

## CITY of NOVI CITY COUNCIL

**Agenda Item 3**  
**April 15, 2019**

**SUBJECT:** Consideration to approve Third Amendment to the previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive.

**SUBMITTING DEPARTMENT:**

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

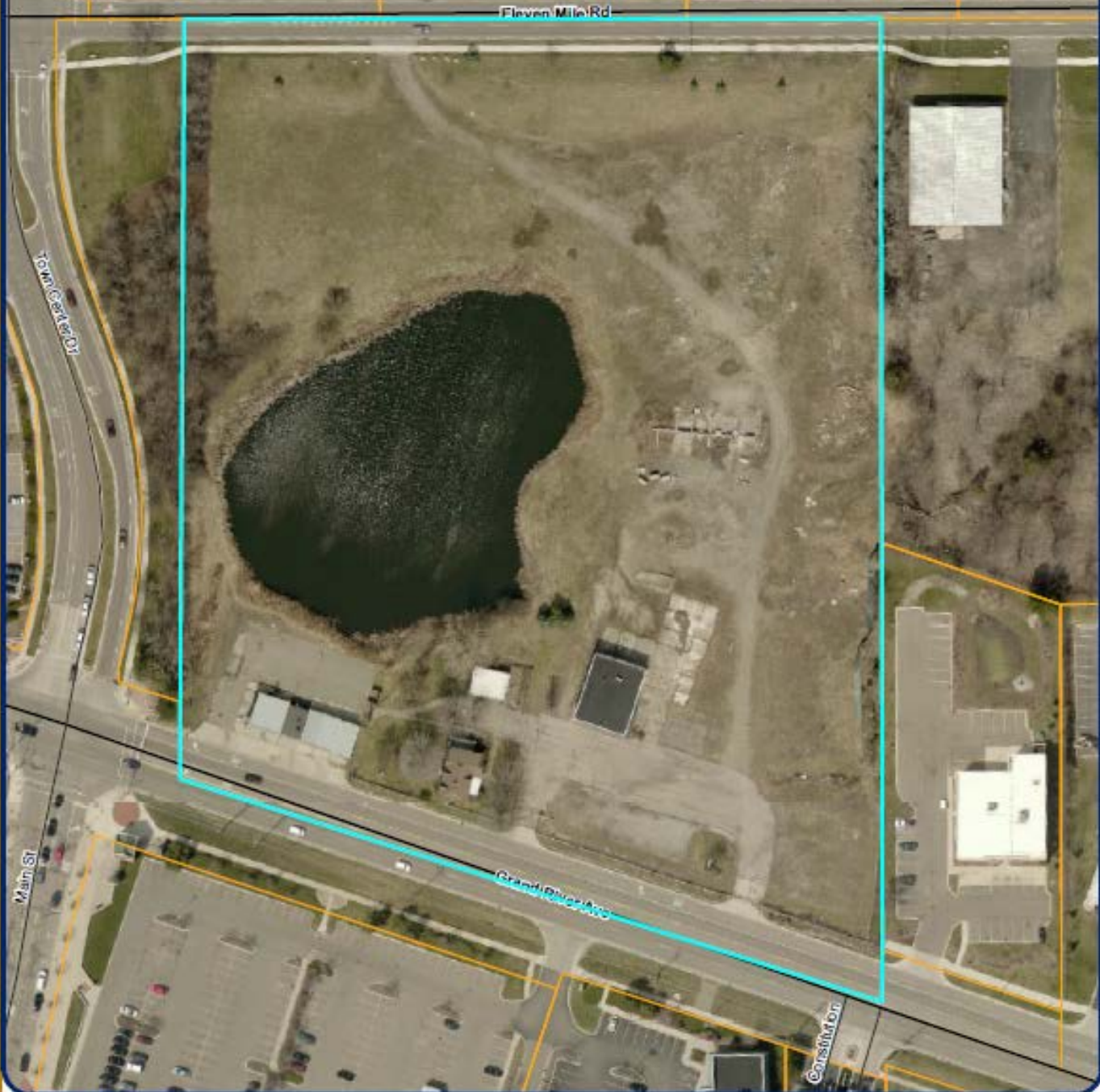
City Council is being asked to amend the purchase agreement for the Anglin property (for the "Asian Village" project) in order to:

