NORTHEAST NEIGHBORHOOD IMPROVEMENT AUTHORITY AGENDA

February 21, 2023
Regular Meeting - 4:00 PM

1) **CALL TO ORDER**
2) **ROLL CALL**
3) **PLEDGE OF ALLEGIANCE**
4) **APPROVAL OF AGENDA** - Items can be added or deleted from the Agenda by City Council action.
   - **A.** February 21, 2023 Northeast Neighborhood Improvement Authority Agenda
5) **APPROVAL OF MINUTES**
   - **A.** December 20, 2022 NE NIA Meeting Minutes
6) **FINANCIAL REPORT**
   - **A.** January 31, 2023 Revenue Expenditure Report
7) **PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS** – Persons addressing the board are required to give their name and address for the record when called upon by the Chair. Members of the public shall be limited to speaking for a maximum of five (5) minutes on any agenda item.
8) **PUBLIC HEARINGS & SUBSEQUENT BOARD ACTION**
9) **OLD BUSINESS**
10) **REPORTS AND RECOMMENDATIONS/NEW BUSINESS**
    - **A.** Forest Street Development Agreement
    - **B.** 2022 State Financial Report
11) **PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS**
    Persons addressing the board are required to give their name and address for the record when called upon by the Chair. Members of the public shall be limited to speaking for a maximum of five (5) minutes on any agenda item.

12) **BOARD REPORTS**

13) **ADJOURNMENT**

MINUTES

Tuesday, December 20, 2022 at 4:00 p.m.
First Floor City Hall Training Room

CALL TO ORDER

Chair Wolfersberger called the meeting to order at 4:00 PM.

ROLL CALL- Present: Lucy Blair, Scott Wolfersberger, David DeGraw, Krista Trout-Edwards, Matt Davis, and Derek Perry

Absent: Gregg Beeg

Also, present: Director of Community Services Eric Zuzga, Director of Finance William Dopp III, Matt Miller, and Tracy Mills

APPROVAL OF AGENDA Motion by DeGraw to approve the December 20, 2022 Northeast NIA agenda. Second by Trout Edwards. Motion approved 5-0

APPROVAL OF MINUTES - Motion by Perry to approve the July 19, 2022 Board minutes. Second by Blair. Motion approved 4-0.

PUBLIC COMMENT - None

NEW BUSINESS –

1. **Forest Street Development**
   Presentation by Matt Miller and Tracy Mills on behalf of Allen Edwin Homes on the potential development of the undeveloped lots on Forest Street in the Briarwood Condominium development. The project will involve 17 homes, which will start around $280,000.

   Staff is working with the developer to draft a development agreement for the project. The expectation is that we will have a draft development for consideration in January.

2. **Mann Road Development**
   Presentation by Matt Miller and Tracy Mills on behalf of Allen Edwin Homes on the potential development of Jerry Clifton's property on the extended Mann Road between O'Keefe and Allen Rd. The project will involve 34 single family homes starting at $280,000. They intend to close on the property in March.

   Staff is working with the developer to draft an agreement for the project. The expectation is that we will have a draft development for consideration in January.

3. **Land Bank Update**
   Arsenic issues on site are stopping progress on the project moving forward. The Land Bank is still looking for funding for the work.

BOARD COMMUNICATIONS – None

ADJOURNMENT at 4:30 PM

Submitted by Eric Zuzga

GL NUMBER	DESCRIPTION	2022-23 AMENDED BUDGET	YTD BALANCE 01/31/2023	AVAILABLE BALANCE	% BDGT USED
Fund 247 - NORTHEAST NEIGHBORHOOD IMPROVEMENT AUTH					
Revenues					
Dept 000					
247-000-402.00	Current Property Taxes	41,080.00	54,644.06	(13,564.06)	133.02
247-000-665.00	Interest	0.00	198.50	(198.50)	100.00
Total Dept 000		41,080.00	54,842.56	(13,762.56)	133.50
TOTAL REVENUES		41,080.00	54,842.56	(13,762.56)	133.50
Expenditures					
Dept 000					
247-000-801.00	Professional Services	0.00	595.00	(595.00)	100.00
247-000-955.00	COST ALLOCATION	127.00	63.50	63.50	50.00
Total Dept 000		127.00	658.50	(531.50)	518.50
TOTAL EXPENDITURES		127.00	658.50	(531.50)	518.50
Fund 247 - NORTHEAST NEIGHBORHOOD IMPROVEMENT AUTH:					
TOTAL REVENUES		41,080.00	54,842.56	(13,762.56)	133.50
TOTAL EXPENDITURES		127.00	658.50	(531.50)	518.50
NET OF REVENUES & EXPENDITURES		40,953.00	54,184.06	(13,231.06)	132.31
BEG. FUND BALANCE		56,456.88	56,456.88		
END FUND BALANCE		97,409.88	110,640.94		

