



Antrim County Brownfield Redevelopment Authority



MEMBERS

Sherry Comben
12/31/2026

Garry Ellison
12/31/2026

Peter Garwood
12/31/2025

Cherie Hogan
12/31/2027

Rachel Krino
12/31/2027

Dawn LaVanway
Annual Appointment

Kathleen Peterson
12/31/2026

Tim Timmer
12/31/2028

Christy Wilson
12/31/2028

STAFF

Jeremy Scott
County Administrator

Janet Koch
Deputy Administrator

Gayle Rider
Administrative Assistant

Margie Boyd
Secretary

OFFICE ADDRESS

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Bellaire, MI 49615

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SPECIAL ASSISTANCE

If you wish to attend a Planning Commission meeting and require special assistance, please contact the Administration and Planning Office.

A **SPECIAL MEETING** of
The Antrim County Redevelopment Authority
is scheduled for
Tuesday, December 19, 2023 at 9:00 a.m.
Antrim County Building
Board of Commissioners Room
203 E. Cayuga, Room 202, Bellaire, MI 49615

AGENDA ITEMS INCLUDE:

1. Call to Order
2. Public Comment
3. Approval of Minutes - [November 14, 2023](#)
4. Treasurer's Report
5. Bellaire Lofts Project
 - a. Project Update
 - b. Reimbursement Agreement—Bellaire Lofts
 - c. Discussion: Subcommittee Appointment
6. Various Matters
7. Public/Member Comment
8. Adjourn

If you have any questions, concerns, please contact the Administration and Planning Office at 231-533-6265.
We appreciate your cooperation in this matter. Thank you



Antrim County
Administration Office
Memorandum

December 14, 2023

TO: Antrim County Brownfield Redevelopment Authority

FR: Administration Office

RE: Approval of Meeting Minutes

You received the minutes of the November 14, 2023 Brownfield Redevelopment Authority meeting via electronic communication on November 21, 2023. If there are no corrections to those minutes, please consider the following motion:

To approve the minutes of the November 14, 2023 meeting as presented.

Antrim County Brownfield Authority
Brownfield Revolving Fund Fund 242

Beginning Cash Balance	11/1/2023		\$	10,038.99
Revenue				
Brwonfield fees		\$	-	
Interest		* \$	0.68	
Transfer In		\$	-	
	Total Revenue		\$	0.68
Expenditures				
Contractual Services				
MAC Consulting Services LLC	11/14/2023	\$	(4,609.90)	
	Total Expenditures		\$	(4,609.90)
Ending Cash Balance	11/30/2023		\$	5,429.77

Submitted:
Sherry A Comben, Treasurer

12/13/2023

* November Interest has not totally been allocated for the month

Antrim County Brownfield Redevelopment Authority
December 19, 2023

Public Hearing Consent Unfinished Business ➡ New Business

SUBJECT: Reimbursement Agreement – Bellaire Lofts

FROM: Mac McClelland, MBRA Consultant

SUMMARY: A Reimbursement Agreement between Bellaire Lofts, LLC and the Antrim County Brownfield Redevelopment Authority is necessary to codify the arrangements for Brownfield TIF capture and reimbursement. In addition, the Reimbursement Agreement is required under Act 381 as part of an Act 381 Work Plan submitted either to the Michigan Economic Development Corporation (MEDC) / Michigan Strategic Fund for Non-Environmental Eligible Activities or the Michigan State Housing Development Corporation (MSHDA) for Housing Development Activities for State tax capture approval.

For the Bellaire Lofts project, the Act 381 Work Plan for Housing Development Activities will be drafted by Fishbeck and presented when ready to the ACBRA and forwarded to MSHDA for review and approval.

The Reimbursement Agreement has the following general conditions:

- If the project is constructed, documentation of Brownfield Eligible Activity expenses, including waivers of lien are provided, and tax increment revenues are generated, the Brownfield Authority will capture the tax increment revenues and reimburse the developer for approved Eligible Activity expenses.
- The Authority is under no obligation to reimburse any funds other than from the tax increment revenues generated by the Brownfield project.
- The “cascade” priority of Brownfield tax increment revenues are outlined if there are multiple parties seeking reimbursement. (In the case of Bellaire Lofts, there is only one party plus the administrative fees for the ACBRA.)
- Outlines the process for submitting Brownfield Eligible Activity cost documentation.
- Requires timely property tax payment.
- Provide indemnification for the ACBRA and County.
- Provides for assignment of the Agreement, with the approval of the Brownfield Authority.
- Other General Terms and Conditions.

The Reimbursement Agreement between Bellaire Lofts and the ACBRA will have two additional provisions as a Brownfield Housing Project:

1. **Income and Rent Documentation** – Act 381 requires the arrangements for income and rent documentation to meet the requirements for qualified households at 120% or less Area Median Income (AMI).

Each year, the developers must provide documentation of rental rates, along with other information. Income certification is proposed to be consistent with the MSHDA Missing Middle Program, which requires households to self-certify income qualification at the time of initial occupancy.

2. **Five Year Review** – The approval of the Brownfield Plan included a requirement for a review of project income and expenses and rental rates in five years after the first certificate of occupancy.

Because the Brownfield Plan used projection for costs, rents and Brownfield TIF revenues, and the Housing TIF Gap is an amorphous calculation instead of a fixed cost for construction related activities, there is a need to evaluate the incentive in light of the actual costs and revenues.

