

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 10, 2013

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Upgrade Storage Area Network (SAN). IT DEPARTMENT
 - C. Plow Truck Set-up. PUBLIC WORKS
- ❑ PUBLIC HEARINGS:
 - A. Consolidated Annual Performance Evaluation Report (CAPER 2012). COMMUNITY & NEIGHBORHOOD SERVICES
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
- ❑ NEW BUSINESS:
 - A. Approval of Sale of City-Owned Home at 539 Orchard. COMMUNITY & NEIGHBORHOOD SERVICES
 - B. Revised Ground Lease – 1601 Beach, LLC. CITY MANAGER
- ❑ ANY OTHER BUSINESS:
- ❑ PUBLIC PARTICIPATION:
 - *Reminder: Individuals who would like to address the City Commission shall do the following:*
 - Fill out a request to speak form attached to the agenda or located in the back of the room.
 - Submit the form to the City Clerk.
 - Be recognized by the Chair.

- Step forward to the microphone.
- State name and address.
- Limit of 3 minutes to address the Commission.
- (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

❑ **CLOSED SESSION:**

❑ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE CUMMINGS, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1 TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Date: September 10, 2013
To: Honorable Mayor and City Commissioners
From: Ann Marie Cummings, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the August 27th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 27, 2013

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, August 27, 2013.

Mayor Gawron opened the meeting with a prayer from Pastor Marcy Miller from Samuel Lutheran Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Gawron, Vice Mayor Lawrence Spataro, Commissioners Eric Hood, Willie German, Byron Turnquist, and Lea Markowski, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Cummings.

Absent: Commissioner Sue Wierengo

2013-71 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the August 12th Commission Worksession Meeting, and the August 13th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. 2013 – 2014 Muskegon High School Community Officer Agreement. PUBLIC SAFETY

SUMMARY OF REQUEST: To approve the 2013-2014 Muskegon High School Community Officer Agreement. This agreement provides Muskegon High School with a Community Officer during the nine months school is in session.

FINANCIAL IMPACT: Muskegon Public Schools agrees to pay the City of Muskegon \$2,185.45 each month, from September 2013 through May 2014, totaling \$19,669.05.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the 2013-2014 Muskegon High School Community Officer Agreement.

C. Emergency Pump Replacement of Sherman Lift Station. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to purchase one new 25 HP Flygt Submersible Sewage Pump from Kennedy Industries for the quoted price of \$16,958.

FINANCIAL IMPACT: Total cost \$16,958.

BUDGET ACTION REQUIRED: None, expenditures for the purchase would come from the Sewer Budget.

STAFF RECOMMENDATION: Approve purchase.

D. City – MDOT Agreement for the Reconstruction of Laketon Avenue between Park and Peck. ENGINEERING

SUMMARY OF REQUEST: Approve the contract with MDOT for the reconstruction of Laketon Avenue between Peck and Park and approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the approved federal funds of \$704,475. The estimated total construction cost is \$1,129,000 plus engineering cost.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approve the contract and resolution authorizing the Mayor and Clerk to sign both.

F. Youth Basketball League and Open Gym Proposal – Muskegon Public Schools. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The City of Muskegon has contracted with the Muskegon Public Schools ("Schools") for the management of the Youth Basketball League and Open Gym since 2010. The program has been successful and the Schools would like to manage the program for the 2013-2014 school year. The Commission is requested to approve the proposal and authorize staff to enter into an agreement with the Schools for oversight of the basketball program and the Open Gym program.

FINANCIAL IMPACT: The cost for the program is \$18,500 (which has not changed since 2010).

BUDGET ACTION REQUIRED: Funds are available through the Leisure Services budget.

STAFF RECOMMENDATION: To approve the "Youth Basketball League and Open Gym Proposal" and authorize staff to enter into a formal agreement with the Schools.

G. Gaming License Request from the Muskegon Rotary Foundation. CITY CLERK

SUMMARY OF REQUEST: The Muskegon Rotary Foundation is requesting a resolution recognizing them as a non-profit organization operating in the City for the purpose of obtaining a Gaming License. They have been recognized as a 501(c)(3) organization by the State.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

Motion by Vice Mayor Spataro, second by Commissioner Hood to approve the Consent Agenda as read except for item E.

**ROLL VOTE: Ayes: Hood, Spataro, German, Turnquist, Markowski, and Gawron
Nays: None**

MOTION PASSES

2013-72 ITEM REMOVED FROM THE CONSENT AGENDA:

E. Request to Re-Float Ten Finger Piers at Hartshorn Marina. PUBLIC WORKS

SUMMARY OF REQUEST: Authorize staff to contract with Great Lakes Dock and Materials, L.L.C. of 559 E. Western Avenue to repair ten floating docks in the large boat basin.

FINANCIAL IMPACT: \$12,000 from the Marina Fund.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Authorize staff to hire Great Lakes Dock and Materials, L.L.C.

Motion by Commissioner Markowski, second by Commissioner German to approve the request to re-float ten finger piers at Hartshorn Marina.

**ROLL VOTE: Ayes: Spataro, German, Turnquist, Markowski, Gawron, and Hood
Nays: None**

MOTION PASSES

2013-73 PUBLIC HEARINGS:

A. Issuance of a Commercial Rehabilitation Certificate – 316 Morris Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 210 of 2005, as amended, the Hinman Company has requested the issuance of a Commercial Rehabilitation Certificate. The City Commission approved the creation of the Commercial

Rehabilitation District on January 22, 2013. The certificate will freeze the taxable value of the building and exempt the new real property investment from local taxes. The school operating tax and the State Education Tax (SET) are still levied on the new investment. The company will be investing over \$450,000 in the building, which qualifies them for an abatement of 10 years.