ITEM 10.A

TO:	Northeast Neighborhood Improvement Authority
FROM:	Eric Zuzga, Director of Community Services
DATE:	February 21, 2023
SUBJECT:	Forest Street Development Agreement

BUDGET IMPACT:

RECOMMENDATION:

DEVELOPMENT AGREEMENT- FOREST STREET

GREEN DEVELOPMENT VENTURES

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the date appearing below, by and between the City of Marshall whose addresses is 323 W. Michigan Avenue, Marshall, Michigan 49068 ("City"), the City of Marshall Northeast Neighborhood Improvement Authority, a Michigan governmental authority, whose address is 323 W. Michigan Avenue, Marshall, Michigan 49068 ("Authority"), and Green Development Ventures, LLC, a Michigan limited liability company, whose address is 2186 Centre Drive, Portage, MI 49024, ("Developer").

WITNESSETH:

WHEREAS, the City of Marshall did through the process set forth in Public Act 57 of 2018, to create the Authority which has the powers as set forth in Public Act 57 of 2018; and

WHEREAS, the Developer is a limited liability company organized under the Michigan Limited Liability Company Act, 1993 PA 23, as amended (codified at MCL 450.4101, et seq.), and exercising all of the powers provided for therein; and

WHEREAS, the City of Marshall has recognized the need for the development of new residential housing in the City and through its City Council determined that the formation of a Neighborhood Improvement Authority ("NIA"), as authorized Public Act 57 of 2018, is the most appropriate way to encourage the construction of residential housing in order to promote economic growth in the City of Marshall; and

WHEREAS, the use of a NIA will allow the following:

- Use of tax increment financing to complete improvement projects;
- Create a clear plan to improve the designated plan area;
- Encourage home ownership by bringing more people into the area to live, work, and play;

- Encourage property improvements and development, thus increasing the City's tax base; and
- Create an enhanced neighborhood that retains residents;

and

WHEREAS the City of Marshall did adopt the Authority Development and Tax Increment Finance Plan on April 15, 2019 ("Development Plan"); and

WHEREAS the adopted Development Plan includes within its designated area the property known as Briarwood Lane Condominium which is described as follows:

Property located in the City of Marshall, Calhoun County, Michigan, and legally described as:

Description of Phase I:

Part of the Southwest ¼ of Section 19, Town 2 South, Range 5 West, City of Marshall, Calhoun County, Michigan, described as: commencing at the Southwest comer of said Section 19; thence North 00° 09' 00" East 1672.18 feet along the West line of said Section to the Southwest comer of Lot 198 of East Drive No. 7 according to the plat thereof as recorded in Liber 18 of plats on Pages 23 and 23-A in the Office of the Register of Deeds for Calhoun County, Michigan, which is the true point of beginning of this description; thence South 89° 48' 38" East 150.08 feet to the Southeast comer of said Lot 198; thence South 00° 05' 39" West, 320.01 feet; thence South 89° 51' 18" East, 175.83 feet; thence South 42° 39' 15" East, 94.71 feet; thence South 80° 30' 20" East, 149.62 feet to the West line of Lot 225 of the plat of East Drive No. 8 according to the plat thereof as recorded in Liber 18 of Plats, on Page 35; thence 576.44 feet along the Westerly and Northerly line of said East Drive No. 8 and the arc of a curve to the right whose radius is 518.98 feet and whose chord bears South 39° 10' 41" West 547.26 feet; thence South 71° 09' 51" West 102.02 feet along said line of East Drive No. 8; thence North 20° 52' 40" West 124.58 feet; thence South 64° 16' 33" West 58.20 feet to Point "K" of the Plat of East Drive No. 5 according to the Plat thereof as recorded in Liber 16 of Plats on Page 02 in the Office of the Register of Deeds for Calhoun County; thence North 00° 1O' 35" East 73.45 feet to Point "J" of said East Drive No. 5; thence North 64° 11' 55" East 100.02 feet; thence North 25° 01' 21" West 209.98 feet to the East line of East Drive No. 4 according to the plat thereof as recorded in Liber 12 of Plats on Page 53 in the Office of the Register of Deeds for Calhoun County, Michigan; thence North 00° 03' 52" East 474.06 feet along said East line to the point of beginning. Containing 5.85 acres, more or less

