

**BROWNFIELD PLAN  
REDEVELOPMENT AND PURCHASE AGREEMENT**

This Agreement is entered into as of \_\_\_\_\_, 2017 (“Effective Date”) between \_\_\_\_\_, LLC, a Michigan domestic limited liability company, having an address at \_\_\_\_\_, \_\_\_\_\_, Michigan \_\_\_\_\_ (“Developer”), and CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY, a Michigan public body corporate, whose address is 241 West South Street, Kalamazoo, Michigan 49007 (“BRA”), and

**RECITALS:**

A. BRA and the City of Kalamazoo (“City”) have determined that brownfield redevelopment constitutes the performance of an essential public purpose.

B. In 2003 and 2005 BRA acquired under quit claim deeds from the State of Michigan, the parcels of real property comprising approximately 27.23 acres that is commonly identified as the former Performance Paper site (“Site”). BRA has been marketing the Site with the goal of creating a medical and health services campus for governmental or non-profit entities to service citizens within the community in need of those services. Towards that goal, BRA sold a 2.3 acre parcel to Family Health Center, Inc., which recently finished the construction of a 49,000 square foot facility, and is under an agreement to sell a portion of the Site on the west side of Portage Creek to a developer to renovate a 3-story building (on a parcel owned by that developer) to house the County of Kalamazoo Department of Health and Community Services.

C. The State of Michigan and BRA have had discussions concerning the State’s desire to relocate its Department of Health and Human Services (“DHHS”) to the Site in further support and expansion of the medical and health services provided to the community. The approximate 5.3 acre parcel of the Site that the State has chosen is located immediately adjacent to the 2.3 acre parcel BRA sold to Family Health Center, Inc. (“FHC Parcel”) subject to a twenty-five (25) foot easement to the west of the FHC Parcel (“Property”).

D. Developer was the successful bidder to construct and lease a building on the Property to house DHHS under the specifications and plans approved by the State with input from BRA.

E. The City established the BRA and has adopted a Brownfield Plan; the current version is the Amended and Restated Brownfield Plan (Amendment No. 29) (“Plan”), pursuant to the provisions of PA, 1996, Act 381, being MCL 125.2651, et seq., (“Act 381”). The Site and Property are both included in the Plan as Chapters 35 and \_\_\_\_\_ (TBD), respectively. The City has amended the Plan to reflect the Developer’s proposed redevelopment project as detailed below. **[NOTE: BRA and the City are in the process of replacing the current version of the Plan with an updated plan entitled City of Kalamazoo Revised Brownfield Plan. The Site will remain in the Revised Plan but the**

*Chapter numbers noted above may change. Therefore, any reference to Revised Plan below anticipates its adoption before this Agreement is signed.]*

F. Developer intends to redevelop and improve the Property by constructing a multi-story building (minimum of 2-stories) of approximately 60,000 square feet, along with other certain site and landscape improvements into a commercial office space for DHHS (“Project”). The capital investment by Developer for the purchase of the Property and Project is approximately \$ \_\_\_ million and will upon completion result in the creation or retention in the City of approximately \_\_\_ full time equivalent (FTE) jobs.

G. The Project will require Developer to incur Eligible Costs associated with certain Eligible Activities regarding demolition, site preparation, infrastructure improvements or environmental activities to satisfy Due Care obligations, all of which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. The Eligible Costs shall not exceed \$\_\_\_\_\_.

H. The Property is a facility within the meaning of the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended.

I. Developer and BRA desire to enter into this Brownfield Plan Redevelopment and Purchase Agreement (“Agreement”) for the mutual benefit of both parties, subject to the following terms and conditions.