- Confirm that the Purchaser's inspection period has passed (it had been extended in previous amendments).
- To extend the date for Purchaser to file its PRO application (although not to extend the date by which the Purchaser must receive approval of a PRO).
- Change the new zoning district for the proposed PRO from TC to TC-1 (at City staff's recommendation following submission of Purchaser's draft concept plan).
- Add a provision that Purchaser will apply for a Commercial Rehabilitation District tax abatement. Approval by the City of the tax abatement is a condition of Purchaser being required to close; however, Council is not obligated to approve either the CRD District or the exemption certificate. The draft amendment acknowledges that the City and the Purchaser would need to enter into an abatement agreement as part of the process. Purchaser's remedy if Council fails to approve the abatement is to terminate the agreement and receive its deposit back (i.e., the same remedy Purchaser has if Council doesn't approve the PRO). Purchaser has determined to seek the tax abatement in light of anticipated increased costs of development due to what is has determined to be poor soils discovered during the inspection period. A CRD abatement is only of local taxes (county and city).

**RECOMMENDED ACTION:** Approve Third Amendment to previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive, and to authorize the mayor and Clerk to sign the same, subject to final review and approval of the terms and conditions of the Purchase Agreement by the City Manager and City Attorney's office, including minor amendments thereto.



**42750 Grand River Ave**  
City of Novi, Michigan



Map Author: Karl Blough  
Date: May 2, 2018  
Project: Anglin Property  
Version #: 1.0

Approved By:  
Date:  
Department:

**MAP INFORMATION**

Map information displayed is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate data available to the people of the City of Novi. Boundary measurements and area calculations and determinations should not be considered as being measurements performed by a Licensed Michigan Surveyor as defined by Michigan Public Act 322 of 1977 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

**Map Legend**

- Freeway
- Major Streets
- Minor Streets
- Tax Parcels



**City of Novi**  
Integrated Solutions Team  
Geospatial Resources Division  
45175 Ten Mile Rd  
Novi, MI 48375  
cityofnovi.org



## Council Meeting Draft 4.10.19

### THIRD AMENDMENT TO CONDITIONAL AGREEMENT OF PURCHASE AND SALE NORTH GRAND RIVER CITY PROPERTY

THIS THIRD AMENDMENT TO CONDITIONAL AGREEMENT OF PURCHASE AND SALE (“**Amendment**”) is made as of April \_\_\_\_, 2019 by and between the CITY OF NOVI, a Michigan municipal corporation (“**Seller**”), and SAKURA NOVI, LLC, a Michigan limited liability company (“**Purchaser**”), with regard to the following:

A. Seller and Purchaser entered into a certain Conditional Agreement of Purchase and Sale North Grand River City Property dated June 21, 2018 for the purchase and sale of the Anglin Parcel and the Town Center Parcel, as defined and described in the such agreement, as amended by that certain First Amendment dated November 2, 2018, and that certain Second Amendment dated December 17, 2018 (as amended, the “**Agreement**”).

B. The parties desire to amend the Agreement to add a condition, terminate the Inspection Period, extend the time period to submit the application for PRO approval, and revise the underlying zoning classification, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties amend the Agreement as follows:

1. The parties confirm and agree that the Inspection Period, as defined in Section 1(g) of the Agreement, has expired.

2. The first paragraph of Section 7 of the Agreement is hereby amended to extend the deadline for Purchaser to submit its application for PRO approval from February 21, 2019 to four (4) weeks after the date of this Amendment.

3. The third sentence of the first paragraph of Section 7 of the Agreement is hereby amended to replace “rezoning of the Property to the TC District,” with “rezoning of the Property to the TC-I District.”

4. The existing language in Section 7, following the title of the Section (“Development Approval Conditions”) shall be designated subsection (a) and entitled “Planned Rezoning Overlay Approval.” A new subsection (b) entitled “Commercial Rehabilitation District Approval” shall be added as follows:

In addition to undertaking the actions required to secure approval of a PRO and PRO Agreement, within 30 days Purchaser will file a written request to the Seller for establishment of a Commercial Rehabilitation District under Section 3 of Act 210 of 2005

("the **Act**"), being MCL 207.843, comprising the Property, the Ecco Parcels, and the Eleven Mile Parcel as described herein (the "**District**"). Seller will process the request in accordance with the requirements of the Act, along with the Purchaser's PRO application.

