AGENDA
THE CITY OF THE VILLAGE OF DOUGLAS
REGULAR MEETING OF THE BROWNFIELD AUTHORITY
Thursday - January 14, 2021 – 1:00 P.M.
Zoom

To attend and participate in this remote meeting of the City of the Village of Douglas City Council, please consider joining online or by phone.

Join online by visiting:
**https://zoom.us/j/**

https://us02web.zoom.us/j/87117970040

Join by phone by dialing:
**+1 (312) 626-6799**
-or-
**+1 (646) 518-9805**
Then enter
"Meeting ID":

871107970040

Those who are hearing impaired and require additional accommodations are encouraged to contact (269) 857-4751 or info@ci.douglas.mi.us as soon as possible.

1. **Call to Order** – Chair

2. **Roll Call** and Election of Officers Per B.R.A Bylaws - City Clerk

3. **Consent Calendar**
   A. Approval of the, January 14, 2021 Agenda
   B. Approval of the Minutes of November 12, 2020
   C. Adopt the 2021 Authority meeting calendar

Motion to approve the Consent Calendar of January 14, 2021 – roll call vote.

4. **Public Communication**
   A. Verbal (Limit of 3 minutes)
   B. Written Communications
      1. No written communication

5. **Unfinished Business**
   A. Chase Manufacturing Insurance
   B. Summarization of Agreement between City and Haworth
   C. Summarization of MOU Agreement between City and Developer
   D. Summarization of cost to demolish and mitigate asbestos cleanup at 200 Blue Star Hwy
   E. Update on Grant Application from PM Environmental
   F. Update on status of Developer regarding 200 Blue Star Hwy, the Miro property, and the City owned 16 acres on Wiley Rd.

6. **New Business**
   A. Summarization of the role of the Brownfield
      1. Next Steps for the Authority
         a. Determine grant application status
         b. Inform City Council of their options and receive their direction

7. **Member Comments**

8. **Adjournment** – voice vote

CITY OF THE VILLAGE OF DOUGLAS

# 2021 MEETING SCHEDULE

| | CITY COUNCIL | PLANNING COMMISSION | DDA | ZBA | KLHA | DHA | DBRA |
|---|---|---|---|---|---|---|---|
| JANUARY | 4, 18 | 13 | 25 | 26 | 19 (D) | | 14 |
| FEBRUARY | 1, 15 | 10 | 22 | 23 | 16 (S) | | 11 |
| MARCH | 1, 15 | 10 | 22 | 23 | 16 (D) | | 11 |
| APRIL | 5, 19 | 14 | 26 | 27 | 20 (S) | 20 | 8 |
| MAY | 3, 17 | 12 | 24 | 25 | 18 (D) | 18 | 13 |
| JUNE | 7, 21 | 9 | 28 | 22 | 15 (S) | 15 | 10 |
| JULY | 6*, 19 | 14 | 26 | 27 | 20 (D) | 20 | 8 |
| AUGUST | 2, 16 | 11 | 23 | 24 | 17 (D) | 17 | 12 |
| SEPTEMBER | 7*, 20 | 8 | 27 | 28 | 21 (S) | 21 | 9 |
| OCTOBER | 4, 18 | 13 | 25 | 26 | 19 (D) | 19 | 14 |
| NOVEMBER | 1, 15 | 10 | 22 | 23 | 16 (S) | | 11 |
| DECEMBER | 6, 20 | 8 | 27 | 21 | 21 (D) | | 9 |

City Council meetings are held on the 1st and 3rd Monday of each month at 7:00 p.m.

Planning Commission meetings are held on the 2nd Wednesday of each month at 7:00 p.m.

DDA - Downtown Development Authority meetings are held on the 4th Monday at 3:00 p.m.

ZBA - Zoning Board of Appeals meetings are held on the 4th Tuesday of each month, as needed, at 7:00 p.m.

KLHA - Kalamazoo Lake Harbor Authority meetings alternate between Saugatuck City (S) and Douglas (D) on the 3rd Tuesday of each month, as needed, 7:00 pm

DHA - Douglas Harbor Authority meetings are held on the 3rd Tuesday of each month at 5:30 p.m.

DBRA - Douglas Brownfield Redevelopment Authority meetings are held on the 2nd Thursday of each month at 1:00 pm

*July & September City Council meeting will be rescheduled due to Independence Day and Labor Day

All meetings are held at the Douglas City Hall - 86 W. Center Street - unless posted.

MINUTES
THE CITY OF THE VILLAGE OF DOUGLAS
BROWNFIELD REDEVELOPMENT AUTHORITY
86 W CENTER ST. - DOUGLAS, MI
NOVEMBER 12, 2020 – 1:00 P.M.
ZOOM MEETING

1. Call to Order by Chair Balmer

2. Roll Call: Present – Donovan, Dixon, Sapita, Balmer, LaBombard, Fechtig, Naumann
   Absent – None

3. Consent Calendar:
   A. November 12, 2020 Agenda
   B. October 8, 2020 Minutes

   Chair Balmer informed those present on zoom cast that agenda item 6 (A) would follow the meeting.

   *Motion by Donovan, with support from Dixon, to approve the consent calendar as amended. Motion carried by voice vote.*

4. Public Comments: None

5. Unfinished Business:
   A. LaBombard reported the EPA draft went to City Council and Community input was received. He believed the grant submitted by PM Environmental looked good.
   Dixon had concerns about the process, stating she thought it was going to come to committee, however Brownfield members never got to see it. She questioned if Brownfield had a roll in this, and what it was.
   Sapita was quite disturbed and embarrassed that the Authority had not reviewed the first, also documents were signed and submitted in the Authorities name. He commented on the community's suspicion as to how this whole project got started. He is also not comfortable with PM Environmental handling of the project, there is no timeframe or schedule. He requested that he go on the record as not comfortable with the entire process.