Subject to any easements, restrictions, or conditions of record.

Description of Phase II:

Part of the Southwest ¼ of Section 19, Town 2 South, Range 5 West, City of Marshall, Calhoun County, Michigan, described as: commencing at the Southwest comer of said Section 19; thence North 00° 09' 00" East 1672.18 feet along the West line of said Section to the Southwest comer of Lot 198 of East Drive No. 7 according to the plat thereof as recorded in Liber 18 of plats on Pages 23 and 23-A in the Office of the Register of Deeds for Calhoun County, Michigan; thence South 89° 48' 38" East 150.08 feet to the Southeast comer of said Lot 198, which is the true point of beginning of this description; thence North 40° 39' 04" East 341.58 feet to the Southwest comer of Lot 194 of said East Drive No. 7; thence South 89° 57' 14" East 210.33 feet to the Southeast comer of Lot 193 of said East Drive No. 7; thence South 00° 00' 15" East 170.14 feet; thence South 89° 49' 30" East 119.61 feet to the West line of O'Keefe Road of said East Drive No. 7; thence South 00° 04' 57" West 70.24 feet along said West line of O'Keefe Road to the Northwest comer of O'Keefe Road of East Drive No. 8 according to the plat thereof as recorded in Liber 18 of plats on Page 35 in the Office of the Register of Deeds for Calhoun County, Michigan; thence North 89° 48' 53" West 160.18 feet; thence South 00° 08' 12" West 368.86 feet along the Westerly line of said East Drive No. 8; thence 64.88 feet along the Westerly and Northerly line of said East Drive No. 8 and the arc of a curve to the right whose radius is 518.98 feet and whose chord bears South 03° 46' 37" West 64.84 feet; thence North 80°30' 20" West 149.62 feet; thence North 42° 39' 15" West, 94.71 feet; thence North 89° 51' 18" West, 175.83 feet; thence North 00° 05' 39" East, 320.01 feet to the point of beginning. Containing 5.31 acres, more or less.

Subject to any easements, restrictions, or conditions of record.

Commonly known as: Briarwood Lane Condominium, Forest Street, Marshall, Michigan 49068
Property Tax Identification:

Development Property
Project Area A- the following lots in Phase 1: Lots 1-5 and 10
Project Area B- the following lots in Phase 2: Lots 11-21

(the "Development Property – Forest Street" – a sketch of the Development Property is attached hereto as Exhibit A);

and

WHEREAS, the Development Property – Forest Street, also referred to as the Briarwood Lane Condominium, has been subdivided in accordance with Michigan law and correctly zoned under the City of Marshall zoning ordinance to allow for the immediate construction of residential structures; and

WHEREAS, the Development Plan recognizes that the following public infrastructure improvements are necessary in order to construct residential structures on the Development Property:

- Forest Street extended to O'Keefe Street;
- Sanitary Sewer system and Service Leads as needed for Forest Street;
- Stormwater infrastructure and management within the public right-of-way;
- Water service lines- to the curb stop;
- Streetlights;
- Road and other signage;
- Earthwork;
- City owned Ultra High-Speed fiber (Fibernet);
- Sidewalks, if desired, along the frontage of properties outside of the site condominium boundary (i.e. east of units 17 and 18, and west of units 6 and 7); and
- Any normal and customary expenses in regard to any of the items listed above for the Development Property.