NOW, THEREFORE, 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. DESCRIPTION OF THE PROPERTY: The Property is located at \_\_\_ East Alcott Street (Parcel No. 06-27-\_\_\_-\_\_\_) in the City and County of Kalamazoo, State of Michigan. The depiction and legal description of the Property is detailed and depicted in Exhibit A and Exhibit A-1 attached and incorporated as part of this Agreement. For the purposes of this Agreement, the Property is subject to (for purposes of site development and location of the building) a Subjacent & Lateral Support Easement Agreement under Document No. 2016-009532 Kalamazoo County records (Easement), and Declaration of Restrictive Covenants with Michigan Department of Environmental Quality Agreement under Document No. 2017-\_\_\_\_\_ Kalamazoo County records (Restrictive Covenant). The Easement and Restrictive Covenant are attached, respectively as Exhibit B and Exhibit C.
3. THE REVISED PLAN: The Revised Plan was approved by the City Commission of the City of Kalamazoo on \_\_\_\_\_, 2017; the Chapter as it relates only to this Property and Project was approved on \_\_\_\_\_, 2017 is attached as Exhibit D and incorporated as part of this Agreement. To the extent provisions of the Revised Plan or this Agreement conflict with Act 381, Act 381 controls.

4. CONSIDERATION: Developer will purchase the Property from BRA based on a sale price of \$10,000/per acre, which based on Exhibit A equals \$53,900 ("Purchase Price"), and other good and valuable consideration as set forth in this Agreement. Upon fulfillment of the terms and conditions of this Agreement BRA will convey the Property by covenant deed to Developer simultaneously upon receipt of the Purchase Price.
5. TITLE INSURANCE: At its expense BRA will provide to Developer (or Developer may obtain) a title commitment for the Property issued through a title insurance company mutually agreeable to the parties ("Title Commitment") for an owner's title insurance policy insuring Developer in the amount of the Purchase Price, with the standard printed exceptions and in the latest form approved by the American Land Title Association. In exercising reasonable discretion, Developer must be satisfied with the requirements set forth in the Title Commitment. BRA shall provide any surveys, affidavits and certificates required by the title company if Developer elects to have the title policy without exceptions or with additional endorsements. Developer is responsible for paying the added premium charged for a policy without exceptions and any such additional endorsements.
6. SURVEY: BRA will provide Developer with any topographical and boundary surveys of the Property that it may have. However, Developer has, at its expense, the option of obtaining its own survey of the Property, including an ALTA survey. (All surveys regarding the Property are individually and collectively referred to as a "Survey").
7. DEFECTS: Developer shall notify BRA within thirty (30) days after Developer's receipt of the last dated version of the Title Commitment, legible copies of all documents listed in the Title Commitment as exceptions, and any Survey, if there are any unacceptable issues ("Defects") regarding the Property for which City or BRA is responsible. Such Defects may include: (i) the Title Commitment discloses an exception not permitted by this Agreement or that shall interfere with Developer's use of the Property; (ii) the Survey shows any deviation from apparent boundaries, an encroachment, or another condition that in Developer's reasonable judgment, could interfere with the Project. BRA shall remove each Defect at its expense by the closing date. In addition, BRA shall satisfy the requirements set forth in the Title Commitment by the closing date. If BRA fails or refuses to remove any Defect, then Developer may: (i) proceed to closing, waiving the Defect at issue; or, (ii) Developer and BRA shall use commercially reasonable efforts to resolve the Defect, or (iii) terminate this Agreement by a written notice to BRA, in which case neither BRA nor Developer shall have any further liability to the other under this Agreement.

At the closing, BRA shall deliver to Developer a standard form of Owner's affidavit executed by BRA and the policy of title insurance (with all required endorsements) for which the Title Commitment was issued. Any additional costs for a title policy without exceptions or a mortgage policy are Developer's responsibility.

BRA agrees not to take any action between the time of execution of this Agreement and the closing that will cause any lien or encumbrance to the Property.

8. INSPECTION: Developer and its agents, consultants, and designees (“Developer's Agents”) may from time to time inspect the Property prior to the closing, and may enter the Property to perform the inspections referenced in this Agreement. Upon execution of this Agreement by both parties, BRA shall provide to Developer, or make available for review by Developer or Developer's Agents, copies of the following documents to the extent that they are in BRA's possession or control (“BRA Documents”): (i) all wetlands, and fill permits, zoning variances and approvals, and environmental reports with respect to the Property; (ii) any prior title commitments or surveys of the Property; (iii) any environmental reports, studies or assessments in possession of BRA, including those obtained in anticipation of entering into this Agreement; (iv) any notices with respect to the Property received from a governmental agency within the five-year period preceding the date of this Agreement; (v) and all leases, licenses, maintenance and other contracts affecting the Property; and (vi) any other information, data, memoranda, agreements and documents that Developer shall reasonably request and that is in the possession of BRA pertaining to the Property.