6. New Business:

7. Public Comments:
   A. Tracey Shafroth, Water St. – Has been involved in writing grants, the PM Environmental grant was not right. She strongly recommends the Authority meet with Robert Kenny and discuss everything. If a grant is received there will be a lot of work for the Authority. She also would appreciate receiving at least a week in advance notification about the Authority meetings.

   Dixon requested Robert Kenny be placed on the next agenda.

8. Adjourn: Motion by Donovan, with support from Fetchig, to adjourn the meeting. Meeting adjourned by voice vote at 1:25 p.m.

# MEMORANDUM

| | |
|---|---|
| **To:** | **Douglas Brownfield Redevelopment Authority** |
| **From:** | **Rich LaBombard**<br>**City Manager** |
| **Date:** | **January 11, 2021** |
| **Subject:** | **Summary of Real Estate Donation Agreement** |

The City of Douglas and Haworth Inc. entered into Agreement on January 22, 2019 to donate real property located at 200 Blue Start Highway for the sum of $100,000. As a condition of the sale, use restrictions were placed on the property as follows:

- Donation; Use Restriction – Section 5. - From and after Closing, the Property shall only be used as: (a) parkland open to the public and/or public road right of way ("Public Use"); or (b) commercial retail use; or (c) mixed commercial retail and residential use in and planned unit development, provided that parkland open to the public in perpetuity shall have been provided to Donee **in trade for** the portion of the property to be used for commercial retail use or mixed commercial retail use or mixed commercial retail and residential use (the "Permitted Retail / Mixed Use" and together with the Public Use, the "Restricted Use").

  Notwithstanding the above, the Donee may convey utility, access, or pipeline easements or licenses, or easements or licenses to allow or facilitate Response Activities (defined below), so long as those easements or licenses do not unreasonably interfere with the Property's Restricted Use.

  *A response activity means any action to investigate, monitor, clean up, treat remove, remediate, or take corrective actions with respect to, or otherwise respond to, Hazardous Substances, so they do not migrate or endanger public health or the environment, as required by Environmental Laws.

Therefore, per the donation section, the City shall calculate the area used for commercial retail; mixed commercial retail; or mixed commercial retail and residential use, and provide for an equivalent area as parkland open to the public in perpetuity.

# REAL ESTATE DONATION AGREEMENT

This Real Estate Donation Agreement ("**Agreement**") is entered into as of January 21, 2019 (the "**Effective Date**"), by and between HAWORTH, INC., a Delaware corporation ("**Donor**"), of One Haworth Center, Holland, Michigan 49423, and the CITY OF THE VILLAGE OF DOUGLAS, a Michigan municipal corporation ("**Donee**"), of 86 W. Center St., Douglas, Michigan 49406-0757. Donor and Donee shall each be referred to as a "**Party**" or collectively be referred to herein as the "**Parties.**"

RECITALS:

A. Donor owns the real property located at 200 Blue Star Hwy, Douglas, Michigan, and more particularly legally described on **Exhibit A** attached to this Agreement, together with all personal property now located thereon and together with all improvements, fixtures, easements, division rights, bonus division rights, redivision rights, hereditaments and appurtenances associated with that real estate (collectively, the "**Property**").

B. Donor desires to donate to Donee, and Donee desires to accept from Donor, on the terms and subject to the conditions set forth in this Agreement, the Property. The transaction provided for in this Agreement is sometimes referred to as the "**Transaction.**"

NOW, THEREFORE, Donor and Donee agree as follows:

***Donation; Use Restriction***

1. **Donation Price.** The purchase price for the Property shall be One Hundred Thousand and 00/100 U.S. Dollars ($100,000.00) ("**Donation Price**").

2. **Bargain Sale and Donative Intent.** Donee acknowledges that it is Donor's intent to effectuate a "bargain sale" of the Property, i.e., a sale to a public municipal entity at a price below fair market value as defined by Section 170 of the Internal Revenue Code of 1986, as amended ("**IRC**") and the Treasury Regulations promulgated thereunder, wherein the difference between the fair market value of the Property and the Donation Price is considered a charitable contribution under applicable sections of the IRC. Donee further acknowledges that Donor's motivation is for charitable purposes. Donee wishes to acquire the Property exclusively for the Restricted Use (defined below) and represents to Donor that this use is related to its purposes as a municipal or political subdivision of the State of Michigan and Donee is qualified to receive federal tax deductible contributions pursuant to IRC Section 170. The parties intend that such purposes constitute a purpose which will qualify the gift contemplated by this Agreement as a "charitable contribution" pursuant to Section 170(c) of the IRC.

3. **Appraisal.** Before Closing (defined below), Donor shall obtain an appraisal for charitable contribution purposes of the Property (the "**Appraisal**") in order to determine the value

of the Property for the purpose of disclosing the donation value to the Donee. The Appraisal shall comply with the requirements of Section 170 of the IRC, the Treasury Regulations and rulings and other pronouncements of the Internal Revenue Service (the "**IRS**"). Donor shall provide Donee with a copy of the Appraisal within five (5) business days after Donor's receipt of the same.

4. **IRS Form 8283.** At Closing, Donee shall sign and deliver to Donor IRS Form 8283 setting forth the appraised value of the Property. The form will represent that Donee is a duly qualified organization under IRC Section 170(c) and that Donee's use will not be for an unrelated purpose.