The approach for the five-year review is proposed to establish certain project financial benchmarks for project success and to evaluate the Brownfield TIF revenues as part of these benchmarks. The following is a list of potential benchmarks - the specific values for the benchmarks will be a matter of negotiation:

- Debt Service Coverage Ratio (DSCR) – the ratio of revenues after expenses available for debt service. The minimum ratio is typically 1.2, with some banks requiring up to 1.35 DSCR.
- Internal Rate of Return (IRR) – A metric to determine profitability. The discount rate that makes the Net Present Value of all cash flows to zero in a discounted cash flow analysis.
- Cash on Cash Return – A rate of return that calculates cash income earned on cash invested. Acceptable range is typically 8 – 12%.
- Return on Owner Equity – A metric of financial performance calculated by dividing net income by shareholder's equity. The Return on Equity is often based on the ability to raise capital and is project dependent.

The results for the five-year evaluation may indicate that continued 100% of Brownfield TIF revenues are required to meet project economic requirements or if Brownfield TIF revenues result in higher than benchmark values, rents could be reduced or the Brownfield Plan may be amended to reduce the percentage of capture or the overall term of capture.

I recommend a subcommittee of the Authority be appointed to negotiate the terms and conditions of the Reimbursement Agreement, especially with respect to the five-year evaluation. Suggested members include Tim Timmer with financing experience, Garry Ellison with construction experience, and Sherry Comben, with financial oversight responsibilities, along with Brownfield Redevelopment Authority Director and County Administrator Jeremy Scott, Deputy Administrator Janet Koch, and Mac McClelland as staff.

The ACBRA by-laws provided from the establishment of a committee by the Authority Board and appointment of members by the Chair with the advice and consent of the Authority Board.

RECOMMENDATION

Establish an ad hoc committee to negotiate the Reimbursement Agreement with Bellaire Lofts, LLC and appoint Tim Timmer, Garry Ellison, Sherry Comben, Jeremy Scott, Janet Koch, and Mac McClelland.

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development and Reimbursement Agreement (the "**Agreement**") is made on _____, 2023, between Bellaire Lofts, LLC, a Michigan Limited Liability Corporation (the "**Developer**") and the Antrim County Brownfield Redevelopment Authority (the "**ACBRA**"), a Michigan public body corporate.

PREMISES

- A. The Developer is engaged in the redevelopment of 6612 Bellaire Highway in Bellaire, Michigan which qualifies as Brownfield Eligible Property under Act 381, PA 1996, as amended, for a residential development (the "Development") for qualified households with income at or below 120% of the Area Median Income (AMI) more fully described in Exhibit A, with Brownfield Eligible Activities to be conducted on the Eligible Property described in the approved Brownfield Plan.
- B. The ACBRA has been formed pursuant to Act 381, Public Acts of Michigan, 1996, as amended ("Act 381") to promote the revitalization of contaminated, blighted, functionally obsolete, historically designated or housing properties.
- C. The ACBRA has determined in furtherance of its purposes and to accomplish its goals that it is in the best interest of the ACBRA to finance certain Eligible Activities as defined by Sec. 2(o) of Act 381, MCL 125.2652(o) on Eligible Property and as described in the approved Brownfield Plan and Act 381 Work Plan, as may be amended or supplemented.
- D. The Brownfield Plan was approved by the ACBRA on November 14, 2023 and by the Antrim County Board of Commissioners on December 6, 2023, with concurrence by the Bellaire Village Council on November 1, 2023 and the Forest Home Township Board on November 2, 2023.
- E. Pursuant to the Brownfield Plan and Act 381 Work Plan, the ACBRA will capture and retain one hundred percent (100%) of the tax increment revenues authorized by law to be captured from the levies imposed by taxing jurisdictions upon taxable property for the Eligible Property consistent with Act 381, as amended, the approved Brownfield Plan and any approved EGLE, MSF or MSHDA Act 381 Work Plan (the "Brownfield Tax Increment Revenues"). Upon satisfaction of the conditions expressed in this Agreement, the ACBRA will use the Brownfield Tax Increment Revenues to carry out the purposes described in Act 381 and this Agreement and to complete certain other activities described in the Brownfield Plan.

In consideration of the premises and the mutual covenants contained in this Agreement, the Developer and the ACBRA hereby enter into this Agreement and covenant and agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. The following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

- (a) "Act 381" means Act 381 of Michigan Public Acts of 1996, as amended.
- (b) "Act 381 Work Plan" means the work plan approved by the ACBRA and State of Michigan, and attached as Exhibit A, if applicable.
- (c) "Agreement" means this Development and Reimbursement Agreement entered into between the ACBRA and the Developer.
- (d) "AMI" means Area Median Income as published annually by MSHDA.
- (e) "Brownfield Plan" means the Brownfield Plan, approved by the ACBRA and the County Commission, with the concurrence of the Village Council and Township Board, pursuant to Act 381.
- (f) "Brownfield Tax Increment Revenues" means one hundred percent (100%) of the tax increment revenues, as defined by Act 381, from all taxable real property located on the Eligible Property for the period of time for the Eligible Activity obligation to be met or the maximum established by the Brownfield Plan from the first year of capture, anticipated to be 2025, whichever is first, which amount results from the increase in taxable value of the Eligible Property multiplied by those millages the ACBRA is legally permitted to capture.
- (g) "County" means Antrim County.
- (h) "County Board" means the Antrim County Board of Commissioners.
- (i) "Developer" means Bellaire Lofts, LLC. its successors and assigns.
- (j) "Development" means the construction of Bellaire Flats, a residential development and certain appurtenant properties and improvements as described in the Brownfield Plan.
- (k) "ACBRA" means the Antrim County Brownfield Redevelopment Authority, established by the County Board.
- (l) "EGLE" means the Michigan Department of Environment, Great Lakes and Energy.
- (m) "Eligible Activities" are those environmental response, non-environmental and housing development activities eligible under the Act 381 and included in the approved Brownfield Plan and, if applicable, approved Act 381 Work Plan.