FINANCIAL IMPACT: The real property taxes would be frozen at their pre-rehabilitated rate for the duration of the certificate.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Establishment of the Commercial Rehabilitation Certificate.

The Public Hearing opened to hear and consider any comments from the public. Andy Winslow, Director of Development for Hinman Company gave an overview of the work that was done and the number of jobs that have been added. No public comments were made.

Motion by Commissioner German, second by Vice Mayor Spataro to close the Public Hearing and establish the Commercial Rehabilitation Certificate.

ROLL VOTE: Ayes: German, Turnquist, Markowski, Gawron, Hood, and Spataro

Nays: None

MOTION PASSES

B. Establishment of a Commercial Rehabilitation District – 500 W. Western Avenue. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 201 of 2005, as amended, 500 W. Western Ave. LLC has requested the establishment of a Commercial Rehabilitation District. The creation of the district will allow the building owner to apply for a Commercial Rehabilitation Certificate, which will freeze the taxable value of the building and exempt the new real property investment from local taxes. The school operating tax and the State Education Tax (SET) are still levied on the new investment. Land and personal property cannot be abated under this act.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Establishment of the Commercial Rehabilitation District.

The Public Hearing opened to hear and consider any comments from the public. Chris Knots gave an overview. No public comments were made.

Motion by Vice Mayor Spataro, second by Commissioner German to close the Public Hearing and establish the Commercial Rehabilitation District for 500 W.

Western Avenue.

ROLL VOTE: Ayes: Turnquist, Markowski, Gawron, Hood, Spataro, and German

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:08 pm.

Respectfully submitted

Ann Marie Cummings, MMC
City Clerk

Date: August 20, 2013

To: Honorable Mayor and City Commissioners

From: IT Department

RE: Upgrade Storage Area Network (SAN)

SUMMARY OF REQUEST: The City has received three quotes for the purchase of a storage area network (SAN) upgrade. This equipment provides virtualized network storage for the 16 servers that run all city computer operations. The new equipment will provide needed expansion and full redundancy/backup for all city servers.

Vendor	Price	Location
Dell Direct	\$22,107.19	Dallas, TX
ISI	16,142.09	Grand Rapids
Trivalent Group	21,600.00	Grandville

Staff recommends purchasing the equipment from the low bidder (ISI). This company has previously provided equipment for the City's VOIP phone system.

FINANCIAL IMPACT: Purchase of this equipment will provide complete redundancy and safeguards for disaster recovery. It will also allow us to meet data storage demands as city department increase storage of image, documents and other large files.

BUDGET ACTION REQUIRED: Funds for this purchase are included in the FY14 budget.

STAFF RECOMMENDATION: Approval of purchase.

Date: 9/10/2013

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Plow Truck Set-up

SUMMARY OF REQUEST:

Authorize staff to proceed with the set-up and installation of (2) new plow/salt truck Dump boxes and underbody scrapers from Truck & Trailer Specialties, the only qualified bidder on State Contract (Mi-Deal).

FINANCIAL IMPACT:

\$51,353.00 each for a total of \$102,706.00

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to proceed with set-up and installation of (2) new plow/salt truck Dump boxes and underbody scrapers from Truck & Trailer Specialties.

Commission Meeting Date: September 10, 2013

Date: September 3, 2013
To: Honorable Mayor & City Commission
**From: Community and Neighborhood Services
Department**
**RE: Request to conduct a Public Hearing of the
Community & Neighborhood Services Department
Consolidated Annual Performance Evaluation
Report (CAPER 2012)**

SUMMARY OF REQUEST: To conduct a public hearing of the 2012-2013 CAPER projects funded through CDBG and HOME allocations to the City of Muskegon Community and Neighborhood Services department.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To submit the 2012-2013 CAPER including any public comments received during the 30 day comment period ending September 26, 2013.

COMMITTEE RECOMMENDATION: None



City of Muskegon
Community Development Block Grant
Consolidated Annual Performance and Evaluation
Report
2012 Grant



2012 Program Year CAPER

Executive Summary

An overview of our 2012 projects funded by CDBG and HOME are listed below tracking of the activities beginning July 1, 2012 through June 30, 2013, respectively. Because our current funding was not available, we offered extensions through July 15, 2013 however, we concluded closer to August 25, 2013.

CDBG Chart

Affirmative Action	\$10,000	Supplements Affirmative Action Staff
Code Enforcement	\$50,000	1 of 3 Code Compliance Inspectors
Facade	\$10,000	\$2,000 - \$5,000 grants for Muskegon business owners
Fire Station Bond	\$157,870	City Payments
Admin	\$140,000	Supports CNS staff
Dangerous Building/Demolition	\$40,000	Curtails neighborhood blight
Youth Recreation	\$70,000	Provide grants to local youth centered projects with an emphasis on self-building exercises
Vinyl Siding	\$50,000	Cover cost of vinyl siding eligible homes within city limits
Priority Housing Repair (Emergency Repair)	200,000	Offer housing repairs to low-income families
Service Delivery Housing Repairs and Vinyl Siding	60,000	Specific to the program management
LOVE-Ramps	3,500	Assist eligible households with accessible entry ramps
LOVE – Utilities	4,500	To help families with rent and utility payments to avoid eviction and shut-offs
Street Construction	\$31,986	Assist staff with the necessary oversight and reporting required to complete Getty Street

Our accomplishments in the Integrated Disbursement Information System (IDIS) have been updated and activities closed as it relates to the final draws for 2012. As a result, only one project was canceled and that was for our Street Construction. The engineering department was unable to select and process a street project in an approved neighborhood prior to the close of 2012. There has been an identified project for the upcoming 2013 fiscal year instead.