5. **Use Restriction.** From and after Closing, the Property shall only be used as: (a) parkland open to the public and/or public road right-of-way ("**Public Use**"); or (b) commercial retail use; or (c) mixed commercial retail and residential use in a planned unit development, provided that parkland open to the public in perpetuity shall have been provided to Donee in trade for the portion of the Property to be used for commercial retail use or mixed commercial retail and residential use (the "**Permitted Retail/Mixed Use**", and together with the Public Use, the "**Restricted Use**"). This use restriction shall be set forth in the Deed (defined below) which shall be counter-signed by Donee at Closing. Further, the Deed shall provide that Donee further agrees, covenants and warrants: (a) that Donee shall not use or allow the use of the Property for any purpose other than for the Restricted Use; (b) that the Restricted Use restriction is perpetual and runs with the land; (c) that the Restricted Use restriction and the other agreements, covenants or warranties of Donee contained in the Deed may be enforced against Donee by any person; and (d) neither the Restricted Use restriction nor the rights reserved under the Deed can be waived or modified except by a written document executed by Donor. All of the foregoing are the "**Restricted Use Covenant Terms.**" Notwithstanding the above, the Donee may convey utility, access, or pipeline easements or licenses, or easements or licenses to allow or facilitate Response Activities (defined below), so long as those easements or licenses do not unreasonably interfere with the Property's Restricted Use.

***Title, Survey and Non-Environmental Inspection Matters***

6. **Title and Survey.**

(a) Donor agrees to convey good and marketable title to the Premises to Donee by a covenant deed ("**Deed**"), subject to: easements, interests, reservations and restrictions of record; zoning ordinances; taxes and assessments; any matter disclosed by the Title Commitment (defined below); any matter shown on the Survey (defined below); and any matter that would be shown by an accurate land title survey prepared in accordance with the latest standards approved by the American Land Title Association and the National Society of Professional Surveyors (collectively, the "**Permitted Exceptions**").

(b) Donor has furnished to Donee a commitment ("**Title Commitment**") for the Property from First American Title Insurance Company dated _____, 2019, No. _____. Donee shall bear the cost of any title insurance purchased in connection with the Transaction.

(c) Donor has provided Donee with a survey of the Property dated June 3, 2010, File No. S101327 ("**Survey**"), which Donee acknowledges shows an office portion of the building that was later demolished.

(d) Donee has reviewed the Title Commitment and Survey and accepts the title and all matters disclosed or shown therein.

7. **Non-Environmental Inspections.** Donee acknowledges that it has had the opportunity to conduct non-environmental inspections and assessments of the Property and has had the opportunity to order its own title work and survey.

***Environmental Matters***

8. **Environmental Definitions.**

(a) "**Environmental Law**" means any law applicable to the Property relating to: pollution or the protection of the environment or natural resources; health and safety as such relates to exposure to any Hazardous Substance; releases of Hazardous Substances, or the cleanup, remediation, manufacture, processing, distribution, use, treatment, storage, transport or handling of Hazardous Substances; or record keeping, notification, disclosure and reporting requirements respecting Hazardous Substances.

(b) "**Hazardous Substance**" means any substance, waste or other material (including, without limitation, any petroleum product, or any derivative or by-products thereof, asbestos, asbestos-containing material, radioactive materials, urea formaldehyde, lead-based paint, and polychlorinated biphenyls) defined or regulated as a bazardous substance, hazardous waste, hazardous material, toxic chemical, contaminant, pollutant, or similar under any Environmental Law.

(c) "**Response Activity**" means any action to investigate, monitor, clean up, treat, remove, remediate, or take corrective actions with respect to, or otherwise respond to, Hazardous Substances, so they do not migrate or endanger public health or the environment, as required by Environmental Laws.

9. **Environmental Assessment.**

(a) Within thirty (30) days from the Effective Date, Donee shall have the right to enter upon the Premises during reasonable business hours for the purpose of conducting, at Donee's expense, an environmental assessment of the Property, which assessment may include, but need not be limited to, a Phase I Environmental Site Assessment (collectively, "**Environmental Assessment**"). The Environmental Assessment shall not include the collection or analysis of samples of soil, groundwater, surface water, or any other environmental medium or building material without Donor's prior consent, which consent may not be conditioned or withheld unreasonably. Donee shall provide to Donor copies of all environmental assessment reports and any other written results of the Environmental Assessment promptly upon receipt.

(b) All inspections and tests performed on the Property by Donee or by Donee's officers, employees, consultants, contractors, or agents ("**Donee's Agents**") shall be conducted in compliance with all federal, state, and local laws, orders, regulations, and ordinances. Donee shall indemnify and hold Donor harmless from any and all claims, actions, losses, liabilities, or damages resulting from any activity on the Property undertaken pursuant to Paragraph 9(a) by Donee or Donee's Agents. The obligations of Donee under this Paragraph shall survive the Closing and any termination of this Agreement.

10. **Donee's Environmental Contingency**. If an environmental condition at or near the Property, disclosed by the Environmental Assessment or otherwise learned by Donee, is unacceptable to Donee, then, as Donee's sole remedy, Donee may terminate this Agreement, in which case none of the Parties will have any further liability to one another except as expressly provided in this Agreement (the "**Termination Remedy**").

11. **Baseline Environmental Assessment.** Prior to Closing, Donee may, at Donee's expense, prepare a "baseline environmental assessment" ("**BEA**") pursuant to Section 26 of Part 201, MCL 324.20126. If Donee determines to have a BEA prepared, Donee shall provide a copy of the BEA to Donor before submitting the BEA or any document relating to a BEA to the MDEQ. Upon receipt of the BEA and any related documents from Donee, Donor shall have two (2) business days to review it and either make reasonable requests for revisions to it, which requests shall not be denied unreasonably.