Seller shall determine when and whether to establish a Commercial Rehabilitation District. Purchaser acknowledges that the Seller may, as part of its authority under the Act, adopt at the time of the establishment of the District a Tax Abatement Policy similar in form and content to that adopted for the District created for the Ten Mile/Meadowbrook area ("**Policy**"), and that such Policy will govern any approval of Exemption Certificates for the development proposed. The terms and conditions of the Policy shall be in the Seller's sole and absolute discretion. Purchaser also acknowledges and agrees that a written agreement between the Seller and the Purchaser, upon terms agreeable to the Seller ("**Agreement**"), shall be required as part of any approval by Seller of an Exemption Certificate for the property within such District.

Seller makes no representation in this Agreement or otherwise that the Commercial Rehabilitation District or the Exemption Certificate(s) ("**Exemption Certificate(s)**") will be approved by the Seller. Notwithstanding anything else in this Agreement, Seller retains all its right and discretion under applicable law and ordinances to approve or reject establishment of the District or issuance of the Exemption Certificate(s), and this Agreement does not limit or waive its authority under the Act in any way. Seller's failure to approve the establishment of the Commercial Rehabilitation District or the Exemption Certificate(s) shall not constitute a default or breach for the purposes of this Agreement. Purchaser agrees that it will not appeal the denial of either action to the Michigan State Tax Commission or any other entity responsible for reviewing such decisions.

Purchaser's obligation to close and purchase any or all of the Property is subject to and contingent upon (i) the creation of the Commercial Rehabilitation District pursuant to the Act over the District as requested by Purchaser and approved by the City, Oakland County and the State of Michigan, (ii) Purchaser's agreement with the terms of the Policy and the Agreement in Purchaser's sole and absolute discretion, and (iii) the approval by the City, Oakland County and the State of Michigan of the Exemption Certificate(s) applied for by Purchaser with terms acceptable to Purchaser in its sole and absolute discretion. If these conditions are not satisfied or waived by Purchaser in writing by the Closing Date, then Purchaser may terminate this Agreement and receive a refund of its Deposit and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated.

5. Section 9(a), Default by Seller, is amended to read as follows:

In the event that Seller should default or otherwise fail to consummate the transactions contemplated by this Agreement for any reason except for (i) Purchaser's default, which is not cured within ten (10) days after written notice from Seller, (ii) failure on the part of the City of Novi to approve the PRO application and PRO plan, or (iii) failure on the part of the City of Novi to approve Commercial Rehabilitation District or the Commercial Rehabilitation Exemption Certificate, then Purchaser may either (a) terminate this Agreement by giving prompt written notice thereof to Seller, upon which the Deposit shall

be refunded to Purchaser in full and the Parties shall have no further obligations under this Agreement, or (b) specifically enforce this Agreement; provided, however, that in the event that such failure of Seller was beyond Seller's reasonable control, Purchaser's sole remedy shall be to so terminate this Agreement; provided, further, in the event Purchaser elects to specifically enforce this Agreement it must institute such action within thirty (30) days following Seller's default, failing which Purchaser shall be deemed to have waived the right to pursue specific performance.

6. The parties hereby confirm and ratify all provisions of the Agreement, which shall and do remain in full force and effect as amended hereby. This Amendment may be signed in counterparts, each of which will be deemed an original document, but all of which together will constitute one and the same document. Faxed and pdf scanned signatures shall be deemed original signatures for purposes of this Amendment. All capitalized, undefined terms in this Amendment shall have the same meaning as defined in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Conditional Agreement of Purchase and Sale North Grand River City Property on the date first above written.

**PURCHASER:**

SAKURA NOVI, LLC,  
a Michigan limited liability company

By: \_\_\_\_\_  
Geoffrey Scott Aikens, Trustee of  
the Geoffrey Scott Aikens Trust  
u/a/d December 10, 2011

**SELLER:**

CITY OF NOVI, MICHIGAN,  
a Michigan municipal corporation

By: \_\_\_\_\_  
Robert J. Gatt, Mayor

By: \_\_\_\_\_  
Courtney Hanson, City Clerk