

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 25, 2019 @ 5:30 P.M.

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
 - A. Pollinator Habitat Update** Department of Public Works
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Zoning Ordinance Amendment – Residential Design Criteria** Planning & Economic Development
 - C. Peck & Sanford 2-Way Conversion** Department of Public Works
 - D. Sanitation Service Fee Resolution** Finance
 - E. Sewer Rate Adjustment** Finance
 - F. Park Storage Environmental Review** Planning & Economic Development
 - G. Approval of Sale of City Home at 1015 E. Forest Avenue** Community & Neighborhood Services
- ☐ **PUBLIC HEARINGS:**
 - A. Establishment of a Commercial Rehabilitation District – 292 W. Western Avenue** Planning & Economic Development
 - B. Issuance of a Commercial Facilities Exemption Certificate – Sweetwater Development, LLC** Planning & Economic Development

C. Request to Create a new Neighborhood Enterprise Zone District at 292 W Western Ave Planning & Economic Development

D. Transmittal of 2019-20 Proposed Budget City Manager

<https://www.muskegon-mi.gov/2019-20-budget-and-quarterly-reforecast/>

☐ **COMMUNICATIONS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish Public Safety

1619 Superior

1285 Eighth Street

769 Catawba Avenue

B. Approval of Midtown Square 2 Construction Contacts Planning & Economic Development

C. BoomTown Market Economic Development Revolving Loan Fund Application Planning & Economic Development

D. Ordinance – Operation of Electric Scooters & Electric Bikes Public Safety

E. Convention Center Resolution and Agreements City Manager

F. Request for Final Planned Unit Development (PUD) Approval Including Street Vacations – The Docks Planning & Economic Development

☐ **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 MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1-22 TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: June 25, 2019

Here is a quick outline of the items on our agendas:

Regular Session:

1. Under Presentations, we will hear from DPW staff on the pollinator program.
2. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. An ordinance amending the single-family and duplex home design criteria to allow for the construction of smaller houses throughout the city. The change will specifically allow for reductions in the minimum living space requirements. The minimum be 850 square feet (11% smaller than before) for one-bedroom units. The minimum for a two-bedroom unit will be 950 square feet, and the minimum for a three-bedroom unit will be 1,050 square feet. The change also allows homes to be narrower – fitting our 33-foot lots better.
 - c. Approval of the lowest responsible bid to convert Peck Street and Sanford Street to two-way traffic.
 - d. Approval of a resolution setting the monthly sanitation fee at \$2.00 per month. The fee will generate an estimated \$318,000 to offset the cost of refuse and recycling collections.
 - e. Approval of a sewer rate adjustment. This is necessary to properly capitalize all of the necessary capital improvement projects currently underway.
 - f. Approval to expend \$16,865 to complete the environmental review at the park Street Storage site. The purpose of the review is to better-understand the environmental issues (if any) that exist on the site as we prepare to put the site back into productive use. The city owns the property, and we have completed the demolition.
3. Public Hearings:
 - a. Establishment of a commercial facilities exemption certificate at 292 West Western Avenue.

- b. Issuance of a commercial facilities exemption certificate to Sweetwater Development, LLC (The Leonard Building).
 - c. Creation of an NEZ district for 292 West Western Ave (We will take no action after the hearing).
 - d. Transmittal of 2019-20 Proposed Budget.
4. New Business
- a. Concurrence with the housing board of appeals decision to demolish three structures.
 - b. Approval of the construction contracts with West Urban, LLC to complete the second phase of the Midtown Square development. After many months of work, we are prepared to move forward with Mid-Town Square Phase Two. The project includes 10 attached single-family townhomes and six detached single-family homes – for 16 total units. The project will cost a total of \$2,999,230, which is \$187,451 per unit. The custom home contracts include ALL COSTS – including fees paid to the general contractor and sub-contractors, all necessary permits, and all sales commissions. Of the \$2,999,230 in total costs, we have dedicated approximately \$170,000 to real estate commissions. Absent real estate commissions, the actual construction costs are \$176,826 per unit. Staff is seeking approval of the seven attached contracts. One contract will be cover the entire townhome portion of the project, while each of the six detached homes will have an individual contract. This will allow all of the townhouses to be finished to the same level/décor, but allow for some design variation among the detached homes. Below is a list of addresses where staff is recommending construction the units:
 - i. 235, 239, 240, 250 Monroe (10 units of townhouses)
 - ii. 219 Merrill (one detached unit)
 - iii. 1261 5th Street (one detached unit)
 - iv. 395 Houston (two detached units)
 - v. 271 Merrill (two detached units)
 - c. Approval of a Revolving Loan Agreement with Boomtown Market. The loan is for \$55,000 and the interest rate is set at prime plus 2% over a five-year term. We are seeking approval of the application and authorization to finalize a loan agreement with the City Attorney's office.
 - d. Approval of an ordinance regulating the operation of electric scooters and electric bikes. This issue came to our attention after a Western Market vendor had problems operating his Segway tour business last summer. Our local rules did not allow for the operation of his equipment on the city streets, sidewalks, or the bike path. The Public Safety Department has worked with the City Attorney's office to