12. **Facility Status; PCB Soils.** Donee acknowledges that Donor has advised Donee pursuant to MCL 324.20116, and Donee acknowledges and accepts, that portions of the Property are a "facility" within the meaning of MCL 324.20101. Donee acknowledges receipt of information from Donor regarding the general nature and extent of the Hazardous Substance release(s) at the Property. Donee further acknowledges that (i) soils in certain areas of the Property contain polychlorinated biphenyls ("**PCBs**") at concentrations considered by the United States Environmental Protection Agency ("**U.S. EPA**") to render the Property in its current condition unsuitable for certain uses; and (ii) that a PCB Work Plan for the affected area of the Property has been submitted to and is currently being reviewed by U.S. EPA.

13. **Environmental Restrictive Covenants.** The Property will be conveyed to Donee subject to a perpetual environmental Declaration of Restrictive Covenants recorded in the public records for the Property in a form satisfactory to Donor that (a) prohibits the use of groundwater and the installation of water wells except for purposes of groundwater monitoring or Response Activities, (b) requires the incorporation of appropriate building features where necessary to prevent intrusion of Hazardous Substances in vapor form in structures at the Property, and (c) grants a right of access to MDEQ and U.S. EPA to enter the Property in connection with environmental investigation or response activities.

14. **Environmental Undertakings by Donee.** From and after the Closing, Donee shall, at its expense, perform, comply with, and fulfill all responsibilities, liabilities, and requirements imposed by, Environmental Laws upon an owner or operator of the Property, including without limitation (i) required Response Activities; (ii) due care obligations imposed under Section 7a of Part 201, MCL 324.20107a and (iii) soil management requirements imposed

under Section 20c of Part 201, MCL 324.20120c (collectively, the "**Environmental Undertakings**"). All such Environmental Undertakings shall be conducted in compliance with all federal, state, and local laws, orders, regulations, and ordinances. This provision shall be set forth in the Deed and is perpetual and runs with the land.

## ***Representations and Warranties***

15. **Donee's Representations and Warranties.** Donee represents and warrants to Donor that: Donee has all necessary power and authority to enter into and perform this Agreement; Donee has taken all necessary action to approve, execute, deliver, and perform this Agreement, and this Agreement is the valid and binding obligation of Donee, enforceable against Donee in accordance with its terms; and no judgment is outstanding against Donee and no litigation, action, suit, judgment, proceeding, or investigation is pending or outstanding before any forum, court, or governmental body, department or agency or, to the knowledge of Donee, threatened, that has the stated purpose or the probable effect of enjoining or preventing the Closing.

16. **Donor's Representations and Warranties.** Donor represents and warrants to Donee that: Donor has all necessary power and authority to enter into and perform this Agreement; Donor has taken all necessary action to approve, execute, deliver, and perform this Agreement, and this Agreement is the valid and binding obligation of Donor, enforceable against Donor in accordance with its terms; and no judgment is outstanding against Donor and no litigation, action, suit, judgment, proceeding, or investigation is pending or outstanding before any forum, court, or governmental body, department or agency or, to the knowledge of Donor, threatened, that has the stated purpose or the probable effect of enjoining or preventing the Closing.

## ***Closing***

17. **Closing.** The closing ("**Closing**") shall take place after all contingencies have been satisfied and all the necessary documents have been prepared on a date ("**Closing Date**") and at a location specified by Donor on at least ten (10) days' advance notice, but no later than March 31, 2019. At the Closing:

(a) Donor shall execute and deliver to Donee and Donee shall execute and accept the Deed, which shall be subject to the Environmental Undertakings, the Declaration of Restrictive Covenants, the Permitted Exceptions and the Restricted Use Covenant Terms, and shall disclaim any warranty with respect to the number of land division rights;

(b) Donee shall pay the Donation Price to Donor;

(c) Donee shall arrange for and pay the recording fee for the Deed;

(d) Donee shall execute and deliver to Donor IRS Form 8283; and

(e) Each Party shall sign a closing statement setting forth the Transaction and shall sign all other documents that may be reasonably necessary to evidence the Transaction. Each Party

shall be responsible for its own attorney fees and shall share equally any closing and escrow fee charged by a title company closing the transaction.

18. **Possession.** Donee shall have possession of the Property immediately following the Closing, subject to the Environmental Undertakings, the Declaration of Restrictive Covenants, the Permitted Exceptions and the Restricted Use Covenant Terms.

19. **Property Taxes and Assessments.** Donor shall pay all real estate property taxes and special assessments, whether or not payable in installments or deferrable without penalty or interest to a later date, with respect to the Property that first become due and payable (or in the case of special assessments, a lien on the Property) on or before the Closing Date, prorated as provided below. Taxes and assessments shall be prorated to the Closing Date on a calendar year basis for the twelve (12) month period constituting the year in which they first are billed and become due and payable. Donee shall be responsible for all other taxes and assessments.

***Release; "As-Is"; Indemnity***

20. **Release.** Notwithstanding any provision of this Agreement, from and after Closing, Donee, for itself and each of Donee's Agents, successors and assigns, forever releases Donor and each of Donor's directors, officers, shareholders, employees, agents, representatives, affiliates, successors, and assigns (collectively, **"Donor Parties"**), from any and all actual and potential claims, demands, suits, causes of action, damages, expenses, obligations and liabilities of any nature whatsoever that Donee had, has or may have, whether direct or indirect, fixed or contingent, now accrued or which may later accrue, known or unknown, liquidated or unliquidated, arising out of, caused by, or otherwise related in any way to the current or former presence of Hazardous Substances at, in, on, under, or emanating to or from, the Property (collectively, the **"Environmental Liabilities"**).