9. BRA'S REPRESENTATIONS AND WARRANTIES: BRA, to the best of its knowledge, represents and warrants to Developer, as of the date of this Agreement and until the closing date, as follows:

- A. BRA is the owner of the Property and there are no pending or threatened condemnation proceedings against any part of the Property;
- B. There are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or threatened regarding the Property;
- C. Subject to Paragraph 24, the Property is free and clear of all violations of applicable federal, state and local laws, ordinances, orders, codes, rules, regulations, building and use restrictions, and other legal requirements (collectively, “Applicable Laws”);
- D. The person signing this Agreement on behalf of BRA has full power and authority to enter into this Agreement, and to perform, or through performance by City employees who assist BRA, all of BRA's obligations under this Agreement;
- E. There are no Contracts, written or oral, which affect the Property in any manner other than this Agreement;
- F. There is no pending or proposed special assessment affecting or which may affect any part of the Property; and

Without waiving any rights under governmental immunity, BRA will hold Developer harmless from any loss, including, without limitation, reasonable attorney

fees, incurred by reason of BRA's breach of any of the above representations and warranties.

10. CONTINGENCIES: The obligation to close the purchase of the Property is contingent upon Developer's reasonable satisfaction or waiver of the following:

- A. The results of its investigation that the Property complies with Applicable Laws.
- B. The results of all inspections of the Property that Developer had performed (e.g., soil tests, etc.).
- C. All representations and warranties of BRA set forth in this Agreement remain true as of the closing date.
- D. BRA has timely performed and complied with all its covenants, obligations, and responsibilities under this Agreement.
- E. Its review of BRA Documents and the condition, permitted use and development prospects for the Property. Developer shall perform such review, at its expense, within thirty (30) days after the date that BRA delivers the last of the BRA Documents to Developer (the "Due Diligence Period").
- F. The City has approved the amendment to the Revised Plan to reflect this Project.
- G. If Developer is satisfied with its due diligence of the Property, then within five (5) business days (Monday through Friday other than holidays) after expiration of the Due Diligence Period, then Developer shall provide a written notice ("Notice to Proceed") to BRA. If Developer reasonably determines that one or more of the contingencies or other circumstances or conditions is not satisfactory for Developer's use of the Property, then Developer shall provide written notice to BRA and, for a period of fifteen (15) business days thereafter the parties shall use good faith efforts to resolve such condition or circumstance. If after such period, BRA and Developer have not resolved such circumstance or condition and Developer is not willing to waive such contingency and give a Notice to Proceed then its sole remedy is to terminate this Agreement by prompt written notice to BRA. Upon such termination neither BRA nor Developer shall have any further liability to the other under this Agreement.

11. DEVELOPER COMMITMENTS: In addition to the payment of the Purchase Price for the Property, Developer agrees that, in consideration for BRA's commitments in the capture of tax increment revenues ("TIR") to assist the Developer in the Project on the Property, it will complete the following (collectively and individually "Undertakings"):

A. Redevelop the Property by constructing a minimum of a two-story building(s) totally approximately 60,000 square feet, along with other site and landscape improvements, as commercial office space for DHHS. More specifically, Developer shall complete the Project substantially following the proposal it presented to the State and BRA, including any subsequent rendering. Therefore, the conceptual breakdown for the Project is as follows: (i) construction of the \_\_\_-story building; and (ii) on-site parking of approximately \_\_\_ spaces. Subject to matters beyond the reasonable control of Developer (e.g., matters of force majeure, acts of God, failure to obtain governmental approvals, etc.-collectively "Force Majeure"), Developer shall commence construction of the Project within 3 months of the date of the closing, and shall substantially complete it - defined as date when Developer receives a temporary or final occupancy permit from the City, ("Completion Date") - within 18 months of the closing date. The total capital investment shall be approximately \$ \_\_\_ million, with the creation or retention in the City of an estimated \_\_\_\_\_ FTE jobs at the Property.