In addition, two projects were planned to move forward with Façade grants. Only one project was approved for assistance and it was located in Marsh neighborhood, census tract #5.

HOME CHART

HOME Admin	\$24,629	Support for staff working on HOME projects
CHDO Reserve	\$36,944.85	Assist community housing development organizations with required funding to produce affordable housing units
CHDO Operating	\$3,555.15	Staffing miscellaneous operating costs
Infill Housing	\$161,170	Build new home for Home Buyer Program
Rental Rehab	\$20,000	Provide assistance to landlords in the City of Muskegon for lead abatement and rehabilitation

Through our HOME activities we met the goals set forth and were able to rehabilitate one property and complete and sell a newly constructed property in Jackson Hill neighborhood, census tract #42. We canceled two projects that were not able to be acquired as an affordable housing unit.

One of the year's highlights included Muskegon County and our sister cities, Muskegon Heights and Norton Shores, partnering with an Interagency agreement which contracted the Fair Housing Agency of West Michigan (FHA). This agreement enlisted surveys, testing, training and reports of our Muskegon Area Fair Housing behaviors and tendencies. We agreed to reduce the FHA requirement to a mid-year and end of the year report. This saved us all money and between quarters, we really didn't see the need to report so frequently.

As the year ended, we were still attempting to work with MSHDA through a technical assistance (TA) opportunity to form a HOME Consortium for the 2014 funding year. We agreed to accept TA for building a HOME Consortium and Muskegon, Muskegon Heights, Norton Shores, Roosevelt Park and North Muskegon so we included Placemaking strategy our proposal to meet the expectation of MSHDA. The HOME activities that could be added to the other cities will be the driving force to become a regional group benefiting residents in the county. We see the partnership as *possibilities* through a HOME Consortium.

This partnership was halted by the response of MSHDA. Without a certification from MSHDA the local support from the county and other regional affiliates came without an opportunity to proceed. Our current request to HUD was withdrawn because we lacked the required MSHDA certification for our HOME Consortia.

This year, four rental housing units were accepted to our Rental Rehabilitation Program through HOME funding. We funded one CHDO and one property completed

through the assistance of the county's lead grant. 2009 Building Code standards apply and all housing projects whether rehab or new, will comply with these standards.

We continue to work together on the promotion of qualified contractors that provide quality work that meets our housing codes while promoting efforts to reach minority and female-owned businesses. We asked a MSHDA Section 3 staffer to facilitate an informational training for our local contractors. Increasing the number of Section 3 Contractors was our goal and we were amazed to see that some contractors were considering themselves as a designated Section 3 agency and we had no knowledge. Overall, the group was provided with the background and process for reaching Section 3 designation.

General Questions

Any obstacles we faced in meeting the underserved needs could be addressed by funding resources. We do not have a match requirement in our community so the biggest challenge was met head on by the reduction of Muskegon's 2011 grant allocation. We made policy changes to offset less funding, we continue to serve low income households and ultimately we can only fund one sub-recipient agency to help meet this goal. In the end, we lost some staple programs but the city uses a portion of its general fund resources to provide youth with after-school activities, open gym and fund a number of summer programs offered throughout our city.

Managing the Process

Community and Neighborhood Services works as the city's liaison to comply with planning requirements and programs. We were selected to receive a monitoring visit from Detroit HUD for our HOME Program and activities associated with compliance issues. As a result we looked at policies, procedures, programs, statutes, regulations and projects invested with HOME dollars. The monitoring allowed us to enhance our core programs for future coordination as we build a HOME Consortium. As the Lead Agency, we can use this monitoring report to fill the gaps in our current process as we move forward with a HOME Consortium in 2014.

Fair Housing

LEAD BASED PAINT

The County of Muskegon's application was approved and continues to assist citizens throughout the county through a Lead Hazard Reduction Program managed by Public Health Muskegon County. As before, the City of Muskegon continues to commit funding to rentals units within our city limits who agree to test for Lead Based Paint hazards.

- We provide referrals from our past Lead Grant.
- We publicized the program to every property owner requesting rental assistance for rehabilitation.
- We accepted four applications for assistance with Lead Based Paint remediation.

The county will test; we will cover non-lead rehab cost @ a ratio of 50/50 and if necessary, fill the gap above the maximum grant threshold. We are committed to reducing lead based paint hazards in rental units in the City of Muskegon and we have made every effort to partner with the county to help our citizens in this regard.

Community Development

In an effort to initiate job growth, we teamed up with the Michigan Works Department and sponsored a Job Fair for Section 3 residents. The attempt was to establish a list of potential workers to assist contractors on our future job sites. In the end, the list consisted of 30 plus individuals and roughly 15 were able to be confirmed as both Section 3 and interested, potential construction workers.

Housing Needs

Goals and objectives per Action Plan 2012 are to maintain affordable housing units while stabilizing neighborhoods as priorities 1 and 2. Specifically,

Objective 1: To serve families direct through...