21. **"AS-IS".** Donee acknowledges that it has been given a reasonable opportunity to inspect the Property. Upon Closing, Donee will have accepted the Property in its "AS IS, WHEREAS" condition with all faults.

22. **No Representations or Warranties by Donor as to the Property.** Donor makes no representation or warranty of any nature whatsoever, express or implied, with respect to the Property, and expressly revokes, releases, and negates any representation or warranty, whether made now or in the future, including, without limitation, any representation or warranty concerning: the nature, quality, construction, or condition of the Property; utility access to the Property; the suitability of the Property for any specific purpose or use; the compliance of the Property with any statute, regulation, rule or ordinance affecting the same; any and all express or implied representations or warranties pertaining to any environmental, geological, structural or other condition or hazard or the absence thereof affecting in any manner the Property; and any and all other express or implied representations or warranties by Donor or any Donor Party.

23. **Indemnity.** Donee shall indemnify, defend, and hold Donor and Donor Parties and each of them harmless from and against any and all potential claims, suits, demands, causes of action, obligations, damages, liabilities, penalties, and expenses, including attorneys' and

consultants' fees, incurred by or asserted against Donor or any Donor Party and arising out of any act or omission of Donee or any Donee Party in the course of any demolition, excavation, removal, or construction activity undertaken at the Property after the Closing and prior to any transfer of the Property to any person or entity.

## *Miscellaneous*

24. **Condemnation; Fire; Other Casualty.** Donor shall promptly notify Donee of any impending or actual condemnation proceedings against the Property or any portion of the Property of which Donor has actual notice or any fire or other casualty to the Property. Following any one of these events, Donee may elect, in its sole discretion, to take the Property at Closing in its then-current condition and shall be entitled to receive all of the condemnation or insurance proceeds attributable to the Property payable as a result of the condemnation or damage.

25. **No Broker.** Each Party agrees and represents to the other that no broker is involved in this Transaction who is entitled to a commission. If a broker makes a claim for remuneration in connection with this Transaction, each Party shall indemnify and hold harmless the other from any amount that the other may be required to pay to a broker that the other did not retain, including, without limitation, the legal costs and reasonable attorney fees expended to defend against the claim. This Paragraph shall survive the Closing.

26. **Notices.** All notices permitted or required to be given hereunder shall be in writing and sent by a nationally recognized overnight courier service (such as Federal Express) or hand delivered, addressed as set forth below, or to such other address or addresses as the parties may designate from time to time by notice given in accordance with this section. Any such notice shall be deemed given on the date of such sending or hand delivery, as the case may be.

| If to Donor: | If to Donee: |
|---|---|
| Haworth, Inc.<br>One Haworth Center<br>Holland, Michigan 49423<br>Attn: Carole Woods,<br>Real Estate Project Manager | City of the Village of Douglas<br>86 W. Center St., P.O. Box 757<br>Douglas, Michigan 49406-0757<br>Attn: City Manager |

27. **Assignment, Successors.** This Agreement shall be binding upon and inure to the benefit of the Donor and its successors and assigns. Notwithstanding any other provision of this Agreement, Donee shall not be permitted to assign its interest hereunder, in whole or in part, without Donor's consent, which consent Donor may withhold in its sole and absolute discretion for any or no reason. Notwithstanding the foregoing, it is understood that the Donee intends to convey all or a portion of the Property to a private party for redevelopment at some point in the future, and the Donee may also transfer all or a portion of the Property to a Brownfield Redevelopment Authority. No notice or consent of the Donor shall be required for a conveyance of all or a portion of the Property by the Donee following, or contemporaneous with, the Closing between Donor and Donee.

28. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. Scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures.

29. **Governing Law.** This Agreement is to be governed by and construed under the laws of the State of Michigan.

30. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties regarding the subject matter of this Agreement and replaces all prior and contemporaneous agreements, understandings, warranties or representations, whether written or verbal. The exhibit(s) attached hereto are incorporated into and are part of this Agreement. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

31. **Waiver.** No waiver of any provision or condition of this Agreement by any Party shall be valid unless in writing, signed by such Party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default. No failure or delay by a Party to this Agreement to exercise any right, power or remedy under this Agreement, and no course of dealing among the Parties to this Agreement, shall operate as a waiver of any right, power or remedy of the Party. No single or partial exercise of any right, power or remedy under this Agreement by a Party to this Agreement, nor any abandonment or discontinuance of steps to enforce any the right, power or remedy, shall preclude the Party from any other or further exercise of the right, power or remedy or the exercise of any other right, power or remedy under this Agreement. The election of any remedy by a Party to this Agreement shall not constitute a waiver of the right of the Party to pursue other available remedies. No notice to or demand on a Party not expressly required under this Agreement shall entitle the Party receiving the notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Party giving the notice or demand to any other or further action in any circumstances without the notice or demand.

32. **Severability.** In the event that any portion of this Agreement shall be finally adjudicated invalid or unenforceable, in whole or in part, or shall cause this Agreement to be unenforceable, in whole or in part, such provision shall be limited to the extent necessary to render the same and the remainder of this Agreement valid and enforceable, or shall be excised from this Agreement, as circumstances require, to preserve the validity and enforceability of the remainder of this Agreement.