B. 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; particularly, to review with Urban Alliance employment opportunities through its Momentum Urban Employment program. Regardless of Developer's ability to hire city residents it, and any contractors hired to perform work on the Project, shall follow the City's "Ex-Offender Purchasing" policy regarding hiring new employees who will work on the Project. A copy of this policy is attached as Exhibit E, and Developer will provide a copy of it to its general contractor prior to performing any work on the Project.

C. Provide any updated conceptual renderings, architectural or engineering drawings or plans for the Project as submitted to the City for permitting (collectively "Project Plans") to the BRA within a reasonable time after any Project Plan is completed. Any substantial deviation in the Project or Project Plans requires the consent of the BRA, which shall not be unreasonably withheld, conditioned or delayed. Final Project Plans or 'As Built' plans shall be submitted to the BRA within 10 days of their completion.

D. Redevelop and improve the Property, including landscaping and all other improvements required for the Project, in compliance with all applicable federal, state and local laws, rules and regulations, including, without limitation, building and zoning codes, site plan review, this Agreement and with any other agreement that relates to the Property or the Project. For purposes of this subparagraph Developer was provided with a copy of the Declaration of Restrictive Covenants dated \_\_\_\_\_, 2017 that impact the Property. Included within that document was an exhibit that listed the invasion species that are prohibited. Developer shall ensure that none of those invasive species will be brought onto or planted on the Property.

E. Assist and cooperate with the BRA in providing information that the BRA may require in submitting necessary reports to other governmental agencies, specifically to include all information BRA needs to file annual reports to the State as required under Act 381 and the required information the State needs to approve the 381 Work Plan if Developer has requested BRA to capture school taxes.

F. Assume responsibility for the costs of all utility connections or necessary upgrades from the Property line to the building.

G. Place on the Property during construction a development sign provided by BRA to promote the Project and the BRA's participation in it. Upon completion of the Project return the sign to BRA.

H. Permit BRA to cite or to use any renderings or photographs of the Project as an example of private/public partnership and brownfield site redevelopment.

I. In requesting and by accepting the Incentives BRA has committed to the Project, Developer acknowledges that the TIR necessary to fund such Incentives are based on projected assessed values of the Property (including, if applicable, the personal property) upon completion of the Project. If Developer petitions the Michigan Tax Tribunal to lower the assessed values on the Property, they will forfeit any future opportunity to renegotiate redevelopment terms.

12. ENVIRONMENTAL ASSESSMENT: Beginning on the Effective Date and thereafter until closing, Developer may, at its option and own expense, conduct its environmental due diligence including that which may result in a Baseline Environmental Assessment ("BEA") within the meaning of Part 201 of the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended (Part 201). Developer's satisfaction with the results of the environmental assessment of the Property shall be a contingency for closing. Within a reasonable period after the BEA, or in conjunction with the preparation of the BEA, Developer shall also, at its own expense, prepare a due care compliance analysis within the meaning of Part 201

After receipt of the BEA and due care compliance analysis Developer shall have 10 days to give written notice to BRA if it is satisfied with these environmental reports ("Environmental Approval Notice"). If Developer fails to provide such timely Notice to BRA, then Developer is considered to have waived this contingency for closing.

If the Developer notifies BRA that the BEA reveals unsatisfactory environmental conditions that will unreasonably impact the financial viability for the Project - and Developer and BRA are unable to agree on how to satisfactorily address such environmental conditions within 30 days after Developer's notice then Developer may (i) terminate this Agreement by prompt written notice to BRA and upon such termination neither BRA nor Developer shall have any further liability to the other under this

Agreement, or (ii) elect to proceed to closing hereunder and to receive assignment from BRA of all rights of BRA in and to the MDEQ Agreement.

13. PROJECT FINANCING: Developer shall, prior to closing, demonstrate its ability to finance the Project by providing BRA with evidence that it is capable of financing the Project. Such evidence may include a lender's financing commitment or personal financial statement. If Developer does not provide evidence of a financing commitment satisfactory to BRA, the BRA may terminate this Agreement.