- (n) "Eligible Property" is the property described in the Brownfield Plan that meets Act 381 qualifying status as Eligible Property from which tax increment revenues will be captured to reimburse Eligible Activities and other costs, consistent with the Brownfield Plan, Act 381 Work Plan, and Act 381 as amended.
- (o) "Estimated Tax Increments" means 100% of the estimated annual tax increment revenues authorized by law to be captured from the levies imposed by taxing jurisdictions upon the Eligible Property through the duration of the Brownfield Plan until Eligible Activity and other obligations are met.
- (p) "Event of Default" means the failure by a party to carry out its obligations under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within 45 days after notice thereof has been given by the other party.
- (q) "Indemnified Persons" means the ACBRA and the County and their members, officers, agents and employees.
- (r) "MSF" means the Michigan Strategic Fund.
- (s) "MSHDA" means the Michigan State Housing Development Authority.
- (t) "Maximum Eligible Activity Cost" means the ACBRA's maximum obligation to pay for the Environmental, Non-Environmental and Housing Development Eligible Activities from Brownfield Tax Increment Revenues from the Development, as provided in the Brownfield Plan.
- (u) "Township" means Forest Home Township.
- (v) "Transaction Costs" means the ACBRA expenses, and liabilities related to the authorization, execution, administration, oversight, and fulfillment of the ACBRA obligations under this Agreement, the Brownfield Plan, and Act 381 Work Plan, which such items shall include, but not be limited to, direct or indirect fees and expenses incurred as a result of the application, approval and amendments to the Brownfield Plan and Act 381 Work Plan, approvals of the developments contemplated herein, printing costs, costs of reproducing documents, filing and recording fees, attorney fees, financial expenses, insurance fees and expenses, administration and accounting for Brownfield Tax Increment Revenues, oversight and review, and all other costs, liabilities, or expenses, related to the preparation and carrying out or enforcing the Brownfield Plan, Act 381 Work Plan, and this Agreement, or other related agreements with the Developer, if any, and any other costs, charges, expenses, and professional and attorney fees in connection with the foregoing.
- (w) "Village" means the Village of Bellaire.

Section 1.2 Number and Gender. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun should include the corresponding masculine, feminine, and neuter forms.

ARTICLE 2
COVENANTS OF THE DEVELOPER AND THE ACBRA

Section 2.1 Construction of the Development. The Developer shall construct the Development in accordance with proper construction standards and this Agreement. The Developer shall proceed with due care and diligence and commence and complete Eligible Activities and the Development in accordance with this Agreement, and in accordance with any applicable law, regulation, code and ordinance.

Section 2.2 Covenant to Pay Financial Obligations. The Developer will utilize their own funds for the Development. The Developer will receive reimbursement from the ACBRA to the extent of available Brownfield Tax Increment Revenues for payment of the Eligible Activities in accordance with the terms of this Agreement, the Brownfield Plan, the Act 381 Work Plan and Act 381 for the Development. Reimbursement for Eligible Activities shall be prioritized as follows:

- (a) First, local tax capture revenues will be applied to the administrative and operating costs and Transaction Costs of the ACBRA;
- (b) Second, Brownfield Tax Increment Revenues will be used to reimburse approved Eligible Activities expenses pursuant to Section 5.1, the approved Brownfield Plan and approved Act 381 Work Plan to the Developer.

If the Development does not result in sufficient revenues to repay such obligations, the Developer agree and understand that the Developer will have no claim or further recourse of any kind or nature against the ACBRA except from available captured tax revenues from the Development.

Section 2.3 Reimbursement Conditions: It is expressly understood and agreed that the reimbursement of the ACBRA is subject to the following conditions:

- (a) The Developer shall have performed all of the covenants, obligations, terms and conditions to be performed by them pursuant to this Agreement or other agreement with the ACBRA, and all preconditions to the performance of the Developer have been satisfied.
- (b) The ACBRA shall only be obligated to reimburse Eligible Activity Obligation that has been reviewed and approved by the ACBRA. Approval of the application, the Brownfield Plan, Act 381 Work Plans, or any other determination of eligibility in no way guarantees or establishes a right to reimbursement of expenditures through tax increment financing prior to review or approval of invoices. Expenditures must be documented to be reasonable for Eligible Activities by submission of invoices and other appropriate documentation. Reimbursement shall only occur pursuant to the terms and conditions of this Agreement, as well as the written policies and procedures of the ACBRA for review and approval of invoices. All invoices for any Eligible Activities on the property must be

submitted to the ACBRA for its review within 360 days from the date of the invoice. While the ACBRA may waive this requirement in its discretion for good cause shown, the ACBRA shall be under no obligation to reimburse any invoice for an Eligible Activity that is not submitted in a timely fashion.