(Collectively "public infrastructure improvements".)

WHEREAS, the following are excluded from "public infrastructure improvements" and shall be the responsibility of the Developer:

- Any expenses incurred by Developer prior to the date the bid is awarded by the City for public infrastructure improvements are excluded and will be the responsibility of the Developer;
- Developer shall install sidewalks in front of the residential structures constructed by Developer on both sides of Forest Street, excluding frontages associated with properties outside of the site condominium boundary.
- Electric Services
- Natural Gas
- Cable TV
- Master grading for the development

WHEREAS, the Developer agrees to construct residential structures on the lots within the Development Property as set forth herein; and

WHEREAS, the Authority agrees to finance and construct, or cause to be constructed, the public infrastructure improvements subject to the terms and conditions set forth herein; and

WHEREAS, the Developer agrees to comply with, including but not limited to, all ordinances, resolutions, policies, procedures, building code, International Property Maintenance Codes, fire codes, and other conditions of the City of Marshall relative to the construction of residential homes.

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. RECITALS. The foregoing recitals are incorporated in and form a part of this Agreement.

2. SCOPE OF PROJECT. The Project is more accurately described in Exhibit A - The Site Plan, but includes undeveloped parcels in the Briarwood Lane Condominium development. Developer agrees to and will construct at its sole cost seventeen residential structures on the Development Property. The structures shall be constructed in compliance with the requirements of the Briarwood Lane Condominium Master Deed, as amended, applicable state law, and codes, and City ordinances, including the City of Marshall Zoning Ordinance. Developer will submit proposed plans to the City of Marshall for review, but the parties agree that so long as Developer complies with City ordinances and the existing City of Marshall Zoning Ordinance, no additional administrative approvals, except standard building permits, are necessary relative to the construction of the structures as set forth herein.

Permits and Fees. Developer acknowledges and agrees that City shall charge and receive from the Developer all building permit fees and inspection fees for all construction activities conducted by the Developer in effect at the time this Agreement is executed. Developer agrees to pay for all water connection fees and sewer capacity charges incurred in connection with the development of the Project, pro rata, at the time of construction of each structure.

Staging Areas. The Developer will place all dumpsters and materials on property owned by Developer and not in the road right of way. Developer will not park or allow to be parked vehicles and construction vehicles within the road right-of-way except for as necessary for deliveries and temporary construction and installation of improvements.

3. COMMENCEMENT OF CONSTRUCTION BY DEVELOPER. Developer will commence construction of the first structure to be located in Project Area A of the Development Property on or before August 1, 2023. Construction on homes in Project Area B of the Development shall occur prior to or within three (3) months of the completion of the identified public infrastructure improvements and permit approval. Construction on the structures shall continue diligently without work stoppages, until completion. Construction will be considered to have begun at the issuance of building permits by the City of Marshall.

4. SCHEDULE FOR DEVELOPER.

a. Project Area A- In addition to the first model structure in Project Area A, as set forth in Paragraph 3, Developer will commence construction of an additional two (2) structures in project Area A on or before December 31, 2023. Developer will complete construction of three (3) additional structures by December 31, 2024, completing development of Project Area A:

b. Project Area B- Developer will commence construction on four (4) residential structures in Project Area B within 3 months of completion of the identified public infrastructure improvements. Developer will commence construction of additional residential structures as follows, measured cumulatively:

(1) 15 months following completion of public infrastructure investment and the ability to obtain building permits: four (4) structures;

(2) 27 months following completion of public infrastructure investment and the ability to obtain building permits: three (3) structures

5. PUBLIC INFRASTRUCTURE IMPROVEMENTS. Authority will, at its sole cost and discretion, provide such of the public infrastructure improvements as determined necessary for the construction of the structures as set forth in this Agreement. The parties agree that for the purposes of this Phase 1 Agreement, the Developer will bear the costs for expenses incurred related to public infrastructure improvements that occurred prior to the date of the Authority's bid award for said public infrastructure improvements. Authority anticipates that the infrastructure improvements will cost approximately Six Hundred Thousand Dollars ($600,000.00). Construction of the public infrastructure improvements shall begin as soon as can be reasonably scheduled after the approval of this Agreement and shall be timed such that they will be complete on or before September 1, 2024, or as reasonably practicable.