develop the attached ordinance to allow the devices on city streets, pike paths, and in parks. The devices cannot be operate don sidewalks or on the state trunklines.

- e. Convention Center. We are seeking approval of the three attached items:
 - 1. Resolution authorizing the issuance of 2019 Capital Improvement Bonds. This will allow us to issue (up to) \$20,000,000 in bonds with a repayment of (up to) 30 years. We expect to have the final agreements related to the development of convention center and reimbursements from the county at the next scheduled City Commission meeting.
 - 2. Amendment to the Development Agreement between the City, County, and Parkland
 - 3. Accommodations Tax Allocation Agreement between the City and County obligating the County to commit accommodation taxes to fund the convention center's debt.
- f. Approval of The Docks Planned Unit Development and corresponding vacation of several un-improved streets within the Edgewater Platt, as well as a cul-de-sac and a portion of Edgewater Street. The PUD was approved at the Planning Commission 8-1, and the vacations were approved 9-0.

Let me know if you have any questions/comments/concerns

Frank

Date: June 25th, 2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Pollinator Habitat Update

Summary of Topic

Update on progress to date and planned next steps relative to the Urban Pollinator Habitat Conservation and Preservation Plan.

Completed Work To Date

In 2018 and 2019 a number of plantings were completed that will help support future pollinator habitat within the city. Several of those plantings fulfilled specific goals outlined within the plan while others were undertaken with the same frame of mind but at previously unidentified areas of opportunity.

2018 Completed Projects:

- McGraft Park – 14 [Redbuds](#) were planted along the main entryway to McGraft Park. Redbuds as a species and McGraft Park as an area were not specifically identified in the plan however the area presented itself as an opportunity in partnership with the parking lot project undertaken the same year.



- Marquette Avenue – A mix of 10 [Crabapple](#) and [Red Horse-Chestnut](#) were planted along Marquette Avenue in the area where many of the terrace trees were lost during the work completed by Consumers Energy. The smaller crabapple trees can be planted under power lines as their maximum heights don't conflict with the overhead lines.



- Hackley Avenue – A mix of 16 [Crabapple](#), [Japanese Tree Lilac](#), [Cherry Plum](#), and [Green Hawthorn](#) were planted along Hackley Avenue from Barclay heading to the west. The area of the planting was hard hit by emerald ash borer. Though not specifically identified in the plan the species are all good supporters of pollinators and the area was in need of reforestation due to the loss of the ash trees.



2019 Completed Projects:

- Richards Park – 50 trees were planted in partnership with Muskegon Rotary on Arbor Day 2019. The City of Muskegon provided the trees and supported the volunteers in the planting. The area targeted for planting was in a little used portion of the park away from traffic that has already been part of the plan for reduced mowing and pesticide use. The trees planted ([Northern Catalpa](#), [Cockspur Hawthorn](#), [Tupelo](#), and [American Basswood](#)) are all supportive of pollinator habitat and will provide a good complement to the wildflowers and grasslands.
- East Glade Street – 30 trees were planted along Glade Street near Southern Avenue in partnership with WMSRDC as a part of a larger project that saw well over 100 trees planted in 2019. The area was not specifically identified in the pollinator plan but does fall between a couple of identified areas along Seaway/Shoreline Drive. The species planted in this particular area ([Crabapple](#), [Nannyberry](#), [Apple Serviceberry](#), [Redbuds](#), and [Flowering Dogwood](#)) are all supportive of the urban pollinator habitat.