- (c) The Developer has adhered to the approved Brownfield Plan and Act 381 Work Plan.
- (d) There are adequate Brownfield Tax Increment Revenues.
- (e) The Developer shall provide sworn written waivers of liens by consultants, contractors, and subcontractors providing services for Eligible Activities as described in this Agreement.
- (f) The Developer has paid the real and personal property taxes levied on any portion of the Development for which the Developer is responsible on or before the date the same are payable without interest or penalty. Any appeal to real property tax assessment shall apply to the current tax year only.
- (g) For State tax capture and reimbursement, Act 381 Work Plans as applicable have been approved by the ACBRA and EGLE for Environmental Eligible Activities, MSF for Non-Environmental Eligible Activities, and/or MSHDA for Housing Development Activities.
- (h) Interest will not be accrued or reimbursed on any Eligible Activity expenses and obligations.

Section 2.4 Income and Rent Documentation

- (a) The Developer shall demonstrate that all units are occupied by households or individuals that meet income requirements and that the rents being charged on an annual basis is no more than 30 percent of household income of 120% AMI, consistent with MSHDA requirements for the Missing Middle Program.
- (b) Households must prove eligibility at the time of initial occupancy by self-certifying using the MSDHA Household Income Self-Certification Form or as otherwise approved by MSHDA.
- (c) The Developer shall provide annually as part of the Act 381 reporting requirements under MCL 125.2666(7,9) a report of the following:
 - 1. Number of housing units produced.
 - 2. Number of income qualified renting households assisted.
 - 3. Housing unit rental rates.
 - 4. Racial and socioeconomic data on the individuals purchasing or renting the housing units, or, if this data is not available, racial and socioeconomic data on the census tract in which the housing units are located.

Section 2.5 Five Year Review and Evaluation

- (a) Five years after the first certificate of occupancy is issued, the ACBRA will initiate and review and evaluation of project capital and operating costs, financing, debt obligations, rent revenues, Brownfield revenues, measured with economic benchmarks described in Exhibit A.
- (b) The developer agrees to full disclosure of all project information as requested and required by the ACBRA.
- (c) Based on the results of the evaluation, if benchmarks are exceeded, rents may be lowered, or the Brownfield Plan can be amended at the sole discretion of the ACBRA with approval by the County Board and concurrence by the Village and Township to reduce Brownfield Tax Increment Revenues or reduce the Brownfield capture period.

Section 2.6 Indemnification of Indemnified Persons.

- (d) The Developer shall be considered independent contractors and not agents or employees of the ACBRA or the County. Nor shall any agent or employee of the Developer be considered an agent or employee of the ACBRA or the County. The Developer shall remain responsible for any claims arising out of acts or omissions of the Developer during the performance of this Agreement, as provided by law. Additionally, the Developer and ACBRA shall not be considered engaged in a joint venture or partnership.
- (e) The Developer shall indemnify, defend and hold the Indemnified Persons harmless from any loss, expense (including actual attorney fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property as a result of the ownership or operation, use or maintenance of their respective components of the Development from and after the date hereof. If any suit, action or proceeding related to the Development is brought against any Indemnified Person, the Indemnified Person promptly shall give notice to the Developer and the Developer shall defend such Indemnified Person with counsel reasonably satisfactory to the Indemnified Person. In any such proceeding, the Indemnified Person shall cooperate with the Developer and the Developer shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Developer may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its consent. The Developer shall not be liable for payment or settlement of any such claim or proceeding made without its consent.
- (f) The Developer shall not be obligated to indemnify any Indemnified Person under subsection (b) if the liability arises out of the Indemnified Person's negligence, willful misconduct or breach of this Agreement or the negligence or willful misconduct of any person or entity acting by, through or under any Indemnified Person.
- (g) The Developer also shall indemnify the Indemnified Persons for all reasonable costs and expenses, including actual attorney fees, incurred in enforcing any obligation of the Developer under this Agreement or any related agreement.

- (h) The Developer shall use its reasonable best efforts to assure that, to the extent an Environmental Consultant provides services toward completion of Eligible Activities, at a minimum, the Environmental Consultant shall indemnify, defend, and hold Indemnified Persons harmless from any loss, expense (including actual attorney fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from injuries to persons or property as a result of the actions or services of the Environmental Consultant.
- (i) This indemnification includes any loss, expense (including actual attorney fees), or liability in excess of that covered by any insurance of the Developer and shall survive the termination or expiration of this Agreement. By entering into this Agreement, the parties do not waive any immunities provided by law.

Section 2.6 Eligible Property Access. The Developer shall grant to the ACBRA or its designated agents, access to the Eligible Property to exercise the ACBRA's right to administer or oversee Eligible Activities related to the purposes and pursuant to the terms of this Agreement. The ACBRA shall give 24-hour written notice of its intent to access the Site whenever possible. If notice cannot be given due to an emergency or any other unforeseen circumstance, the ACBRA shall give notice as is reasonable and practicable under the circumstances.

Section 2.7 Separate Covenants and Obligations. Except as expressly provided in Section 2.3, the covenants and obligations of the Developer are separate covenants solely running to and enforceable by the ACBRA, EGLE, MSF and/or MSHDA as provided by law, and to no other party, person, or entity. Unless otherwise expressly provided in this Agreement, a breach or default by the Developer of its obligations to the ACBRA shall not constitute a breach or default of this Agreement or bar enforcement or claims by the other parties. No third-party beneficiary rights, interests, or claims are created by implied contract, operation of law, or any other means.