33. **Amendment.** This Agreement may be amended only by a written instrument subsequently executed by Donor and Donee expressly stating the intention to amend this Agreement.

34. **Interpretation.** Each Party to this Agreement acknowledges and agrees that: (a) such Party and the Party's counsel have reviewed and negotiated, or have had the opportunity to review and negotiate, the terms and provisions of this Agreement and have contributed to its review and revision; (b) any rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be used to interpret this Agreement; and (c) the terms and provisions of this Agreement shall be construed fairly as to all Parties to this Agreement and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement. The headings and captions of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions of this Agreement.

35. **Time of the Essence.** Time is of the essence of this Agreement. If the date for Closing, for the delivery of a document, or for giving of a notice falls on a Saturday, Sunday, or bank holiday, then it shall be automatically deferred to the next day that is not a Saturday, Sunday, or bank holiday.

36. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties to this Agreement, and no person or entity shall be regarded as a third-party beneficiary of this Agreement.

37. **Public Statements.** No Party shall issue any press release or otherwise make any public statement with respect to the transactions contemplated by this Agreement without the prior written consent of each other Party, except as may be required by law.

This Agreement is effective as of the Effective Date set forth above.

**HAWORTH, INC.**

By: _____

Name: JOHN MOONEY

Title: VP GLOBAL FINANCE

Dated: 1/22/19

**DONOR**

**CITY OF THE VILLAGE OF DOUGLAS**

By: Linda Anderson

Name: Linda Anderson

Title: Mayor

Dated: January 21, 2019

By: Pamela Aalderink

Name: Pamela Aalderink

Title: City Clerk

Dated: January 21, 2019

**DONEE**

001030 157299 18023643-3

## EXHIBIT A

## LEGAL DESCRIPTION OF PROPERTY

Beginning at the West 1/8 post of the Southwest 1/4 of Section 16, Town 3 North, Range 16 West, City of the Village of Douglas, Allegan County, Michigan; thence North 2 degrees 34 minutes 06 seconds East on the West section line 200.0 feet; thence South 87 degrees 37 minutes 54 seconds East 422.57 feet; thence South 2 degrees 34 minutes 06 seconds West 23.0 feet; thence South 87 degrees 37 minutes 54 seconds East 218.43 feet to the West line of Blue Star Highway (US-31); thence along Blue Star Highway South 33 degrees 20 minutes 06 seconds West 818.71 feet; thence North 87 degrees 37 minutes 54 seconds West 222.35 feet to the West section line; thence North 2 degrees 34 minutes 06 seconds East 525.0 feet to the place of beginning.

# MEMORANDUM

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|---|---|
| To: | Douglas Brownfield Redevelopment Authority |
| From: | Rich LaBombard<br>City Manager |
| Date: | January 11, 2021 |
| Subject: | 200 Blue Star Highway<br>Memorandum of Understanding |

Review the goals and terms of the Memorandum of Understanding.

**DEVELOPMENT AGREEMENT**
**MEMORANDUM OF UNDERSTANDING**
**October 19, 2018**

I. Background – The City of the Village of Douglas

The City of the Village of Douglas is interested to see economic development progress in the corridor containing the existing Haworth property and related MIRO development properties surrounding that area. The goals of the City include the following:

A. Eliminate an eyesore along Blue Star Highway;

B. Create family housing;

C. Demolition of the Haworth property, replacing it with a vibrant mixed-use commercial development opportunity, and clean-up of environmental contamination;

D. Create green space/park area in properties configured appropriately within the existing Haworth contamination plume.

II. Dave Barker and Associates, Ltd. (Barker)

Dave Barker and Associates is an experienced developer in West Michigan. Please refer to the attached resume and bio of Mr. Barker. Barker completed development of the Wilderness Ridge subdivision to the west of this site some years ago. Barker currently owns approximately 50 acres as shown in the attached exhibit. Barker's goals are consistent with the City's goals above, in addition to creating a property development program that includes family housing with commercial development along Blue Star Highway in a density of 8-10 units per acre which is the existing zoned density. Barker is also interested in a joint venture with the City.

III. Understanding of Development Terms

A. The City of the Village of Douglas would acquire the Haworth property and address the contamination there and in the surrounding properties in an appropriate manner within guidelines identified by MDEQ, etc.

B. The City would receive parkland/open space over the potential plume on the Barker property and incorporate that into a comprehensive environmental cleanup program associated with the Haworth property.

The City would agree to exchange its 16.7 acres of land southwest of the Barker property for a similar sized parcel, containing the contamination

plume which extends across the northeast portion of the Barker property. The goal is to balance the acreage of lands exchanged between the City and Dave Barker. The City owned property containing the contamination plume would become a City park/open space as part of the comprehensive plan/PUD in that project area.

C. The City and Barker would pursue a joint PUD program/land use submittal to be considered by the City planning and City councils. The comprehensive land-use plan would emphasize the following:

1. Family housing for the remaining 50 acre Barker program/land use With density to be at existing densities which are 8 to 10 units per acre.

2. The City receives park property and will develop the park for use by the public.

3. Barker would receive the excess Haworth properties that are not needed for Road right-of-way and could be developed commercially for entryway to the project.

4. Barker would pay for the demolition of the Haworth buildings as part of his initial investment into the project. If State or Federal grants are available to the City for demolitions, Barker would then pay the City's local match.

5. Barker reserves the right to approve the comprehensive land-plan as described above.

6. The City will take on the environmental contamination concerns at the Haworth property in association with the standard Brownfield program elements from the State of Michigan.