6. BONDING. To the extent that the Authority issues bonds to pay for some or all of the public infrastructure improvements, Developer agrees to reasonably cooperate in providing information to support the issuance of the bonds.

7. TERM OF AGREEMENT. The term of this Agreement shall be from the date of execution through the term of the bonds. The term of the Agreement may be extended by the mutual written consent of both parties.

8. DEFAULT BY DEVELOPER. Developer shall be deemed to be in default of this Agreement if the Developer fails to comply with any covenants, clauses, provisions, or agreements contained herein and Authority has provided Developer with thirty (30) days written notice of default and the opportunity to cure such default, which shall not exceed (60) days, provided however, that if the Developer can provide evidence that it is actively, diligently, and expeditiously working on curing the default but cannot achieve full cure of the default within the sixty (60) day period, Authority shall grant a mutually agreeable extension of time to cure to Developer.

Provided that Developer has been properly served with notice of default to the addresses provided herein, Developer must pay to Authority, within thirty (30) days of the passing of the applicable deadline, liquidated damages in the amount of Two Hundred and 00/100 Dollars ($200.00) per day for each day that Developer is in default of this Agreement, not to exceed each annual Developer's debt participation payment as set forth in Paragraph 13.

9. UTILITY LIENS AND ASSESSMENTS. In the event that, for any reason whatsoever, the Developer fails to substantially complete the Project, and apply for permits and pay all water and sewer charges required herein, the Developer consents that the equitable portion of any charges and the remaining bond balance at the time of default may be assessed against all property benefiting from such improvements, including the property contained in this Project, by the City Council as a special assessment for public infrastructure improvements.

10. FORCE MAJEURE. Neither City, Authority, nor Developer shall be considered in default of this Agreement to the extent that strict compliance or performance of any obligation, duty, or deadline is prevented by an act of God, fire, or vandalism.

11. CHANGE OF OWNERSHIP INTEREST. Except for mortgages, security interests, or other liens to secure debt granted to Developer in connection with the Development, neither the managing member of the Developer, nor any successor in interest to the managing member of the Developer, may transfer or otherwise change the ownership of the Development Property or transfer, assign or convey its rights, duties, or obligations under this Agreement, without the prior written approval of the Authority. Any such transfer or other change will not release, in any manner, the Developer or Developer's successors in interest, from any obligation under this Agreement, unless the Authority releases the Developer or its successors in interest in writing.

12. ANNUAL UPDATE. Developer agrees that on at least an annual basis, it will provide a presentation to the Marshall City Council and the Authority regarding the status of the construction of the homes pursuant to this Agreement.

13. TAX CAPTURE AND DEVELOPER PARTICIPATION IN DEBT PAYMENT. The Northeast Neighborhood Improvement Authority shall reserve and dedicate captured tax dollars in a given fiscal year towards the annual principal and interest amount requirement on any debt that may be outstanding as of June 30, of each succeeding year. In case that the amount reserved and dedicated is not sufficient to meet the principal and interest payment requirements on the debt, the Developer will be notified on or before August 1st of the amount of payment required, and the Developer shall pay to the Authority the difference between the tax capture and dept payment due in the year at issue to make principal and interest payments as required. A separate accounting shall be maintained of said payments by Developer. In future years when the total tax dollars captured in a given fiscal year are sufficient to cover the annual principal and interest payment on any outstanding bond debt payment that may be due, the difference between the amount captured and the actual annual bond debt payment shall be reimbursed to the Developer as calculated on an annual basis until any amounts paid by the Developer to cover the bond costs in prior years have been reimbursed to the Developer. This Agreement binds the parties, and their respective successors, representatives, and assigns.