14. BRA COMMITMENTS: BRA agrees to provide, complete or perform the following inducements or tasks to assist Developer towards completion of the Project, including the application of TIR as outlined in Paragraph 15 (collectively and individually "Incentives"):

A. Extend to Developer the benefits outlined in the Plan, subject to the provisions of Act 381. Those benefits include reimbursement for "eligible activities" from captured TIR detailed in Paragraph 15. These activities are any eligible activity allowed under Act 381, including, but not necessary limited to, demolition, site preparation (soil removal, grading, filling, etc.), infrastructure improvements, environmental assessment, due care obligations, or environmental response activities; and the services of various contractors, engineers, environmental consultants, attorneys and other professionals retained regarding such activities ("Eligible Activities"). Before undertaking Eligible Activities, Developer should discuss those activities with appropriate City staff prior to incurring such costs.

B. If reasonably necessary for the financial viability of the Project, Developer may seek the approval by and assistance from appropriate state agencies. BRA will cooperate and utilize its best efforts to assist in obtaining those approvals and assistance.

D. Provide the Developer with appropriate service agency/employment agency contacts for the identification of city residents as potential employees to interview for employment, specifically to include those agencies mentioned under Paragraph 11B.

E. No official, board member, officer or employee of BRA or the City is personally liable to Developer or its successor in interest upon a breach or default by BRA for any amount payable to Developer or its successor or any obligation under this Agreement.

15. TERM OF AGREEMENT: Under the Revised Plan the BRA shall capture and reimburse Developer that amount of TIR generated from local real and personal property taxes, including school taxes if requested by Developer and approved by the State of Michigan, allowed by law on the Property, beginning on December 31 in the year Developer has completed the Project and continuing until whichever of the



following situations occurs first:

A. full reimbursement of the Developer's Eligible Costs for those Eligible Activities set forth above, which shall not exceed \$478,000; or

B. 7 years' worth of actual TIR capture and reimbursement if Developer is approved by State to receive those school taxes under its Act 381 Work Plan.

If, however, Developer encounters unforeseen site conditions - such as unexpected foundations or an abundance of unsuitable material or debris - which create a major interruption to work on the site impacting Eligible Activities and potentially increasing Eligible Costs, BRA will reimburse Purchaser up to an additional \$222,000 or 3 years for such costs. BRA, or City staff, pre-approval is necessary before Purchaser incurs any Eligible Cost for which it seeks early reimbursement. After BRA's approval for Purchaser to proceed with such Eligible Activity, Purchaser shall provide paid invoices or other proper documentation evidencing payment for that Eligible Cost. Any early reimbursement is considered an advance against the limitations set forth above.

Further, Developer acknowledges and agrees that the BRA is entitled by Act 381 to capture and retain TIR generated by this Project for the following purposes: (i) reimburse BRA for any eligible activities it previously incurred regarding the Property as allowed under Act 381; (ii) payment for certain administrative operating expenses BRA incurred; and (iii) to fund the Local Site Remediation Revolving Fund relating to this Project for an additional term not to exceed 5 years following the above reimbursement to Developer and BRA – subject to any adjustments under Paragraph 18; and unless adjustments do occur under Paragraph 18 the use of TIR for (i) through (iii) above shall not occur before the TIR payable to Developer under Subsections A. or B. above, whichever first occurs, is paid.

16. REIMBURSEMENT SOURCE: During the term of this Agreement, and except as set forth in Paragraph 17A below, the BRA shall reimburse the Developer for its Eligible Costs, as limited under this Agreement, from all applicable TIR collected from the real and personal property taxes on the Property.

17. REIMBURSEMENT PROCESS:

A. Before July 31 of the year after Developer has completed the Project (and in no event more than 2 years following the Completion Date – “Late Submittal”) the Developer will submit to the BRA the Eligible Costs Reimbursement Form, attached as Exhibit F, that identifies the costs of each of the Eligible Activities as described in Paragraph 15A. When submitting Exhibit F, the Developer will also provide sufficient documentation of the Eligible Costs incurred including the dates, complete description of the work, proof of payment (accompanied by signed lien waivers from the applicable contractors or subcontractors) and detailed invoices for the costs involved for each Eligible Activity. Exhibit F and the above additional documentation comprise the “Completed Request”.

(i) Developer understands that the Late Submittal of the Reimbursement Form shall not extend the term of this Agreement under Paragraph 15. Developer assumes all risks that a Late Submittal will result in TIR capture by BRA of less than \$478,000.

