

Memorandum



Date: June 2, 2023
To: Buchanan City Commission
From: Tony McGhee
Subject: Sale of City Owned Lots

Background

The purpose of this memorandum is to recommend that the City Commission approve the sale of eight City-owned residential lots to Allen Edwin, through Michigan Housing Partnership, LLC, as outlined in the attached purchase agreement.

This proposed sale is part of the larger 12-lot package the City offered to developers for the purpose of encouraging new residential construction in Buchanan. The City received developer interest in the lots and has worked through the process of assigning the subject properties to developers capable of moving the lots into productive residential use.

Under the proposed agreement, Allen Edwin would purchase eight of the twelve lots. The remaining four lots are expected to be sold to Astrong Construction. Verbal terms have been reached on those four lots, and purchase agreements are currently being developed. The goal with both transactions is to move these City-owned lots back into productive use and support the construction of new single-family housing in the community.

The eight lots included in the proposed sale to Allen Edwin are as follows:

- 405 Elizabeth Street
- 420 Elizabeth Street
- 314 Arctic Street
- 503 Arctic Street
- 418 Fulton Street
- 724 W. Roe Street
- 907 Victory Street
- 1106 Victory Street

The purchase agreement provides for a purchase price of \$6,500 per lot. The agreement also allows for the lots to be purchased in phases, with construction beginning on two homes in 2026, best efforts to purchase and begin construction on two additional lots by June 1, 2027, and a good faith effort to purchase the remaining four lots by the end of 2027. The agreement has been reviewed by Butzel, the City's attorney.

The agreement also provides Allen Edwin with a right of first refusal on the remaining four lots if the other developer selected for those lots does not fulfill its obligation to the City. Those four lots are:

- 411 Elizabeth Street
- 416 Bluff Street
- 418 Bluff Street
- 1104 Victory Street

The second developer buying City owned lots in the neighborhood also has the same option to purchase lots allocated to Allen Edwin should they not perform under the terms of the agreement.

The development of infill housing is important to the future of Buchanan. Like many communities, Buchanan has existing lots within established neighborhoods that already have access to nearby streets, utilities, schools, parks, and other public services. When those lots remain vacant, they do not contribute to the community in the same way they could if they were developed with quality housing.

Infill housing allows the City to grow in a more efficient and responsible way. Rather than relying only on outward expansion or new subdivisions at the edge of the community, infill development makes better use of land already located within the City. It helps strengthen existing neighborhoods, adds new housing options, supports the local tax base, and places new residents closer to downtown, parks, schools, and other community assets.

Adding new homes on these lots will also help address the need for additional housing in Buchanan. New residential construction supports population stability and growth, creates opportunities for new families and residents to move into the community, and helps maintain the long-term strength of neighborhoods. It also has the potential to support local businesses as new residents shop, dine, and participate in community life.

From a financial standpoint, selling these lots moves currently underutilized City-owned property back onto the tax roll. Once developed, the lots will generate additional taxable value and long-term property tax revenue for the City and other taxing jurisdictions. While the immediate sale price is important, the larger benefit is the long-term value created by placing new homes on vacant lots and returning those properties to productive use. The sale also supports the City Commission's broader goals related to neighborhood reinvestment, housing development, and responsible use of City-owned property. Staff believes this agreement provides a practical path forward to get these lots developed by an experienced builder and to continue moving Buchanan toward additional housing investment.

Recommendation

Administration recommends that the City Commission approve the purchase agreement for the sale of the eight subject lots to Allen Edwin, through Michigan Housing Partnership, LLC, and authorize the City Manager and City Attorney to complete any necessary documents to finalize the transaction.

Attachment A: Purchase Agreement

Attachment A



LOT PURCHASE AGREEMENT

This LOT PURCHASE AGREEMENT (this “Agreement”) is made on _____, by and between MICHIGAN HOUSING PARTNERSHIP, LLC, a Michigan limited liability company of 2186 E. Centre Ave., Portage, MI 49002 (“Purchaser”) and the CITY OF BUCHANAN, a municipal corporation of 302 N. Redbud Trail, Buchanan, MI 49107 (“Seller”) as follows:

BACKGROUND

Seller desires to sell, and Purchaser desires to purchase up to eight (8) Lots, located in the City of Buchanan, Berrien County, Michigan (the “Lot”)

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN THE PARTIES AGREE AS FOLLOWS:

1. Lot. Seller agrees to sell, and Purchaser agrees to purchase up to eight (8) Lots, located in the City of Buchanan, Berrien County, Michigan, as described on the attached Exhibit A. The parties will agree to precise legal descriptions of the Lots prior to Closing.