14. LIMITATIONS ON TAX INCREMENT REVENUE. Nothing contained in this Agreement shall be construed to establish any liability on the part of the City or the Authority to reimburse the Developer for any costs or expenses, except to the extent that such costs and expenses are eligible expenses under one or more tax increment financing plans approved by the City and the Authority, and sufficient taxes are actually captured by the City or Authority to pay for such costs and expenses.

15. NO THIRD-PARTY BENEFICIARIES. The Parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Parties hereto and their successors and assigns including any lender participating in the financing of the Project, and in no event shall any other person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there are no third-party beneficiaries under this Agreement.

16. DEVELOPER'S INSURANCE AND INDEMNIFICATION.

a) Developer's Insurance. Prior to commencing construction on all or any portion of the development site, Developer shall and Developer shall cause its agents, contractors and subcontractors, (the "Developer Parties") to procure and maintain in full force and effect, at Developer's sole expense, Builders Risk, Commercial General Liability Insurance, Commercial Automobile Liability Insurance, (including coverage for owned automobiles and for non-owned and hired automobiles), Umbrella or Excess Liability Insurance for the Commercial General Liability Insurance and Commercial Automobile Liability Insurance, Professional Liability as specified herein and any other insurance as may be required from time to time. With the exception of Worker's Compensation and Professional Liability Insurance, each policy must (i) identify the Authority and the City and their respective successors and assigns (collectively, "Developer's Designees") as additional insureds and (ii) include an endorsement providing that coverage in favor of Developer's Designees will not be impaired in any way by any act, omission, or default of Developer, its contractors, employees, agents, representatives, or any other person. All insurance policies required hereunder shall be written as primary policies, not contributing with or in excess of any coverage maintained by the Authority or the City of Marshall. Developer shall provide the Authority and City with a Certificate of Insurance and a copy of the additional insured endorsement at any time upon request. Commercial General Liability Insurance, Commercial

Automobile Liability Insurance, Umbrella or Excess Coverage and Worker's Compensation Insurance shall be written with limits of liability not less than those shown below. Builders Risk policies for each portion of the Project will be for the completed value of the structures and the Infrastructure Improvements, either in whole or as component parts of the Project based upon the construction cost.

Builders Risk	As stated above
Commercial General Liability	
i. Each Occurrence	$1,000,000;
ii. General Aggregate	$2,000,000 and;
iii. Products/Completed Operations (Aggregate)	$2,000,000;
Personal and Advertising Injury	$1,000,000
Commercial Automobile	$1,000,000 combined single limit
Umbrella	$5,000,000 each occurrence
Worker's Compensation	Statutory limits
Employer's Liability	$1,000,000
Limited Pollution	$1,000,000
Professional Liability	$1,000,000

Developer shall, and shall cause all Developer Parties to, maintain in effect all insurance coverages required hereunder, at the Developer's sole expense or such Developer Party's sole expense. All insurance is to be issued by companies having a "General Policyholders Rating" of at least "A" and a financial rating of not less than Class XII. All insurance policies shall provide that the coverage afforded shall not be canceled or non-renewed or restrictive modifications added, until at least ten (10) days' prior written notice has been given to each of the Developer's

Designees. Developer shall, at least thirty (30) days prior to the expiration of such policies, furnish Authority with renewals thereof. In the event the Developer or Developer Parties fail to obtain or maintain any insurance coverage required under the Agreement, Authority may purchase such coverage and charge the cost thereof to Developer at 125% of the actual costs in order to compensate the Authority for the administrative time involved.

b) General Indemnification. To the extent, and only to the extent, not covered by the proceeds from the insurance policies required to be carried hereunder or under any other agreements between the parties hereto, the Developer agrees that it shall indemnify and hold harmless the Authority and the City from against and from any loss, damage, claim of damage, liability or expense to or for any person or property, whether based on contract, tort, negligence or otherwise, arising directly or indirectly out of or in connection with its acts or omissions in conjunction with the performance of this Agreement so indemnifying, its agents, servants, employees or contractors; provided, however, that nothing herein shall be construed to require a party to indemnify the other against such party's own acts, omissions, or neglect.