- Parks and highway staff have worked together on a plan to reduce mowing in a few identified areas which will help support native wildflower and grassland growth, while reducing maintenance costs. The areas targeting for reduced mowing in 2019 are at the Grand Trunk Boat Launch and at Hartshorn Point. Both of these areas were identified in the plan. In these areas crews will continue to mow a maintenance strip next to paved and gravel surfaces. In areas beyond the maintenance strip mowing will be reduced to once a year. The yearly mowing will help prevent woody species from taking over and allow for improved wildflower and grassland habitat.

Upcoming Projects:

- Lakeshore Drive – The project work along Lakeshore Drive from Laketon to McCracken required the removal of one (1) tree, a dead ash tree near the fire station. Once completed the project will plant well over 100 new trees along a section of roadway right-of-way that was largely devoid of trees. In addition several of the intersections in the stretch from Moon to Torrent will have planter beds installed with a variety of flowers and grasses.
- 3rd Street – Another section of roadway that is largely devoid of trees and landscaping will receive six (6) new trees along with five (5) large planter beds that will provide new habitat and color to an area that previously had none.
- In partnership with MDOT parks and highway staff are in the process of working with MDOT to reduce mowing along several sections of Seaway Drive and Moses Jones Parkway. Similar to the work we are undertaking at Grand Trunk and Hartshorn Point the intention would be to reduce mowing to only maintain a small maintenance strip in many areas and mow the remainder of the areas once a year. The unmowed areas could be considered for future wildflower plantings or left to volunteer growth.
- Commissioner Warren will had a booth set up at the Farmers Market on Saturday, June 22nd. She provided free packages of wildflower seed packets as well as information on the pollinator program here in Muskegon. Approximately 150 seed packets were given away at the event.
- Pollinator Habitat signage will be deployed to help provide input on why we are undertaking less mowing in areas that have traditionally been mowed.

Date: June 17, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the minutes of the June 6, 2019 Budget Meeting, June 10, 2019 Worksession, June 11, 2019 Regular Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Thursday, June 6, 2019
5:30 p.m.
Special Budget Worksession Meeting
City Commission Chambers

MINUTES

2019-45

Present: Mayor Gawron, Commissioners Turnquist, Warren, Hood, Johnson, German, and Rinsema-Sybenga.

Absent: None.

Public Participation

Received.

Budget

The City Manager gave a general overview of the proposed 2019/20 budget. After a general overview was given, the City Manager did review each fund line-item by line-item and accepted questions of the City Commission.

Adjourn at 8:30

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Thursday, June 10, 2019
5:30 p.m.
Worksession Meeting
City Commission Chambers

MINUTES

2019-46

Present: Mayor Gawron, Commissioners Turnquist, Warren, Hood, Johnson, German, and Rinsema-Sybenga.

Absent: None.

Mid-Town Square Phase Two

Staff is proposing to use our \$3,000,000 loan to develop Midtown Square II along with up to eight other new homes in close proximity. Dave Dussendang's proposal for Midtown Square II anticipated construction cost to be around \$155,000 per unit, however, with construction costs rising, we can probably assume they could be closer to \$165,000 per unit. This would allow for the construction of 10 rowhouses at the Midtown Square II location and up to eight other homes located within the boundaries of our Nelson Neighborhood Infill Development Brownfield. A detailed map depicting staff's recommended lots to start with along with the number of units that could go on each lot.

Froebel School

A timeline for the possible sale of Froebel School was presented to City Commission. The timeline was submitted by Melching. Mike Franzak, Planning Director, indicated Melching is interested in preserving the building for possible housing.

Mike Oliver gave an overview of his vision for the building indicating he has a passion for historic buildings.

Update Parks and Streets Plan

A plan was submitted for a requested millage for local street improvements and parks. The overall expense summary is \$26,226.986 with a breakdown of a proposed millage rate of 10 years at 5.21%, 15 years at 3.73, and 20 years with a 2.99% millage rate.