ARTICLE 3
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE
DEVELOPER AND THE ACBRA

Section 3.1 Conditions Precedent to Obligations of the Developer to Acquire and Construct the Development. Any obligation of the Developer to acquire and construct the Development, as contemplated herein, are subject to the following conditions precedent which must be satisfied by the Developer, as required herein, or waived by ACBRA, except as specifically provided herein:

- (a) No condition, event, action, suit, proceeding or investigation is occurring or threatened to occur, or shall be pending before any court, public board or body to which the Developer, County, or ACBRA is a party, or threatened against the Developer, County, or ACBRA contesting the validity or binding effect of this Agreement or the validity of the Brownfield Plan or Act 381 Work Plan or which could result in an adverse decision which would have one (1) or more of the following effects:

- (1) A material adverse effect upon the ability of the ACBRA to collect and use Brownfield Tax Increment Revenues to repay its obligations under this Agreement.
 - (2) A material adverse effect on the ability of the Developer or ACBRA to comply with the obligations and terms of this Agreement, the Brownfield Plan, or Act 381 Work Plan.
- (b) There shall have been no Event of Default by the Developer and ACBRA and no action or inaction by the ACBRA which eventually with the passage of time could become an Event of Default.
 - (c) The Developer and ACBRA shall be in compliance with the terms and conditions to be performed by them pursuant to this Agreement.
 - (d) Brownfield Tax Increment Revenue and other needed revenue are anticipated, in the ACBRA's sole reasonable judgment, from actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources other than general tax revenues to meet the obligations for Eligible Activities of the Developer and/or ACBRA included in the Brownfield Plan and Act 381 Work Plan.
 - (e) Approval of the Act 381 Work Plan as applicable by EGLE for Environmental Eligible Activities, MSF for Non-Environmental Eligible Activities and/or MSHDA for Housing Development Activities.
 - (f) The Developer has received the consent of any affected utility for relocation, burial or other activity necessary to construct their respective portions of the Development.
 - (g) There has been no change in statutes or other law that would negatively impact either party's ability to meet (a)-(f) above.
 - (h) The Parties acknowledge that the Developer has made an advance payment to the ACBRA in the amount of \$10,000 to cover its expenses attributable to approval of the Application/Work Plan, Development and Reimbursement Agreement, and reimbursement for Eligible Activities as provided herein. The Developer shall make an additional advance payment of \$7,500 prior to approval of this agreement by the ACBRA. This payment will be a pre-approved reimbursable Eligible Activity cost.

ARTICLE 4 **COVENANTS OF THE ACBRA**

Section 4.1 Adoption of Brownfield Plan. The ACBRA and County Board have approved the Brownfield Plan, with the concurrence of the Village Council and Township Board, and, if applicable, the ACBRA has approved Act 381 Work Plan(s), which provides for the payment of ACBRA Administrative and Transaction Costs and the preparation and approval of the Brownfield Plan and Act 381 Work Plan, and reimbursement for the Developer Eligible Activities expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement, the Brownfield Plan, and Act 381 Work Plan.

Section 4.2 Completion of Eligible Activities. Upon the satisfactory completion of any Eligible Activities by the Developer as described in the approved Brownfield Plan and Act 381 Work Plan, as applicable, the ACBRA shall, to the extent Brownfield Tax Increment Revenues are available, reimburse the Developer in accordance with the terms set forth in this Agreement. If the Developer incurs any expenses or costs for any activities other than the Eligible Activities or the Eligible Activity costs exceed the Maximum Costs of Eligible Activities as set forth in the Brownfield Plan, as amended or supplemented, the Developer shall bear such costs without any obligation on the part of the ACBRA. If the costs of Eligible Activities set forth in the Brownfield Plan, as amended or supplemented, are less than Maximum Costs of Eligible Activities, then the Developer shall have no further right of reimbursement beyond their actual costs.

Section 4.3 ACBRA or Contract Manager Oversight. The ACBRA may retain the services of a qualified contract manager to exercise oversight of the Developer and their environmental consultant, contractors, or subcontractors, for the purposes of assuring that the activities, invoices, and accounting by the Developer are fair, reasonable, and constitute Eligible Activities within the meaning and scope of this Agreement, the Brownfield Plan, the Act 381 Work Plan(s), and Act 381. The Developer shall provide the ACBRA and its contract manager access to data, reports, sampling results, invoices, and related documents reasonably necessary to fulfill the exercise of such oversight. It is expressly understood that the ACBRA has no right to control or to exercise any control over the actual services or performance by the Developer of the Eligible Activities, except as to assurance that the Developer have met the conditions and requirements of this Agreement.

ARTICLE 5

CONDITIONS PRECEDENT TO ACBRA OBLIGATIONS

Section 5.1 Conditions Precedent to ACBRA's Reimbursement Obligation for Eligible Activities. The obligations of the ACBRA for reimbursements of costs to the Developer for completion of Eligible Activities expenses as contemplated herein shall be subject to the following conditions precedent which must be satisfied by the Developer as required herein, except as expressly provided in this Agreement or otherwise waived in writing by the ACBRA. It is expressly agreed that the ACBRA makes or gives no assurance of payment to the Developer by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Brownfield Plan and/or Act 381 Work Plan, or as hereafter supplemented or amended, and that it shall have the right to review and approve all written summaries of and invoices for Eligible Activities for the reasonableness of services performed by any consultant, contractor, or subcontractor under this Agreement. However, so long as an Eligible Activity by the Developer has been approved and is authorized by Act 381 and has been completed and approved in accordance with the following procedure and this Agreement and to the extent Brownfield Tax Increment Revenues are available, the Developer shall be entitled to reimbursement for its Eligible Activities expenses. The approval of the Brownfield Plan, Act 381 Work Plan, or the project budget described below is not a guarantee that there will be sufficient Brownfield Tax Increment Revenues to reimburse the Eligible Activities, and if for any reason, the revenues are insufficient or there are none, the Developer assume full responsibility for any such loss or cost of any Eligible Activity conducted.