B. The BRA shall review the Completed Request within 60 days after receiving it. If the BRA determines that the documentation submitted by the Developer is not a Completed Request, then Developer shall cooperate in the BRA's review by providing any additional documentation of the Eligible Costs as deemed reasonable and necessary by the BRA in order to complete its review.

C. Before December 31 of the year after Developer completed the Project (and as property taxes are received each subsequent year) after both the summer and winter taxes are captured on the Property, the BRA shall pay approved Eligible Costs to the Developer from such available TIR following the Plan and this Paragraph 17. If there are insufficient TIR available in any given year to reimburse all of the Developer's Eligible Costs, as described in Paragraph 15A, then the BRA shall reimburse the Developer only from available TIR. The BRA shall make additional payments, on an annual basis as property taxes are received, toward the Developer's remaining unpaid Eligible Costs during the term of this Agreement. Reimbursement of Eligible Costs is subject to Developer paying the Developer's taxes levied against the Property and the personal property used in the business or operations conducted from the Property.

D. The BRA will reimburse the Developer for Eligible Costs as follows:

Checks shall be payable to: *Developer's Address & Contact Person*  
Delivered to the following address:  
(By certified mail or personally)

18. ADJUSTMENTS: The parties acknowledge that adjustments regarding the amount of TIR paid to Developer may occur under any of the following circumstances:

A. If either 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 under Act 381, the Developer shall pay back to the BRA that portion of the payments made to the Developer within 30 days of such determination. However, the Developer shall have the right, before any such repayment is made, to appeal on its or the BRA's behalf any such determination made by a state agency or court, and the BRA agrees to cooperate with Developer in any such appeal. If the Developer is unsuccessful in that appeal, the Developer shall repay the portion of payments found to be unlawful to the BRA within thirty (30) days of the date when the final determination is made on the appeal.

B. If during the term of this Agreement Developer successfully petitions the

Michigan Tax Tribunal (Tribunal) to lower the assessments levied by the City of Kalamazoo against the Property for tax purposes, the provisions under Paragraph 15 will require a redetermination regarding the amount of TIR that was captured or would be captured over the 7-year term of this Agreement as a result of such lower assessments. If such adjusted amount is less than the actual amount of TIR that BRA has already paid to the Developer, Developer shall reimburse BRA the difference between the total amount of adjusted TIR captured over the projective 7-year period and the amount actually paid to Developer. Otherwise, any refund due Developer as a result of the lower assessments is limited only to the amount such refund exceeds the amount of TIR paid to Developer for those years covered by the Tribunal's order.

C. If the lease agreement between Developer and the State grants the State an option to purchase the Property any time after the \_\_\_\_\_ anniversary of that agreement, and if the State exercises that option resulting in the Property becoming tax exempt before BRA has captured all the TIR for which it is entitled under the last paragraph under Paragraph 16, then BRA has option to seek from Developer the unrealized TIR it would have otherwise captured except for Developer's sale of the Property to the State. Developer shall provide BRA at least 30 days notice of the State's decision to purchase the Property in order for BRA to determine the amount of unrealized TIR and to notify Developer that it will exercise its right to recoup that amount at or prior to closing on sale to State. If sale proceeds from the State are insufficient, then Developer shall pay the balance of the unrealized TIR within 30 days after the State closing, or on terms as Developer and BRA mutually agree.

19. EVENTS OF DEFAULT:

19.1 During the term of this Agreement any of the occurrences listed below is considered a default and shall entitle BRA, at its option after notice and failure to cure as provided herein, to exercise any of its rights under Paragraph 19.2.

A. Failure for reasons other than Force Majeure to abide by the time periods or due dates under which Developer commits to perform the Undertakings; including any additional time the BRA elects to provide Developer to cure a default in a written notice.

B. Failure to materially meet the capital investment, square footage or job creation criteria for the Project as more fully detailed under Paragraphs 11A or 11B; failure to substantially complete the Project in accordance with Project Plans, or to satisfy the requirements set forth in the approved site plan; or failure to materially fulfill the Developer Commitments under Paragraph 11, or otherwise comply with the terms of this Agreement except in any of such cases due to Force Majeure.

C. Failure by Developer to pay before delinquency all taxes levied against the Property or any personal property owned by Developer in connection with the Project or the Property.