17. NOTICES. Except as otherwise specified herein, all notices, consents, approvals, requests, and other communications (collectively called "Notices") required or permitted under this Agreement must be given in writing and are effective on delivery. Delivery may be effectuated by personal service with receipt obtained; certified mail or first-class mail with delivery proof; or nationally recognized overnight courier delivery service with next business day delivery. Notices must be addressed as follows:

If to the Authority: City Manager
323 W. Michigan Avenue
Marshall, Michigan 49068

With a copy to: City Attorney

323 W. Michigan Avenue
Marshall, Michigan 49068

If to the Developer: Green Development Ventures, LLC
2186 Centre Drive
Portage, MI 49024

With a copy to: Developer's Attorney
Eric Guerin
2186 East Centre Avenue
Portage, MI 49002

18. SEVERABILITY. If any part, term, or provision of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining portions and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid unless it is a material term or provision of the agreement that would significantly alter the nature of the Agreement. All terms, conditions, responsibilities, duties, promises and obligations of the parties are binding upon the parties, their successors and assigns.

19. LIMITATION OF REMEDIES FOR DEVELOPER, WAIVER. Developer agrees that its sole and exclusive remedy against the Authority or the City of Marshall for any claim arising out of this development, including but not limited to claims arising out of this Agreement shall be to seek and obtain specific performance of the terms of this Agreement including temporary and permanent injunctive relief. All other claims arising out of this Project and this Agreement, whether for breach of contract, tort, or otherwise are waived by Developer. In the event that this Agreement is collaterally assigned to any other party, said party and lender and its successors and assigns shall have as its sole and exclusive remedy specific performance of the terms of this Agreement including temporary and permanent injunctive relief, and shall be deemed to have waived any other claims as specified in this provision. Each party shall be responsible for

its individual attorney fees, costs, and expenses, including expert witness fees and expenses, in any proceeding or court action to enforce the terms of this agreement. The award of any monetary relief shall be limited to the amounts owed in accordance with the terms of this Agreement, and the agreements and financing incorporated by reference in the terms of this Agreement in an action for specific performance, including temporary and permanent injunctive relief.

20. ASSIGNABILITY, TRANSFERABILITY, MODIFICATION. This Agreement is not assignable, transferable, or modifiable without the express written agreement of the parties which shall not be unreasonably conditioned, delayed, or denied. The Authority agrees to take reasonable steps necessary to promptly approve any assignment, transfer, or modification provided that any proposed new party to the Agreement agrees to be bound by the terms and conditions herein. Nothing in this Agreement beyond that stated herein shall be construed to hinder, delay, or prohibit the assignment, transferability or modification of this Agreement or prohibit the Authority's use of reasonable criteria to ensure that the Authority or City of Marshall are not subjected to additional material risk related to the Development as a result of any such assignment, transfer, or modification. If an assignment of this Agreement, including any and all ancillary agreements (to a party other than a state or federally regulated lender or financial services firm with assets in excess of $1,000,000,000 is requested by Developer prior to the issuance of all Certificates of Occupancy for the Project, reasonable criteria shall be considered by the Authority in order to insure that the proposed assignee has adequate financial strength and capabilities, reputation, experience and expertise and the proposed assignment does not subject the Authority to additional material risk related to the Development. Authority agrees to perform such review within 30 business days of receiving that information reasonably necessary for such review. If an assignment of this Agreement (including any and all ancillary agreements) is requested by Developer after the issuance of all Certificates of Occupancy for the Development, reasonable

criteria shall be defined as that criteria necessary to insure that the proposed assignee agrees to be legally bound by the terms and conditions herein. If the Authority properly declines to approve an assignment in accord with the provisions of this section, Developer shall remain obligated to complete its obligations under the Agreement.

21. COUNTERPARTS. This Agreement may be executed in counterparts, each of which is deemed an original document, but together constitute one instrument.

22. GOVERNING LAW AND INTERPRETATION. The laws of the State of Michigan govern this Agreement and the venue for all proceedings in connection with this Agreement shall be Calhoun County, Michigan. The pronouns and relative words used are written in the masculine and singular only. If more than one joins in the execution hereof as Developer or is of the feminine sex or a corporation or limited liability company, such words are read as if written in plural, feminine, or neuter, respectively.