2. Purchase Price. The Purchase Price shall be six thousand five hundred dollars and 00/100 (\$6,500.00) per Lot.

The Purchase Price shall be delivered at Closing in immediately available funds subject to the terms and conditions stated in this Agreement and consistent with the schedule in Section 5 of this Agreement. The Purchaser’s obligations under this Agreement are not contingent upon financing.

3. Investigation Period; Right to Terminate. The Investigation Period shall expire ninety (90) days following the date this Lot Purchase Agreement has been executed by both parties (the “Effective date”). Purchaser intends to seek approval of a PILOT and/or TIF/Brownfield Plan which is intended to be obtained within this time period. During the Investigation Period, Purchaser shall have the right to have the Lots inspected, surveyed, evaluated, analyzed, tested, appraised and/or assessed for any matter whatsoever, including but not limited to, market value; soil conditions; location of flood plains; presence of wetlands and necessary mitigation, if any; storm water drainage systems; presence of environmental contamination; health and safety conditions; access to utilities; access to public roads; zoning; compliance with laws, codes and ordinances and any other matter desired by Purchaser. Seller hereby grants Purchaser and Purchaser’s agents, employees, representatives, consultants, and contractors a nonexclusive license during the term of this Agreement, to enter and have access to the Lots for purposes of having such investigations performed and the right to discuss the Lots and the conditions related thereto with governmental authorities. Purchaser may choose to have Contractors perform site investigation work on site. During the Investigation Period, and any extensions thereof, Purchaser has sole discretion to terminate this Agreement. Purchaser shall reasonably restore any disturbance to the lots caused by the investigation.

Purchaser may extend the Investigation Period for no more than two (2) ninety (90) day periods, upon written notice from Purchaser to Seller at no additional cost to Purchaser. Purchaser shall commence construction on 2 homes within 2026 and commence construction on 2 additional lots by the 1st of June 2027. Purchaser shall make a good faith effort to purchase the remaining 4 lots by the end of 2027.

4. Payment of Property Taxes. Property taxes for the year of Closing shall be prorated as of the date of Closing on a calendar basis based upon the amount of such taxes if known at the time of Closing.

5. Closing Deadline; Purchase Schedule; Contingencies. Purchaser shall retain an exclusive right to purchase the Lots in separate phases over the period outlined in this Section 5, the “Partial Purchase Periods.”

A. The parties agree to schedule a Closing on four (4) Lots, identified by Purchaser (the “Initial Partial Purchase”), to occur within ten (10) days after the expiration of the Investigation Period, or any extensions thereof. Each Closing shall be contingent upon the City’s approval of a PILOT and/or TIF/Brownfield Plan, and Purchaser’s receipt of permits and approvals for re-development of the land.

B. During the six (6) month period following the Initial Partial Purchase, Purchaser shall retain the exclusive right to purchase the remaining Lots (the “Second Partial Purchase Period”).

C. Partial Purchase Periods. There may be multiple purchases and closings within each Partial Purchase Periods. Purchases shall be measured cumulatively.

D. Following the initial purchase period, Purchaser shall pay \$2,000 EMD (Earnest Money Deposit) for subsequent lot purchases to be allied to the purchase price.

6. Seller’s Closing Deliveries. At Closing, Seller shall deliver to the Purchaser, the following items, which shall be in a form and substance satisfactory to Purchaser:

A. A Warranty Deed conveying to Purchaser title to the Lot, executed and acknowledged by Seller in recordable form;

B. An ALTA fee owner’s policy of title insurance or equivalent coverage from a title company acceptable to Purchaser (the “Title Policy”) in an amount not less than the Purchase Price insuring Purchaser as owner of fee simple, indefeasible title to the Lot without standard exceptions, and subject only to the following permitted exceptions (the “Permitted Exceptions”): (1) the lien prorated property taxes not yet due and payable, (2) utility easements serving the Lot, (3) other matters described in Section 9 and 10, (4) any matter arising as a result of any act or omission of Purchaser; and (5) such other matters that are not objected to by Purchaser.

C. Such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Seller.

7. Purchaser's Closing Deliveries. At Closing, Purchaser shall deliver to Seller, the Purchase Price and such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Purchaser.

8. Closing Costs and Prorations. Seller shall pay or reimburse Purchaser for (i) all transfer and/or conveyance taxes, if any, assessed in connection with Closing, (ii) the premium for the Title Policy, (iii) one half (1/2) of any closing fee charged by the title company in connection with this transaction, and (iv) any special assessments (sewer or otherwise but not including hook-up fees or associated costs of the same) that currently exist against the Lot. Seller shall be responsible for and pay all past due real estate taxes and assessments at or prior to Closing. This obligation shall survive Closing. Other regular and customary costs and expenses related to the Lot shall also be prorated based on the date of Closing.