D. Any default under the lease agreement with the State that Developer does not cure within the time period allowed under the lease.

19.2 DEFAULT REMEDIES: If Developer fails to cure any event of default as outlined in Paragraph 19.1 within 30 days (or the additional time – not to exceed 60 additional days – BRA permits if, under Sections 19.1A and B, Developer has commenced cure within that thirty (30) days and is proceeding in good faith) of written notice to Developer, the BRA shall have the option to exercise one or any combination of remedies under this Agreement or otherwise available at law or in equity, including without limitation:

A. To withhold, suspend or rescind reimbursement to Developer for Eligible Costs from TIR under Paragraph 15 until Developer has cured that default to the satisfaction of BRA. Any action by the BRA shall not under any circumstances extend the time period under Paragraph 16B unless specifically approved by BRA.

B. To obtain within thirty (30) days the rebate of all payments made to Developer for reimbursement of Developer's Eligible Costs that BRA paid through date of the event of default.

C. To reimburse BRA for all costs and expenses, including attorney fees, incurred by BRA to enforce its rights under this Agreement.

D. To secure any amount owed by Developer to BRA under this Paragraph, BRA has the right to place a lien against the Property in the same manner as delinquent taxes, including the accrual of interest, penalties and administrative expenses until the lien is fully satisfied. However, that lien shall be subject and subordinate to the lien of any mortgage the proceeds of which have been expended for construction of the Project and any refinancing of that mortgage, but only if refinancing relates to the Project or the Property.

20. DEFAULT BY BRA. If BRA shall default under this Agreement and fails to cure any event of default within 30 days after written notice from Developer, and specifically if BRA shall fail to close the conveyance of the Property to Developer when required under this Agreement, then Developer shall have the option to exercise one or any combination of remedies available at law or in equity, including without limitation specific performance. In such event BRA shall reimburse Developer its reasonable costs and expenses, including attorney fees, incurred by Developer to enforce its rights under this Agreement.

21. CLOSING: The closing of the sale shall take place within 10 days after Developer gives the Notice to Proceed to BRA at the office of the title company, unless the parties agree upon another more convenient location. However, either party shall have the right

to extend the closing date for an additional 30 days to complete necessary due diligence, to cure any Defect, or to satisfy any contingency.

BRA shall prepare the covenant deed conveying the Property to Developer. Each party shall pay the routine closing costs normally charged, respectively, against a seller (BRA) (BRA to pay any state or local transfer tax and title insurance premium) and a buyer (Developer) (Developer to pay to record the Deed, survey and the expense of environmental reports that it shall order), except each party will equally share the fee charged by the title company for conducting the closing.

22. POSSESSION: Developer is entitled to sole and exclusive possession upon payment of the Purchase Price and receipt of the covenant deed to the Property.

23. TAXES: The Property is currently exempt from property tax; this status will change on December 31 following the closing date. Developer shall pay all real and personal property taxes that are due after the date of the closing. BRA shall pay any assessments levied against the Property to the date of closing, and Developer will pay when due any assessment, or annual installment, that is levied or due against the Property after the date of closing.

24. ENVIRONMENTAL CONCERNS: Developer, having the opportunity to inspect and test the Property, at closing will accept the Property in "as is/where is" condition. BRA makes no representations regarding environmental hazards or liabilities on or relating to the Property. Developer acknowledges that BRA may not be under an obligation to perform any cleanup or other remedial action.

25. TIME IS OF THE ESSENCE: The parties agree that in all matters relating to this Agreement, time is of the essence.

26. NOTICES: Any notice or other communication required under this Agreement shall be in writing, signed by an authorized representative, and delivered either (i) in person or (ii) by certified or registered mail, with return receipt requested, or (iii) by a recognized overnight or daytime courier and properly addressed to the following:

Developer:  
*Insert Name & Address*

w/ copies to:  
*Name & Address of Developer's Attorney*

BRA:  
City of Kalamazoo  
Brownfield Redevelopment Authority  
c/o Executive Director of EDC  
241 West South St.  
Kalamazoo, MI 49007

w/copies to:  
The Office of the City Attorney  
241 West South St.  
Kalamazoo, MI 49007