23. HEADINGS. The sections and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the interpretation of the Agreement

24. LEGAL REPRESENTATION. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply due to the joint contribution of both parties.

25. WAIVER. The failure of either Party to exercise any right given hereunder or to insist upon strict compliance with regard to any provision of this Agreement, at any time, shall not constitute a waiver of such provision or the right by such at any time to avail itself of such remedies as it may have for any breach or breaches of such provision.

26. RELATIONSHIP OF THE PARTIES. The relationship of the Authority and the Developer shall be defined solely by the expressed terms of this Agreement, including the

implementing documents described or contemplated herein, and neither the cooperation of the parties hereunder nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the Authority and the Developer, nor shall any party or their agent be deemed to be the agent or employee of any party to this Agreement. Under no circumstances shall an agent, employee, or contractor of the Developer, be, nor considered to be, an employee of the Authority or of the City of Marshall.

27. ENTIRE AGREEMENT. The parties agree that this Development Agreement contains the entire terms and conditions between the Authority and Developer and that there are no other agreements, representations, statements, or understandings, which have been relied on by the parties.

28. DRAFTING AND CONSTRUCTION. All parties to this Agreement have participated fully and equally in the negotiation and preparation hereof; therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against any party hereto.

29. DUE AUTHORIZATION. The Authority and the Developer each warrant and represent to the other that this Agreement and the terms and condition thereof have been duly authorized and approved by, in the case of the Authority, its Board and all other governmental agencies whose approval may be required as a precaution to the effectiveness hereof, and as to the Developer, by the members thereof, and that the persons who have executed this Agreement below have been duly authorized to do so. The parties hereto agree to provide such opinions of counsel as to the due authorization and binding effect of this Agreement and the collateral documents contemplated hereby as the other party shall reasonably request.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

WITNESSES: CITY OF MARSHALL

_______________________________ By_______________________________
Jim Schwartz, Mayor

_______________________________ By_______________________________
Michelle Eubank, City Clerk

CITY OF MARSHALL SOUTH
NEIGHBORHOOD IMPROVEMENT
AUTHORITY

_______________________________ By_______________________________
Scott Wolfersberger, Chairperson

_______________________________ By_______________________________
Tom Larabel, Vice President
Green Development Ventures, LLC

APPROVED AS TO FORM:

By_______________________________
David M. Revore, City Attorney

EXHIBIT A – Proposed Plan for Phase 1

City of Marshall
Northeast Neighborhood Improvement Authority
Annual Report for Year ending 6/30/2022

Revenue:	Tax Increment Revenue		$	40,109
	Property taxes - from DDA millage only		$	-
	Interest		$	2
	State reimbursement for PPT loss		$	-
	Other income (grants, fees, donations, etc.)		$	-
		Total	$	40,111

Tax Increment Revenues Received				
	From counties		$	8,908
	From cities		$	26,375
	From townships		$	-
	From villages		$	-
	From libraries (if levied separately)		$	-
	From community colleges		$	4,826
	From local school districts-operating		$	-
	From local school districts-debt		$	-
	From intermediate school districts		$	
	From State Education Tax (SET)		$	-
		Total	**$**	**40,109**

Expenditures	Transfer to other funds		$	2,500
	Capital Outlay		$	16,538
			$	-
	Transfers to General Fund		$	-
		Total	$	19,038

CITY OF Marshall MICHIGAN

ITEM 9.C

TO:	Northeast Neighborhood Improvement Authority
FROM:	William Dopp, Finance Director/ City Treasurer
DATE:	January 17, 2023
SUBJECT:	Annual Report

Pursuant to MCL 125.1665(3), the NE-NIA shall annually submit to the governing body (City Council) and the Michigan Tax Commission a report on the status of its tax increment financing activity and publish the report in a newspaper of general circulation. Public Act 57 outlines specifically what the format and contents of the report Tax Increment Financing Authorities shall submit.

BUDGET IMPACT:
No budetary impact.

RECOMMENDATION:
The NE-NIA Board of Directors accept and place on file the FY22 NE-NIA Annual Reports and forward the Annual Reports to City Council.