9. Title. Seller shall order a commitment for an owner's policy of title insurance from a title company acceptable to Purchaser (the "Title Policy") within ten (10) days of the date of this Agreement. After Purchaser has received both the title commitment and the Survey described in Section 10 below (if obtained), both in a form satisfactory to Purchaser, the Purchaser shall deliver written notice of any objections Purchaser has to the title commitment. Seller shall have five (5) days from receipt of such notice of objections to provide written notice to Purchaser as to whether Seller will cure such objections at or before Closing. If Purchaser notifies Seller of the existence of defects rendering title unmarketable and should Seller fail to effect cure of such defects by Closing, Purchaser may, at its option: (1) extend the time for Seller's performance hereunder only if Seller so requests, (2) waive such objections, or (3) terminate this Agreement.

10. Survey. Within ten (10) days of the date of this Agreement, Purchaser may order, at its expense, a new ALTA survey of the Lot (the "Survey"), showing the legal description of the Lot, any boundary encroachments that may impact the Lot, all easements affecting the Lot and such other matters desired by Purchaser.

11. Environmental Matters. Purchaser may, at its expense, conduct such environmental site evaluations of the Lot as it deems appropriate including, without limitation, a Phase I and Phase II environmental site assessment and/or a Baseline Environmental Assessment (collectively, the "Site Investigation Reports").

12. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser that to the best of Seller's knowledge, as of the date hereof and on the date of Closing, which representations and warranties shall survive Closing, but without additional investigation by Seller:

A. Seller has the right, power and authority to enter into this Agreement and to sell the Lot in accordance with the terms hereof, and Seller has granted no option or right of first refusal to any other person or entity to purchase the Lot and has not entered into any contract to sell the Lot as of the date of the Agreement. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto.

B. Seller has not received any notice of, and has no knowledge of, existing violations on the Lot or any portion thereof of any zoning, building, fire, health, pollution, environmental protection, hazardous or toxic substance or waste disposal law or ordinance.

C. At Closing, there will be no parties in possession of the Lot or entitled to possession thereof other than Seller. There will be no leases, agreements, options or other instruments or agreements in effect with respect to the Lot.

D. There are no existing or pending condemnations or sales in lieu thereof with respect to the Lot, or any part thereof, nor have any such actions, suits, proceedings or claims been threatened or asserted.

E. Seller has the right to, and will convey to, Purchaser the Property pursuant to the Warranty Deed.

F. All general real estate related property taxes and assessments shall have been paid when due. There are no delinquent assessments. Except for any ordinary accruals of dues, no future assessments against the Lot have been announced.

G. There is no litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against or involving Seller or the Lot, and Seller does not know or have reason to know of any grounds for any such litigation, proceeding or investigation, which could have an adverse impact on Purchaser or Purchaser's title to or use of the Lot, either before or after Closing.

H. All federal, state and local real estate, personal property and other taxes relating to the Lot (other than those not currently due and payable) shall be properly paid on or before Closing. Seller has not received any notice of assessment or proposed assessment in connection with the Lot.

I. Seller is not a "foreign person" as that term is defined in section 1445 of the Internal Revenue Code of 1986, as amended.

J. The Lot and Seller are in full compliance with all requirements of federal, state and local environmental, health or safety laws, regulations and administrative or judicial decrees, as amended (the "Environmental Laws").

K. With the exception of the documents provided by Seller to the Purchaser, there are no reports, studies, appraisals, engineering reports, correspondence, agreements with governmental authorities, wetland studies or reports, flood plain studies or reports and/or other written information related to the Lot of which Seller is aware or that are in Seller's possession or control.

13. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller, which representations and warranties shall survive Closing, that as of the date hereof, and on the date of Closing:

A. Purchaser has the full power and authority to execute, deliver and perform this Agreement and all of Purchaser's obligations under this Agreement; and

B. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Purchaser are and shall be duly authorized to sign the same on Purchaser's behalf and to bind Purchaser thereto.

14. Hold Harmless. Seller agrees to hold Purchaser and its managers, members, and successors and assigns harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature, including but not limited to, all expenses related thereto, including, without limitation, court costs and attorney's fees for matters (i) arising or accruing prior to Closing and which are in any way related to the ownership, maintenance, or operation of the Lot; and/or (ii) arising from or related to the inaccuracy or breach of any of Seller's representations and warranties. Purchaser agrees to hold Seller and its managers, members, and successors and assigns harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature, including but not limited to, all expenses related thereto, including, without limitation, court costs and attorney's fees for matters (i) arising or accruing after Closing and which are in any way related to Purchaser's ownership, maintenance, or operation of the Lot; and/or (ii) arising from or related to the inaccuracy or breach of any of Purchaser's representations and warranties. It is expressly stipulated and agreed that the provisions of this Section shall survive Closing.