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

27. CONDEMNATION, FIRE, OR OTHER CASUALTY: BRA shall promptly notify Developer of any impending or actual condemnation proceedings against the whole or any part of the Property of which BRA has actual notice or any fire or other casualty to the Property. If any condemnation proceedings are initiated or threatened against the Property, or if the Property is damaged as a result of fire or other casualty prior to the closing (to the extent Developer is unable to complete the Project as contemplated under this Agreement), Developer shall have the right:

A. To terminate this Agreement by a written notice to BRA within 10 days after receipt of notice of such proceedings or damage, in which case neither BRA nor Developer shall have any further liability to the other under this Agreement; or

B. To proceed to closing as provided in this Agreement, agreeing to take the Property in its then-current condition, in which case Developer is entitled to receive all of the condemnation or insurance proceeds payable as a result of such condemnation or such damage. BRA shall assign its rights to such proceeds to Developer at closing.

28. GOVERNING LAW: This Agreement is governed by Michigan law.

29. 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 and assigns. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement except that BRA acknowledges that Developer may assign receipt of TIR under this Agreement to its lenders. BRA will cooperate with Developer and/or any lender in executing an acceptable assignment document.

30. ESTOPPEL AGREEMENT: At the request of Developer, BRA shall, within ten (10) business days after request, deliver to Developer, or anyone designated by Developer, an estoppel certificate stating that, as of the date of the certificate, Developer: (i) has performed all of its Undertakings; (ii) has met all of its obligations for capital investment, square footage and/or job creation criteria; (iii) has substantially completed the Project in accordance with Project Plans or satisfied the requirements set forth in the approved Site Plan; (iv) has fulfilled Developer Commitments under Paragraph 11; and (v) is otherwise not in default under this Agreement, if all the above are true. Further, BRA shall indicate that the Agreement is in full force and effect and is unmodified – or if modified Developer has complied with all modifications; and that

Developer is not in default under the Agreement - if Developer is in default stating the nature of the default.

31. WAIVER: No failure of either party to complain of any act or omission on the part of the other party, regardless how long such 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.

32. AUTHORIZATION: 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.

33. ENTIRE AGREEMENT: This Agreement and the exhibits to this Agreement contain all of the representations and statements by BRA and Developer 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.

34. MISCELLANEOUS:

A. The representations, warranties, and provisions that require performance subsequent to closing set forth in this Agreement shall survive the closing.

B. This Agreement may be signed in counterparts, which together shall comprise a single agreement. However, the Agreement is not effective until both parties have signed it in compliance with Paragraph 32.

C. Developer understands that any, including electronically transmitted, document or communication submitted by Developer to BRA may meet the definition of a public record and therefore subject to release to the public under the Freedom of Information Act, Act ("FOIA") (MCL 15.231 et. seq.). Consequently, unless specifically allowed under FOIA, Developer will not raise a claim of trade secrets or other privilege or exception under FOIA as it relates to this Agreement or such documents or communications.

D. If Developer, or any affiliate or subsidiary, shall cease to use the Property for the purposes contemplated by the Project, Developer agrees that it will not allow the Property to go to waste, become an attractive nuisance or allow the building (if unoccupied) to be open to casual entry. Furthermore, Developer agrees to comply with applicable law with respect to environmental releases for which it is responsible.

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

Agreement shall have their common meaning, except any word or term that is specifically defined in Act 381 shall follow that definition or meaning.

Dated: \_\_\_\_\_, 2017

CITY OF KALAMAZOO BROWNFIELD  
REDEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Douglas J. Phillips

Its: Chair

Dated: \_\_\_\_\_, 2017

*DEVELOPER'S NAME*

By: \_\_\_\_\_

Its:

DRAFT





**Request for Proposal (RFP)**  
**Michigan Department of Technology, Management and Budget (DTMB)**  
**for**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS) – Kalamazoo, MI**  
**SR #2017-0135**  
**November 2, 2017**

**Purchase Agreement Acknowledgement**

**This Acknowledgment must be signed, dated, and returned with your Proposal**

The Bidder acknowledges and certifies that they have read and fully understand all terms and conditions of the City of Kalamazoo's Brownfield Plan Redevelopment and Purchase Agreement and agree to its terms.

\_\_\_\_\_  
Signature of Authorized Bidder/Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name