Goal 1: Emergency repairs/50 households

Goal 2: Vinyl siding; 10 homes

Goal 3: Weatherizing/canceled (returned to draw as Emergency Repair)

Objective 2: Increase housing opportunities

Goal: Construct one new home and rehab 1

Case No.	Type of Repair						Total Amount	Ethnic					Senior	Income		
	R	F	E	P/S	O	Description		B	W	H	A	AI		60%	30 - 50%	20%
2012-01	1						\$3,087.00	1							1	
2012-02	1						\$5,637.00	1								1
2012-03	1						\$4,056.00		1				1			1
2012-04			1				\$907.69		1				1		1	
2012-05	1						\$7,120.00		1						1	
2012-06	1						\$4,543.50	1					1	1		
2012-07	1						\$3,446.56		1						1	
2012-08				1		Water Permit	\$800.00		1						1	
2012-09	1				1	Porch	\$8,114.25	1							1	

2012-10				1			\$405.00	1							1	
2012-11	1						\$6,604.58	1								1
2012-12	1						\$3,675.00	1					1		1	
2012-13		1					\$2,624.00	1							1	
2012-14			1				\$1,459.00	1							1	
2012-15		1					\$2,300.00	1							1	
2012-16	1						\$2,374.00		1					1		
2012-17	1						\$6,769.00			1					1	
2012-18					1	Foundation	\$4,200.00	1							1	
2012-19	1						\$6,724.00		1						1	
2012-20		1				Boiler/Asbestos	\$2,882.00	1							1	
2012-21				1			\$7,291.00		1				1		1	
2012-22				1			\$500.00		1							1
2012-23	1						\$2,830.00	1						1		
2012-24					1	Foundation	\$12,000.00		1						1	
2012-25	1						\$5,833.50				1		1			1
2012-26	1						\$2,676.00		1				1		1	
2012-27	1						\$6,032.13	1							1	
2012-28	1						\$5,377.00		1						1	
2012-29	1				1	Water Heater	\$8,806.00		1				1			1
2012-30				1			\$1,600.00	1					1		1	
2012-31		1			1	Foundation	\$8,707.00	1					1		1	
2012-32			1		1	Asbestos/Duct	\$3,325.00		1					1		
2012-33	1						\$2,614.73		1				1			1
2012-49		1					\$3,895.00	1					1	1		
2012-35				1			\$100.00		1				1			1
2012-36	1						\$7,725.00	1					1		1	
2012-37	1						\$11,625.00		1						1	
2012-38	1						\$5,138.00		1							1
2012-39					1	Water Heater	\$1,035.00	1					1		1	

2012-40	1						\$4,298.00		1					1		1	
2012-41	1						\$7,855.00			1						1	
2012-42	1						\$8,206.00		1								1
2012-43		1					\$2,100.00	1						1		1	
2012-44			1				\$2,695.00	1								1	
2012-45					1	Landing/Steps	\$1,760.00		1					1		1	
2012-46			1				\$4,546.94		1							1	
2012-47			1				\$1,450.00						1	1		1	
	25	6	6	6	8		\$207,749.88	21	22	2	1	1	19	5	32	10	

*R=Repair F=Furnace E=Electric P/S=Plumbing/Sewer O=Other

INCOME		
<30%AMI 10	30-50%AMI 32	50-60 AMI 5
HEAD OF HOUSEHOLD		
Male- 18 Female- 29		

Install Total	Supply Total	Total Amount	Ethnic					Income			Senior?		FHH	
			B	W	H	A	AI	30%	50%	60%	Y	N	Y	N
\$1,797.50	\$2,435.94	\$4,233.44	1							1	1		1	
\$2,254.75	\$3,188.36	\$5,443.11	1							1		1		1
\$2,773.75	\$4,211.46	\$6,985.21			1					1	1		1	
\$0.00	\$3,289.75	\$3,289.75	1					1				1	1	
\$2,754.75	\$3,675.29	\$6,430.04		1					1		1			1
\$0.00	\$5,049.42	\$5,049.42	1						1			1	1	
\$0.00	\$6,687.53	\$6,687.53	1					1*				1		1
		\$38,118.50	5	1	1	0	0	2	2	3	3	4	4	3

*occupants are below 30% AMI

Our intent to improve programs and streamline the process by which we assist families was strengthened when we restricted households to 10 years. Families cannot return to receive new housing repairs if the were assisted within the last 10 years. Without limits, our citizens were returning for help annually. As a result of our limits, grant funds can be made available for a longer period of time. We are proud to say that with dwindling resources we were able to meet the needs and be consistent with program regulations regardless of outside funding grants.

For all of our housing programs, we did not displace any homeowner. It is necessary to state that our CDBG funded programs were limited to our entitlement allocation and any additional resources were covered by (PI) Program Income received from the CDBG programming.

HOME

Affordable, decent and safe housing is critical to goals and objectives of the 2011 planned activities. The City of Muskegon's HOMEBUYER (program income available)

ACTIVITIES	5 YR PROJECTION	ANNUAL PROGRESS
Acquisition	2	1
New Construction	5	2 *
Rehabilitation	10	3
Rental	10	8 *
*CHDO Assisted		

Community enCompass – 1 rental unit completed

Homebuyer Program – 4 homes sold:

3 total rehabilitation

1 new construction

Types of Households Served

GENDER	MARRIED	RACE	INCOME	FAMILY SIZE
F	NO	WHI	50% AMI	1
M	NO	BLK	62% AMI	1
M	NO	WHI	70% AMI	1
F	NO	BLK	67% AMI	2
M	NO	BLK	20% AMI	7

PUBLIC STRATEGY

As the governmental entity for our Public Housing Agency, we continue to affirm that their plan fits our consolidated plan supporting suitable living environments for low-income households. To promote homeownership, the City of Muskegon presented to the residents of the Muskegon Housing Commission opportunities to affordable living. Fellow presenters were Muskegon County Habitat for Humanity and a local lender, Community Shores Bank. This setting allowed for discussion and questions but most importantly, information about opportunities to affordable housing programs designed to provide options to public housing.

BARRIERS TO AFFORDABLE HOUSING

To identify barriers to affordable housing is a big task. One area that we see limiting families to our affordable homes is their inability to access a mortgage for purchase. We have a Lease with Option to purchase program but our inventory is usually unavailable because of current tenancy.