15. Default and Remedies.

A. Purchaser's Default; Seller's Remedy. If the Purchaser fails to close on the purchase of the Lot, Seller may, as its sole and exclusive remedy terminate this Agreement by giving an appropriate Notice of Default as provided below.

B. Seller's Default; Purchaser's Remedies. In the event Seller fails to timely perform any material act, or provide any material document or information required to be provided by Seller, or in the event any Representation and Warranty made by Seller pursuant to this Agreement is untrue when made, then Purchaser shall be entitled to either (i) terminate this Agreement, and seek Purchaser's actual damages arising from Seller's breach; or (ii) seek specific performance of this Agreement, and seek Purchaser's actual damages provided, however, there will be no specific performance if Seller's failure to close is caused by its inability to clear a title exception, and in such event Purchasers' damages will be limited to its direct out-of-pocket costs for entering into this Agreement.

C. Notice of Default. In the event either party declares the other to be in default, such declaration shall be in writing, with an outline of the actions required to cure such default. The recipient of such notice of default shall have 30 days to cure the alleged default.

16.

17. Sale and Assignment of Agreement. Purchaser shall have the right to assign all of its rights and delegate all of its obligations under this Agreement to another entity, provided however, that no assignment shall operate as a release of the Purchaser.

18. Confidentiality. The parties hereto agree to keep the terms and provisions of this Agreement strictly confidential with the exception of disclosures to their respective attorneys, financial consultants, lenders, investors and other persons or entities necessary for consummation of this Agreement and for Purchaser's purposes as provided above.

19. Miscellaneous.

A. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

B. This Agreement shall be governed by and construed under the laws of the state of Michigan.

C. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the conveyance of the Lot and all other matters contained herein and constitutes the sole and entire agreement between Seller and Purchaser with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

D. All notices, payments, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served effective on the second (2nd) business day after being deposited in the United States mail, postpaid and registered or certified with return receipt requested; or when sent by private courier service for same-day delivery or one day after being sent by private courier service for next-day delivery. Notices shall be sent via e-mail and also to the respective addresses set forth below:

To Seller: CITY OF BUCHANAN
ATTN: _____
302 N. Redbud Trail
Buchanan, MI 49107
E-mail: _____

To Purchaser: MICHIGAN HOUSING PARTNERSHIP ,LLC
ATTN: Thomas M. Larabel
795 Clyde Ct., SW
Byron Center, Michigan 49315
tlarabel@allenedwin.com

With a copy to: Eric J. Guerin
2186 E. Centre Ave.
Portage, Michigan 49002
eguerin@allenedwin.com

Brian Farkas
bfarkas@allenedwin.com

Alexandra Kruh
atyra@allenedwin.com

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

F. Allen Edwin Realty, L.L.C., is a broker for Purchaser, and it waives any buyer-side commission. City has no broker and no obligation for any commissions to any real estate agent or broker.

G. Seller and Purchaser agree that in the event the other developer that won the other four (4) lots, as described in Exhibit A, does not fulfil its obligation to the City, Purchaser shall have the right of first refusal to purchase those four (4) lots for the same price as outlined here.

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

SELLER:
CITY OF BUCHANAN

By:
Its:

PURCHASER:
MICHIGAN HOUSING PARTNERSHIP, LLC

By: Thomas Larabel
Its: Vice President

EXHIBIT A

8 Lots

City of Buchanan, Berrien County, Michigan

Lots to Purchase:

PARCEL NO.	ADDRESS
11-58-2000-0054-00-4	405 Elizabeth Street
11-58-2000-0172-00-7	420 Elizabeth Street
11-58-2000-0309-00-2	314 Arctic Street
11-58-2000-0216-00-4	503 Arctic Street
11-58-2000-0333-00-1	418 Fulton Street
11-58-1350-0051-00-5	724 W Roe Street
11-58-2000-0147-00-2	907 Victory Street
11-58-2000-0360-00-8	1106 Victory Street

Lots subject to Purchaser's First Right of Refusal, as described in 19(G) of this Agreement:

PARCEL NO.	ADDRESS
11-58-2000-0057-00-3	411 Elizabeth Street
11-58-2000-0044-00-9	416 Bluff Street
11-58-2000-0043-00-2	418 Bluff Street
11-58-2000-0364-00-3	1104 Victory Street