Recreational Marihuana

Mike Franzak, Planning Director, gave an overview of the options that Commission has.

Municipalities will not be receiving a sales tax percentage for medical marihuana. Percentages will only be given to municipalities offering recreational marihuana.

Options are:

Take no action and the municipality is automatically in. The State will issue a license to anyone as long as they are not within 1000 feet of schools or in a residential district.

The City may choose to opt-out.

The City may choose to opt in and regulate what areas it is allowed in.

Commissioners do need to make a decision before the end of the year.

Greg Maki, 420 Causeway, owner of dispensary at 1922 Park Street, is hoping the City will opt into recreational marihuana.

Aaron Smith, 410 Causeway, need to look at parking and traffic patterns when looking at approved locations.

Diversity, Equity and Inclusion - Michigan Department of Civil Rights

A proposal was received from the Michigan Department of Civil Rights for Diversity, Equity and Inclusion training solutions for Commissioners and employees. The cost of the program is \$8,790.

Civil Service

Civil Service is proposing putting a question on the ballot to eliminate the rule of three. Currently the rule of three allows only the top three candidates to be interviewed for a position. By eliminating the rule of three, all qualified candidates may be interviewed and considered for a position.

880 First Street- Ameribank Building Update

Staff is seeking approval to publicize a request for proposals for redevelopment of 880 First Street because the previous developer has withdrawn his purchase option agreement.

Commission Rules

The Mayor is exploring different options and has reached out to other municipalities to gather more information. He indicated he wants to place this on a Legislative Policy meeting in July.

Adjourn at 9:13 pm.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 11, 2019 @ 5:30 P.M.

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, June 11, 2019, Pastor Tim Cross, Living Word Church, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Ken Johnson, Byron Turnquist, Debra Warren, Dan Rinsema-Sybenga, and Willie German, Jr., City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

HONORS AND AWARDS:

A. Recognition of Spring 2019 Citizen's Academy Graduates Public Safety

Mayor, Stephen J. Gawron, read the resolution and thanked the 2018 Citizen's Police Academy for their faithful attendance, completion, and graduation from the ten week academy.

2019-47 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the May 28, 2019 Regular Meeting minutes.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

C. Consideration of Bids for H91843 Third Street, Merrill to Muskegon DPW-Engineering

SUMMARY OF REQUEST: To award the project to Jackson-Merkey Contracting, Inc. since they were the lowest responsible bidder with a total bid price of \$825,867.05.

Three (3) bids were submitted for this project as follows:

Jackson-Merkey	\$825,867.05
K&R, Inc.	\$857,061.35
McCorMick Sand	\$882,088.75
FINANCIAL IMPACT:	\$825,867.05

BUDGET ACTION REQUIRED: Project is included in the 19/20 Capital Budget. Reforecast may be needed to address final project cost.

STAFF RECOMMENDATION: Award the contract to Jackson-Merkey Contractors, Inc.

D. Electrical System Upgrades Design and Construction Services

DPW-Filtration

SUMMARY OF REQUEST: Authorize staff to enter into a professional services agreement for Electrical System Upgrades Design and Construction Services at Water Filtration Plant with Tetra Tech per their proposal for \$13,000.

Tetra Tech is being recommended since they were the engineer for the control systems upgrades project and their familiarity with the filtration plant.

FINANCIAL IMPACT: \$13,000

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Tetra Tech for a cost of \$13,000.

E. Fence at Elevated Tanks DPW – Filtration

SUMMARY OF REQUEST: Authorize staff to enter into a fence installation agreement with Fence Consultants since they submitted the responsible bid of \$43,050 that meets the RFP requirements.

Two bids were submitted and only one bid meets the RFP requirements.

FINANCIAL IMPACT: \$43,050

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Fence Consultants for a cost of \$43,050.

F. City Hall Air Conditioners Department of Public Works

SUMMARY OF REQUEST: Authorize staff to contract with Jewitt Heating and Cooling for the replacement of four (4) air conditioners at City hall in the amount of \$13,832.50.