During this funding year we received two of those units back through default. One family had serious health concerns and the other employment issues. As a result, we obtained these homes and renovated them for sale within the balance of the 40 months allowed by regulation. One is currently available for lease and the other is pending a sale. Through the new construction of single family homes or the rehabilitation of an existing home, our homebuyer program helps individuals to ownership.

In addition, we have worked with the Fair Housing Agency of West Michigan to identify barriers to families who may have experienced discrimination which can be considered a barrier to affordable housing. Our collaboration with our sister cities support a positive action toward furthering Fair Housing Choice in Muskegon.

This agreement commissions them to address realtors, service agencies and public officials, all in an effort to help eliminate barriers of housing discrimination. Twice a year, we receive reports about what they have found and what they perceive as solutions to any foreseen areas of affordable housing options.

HOMELESS NEEDS

In our Community, Muskegon is an active board member of the Continuum of Care Coalition. Local agencies have proved to be equipped in serving households at risk of becoming homeless.

Actions taken to deter homelessness

- Staff training
- Recruitment of landlords
- Multi-agent programs for at risk families
- Support groups
- Improved housing opportunity facilities

More funding for families in the area of rental assistance was accomplished. Previously cut off from any type of assistance, a family could re-apply for rent subsidy dollars that were released to our area early spring 2012. These federal dollars helped to prevent eviction which leads to homelessness.

NON-HOMELESS SPECIAL NEEDS

People Living Below Poverty

- Our commission members agreed to grant a local sub-recipient additional dollars to help low-income families pay utilities and rent.

LOVE INC

19 Residents of the City of Muskegon were assisted with Rent/Utility Assistance. The following is a breakdown of those receiving assistance:

<u>Income Level *</u>		<u>Service</u>	
Extremely Low	8	Rent	2
Very Low	6	Electric	9
Low	1	Gas	2
		Water	6

<u>Ethnic Group</u>	
Black	16
White	3

* Low: 60 – 80% Very Low: 30 – 50% Extremely Low 20% >

We will continue to grant money for the special needs of families at risk of non-homeless priorities that threaten health and safety.

The City of Muskegon is home to a HOPWA funded agency who has submitted plans that coincide with the City's Consolidated Plan as a Housing priority for affordable housing units. The challenges are great but partnering with the Continuum of Care will broaden the opportunities for housing choice. No financial assistance has been given to identify clients but any improvement in local properties is a perceived benefit for any persons facing eviction and struggling to afford a suitable place to live.

Because the City of Muskegon does not receive HOPWA funding, our role is simple: We will assist to meet the needs of all of our citizens regardless of race, religion, color, national origin, age, familial status, marital status, sexual orientation or gender identity.

Emergency Shelter Grant

NOT FUNDED directly but several Continuum of Care coalition members report on the county's funding. The needs of at-risk families have been served by the circle of shelters, programs and community organizations receiving.

COMMENTS

Commission Meeting Date: September 10, 2013

Date: September 3, 2013

To: Honorable Mayor & City Commission

From: Community and Neighborhood Services Department

RE: Approval of Sale of City-owned home at 539 Orchard

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction between Amanda M. Schaub, for the totally rehabilitated home at 539 Orchard. Ms. Schaub will purchase it for \$50,500.

This is a property that was under the Lease with Option to Buy Program 5 years ago.

FINANCIAL IMPACT: The proceeds from the sale will be used for the HOME Program.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and direct the CNS staff to complete the sale.

COMMITTEE RECOMMENDATION: None.



MUSKEGON CITY COMMISSION

RESOLUTION TO APPROVE THE PURCHASE OF
CURRENTLY CITY-OWNED PROPERTY AT 539 ORCHARD AVE.

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to promoting high quality affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby approves the sale of 539 Orchard Avenue to Amanda M. Schaub. Ms. Schaub will purchase the house as an owner-occupied structure.

Adopted this 10th day of September, 2013

Ayes:

Nays:

By _____
Stephen Gawron, Mayor

By _____
Ann Marie Cummings, MMC City Clerk

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: September 5, 2013

RE: Revised Ground Lease – 1601 Beach, LLC

SUMMARY OF REQUEST:

To consider a revised ground lease with 1601 Beach, LLC. This would allow the construction of additional parking adjacent to the existing parking lot.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the revised ground lease and to authorize the mayor and clerk to execute it.

COMMITTEE RECOMMENDATION:

None.

GROUND LEASE

THIS LEASE made this ____ day of _____, 2013, by and between City of Muskegon ("City"), a Michigan municipal corporation, and 1601 Beach, LLC, a Michigan limited liability company ("Harris"), in consideration of the mutual covenants and promises herein contained and for other valuable consideration.

WITNESSETH:

1. PREMISES LEASED. The City leases to Harris, and Harris leases from the City, pursuant to the terms and conditions set forth in this Lease, for the premises located at 1601 Beach Street, Muskegon, Michigan and the existing parking area located immediately across the street, as well as the additional parking to be constructed on the property by Harris (collectively known as the "Premises"), all as more specifically described and identified in Exhibit A attached hereto.

2. TERM. The term of this Lease shall be for a period of five (5) years, commencing on _____, 2013 ("commencement date").

Provided Harris is not in default under any of the terms and provisions of this Lease at the time of renewal, the City grants to Harris the option to renew this Lease for continuous terms of 5 years. Each option can only be exercised at the completion of the preceding term. The First Renewal Term and each succeeding Renewal Term (if any) shall be based upon all the terms and conditions contained in this Lease. Each of the foregoing options to renew shall be considered to have automatically been renewed unless Harris gives written notice to City no later than twelve (12) months prior to the expiration of the original Term of the Lease, or each succeeding Renewal Term as the case may be, of its intention not to exercise the option.