7. The City and Baker would cost share the initial land planning/approval process.

D. Target values for residential units within the reconfigured Barker property would be to achieve approximately 50% family units, meaning condominium residential units costing less than approximately $275,000 and/or apartments. The remaining residential units would be targeted to cost less than $500,000. Both parties realize these values vary with market conditions over time and related construction costs.

Time is of the essence with regard to purchase of the Haworth property by the City. Barker is available to proceed immediately on the project with Phase I (Demolition). Barker will

provide proof of financing and resources necessary to develop the site as part of a final definitive agreement with the City.

BE IT RESOLVED, that the parties hereby agree to this memorandum of understanding as part of entering negotiations on a more definitive agreement that will address the terms and conditions for the parties. Redevelopment of the subject properties once the City secures an option to purchase on the Haworth Property, the parties agree to move forward with a definitive agreement as outlined herein as soon as possible. This memorandum is non-binding and neither party agrees to be bound by its terms unless and until a definitive agreement is reached and approved and signed by both parties.

Accepted by:

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|---|---|---|---|
| | 10-19-18 | | 11-2-18 |
| The City of the Village of Douglas | Date | Dave Barker and Associates, Ltd. | Date |
| | 10.30.18 | | 11/2/18 |
| Witness | Date | Witness | Date |

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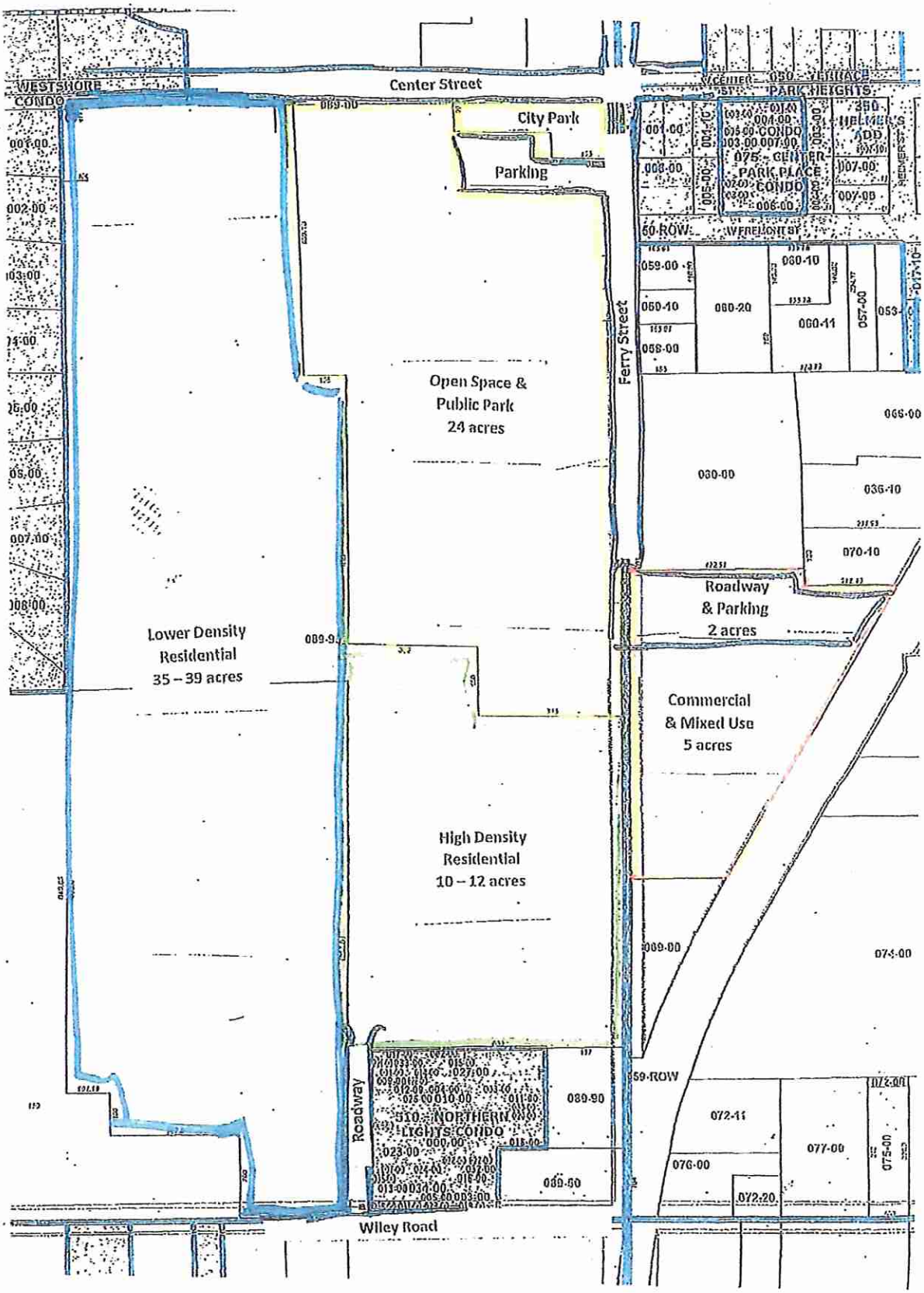
Douglas Haworth Miro
City of Douglas

*PUD Study Area Property Ownership*

0 50 100 200


Center Street
WESTSHORE CONDO
City Park
Parking
Ferry Street
Open Space &
Public Park
24 acres
Lower Density
Residential
35 – 39 acres
Roadway
& Parking
2 acres
Commercial
& Mixed Use
5 acres
High Density
Residential
10 – 12 acres
Roadway
Wiley Road

# MEMORANDUM

**To:** Douglas Brownfield Redevelopment Authority

**From:** Rich LaBombard
City Manager

**Date:** January 11, 2021

**Subject:** Preliminary Demolition Costs

Specialized Demolition of Hamilton, Michigan, provided a quote to remove the building located at 200 Blue Star Highway as a preliminary estimate to remove the structure. The demolition quote does not include removing:

- Asphalt parking areas
- Concrete slabs, footings, and foundations
- Asbestos survey or abatement
- Utility disconnect
- Sand backfilling
- Hauling or disposal of contaminated material

The value of steel is deducted from the quoted price. The quote also includes the cost of permits, dust control, freon reclamation, hauling debris to a landfill, recycling clean block and clean steel.