Three firms were contacted for bids as follows:

Jewitt Heating and Cooling	\$13,832.50
Boardwell Mechanical Services	\$19,500.00

American Mechanical Services

Declined to Bid

FINANCIAL IMPACT: \$13,832.50

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize staff to contract with Jewitt Heating and Cooling for the air conditioner replacements.

G. Repayment of Reimbursement Agreement on Parcel O at Harbour 31
Finance

SUMMARY OF REQUEST: In 2008 Dan Henderickson & Viridian Properties signed a reimbursement agreement with the City to use \$250,000 of a \$500,000 MDEQ loan the City had secured. Currently there is an outstanding invoice of \$18,554.93 and a principal balance of \$33,942.83 owing on this reimbursement agreement. A development group is in the process of purchasing two lakefront parcels from the current owners, Muskegon Lakefront, LLC. To ensure this purchase goes through the developers have agreed to pay the \$33,942.82 principal balance owed if the city is willing to write off the invoice of \$18,554.93. This new developer is currently in negotiations to purchase one other parcel at the Harbour 31 site, once that is completed they are ready to announce their plans for the site. The City should be able to recoup our costs from Brownfield capture.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the write off of invoice 17-00004744 in the amount of \$18,554.93.

H. CDBG Program Administration Agreement – City of Muskegon/City of Norton Shores
Planning & Economic Development

SUMMARY OF REQUEST: The City of Muskegon has contracted with the City of Norton Shores to administer their Community Development Block Grant (CDBG) program since 2006. The current Agreement concludes on June 30, 2019. The new Agreement extends for two years (through June 30, 2021).

FINANCIAL IMPACT: The City of Norton Shores will pay the maximum allowable CDBG costs per program year to the City of Muskegon, minus \$1,000 to administer their CDBG program.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the Agreement and authorize the Mayor and Clerk to sign.

I. 880 First Street RFP Economic Development

SUMMARY OF REQUEST: Staff is seeking approval to publicize the Request for

Proposals for redevelopment of 880 First Street as presented.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize the release and publication of the Request for Proposals as presented.

J. Administrative Vehicle Leases City Manager

SUMMARY OF REQUEST: Staff is seeking approval to lease two GMC Acadia sport utility vehicles from Betten Baker Muskegon.

FINANCIAL IMPACT: \$18,922 per vehicle

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize staff to execute the leases consistent with the provided term sheet.

K. Youth Hockey Director City Manager

SUMMARY OF REQUEST: Staff is seeking approval of an Agreement with Bill Zalba to serve as the Youth Hockey Director at the LC Walker Arena.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize staff to execute the agreement.

L. Community Relations Committee Recommendations City Clerk

SUMMARY OF REQUEST: To accept resignations and appointment as follows:
Accept the resignations of Teresa Emory from the Citizens Police Review Board and William Krick from the Housing Code Board of Appeals.

Accept the appointment of Kim Burr to the Citizen position on the Housing Code Board of Appeals.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To concur with the recommendations of the Community Relations Committee and approve the resignations and appointment.

Motion by Commissioner Warren, second by Commissioner German, to approve the consent agenda as presented, except item B.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, Warren, and German

Nays: None

MOTION PASSES

2019-48 REMOVED FROM CONSENT AGENDA:

B. Establish Business Development Manager Position

Planning Department

SUMMARY OF REQUEST: Approve the establishment of a position for a Business Development Manager and hire Dave Alexander for the position. The purpose of the position is to develop the city's commercial districts through attraction of investment, supporting of existing businesses, assistance with events, and promotion of the City. The manager will serve as staff liaison to the Downtown Development Authority, the Downtown Muskegon Business Improvement District, the Downtown Muskegon Development Corporation, and the Lakeside Business District.

Now that our Downtown Development Authority has steady income, there is a duplication of efforts between the DDA and Downtown Muskegon Now. Both boards have agreed to combine, and the DMN board will be dissolved on June 30, 2019. Dave's work to promote downtown will continue as a city employee.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

STAFF RECOMMENDATION: Approve the new position and appoint Dave Alexander to fill it.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to approve the new position and appoint Dave Alexander to fill it.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, Warren, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public Comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 6:00 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

Commission Meeting Date: June 25, 2019

Date: June 20, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Zoning Ordinance Amendment – Residential Design Criteria

SUMMARY OF REQUEST:

Staff initiated request to amend section 2319 of the zoning ordinance to reduce the minimum living space requirement for single-family and duplex homes.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their June 13 meeting.

