,500 square feet, for a total capital investment of approximately $3.5 million.

The Brownfield Redevelopment Authority (“Authority”) approved the implementation of an Act 381 Brownfield Plan for the redevelopment project in July 2020. The Plan describes "eligible activity" expenses in connection with the Property that the developer will incur, including lead and asbestos abatement, demolition, and infrastructure improvements. The City Commission is set to approve the Plan at their meeting on Monday, December 7, 2020.

The Development Agreement provides for up to six years of Tax Increment Revenue (TIR) capture and reimbursement to the Developer for actual expenses incurred up to $100,000. The project must commence no later than March 15, 2021 and be completed by December 31, 2022.

RECOMMENDATION

It is recommended that the Brownfield Redevelopment Authority approve the Development Agreement between 266 Michigan Ave Kalamazoo, LLC to redevelop and restore a history resource that is considered to be functionally obsolete and increase housing units in the downtown.

ATTACHMENTS

N/A
The City of Kalamazoo Brownfield Redevelopment Authority

INTER-OFFICE MEMO

TO: Board of Directors EDC/BRA

FROM: Richard O. Cherry, Deputy City Attorney

DATE: November 17, 2020

SUBJECT: Open Meetings Act and Conflicts of Interest

The City of Kalamazoo’s Economic Development Corporation (EDC) and the Brownfield Redevelopment Authority (BRA) both have conflict of interest policies outlined in each of their respective bylaws.

The EDC’s bylaws section 4 states that “[a] director who has a direct interest in any matter before the corporation shall disclose his or her interest prior to the corporation taking any action with respect to the matter, which disclosure shall become a part of the record of the corporation's official proceedings.”

Similarly, the BRA’s bylaws under section 5 states that “a Director who has a direct interest in any matter before the Authority shall disclose his/her interest prior to any discussion of that matter by the Authority, which disclosure shall become a part of the record of the Authority's official proceedings. The interested Director shall further refrain from participation in the Authority's action relating to the matter. Each Director, upon taking office and annually thereafter, shall acknowledge in writing that they have read and agree to abide by this section.”

A member of the public body must put on the record their conflict and abstain from voting. See Attorney General Opinion No. 5916. Additionally, the member cannot participate in the discussion of the issue. This does not mean that there is a requirement that the member leave the meeting. Pursuant to the Open Meetings Act (OMA) MCL 15.263 (6) “A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.” The term “a person” is not defined, therefore a person would mean anyone, including any of the board of directors. Thus, neither the EDC nor the BRA should adopt a policy requiring any of the Board of Directors to leave a meeting if they have a conflict of interest. This is prohibited by the OMA. Board of Directors with conflicts may excuse themselves but should not be required to do so. What a board member is required to do however, is to put the reason for their conflict on the record. Additionally, they must abstain from discussing and voting on the matter.

cc: Jamie McCarthy
    Antonio Mitchell
    Marcy Dix
    Rich Cherry