- (a) The Developer shall submit invoices of its Eligible Activities expenses and a written statement demonstrating a factual basis that it has completed the Eligible Activities to the ACBRA for preliminary review and approval within 360 days of completion of the Eligible Activity. Submission of a request for reimbursement by the Developer for their Eligible Activity expenses will include the following information as may be required by the ACBRA:
- (1) a written statement detailing the costs.
 - (2) a written explanation as to why reimbursement is appropriate under the Brownfield Plan.
 - (3) Copies of invoices from the consultants, contractors, engineers, attorneys or others who provided such services and accompanying waivers of lien, cancelled checks or other forms of documentation of payment; and
 - (4) A statement from the engineer or project manager overseeing the work on behalf of the Developer recommending payment.

Documentation of the costs incurred shall be provided including proof of payment, liens waivers, and detailed invoices for the costs incurred in sufficient detail to determine whether the costs incurred were for Eligible Activities. The ACBRA shall not be required to reimburse any request that is not submitted within 360 days after the expense is incurred.

- (b) Within 60 days after submittal of an invoice or invoices under (b) above, the ACBRA contract manager shall review and approve or reject the reasonableness of the invoice(s) and activity as eligible or ineligible and, if recommended, shall present the invoice(s) to the ACBRA for approval. In the event of an objection, the ACBRA contract manager will notify the Developer within the 60-day time period, and the Developer shall meet to resolve or cure the objection. If the objection is not resolved or cured within 45 days, there is no obligation to pay the portion of the invoice(s) objected to until the parties have mutually agreed in writing through an alternative dispute mediation or there is a final judgment or order of a court of competent jurisdiction directing payment. It is expressly agreed that the ACBRA does not make or give any assurance of payment to the Developer by the mere fact that an Eligible Activity or a dollar amount for such activity is identified in the Brownfield Plan or Act 381 Work Plan and that the ACBRA shall have the right to review and approve or deny reimbursement for any invoices for Eligible Activities based on the reasonableness of services performed by any consultant or contractor under this Agreement.
- (c) Payment for approved invoices from Brownfield Tax Increment Revenues from the Development will be made annually no later than 30 days after settlement is completed.
- (d) No condition, event, action, suit, proceeding or investigation is occurring or threatened to occur, or shall be pending before any court, public board or body to which the Developer, County, or ACBRA is a party, or threatened against the Developer, County, or ACBRA contesting the validity or binding effect of this Agreement or the validity of the

Brownfield Plan or which could result in an adverse decision which would have one (1) or more of the following effects:

- (1) A material adverse effect upon the ability of the ACBRA to collect and use Brownfield Tax Increment Revenues to repay its obligations under this Agreement.
 - (2) A material adverse effect on the ability of the Developer or ACBRA to comply with the obligations and terms of this Agreement, the Brownfield Plan, or the Act 381 Work Plan.
 - (3) There shall have been no Event of Default by the ACBRA and no action or inaction by the ACBRA which eventually with the passage of time could become an Event of Default.
- (e) The Developer and ACBRA shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement.
 - (f) Brownfield Tax Increment Revenue and other needed revenue are anticipated, in the ACBRA's sole reasonable judgment for actual development, imminent development, contractual obligations to pay the equivalent taxes, and other designated sources other than general tax revenues to meet the obligations for Eligible Activities of the Developer and/or ACBRA included in the Brownfield Plan and Act 381 Work Plan.
 - (g) Approval of the Act 381 Work Plan as applicable by EGLE for Environmental Eligible Activities, MSF for Non-Environmental Eligible Activities and/or MSHDA for Housing Development Activities.
 - (h) Proper approvals required under applicable federal and state laws or regulations, and local ordinances, codes or regulations for land use and the Development have been secured.
 - (i) There has been no change in statutes or other law that would have one or more of the effects described in (e) above.
 - (j) The Developer has received the consent of any affected utility for relocation, burial or other activity necessary to construct their respective portions of the Development.
 - (k) The Developer shall have performed all of the terms and conditions to be performed by it.
 - (l) During the term reimbursement, the Developer shall provide to the ACBRA an annual report of investment made, number of residential units, the amount, by square foot of new or rehabilitated residential, retail, commercial, or industrial space, and the number of new jobs created, in addition to the housing reporting requirements under Section 2.4(c). Report shall be delivered to the ACBRA Director no later than June 15 of each year.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations and Warranties of ACBRA. ACBRA represents and warrants to the Developer that:

- (a) ACBRA is a public body corporate, established pursuant to Act 381, with all necessary corporate powers pursuant to that Act to enter into and perform this Agreement.
- (b) The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of the ACBRA, and this Agreement constitutes a valid and binding agreement of the ACBRA enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- (c) Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, or any agreement to which the ACBRA is a party or by which the ACBRA is bound.

Section 6.2 Representations and Warranties of the Developer. The Developer represents and warrants to the ACBRA that:

- (a) The Developer (i) is duly organized and validly existing as a Michigan corporation, limited liability company, or a 501(c)(3) non-profit organization in good standing under the laws of the State of Michigan, with power under the laws of such state to carry on their business as now being conducted; (ii) are duly qualified to do business in the State of Michigan, and (iii) have the power and authority to consummate the transactions contemplated under this Agreement by the Developer.
- (b) There is no material violation or default by the Developer of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which they are a party and by which they are bound, or to which they or any of their assets are subject, and compliance with the terms, conditions and provisions of this Agreement does not conflict with and will not result in or constitute a breach of or default under any of the foregoing, wherein default, breach or violation would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement.
- (c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Developer and this Agreement constitutes a valid and binding agreement of the

Developer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

- (d) Except as a part of the performance and completion of Eligible Activities under the terms of this Agreement, the Developer and their contractors or subcontractors shall not use the Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the Site, and shall obtain all necessary permits in connection therewith.
- (e) The Developer warrants that they will comply with all obligations, covenants and conditions required of them or their agents or contractors under the terms of this Agreement.