PLANNING COMMISSION EXCERPT

SUMMARY

1. Staff is recommending to amend the residential design section of the zoning ordinance to allow for smaller single-family and duplex homes. Homes are now trending smaller across the country and many of the recently proposed homes in Muskegon have had difficulty meeting the current standards. Reduced minimum size and storage standards will also help the City meet our visitability and livability goals as well as reduce the overall home prices, which will create a more diverse housing stock. Other parts of the ordinance were removed because they no longer apply (Historic zoning, front and rear setbacks).
2. Please see the enclosed "Proposed Revisions to Residential Requirements" document.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2319 of the zoning ordinance to amend the standards.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

(Deletions are crossed out, additions are in bold)

Setbacks (Single-Family):

~~Street Frontage = 50 feet minimum~~

Front = (Expressway & Arterial Streets) = 30 feet
(Major & Collector Streets) = 25 feet
(Minor Streets) = 15 feet

Minimum front setbacks for new principal structures in the R-1, R-2, R-3 **and** RT, ~~B-3, and H~~ zones, fronting on minor streets, may align with existing principal structures in the immediate area, even if the front setback is below the minimum required.

~~Rear = 30 feet~~

~~Side: 1 to 1.5 story = 16 feet total with 6 foot minimum on each side
2 to 2.5 story = 20 feet total with 8 foot minimum on each side~~

Height Limit = 35 feet measured from average grade to the midpoint of eave & peak of the roof.

Zoning Ordinance Excerpt:

SECTION 2319: [RESIDENTIAL DESIGN CRITERIA] [amended 7/98, amended 4/00, amended 8/01, amended 4/02, amended 3/05, amended 8/06, amended 3/07]

It is the intent and purpose of this section to establish design review standards and controls over housing development in the City of Muskegon. It is recognized that there are unique design aspects inherent in the community appearance that need to be preserved and enhanced. The adoption of these criteria will guide and ensure that all future growth enhances community character and image and fits with the unique vernacular of the City of Muskegon's urban setting. A positive community image: enhances economic development opportunity; safeguards property values; curbs blight and deterioration; and enhances public safety and welfare. The following standards shall apply to all single-family or duplex structures erected in the City of Muskegon.

In the case of a one (1) family or two (2) family dwelling unit which is of standard construction, a mobile home, a pre-manufactured, or a pre-cut dwelling structure, and any additions or alterations thereto, erected or

placed in the City of Muskegon, other than a mobile home located in a licensed mobile home park approved under the provisions of Article V, MHP Mobile Home Park Districts, shall conform to the following regulations in addition to all other regulations of this Ordinance:

1. The dwelling unit shall have a minimum living area (excluding all basement area) of ~~nine hundred and sixty (960)~~ **eight hundred and fifty (850)** square feet for a one (1) bedroom dwelling. For each bedroom thereafter, an additional 100 square feet of living space shall be provided.
2. Where the home design involves a roof pitch, it shall be a minimum pitch of 5/12, that is, for every twelve inches (12") of lateral run, the roof shall rise five inches (5"). In the case of additions or alterations to principal structures when a 5/12 pitch is not practical, the roof pitch may be allowed to correspond with that of the principal structure.
3. The roof shall have a snow load rating of forty (40) pounds per square foot.
4. Roof drainage in the form of a roof overhang of at least twelve inches (12") shall be provided to direct storm or meltwater way from the foundation, unless a gambrel roof or other design elements necessitate an alternative roof drainage system.
5. Siding shall be the same gauge for modulars and mobiles as for on-site-built homes.
6. The dwelling unit shall have a minimum width across any front, side, and rear elevation view which is the lesser of:
 - a. **Twenty-four (24) feet on lots that are at least thirty-five (35) feet wide and Twenty (20) feet on lots under thirty-five (35) feet wide ; or**
 - b. The average width of the homes on the same street within six hundred (600) feet in either direction.
7. A structure with a front elevation view of over 40 linear feet shall have a design offset including but not limited to; bay windows, covered porches, or structural offsets from the principal plane of the building.
8. ~~Any single-story, residential structure shall not be more than two (2) times longer than its width (exclusive of an attached garage).~~
8. Garage doors may not comprise more than fifty percent (50%) of the front face of the structure.
9. Newly constructed homes must be at the average setback of existing homes within 600 feet.
10. The dwelling unit shall be firmly attached to a permanent foundation constructed on the site in accordance with the building code, manufacturers specifications, and other applicable requirements.
11. Any crawlspace that may exist between the foundation and ground floor of the dwelling unit shall be fully enclosed by an extension of the foundation wall along the perimeter of the building.