3. RENTAL: Harris agrees to pay to City at its office or to such other person or persons or at such other place as City shall designate in writing, as rental for the said premises, as follows:

(a) During the initial 5 year term, the sum of Six Thousand and 00/100 (\$6,000.00) per year, payable as follows: 1/3 by July 1, 1/3 by August 1, and the final 1/3 by September 1.

(b) At the beginning of each successive 5 year option term, the rent shall be increased 10%.

(c) Rental and all other charges hereunder shall promptly be paid without prior demand therefore and without deductions or set-offs for any reason whatsoever, and Harris shall be charged a late fee of ten (10%) percent of the unpaid balance or One Hundred and No/100 (\$100.00) Dollars, whichever is greater, for any payment that is received ten (10) days past the due date.

4. USE OF PREMISES. Harris shall use and occupy the Premises for the

purposes outlined in its Proposal for Site Development, which is attached as Exhibit B. The specific uses are subject to City's ordinances. This paragraph contemplates that Harris will comply with all laws, local ordinances, and lawful police and health regulations applicable to the use of the Premises, or permit anything to be done on the Premises tending to create a nuisance or disturbance. The City acknowledges that Harris will own and operate a restaurant and event center businesses on the Premises, with live music, and, so long as the operation complies with City ordinances, and that conduct does not constitute a nuisance or disturbance.

Subject to fire damage or other casualty loss, Harris is required to fully operate the said restaurant business on the premises continuously (daily, except for conditions not in the control of Harris) during the period from Memorial Day through Labor Day of each year of every term. In addition to other events of default, failure to substantially comply with the operation of the business during that period shall be a material default and the City shall have the rights as set forth in paragraph 16 below. "Substantial compliance" shall be defined as be open from noon to 8:00 p.m. on 80% of the days between Memorial Day and Labor Day.

5. UTILITIES. Harris shall procure and shall pay the cost when due of all utilities rendered or furnished to the leased premises during the term of this Lease, including electricity, gas, water and sewerage charges.

City shall grant any reasonable requests, in the City's sole discretion, to execute any easements, rights of way, and licenses over the Premises required by any public or quasi public utility company with respect to the construction, operation and use of the Premises.

6. SIGNS. The cost of installing, maintaining, changing and removing any signs upon the leased premises shall be borne by Harris. Harris shall obtain City's written approval, which shall not be unreasonably withheld, as to design, location and the manner of installation prior to placing any sign whatsoever upon the leased premises. The City acknowledges Harris has the right to install signs in the parking lot of the leased premises, subject to the other terms and conditions in this paragraph. Any signs shall comply with all requirements of appropriate governmental authority and all necessary permits or licenses required in connection therewith shall be obtained by Harris at Harris's sole cost and expense. Harris shall maintain all signs in good condition and repair at all times during the term of this Lease. Upon vacating the leased premises, Harris shall remove all signs and repair any damage caused by such removal.

7. ALTERATIONS. Harris hereby accepts the Premises in "**AS IS**" **CONDITION WITH ALL FAULTS.** City grants its permission, as the landlord as opposed to its governmental authority, to Harris to demolish or renovate the existing building on the Premises. City's permission is subject to the prior approval of a Development Agreement between the parties which will include the construction of another building and parking lot on the Premises, prior issuance of permits by the City, and evidence of

financial ability by Harris to complete the construction.

Harris shall have the right, at its own cost and expense, subject to necessary City permits, to make structural changes and alterations to the interior of any building without City approval, and to place or install within the building such fixtures, partitions, equipment and trade fixtures, together with any additional painting or minor alterations which Harris may find necessary and deem desirable. The building and all fixtures, partitions, equipment, trade fixtures, alterations or changes installed by Harris shall be and remain owned by Harris.

At the expiration of the Lease, Harris shall have 30 days to remove the buildings and all furniture, fixtures and equipment. At the expiration of the 30 days, if the buildings or any furniture, fixtures and equipment is remaining on the property, ownership shall pass to the City. Harris shall execute any and all documents requested by the City to effectuate the transfer of ownership. Any damage to the leased premises caused by the removal of the building or damage to the building caused by the removal of furniture, fixtures and equipment shall be repaired by Harris at the sole cost and expense of Harris. Should Harris fail to do so, City may perform the necessary work to return leased premises to said condition, and Harris shall reimburse City therefore.

8. MAINTENANCE AND REPAIR. Harris shall be solely responsible for repair, maintenance, and snow and sand removal of the existing parking lot and the parking lot to be constructed by Harris. Notwithstanding the above, the City agrees that as part of its annual spring beach cleanup, it will remove the accumulated sand from both parking lots with its equipment and personnel, at no cost to Harris. Additionally, the City agrees to fill in any cracks in both parking lots as needed. The City will provide the equipment and personnel and Harris will pay for the materials.

If the City intends to repave Beach Street, it agrees to replace the existing parking lot on the leased premises according to the following terms and conditions. The City will provide the labor and equipment to replace the existing parking lot, but Harris will pay for the materials. If, in the future, the parking lot to be constructed is in need of replacement, the City will do so according to the same terms and conditions as contained in this paragraph 8.

Harris agrees to maintain the exterior of the new building in good repair. Harris shall keep the sidewalks, entrances and parking lot free from rubbish, ice, and snow. In the event Harris fails to make any of the repairs which it is obligated to make, after having been given 60 days written notice by the City to Harris, City shall be entitled to enter the Premises and make or cause the same to be made, and the amount or amounts expended by it for such repairs shall be due and payable by Harris to City as additional rent.