The estimated cost for demolition of 200 Blue Star Highway is $175,000.

A separate estimate for asbestos remediation was provided by PM Environmental at an approximate cost of $60,000.

# PROPOSAL

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| To: Richard LaBombard<br>City Manager<br>City of the Village of Douglas<br>86 W. Center Street<br>P.O. Box 757<br>Douglas, MI 49406 | Date: 3/9/2020<br>Proposal: Demolition<br>Job Name: 200 Blue Star Highway<br>Location: Douglas, MI |

**We hereby submit specifications and estimates to provide labor, equipment and necessary supervision for:**

Demolition and removal of the existing building down to the slab, leaving the concrete slabs, footings and foundations in place. Our proposal includes a demolition permit, spraying water for dust control as needed, Freon reclaim from RTU's, hauling the landfill debris to a licensed landfill, hauling the clean block to a recycler and hauling the steel to a recycler.

The steel value after it is hauled to the scrap yard is deducted from our price. The steel value is based off from the February 2020 steel pricing. This will change every month.

Exclusions:

1. Asphalt parking area removal
2. Removal of concrete slabs, footings and foundations
3. Asbestos survey or abatement (we will not know if asbestos is present until the asbestos survey is done)
4. Disconnects
5. Sand backfill
6. Hauling or disposing of any contaminated material

**WE HEREBY propose to furnish material and labor-complete in accordance with the above specifications, for the sum of:**

**Dollars:** $175,000.00 (one hundred seventy five thousand)

**Payment to be made as follows: NET 10 DAYS Interest will be charged on balances over 10 days as set forth below.**

All material is guaranteed to be as specified. All work is to be completed in a professional manner according to standard practices. Any alteration and/or deviation from the above specifications involving extra costs will be undertaken only upon written change/work orders, and will become an extra charge over and above the Proposal. All agreements are contingent upon strikes, accidents or delays beyond our control. The Customer shall carry fire, tornado and other necessary insurance. By acceptance of the goods and/or services described above (hereinafter the "goods and/or services"), the Customer receiving the goods and/or services agrees to all of the terms set forth herein. Payment of an invoiced amount is due ten (10) days from the date of the invoice. Any invoice not paid in its entirety within ten (10) days from the invoice shall incur a finance charge of eighteen percent (18%) per year on the remaining unpaid balance.

If the amount of any invoice is disputed by the Customer, the Customer must notify Specialized Demolition, Inc. (hereinafter "SDI") in writing within ten (10) days of the invoice and provide the following information: invoice number, invoice date, a detailed explanation of the disputed portion(s) of the invoice, and any written documentation supporting the Customer's claim. Any invoice not disputed in the manner described above shall be considered accurate in its entirety, and the Customer agrees it is liable for the full and complete payment of such invoice.

The Customer agrees to pay all costs incurred by SDI in the collection of any unpaid amount owed by the Customer to SDI, including but not limited to reasonable attorney fees, court costs, filing and/or service of the process fees. The Customer further agrees that the agreement for the provisions of goods and/or services was reached and/or executed in Allegan County, Michigan.

Authorized Signature: Dan Van Der Hulst, Estimator

NOTE: This proposal may be withdrawn by us If not accepted within 30 days.

**ACCEPTANCE OF PROPOSAL:** The specifications and conditions set forth above are satisfactory and are hereby Accepted. You are authorized to conduct the work as specified. Payment will be made as outlined above.

**Signature:**

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| Printed: | Date of Acceptance |

# MEMORANDUM

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|---|---|
| To: | Douglas Brownfield Redevelopment Authority |
| From: | Rich LaBombard<br>City Manager |
| Date: | January 11, 2021 |
| Subject: | 200 Blue Star Highway<br>Draft Development Scenarios |

**Draft Scenario #1 – Memorandum of Understanding**

In this scenario, the City follows the terms outlined in the Memorandum of Understanding dated October 19, 2018 and agrees to work with Dave Barker and Associates on the redevelopment of 200 Blue Star Highway, trade properties for open parkland, and requires creating affordable / attainable housing for the community. The City works closely with Dave Barker and Associates to demolish and clean up properties and make them redevelopment ready. The City will create a Tax Increment Finance model that will incorporate all the improved properties to capture tax revenue to repay the City for costs incurred for clean up expenses. The City will apply for grant / financial assistance when possible. Barker pays for the City's share of grant match funds and pays for demolition.

**Draft Scenario #2 – City Clean-up**

In this scenario, the City terminates the MOU with Dave Barker and Associates and issues an Request for Proposal from other interested to redevelop 200 Blue Star Highway. The City bears the cost of demolition and environmental cleanup and creates a Tax Increment Finance model to capture tax revenue from the improved properties to repay the City for costs incurred for cleanup expenses, but perhaps based on less properties. The City will apply for grant / financial assistance when possible. Affordable / Attainable housing may be more difficult to accomplish.

**Draft scenario #3 – Combination of above or other considerations**