ARTICLE 7 **INSURANCE**

Section 7.1 Insurance. The Developer and any contractor(s) or subcontractor(s) conducting Eligible Activities shall purchase and maintain insurance not less than the limits set forth below as applicable and necessary. The Developer and any contractor(s) and subcontractor(s) shall maintain such other insurances as they deem appropriate for their own protection and liabilities.

- (a) Worker's Disability Compensation Insurance including Employers Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- (b) Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit. Coverage shall include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Endorsement or Equivalent.
- (c) Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Coverage shall include all owned vehicles and all leased vehicles.
- (d) Contractor's Pollution Liability Insurance provided by Contractors, sub-contractors and site work contractors engaging in environmental response activities, covering any sudden and non-sudden pollution or environmental impairment, including cleanup costs and defense, with limits of liability of not less than \$1,000,000 per occurrence (with first party and third-party coverage).

Section 7.2 Cancellation Notice. It is understood and agreed that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change to any insurance policy specified above shall be sent to the ACBRA.

Section 7.3 Additional Insured. The Commercial General Liability Insurance, Motor Vehicle Liability Insurance, and Pollution Liability Insurance, as described above, held by the Developer,

and their Environmental Consultant and contractors, as appropriate shall have an endorsement including the Antrim County Brownfield Redevelopment Authority and Antrim County as additional insured. It is understood and agreed by naming the ACBRA and County as additional insured, coverage afforded is considered to be primary and any other insurance the ACBRA or County may have in effect shall be considered secondary and/or in excess.

Section 7.4. Proof of Insurance. The Developer or any contractor or subcontractor shall make available copies of certificates of insurance for each of the policies mentioned above to the ACBRA upon request. If so requested, certified copies of all policies will be furnished.

ARTICLE 8 **REMEDIES AND TERMINATION**

Section 8.1 Alternative Dispute Mediation. If a dispute arises between the parties to this Agreement, the parties shall seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

- (a) The party bringing in a claim shall give notice to the other party and, in writing, propose a meeting in which to discuss and attempt to resolve the claim within seven (7) days after the claim arises.
- (b) In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of twenty-one (21) days after the initial meeting between the parties. The mediator shall render his/her decision within ten (10) days of meeting with the parties. In the event that the mediator does not render a decision within said time period, the party bringing the claim shall have the right to proceed with litigation.
- (c) The purpose of the mediator is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.
- (d) During the pendency of this alternative dispute resolution process, the parties agree that any statute of limitations applicable to all claims that are the subject of this mediation process shall be tolled.

Section 8.2 Remedies for Default. The ACBRA or the non-defaulting party will provide notice to the defaulting party of the nature and extent of the default. The defaulting party will have 45 days to remedy the default.

Section 8.3 Remedies upon Default. Upon the occurrence of an Event of Default which has not been remedied under Section 8.1 or Section 8.2, the non-defaulting party shall have the right to terminate this Agreement with the defaulting party or, at the election of such non-defaulting party, may obtain any form of relief permitted under the applicable laws and court rules of the State of Michigan, including the right to seek and obtain a decree of specific performance by a court of competent jurisdiction.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Term. The term of this Agreement shall commence on the date first written above and shall expire upon payment in full of ACBRA's obligations under this Agreement or thirty (30) years from the first year of capture, estimated to begin 2024, whichever is first, or pursuant to the terms of the Brownfield Plan or Act 381 Work Plan and Act 381.

Section 9.2 Assignment of this Agreement. No party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement, including the right to reimbursement from Brownfield Tax Increment Revenue, without the prior written consent of all other parties hereto, which consent will not be unreasonably withheld. This provision does not limit the transfer of membership interest within the limited liability corporation, as applicable.

Section 9.3 Notices. All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to ACBRA: Janet Koch, Deputy County Administrator
Antrim County
203 E. Cayuga Street
Bellaire, Michigan 49615

If to Developer: Derek Coppas, Principal
Bellaire Lofts, LLC
452 Ada Drive, SE Suite 220
Ada, Michigan 49301

or to such other address and/or representative as such party may specify by appropriate notice.

Section 9.4 Amendment and Waiver. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

Section 9.5 Entire Agreement. This Agreement contains all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

Section 9.6 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 9.7 Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

Section 9.8 Governing Laws/Consent to Jurisdiction and Venue. This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the 57th Judicial Circuit Court of the State of Michigan, the 90th District of the State of Michigan, or the United States District Court for the Western District of Michigan, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

Section 9.9 Mutual Cooperation. Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement and with any individual entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Development, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the construction or operation thereof. Each party to this Agreement shall execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement including, but not limited to, such documents or agreements as may be required by the lenders of the Developer with respect to the Development to secure the financing from such lenders. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of their respective obligations hereunder and to assure that all conditions precedent to the completion of the Development are timely satisfied.

Section 9.10 Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

Section 9.11 Brokerage Fees. The ACBRA and the Developer represent and warrant to the others that no broker or finder has been engaged in connection with this Agreement.