9. INSURANCE.

9.1 HOLD HARMLESS. To the fullest extent permitted by law, Harris agrees to

defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees, volunteers, and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City, arising out of or in any way connected or associated with this contract. The obligation to defend and hold harmless extends to City's employees, agents, subcontractors, assigns and successors.

9.2 INSURANCE REQUIREMENT. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan and Best Rated A VIII. All coverage shall be with insurance carriers acceptable to City.

9.2.1 Workers' Compensation Insurance. Harris shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable Statutes of the State of Michigan.

9.2.2 Vehicle Liability Insurance. Harris shall procure and maintain during the term of this Agreement, Vehicle Liability Insurance in accordance with applicable statutes of the State of Michigan.

9.2.3 Commercial General Liability Insurance. Harris shall procure and maintain during the life of this contract, commercial general Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all explosion, Collapse and Underground (SCU) exclusions, if applicable.

9.2.4 Additional Insured. Commercial General Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insureds": The City, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. The endorsement adding the City as additional insured shall read exactly as follows: "The City of Muskegon is hereby added as an additional insured..."

9.2.5 Cancellation Notice. Workers' Compensation Insurance and Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to: CITY OF MUSKEGON CITY MANAGER."

9.2.6 Proof of Insurance Coverage. Harris shall provide the City certificates and policies endorsing the City as additional insured as listed below:

- i. Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, if applicable;
- ii. Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- iii. If so requested, Certified Copies of all policies mentioned above will be furnished.

9.2.7 Harris shall deliver renewal certificates and/or policies to City at least ten (10) days prior to the expiration date.

10. DAMAGE BY FIRE OR OTHER CASUALTY. Prior to construction of a new building, if the building is damaged or destroyed by fire or other cause, rent shall not be abated.

Once a new building is constructed, if all or any portion of the building is damaged or destroyed by fire or other casualty, Harris shall restore the same as nearly as possible to its condition and character immediately prior to such damage or destruction and may use all available proceeds of insurance for such purpose. All insurance proceeds in excess of those used in the restoration shall be the property of Harris. Notwithstanding the foregoing, Harris shall not be obligated to restore the building and shall have the right to terminate this Lease within sixty (60) days after the date of damage if (a) the building shall be substantially damaged by fire or other casualty or cause, or (b) the cost of the repairs, restoration or reconstruction would exceed 25% of the replacement value of the building. If Harris elects to terminate this Lease as provided in this Section, all insurance proceeds received in connection with the fire or other casualty shall to the extent received be paid to Harris. In such event, Harris shall demolish and remove all debris and restore the Premises, as nearly as possible, to its condition immediately prior to the construction of the building.

11. ENCUMBRANCE OF HARRIS' LEASHOLD INTEREST. Harris may encumber by mortgage or other proper instrument its leasehold interest together with all buildings and improvements owned by Harris, as security for any indebtedness of Harris; provided, however, that the fee simple interest of City shall be unaffected and unencumbered by any such security, instrument, or mortgage. The execution of any such mortgage or other instrument shall not be held as a violation of any of the terms or conditions of this Lease. The foreclosure of any such mortgage, or other instrument, or any sale thereunder, either by judicial proceedings or by virtue of any power reserved in such mortgage or conveyance by Harris as a holder of such indebtedness, or the exercising of any right, power, or privilege reserved in any mortgage or other instrument shall be held as a violation of any of the terms or conditions of this Lease. No such

encumbrance, foreclosure, conveyance, or exercise of right shall relieve Harris from its liability under this Lease. City's interest in the land may not be subordinated or encumbered in any way.

12. REAL ESTATE TAXES. Harris shall during the term of this Lease, pay Real Estate Tax Expense prior to the "due date", which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority, or any other taxing authority having jurisdiction over the premises, against the land, buildings and all other improvements.

Harris shall have the right to appeal or contest any tax if it should desire to do so. Any cost or expense, or any penalties, that may be incurred as a result of any such appeal or contest of the amount of the assessed valuation shall be borne by Harris.

13. PERSONAL PROPERTY TAXES. Harris shall pay all taxes levied against its personal property located within the leased premises during the term of this Lease, with such payment to be made prior to the "due date".

14. EMINENT DOMAIN. If a part of the leased premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken from the date possession of that part so taken. In the event that all the leased premises amounting to twenty-five (25%) percent or more of the square foot of the Premises is taken, or the building is rendered unsuitable for the use permitted under this Lease, Harris shall have the right either to cancel this Lease and declare the same null and void or to continue in possession of the remainder of the leased premises under the terms herein provided, except that the rental shall be reduced in proportion to the amount of the premises taken.

Harris shall be entitled to the award made for any taking, condemnation or conveyance to the extent used by Harris for repairs or renovations under this Section. Otherwise, the City shall be entitled to the entire award for the land and Harris shall be entitled to the entire award as to the building (after all necessary demolition and removal of debris which shall be paid from such award).

15. RESTRICTION AGAINST ASSIGNMENT AND SUBLETTING. Harris shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein, or sublet said premises or any parts thereof or permit the use of same or any part thereof by anyone other than Harris, without the prior written consent of City, which consent shall not be unreasonably withheld. Consent by City to any assignment or transfer of interest under this Lease or subletting of said leased premises or any part thereof shall be limited to the instance stated in such written consent and shall not constitute a release, waiver or consent to any other assignment, transfer of interest, or subletting.

16. EVENTS OF DEFAULT; RIGHTS OF CITY UPON DEFAULT. In the event Harris shall fail to make payment of the rental or any other item required of Harris within

C:\USERS\BRYON.MAZADE\APPDATA\LOCAL\MICROSOFT\WINDOWS\TEMPORARY INTERNET
FILES\CONTENT.0U\LOOK\DOO1R28Y\GROUND LEASE WITH ADDITIONAL PARKING LOT 9-4-13.DOC

ten (10) days after the due date of same, or if Harris fails to cure its breach of a non-payment covenant within thirty (30) days after receipt of written notice of breach from City, Harris shall be in default provided however, that if such default is of a nature that it cannot be reasonably cured within such thirty (30) day period, then Harris shall have such time as it reasonably required to sure such default, provided that Harris promptly commences to cure such default and diligently pursues such cure to completion. In addition, Harris shall be in default if it abandons the leased premises, becomes insolvent, makes an assignment for the benefits of its creditors, has a receiver or trustee appointed for its property as a result of its insolvency or threatened insolvency, or is subject to a levy of execution or attachment or other taking of its property, assets or leasehold interest in the leased premises by process of law or otherwise in satisfaction of any judgment or claim. In the event of default that is not cured, City may, at its option, terminate this lease and all the rights of Harris hereunder and thereupon City shall have the right to enter the leased premises and remove all persons and property there from, or City may, without terminating this lease, enter into leased premises as the agent of the Harris and re-let the leased premises with or without any furniture, fixtures, or property of Harris or make any repairs, changes, alterations, or additions in or to said leased premises that may be necessary or convenient, all for the account of Harris. In addition to the past due rentals and charges, Harris hereby agrees to pay interest on the past due sum in the amount of eighteen percent (18%) per annum, plus all reasonable attorneys' fees and expenses and court cost and expenses, including interest, incurred by City in the process of eviction or collections.

17. EVENTS OF DEFAULT; RIGHTS OF HARRIS UPON DEFAULT. In the event City fails to cure its breach of a covenant within thirty (30) days after receipt of written notice of breach from Harris, City shall be in default. In the event of default that is not cured, Harris may terminate this lease. This remedy shall not be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy existing at law or in equity.

18. COVENANT OF TITLE AND QUIET POSSESSION, City covenants that it has the right to make this lease for the term aforesaid and that it will put Harris into possession of the leased premises for the full term of this lease. City warrants that Harris, upon making the payments and performing and keeping the other covenants and agreements of this Lease on its part to be kept and performed, shall have quiet and peaceful possession of the leased premises during the term of this Lease and any extension thereof.

19. RIGHT TO EXAMINE PREMISES. Harris agrees to allow City, its agents and representatives, free access to the leased premises during reasonable hours for the purpose of examining same; and during the period of three (3) months previous to the expiration of the term of this Lease or during the period of three (3) months prior to any renewal hereof, to exhibit same to prospective tenants.

20. HOLDING OVER. It is hereby agreed that in the event of Harris holding over after the termination of this Lease, thereafter the tenancy shall be from month to month

in the absence of a written agreement to the contrary, and Harris shall pay to City a daily occupancy charge equal to five (5%) percent of the monthly rental under Paragraph 3 (plus all other charges payable by Harris under this Lease) for each day from the expiration or termination of this Lease until the date demised premises are delivered to City in the condition required herein, and City's right to damages for such illegal occupancy still survive.

21. PROPER NOTICES. All notices required or permitted under this Lease shall be deemed to be properly served if sent by registered mail to the last address previously furnished by the parties hereto. Until hereafter changed by notice in writing, notices shall be sent to City at City Manager, City of Muskegon, 933 Terrace, Muskegon, Michigan, and to Harris at 950 West Norton, Muskegon, Michigan 49441.

22. WAIVER. The failure of City to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any of one or more instances, shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall be and remain in full force and effect. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Harris of any term, covenant or condition of this Lease, other than the failure of Harris to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by City, unless such waiver is in writing by City.

23. ENTIRE AGREEMENT. This Lease and the exhibits and addenda, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between City and Harris concerning the lease of the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between City and Harris other than is set forth herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon City or Harris unless reduced to writing and signed by the parties hereto.

24. PERSONAL PROPERTY, MERCHANDISE, FURNITURE AND FIXTURES. Any and all personal property, merchandise, furniture or fixtures placed in or moved upon the leased premises by Harris shall be at the sole risk of Harris. City shall not be liable for damages to a newly constructed building, furniture, fixtures or equipment.

25. PARTIAL INVALIDITY. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

26. HAZARDOUS SUBSTANCES. Harris shall not cause or permit any Hazardous

Substance to be used, stored, generated, or disposed of on or in the Premises by Harris, Harris's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner for which Harris is legally liable, Harris shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term, and as a result of that contamination by Harris.

27. TITLE III. Notwithstanding any other provision of this Lease, the parties hereby agree that the premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Harris to comply with any and all provisions of the ADA, and such compliance may be required to operate the demised premises. Harris further agrees to indemnify and hold the City harmless against any claims which may arise out of Harris's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims.

28. RECORDING OF MEMORANDUM. Upon the execution hereof, City and Harris shall execute and cause to be recorded with the Muskegon County Register of Deeds a memorandum hereof in form reasonably acceptable to City. All recording charges and any stamp or similar tax shall be paid by Harris. Upon the expiration or earlier termination of this Lease, City and Harris shall cooperate to execute a recordable termination of same.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be signed in their respective names by their respective officers and sealed with their respective seals the day and year first above written.

LESSOR: City of Muskegon

LESSEE: 1601 Beach, LLC

By:_____

By:_____

Title:_____

By:_____

Date:_____

Date:_____

EXHIBIT A

PROPERTY DESCRIPTION OR MAP

EXHIBIT B
SITE DEVELOPMENT