Section 9.12 Condominium Documents. The Developer agrees to put notice of this Agreement in any condominium Master Deed, if a condominium project is developed on this land.

Section 9.13 Order of Precedence. In the event of conflict between the terms and conditions of this Agreement, any attachments hereto and Act 381, the order of precedence shall be: (a) Act 381; (b) this Agreement; (c) Brownfield Plan; and (d) Act 381 Work Plan.

The ACBRA and the Developer have caused this Agreement to be duly executed and delivered as of the date first written above.

Bellaire Lofts, LLC

By: Derek Coppas
Its: Principal

APPROVED AS TO SUBSTANCE:

ANTRIM COUNTY BROWNFIELD
REDEVELOPMENT AUTHORITY

By: Janet Koch
Deputy County Administrator

By: Rachel Krino
Its: Chair

APPROVED AS TO FORM:

By: Civil Counsel
Antrim County

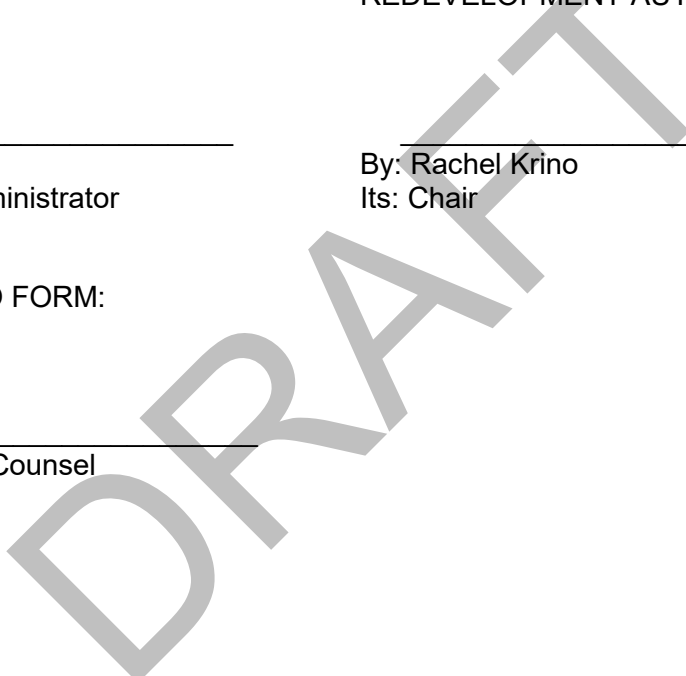


EXHIBIT A: THE DEVELOPMENT

Bellaire Lofts, LLC, a limited liability corporation formed by the 1983 Company, has acquired property at 6612 Bellaire Highway in Bellaire to develop 50 townhomes with a total of 138 suites for qualified households or individuals with incomes no greater than 120% Area Median Income (AMI). The total investment is estimated at over \$17 million.

(Site Plan)

(Renderings)

There are extraordinary development costs that impact the economic viability of the project, including the gap between project capital and operation costs and rent revenue for residential units for households with income no greater than 120% of Area Median Income (AMI).

The project has been awarded a MSHDA Missing Middle Grant of \$___ million.

The Development will have a restriction that meets Michigan State Housing Development Authority standards, and that runs with the land for a period of 30 years, limiting the rental of the Units to no greater than 30 percent of 120% AMI for qualified households or individuals.

Estimated development timeline:

- Groundbreaking: January 2024
- Foundations: Spring 2024
- First Building Completion: Summer 2024
- Site Complete: Fall 2024

EXHIBIT B: FIVE YEAR FINANCIAL REVIEW AND EVALUATION

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EXHIBIT B: FIVE YEAR FINANCIAL REVIEW AND EVALUATION

Brownfield Plan Resolutions approved by the ACBRA and County Board, with the concurrence of the Village Council and Township Board included a requirement to review Brownfield TIF revenues, project income and expenses, and rental rates in five years after the date of the first certificate of occupancy.

The purpose is to review the project capital expenses, debt obligations, operating costs, rental revenues and Brownfield TIF revenues, measured against benchmarks for project economic viability.

The Developers have provided a pro forma in the format developed by the Michigan Economic Development Corporation (MEDC) dated November 16, 2023. Financial information required below as part of the 5-year evaluation shall be submitted in the MEDC pro forma format, with original documentation.

The following provides the framework for the Financial Review and Evaluation.

- Developer Information:
 - Construction Cost – the Developer will provide the final closeout documents for construction contracts as well as other engineering or professional construction services expenses.
 - Operating Cost – a 3-year detail of all project operating costs, including but not limited to maintenance, janitorial, repairs.
 - Utilities – 3-year detail of electricity, water, sewer, natural gas, cable/internet
 - Administrative – 3-year detail of management fees, payroll, overhead, legal/accounting.
 - Insurance
 - Reserve Requirements
 - Debt Service – Disclosure of terms and conditions of project financing.
- Benchmarks – the following benchmarks are established for economic viability of the project.

Debt Service Coverage Ratio:	1.2 (or as required by lender)
Internal Rate of Return:	8%
Cash on Cash Return:	8%
Return on Owner Equity:	5%

- Evaluation Outcomes:
 - If the Evaluation determines the project is meeting the Benchmarks, no adjustment will be considered.
 - If the Evaluation determines the project is exceed the Benchmarks, the following adjustments will be considered:
 - Rents may be lower to reduce revenue and bring the project back to the Benchmarks.
 - The Brownfield Plan may be amended under the procedures in Act 381 to either reduce the annual reimbursement or reduce the term of capture.