12. If the dwelling is a mobile home, as defined herein, such dwelling shall be installed pursuant to the manufacturer's setup instructions and shall be secured to the premises by an anchoring system or device complying with the rules and regulations of the Michigan Mobile Home Commission.
13. In the event that a dwelling unit is a mobile home as defined herein, it shall be installed with the wheels removed. No dwelling unit shall have any exposed towing mechanism, undercarriage or chassis.
14. The dwelling unit shall be connected to a public sewer and water supply when available, as defined by the Plumbing Code or if not available, to private facilities as approved by the county health department, the city, and other applicable agencies.
15. Storage space of at least fifteen percent (15%) of the interior living space of the dwelling unit, exclusive of ~~auto storage or attic storage~~, shall be provided ~~within the structure~~ **onsite**.
16. The subject dwelling unit shall be aesthetically compatible in design and appearance with other dwellings within 600 feet. The review shall include but not necessarily be limited to: roof pitch, scale, size, mass, minimum transparency, orientation to the street, and overhangs. The foregoing shall not be construed to prohibit innovative design concepts involving such matters as (but not limited to) solar energy, view, or unique land contour.
17. The compatibility of design and appearance shall be determined in the first instance by the Zoning Administrator upon review of the plans submitted for a particular dwelling unit. The Zoning Administrator's decision may be appealed, to the Zoning Board of Appeals within a period of fifteen (15) days from the receipt of notice to the official's decision.
18. The dwelling unit shall contain no additions of rooms or other areas which are not constructed with similar quality workmanship as the original structure, including permanent attachment to the principal structure and construction of a foundation as required herein.
19. The dwelling unit shall comply with all pertinent building and fire codes. In the case of a mobile home, all construction and all plumbing, electrical apparatus and insulation within and connected to said mobile home shall be of a type and quality conforming to the "Mobile Home Construction and Safety Standards" as promulgated by the United States Department of Housing and Urban Development, being 24 CFR 3280, and as from time to time such standards may be amended.
20. All construction required herein shall be commenced only after a building permit has been obtained in accordance with the Building Code.
21. Each dwelling unit shall have an approved established vegetative ground cover, native to the immediate area within 600 feet, no less than 12 months after occupancy. Approval shall be given by zoning staff of the Planning Department as part of the initial residential site plan review. A minimum of one shade tree, two and one-half inches (2.5") in diameter, four feet (4') from the ground or one six foot (6') evergreen tree shall be provided. Existing landscaping may be accepted in lieu of this requirement.

~~22.~~ Each dwelling unit shall have a garage or a shed providing a minimum of sixty-four square feet (64 sq. ft.) of yard storage for each dwelling unit. ~~Said area shall be calculated separately from the required interior storage space.~~

In the case of a multi-family (more than 2 units) dwelling structure which is of standard construction, a mobile home, a premanufactured, or a precut dwelling structure, and any additions or alterations thereto, erected or placed in the City of Muskegon, other than a mobile home located in a licensed mobile home park approved under the provisions of Article V, MHP Mobile Home Park Districts, shall conform to the following regulations in addition to all other regulations of this Ordinance:

1. Each dwelling unit shall have a minimum living area (excluding all basement area) of six hundred and fifty (650) square feet for a one (1) bedroom unit, of eight hundred and seventy-five (875) square feet for a two (2) bedroom unit, and of twelve hundred (1200) square feet for a three (3) bedroom unit. For each bedroom thereafter, an additional 100 square feet of living space shall be provided.
2. Roof drainage in the form of a roof overhang of at least twelve inches (12") shall be provided to direct storm or meltwater way from the foundation, unless a gambel roof or other design elements necessitate an alternative roof drainage system.
3. The roof shall have a snow load rating of forty (40) pounds per square foot.
4. Siding shall be the same gauge for modulars and mobiles as for on-site-built homes.
5. Garage doors may not comprise more than fifty percent (50%) of the front face of the structure.
6. The structure shall be firmly attached to a permanent foundation constructed on the site in accordance with the building code, manufacturers specifications, and other applicable requirements.
7. Any crawlspace that may exist between the foundation and ground floor of the structure shall be fully enclosed by an extension of the foundation wall along the perimeter of the building.
8. The structure shall be connected to a public sewer and water supply when available, as defined by the Plumbing Code or if not available, to private facilities as approved by the county health department, the city, and other applicable agencies.
9. Storage space of at least 10 percent (10%) of the interior living space of each dwelling unit, exclusive of auto storage or attic storage, shall be provided within the structure.
10. The subject structure shall be aesthetically compatible in design and appearance with other dwellings within 600 feet. The review shall include but not necessarily be limited to: roof pitch, scale, size, mass, minimum transparency, orientation to the street, and overhangs. The foregoing shall not be construed to prohibit innovative design concepts involving such matters as (but not limited to) solar energy, view, or unique land contour.
11. The structure shall contain no additions of rooms or other areas which are not constructed with

similar quality workmanship as the original structure, including permanent attachment to the principal structure and construction of a foundation as required herein.

12. Each dwelling unit shall have an established vegetative ground cover no less than 12 months after occupancy. A minimum of one shade tree, two and one-half inches (2.5") in diameter, four feet (4') from the ground or one six foot (6') evergreen tree shall be provided. Existing landscaping may be accepted in lieu of this requirement.
13. Each dwelling unit shall have a garage or a shed providing a minimum of sixty-four square feet (64 sq. ft.) of yard storage for each dwelling unit. Said area shall be calculated separately from the required interior storage space.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 25th day of June 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2019.

Ann Meisch, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on June 25, 2019, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2319 of the zoning ordinance amend the residential design criteria.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2019.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

AGENDA ITEM NO. _____

CITY COMMISSION MEETING ____

TO: Honorable Mayor and City Commission
FROM: Department of Public Works
DATE: June 25th, 2019
SUBJECT: Peck & Sanford 2-Way Conversion

SUMMARY OF REQUEST:

To Award above referenced project to J. Ranck Electric, Inc. since they were the lowest responsible bidder with a total bid price of \$205,247.10

One (1) bid was received for this project as follows:

J. Ranck Electric, Inc.\$205,247.10

FINANCIAL IMPACT:

\$205,247.10

BUDGET ACTION REQUIRED:

None. Project was budgeted in 18-19 reforecast and will be carried forward into 19-20 budget.

STAFF RECOMMENDATION:

Award the contract to J. Ranck Electric, Inc.

BID TABULATION								
City of Muskegon Engineering Department				Project Engineer: CW	Date: 6/18/2019			
				Project Number: H91859 Peck & Sanford				
				Project description: TWO WAY CONVERSION				
					Engineers Estimate		J Ranck	
Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total	Unit Price	Total
1	1500001	Mobilization, Max \$16,000.00	LSUM	1	\$ 7,000.00	\$ 7,000.00	\$ 16,000.00	\$ 16,000.00
2	2040055	Sidewalk, Rem	Syd	10	\$ 20.00	\$ 200.00	\$ 20.00	\$ 200.00
3	2090001	Project Cleanup	LSUM	1	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00
4	8030044	Sidewalk, Conc, 4 inch	Sft	90	\$ 5.00	\$ 450.00	\$ 20.00	\$ 1,800.00
5	8100280	Fdn, Wood Support, Rem	Ea	1	\$ 100.00	\$ 100.00	\$ 200.00	\$ 200.00
6	8100340	Post Hole Through Conc for Steel Post	Ea	7	\$ 100.00	\$ 700.00	\$ 50.00	\$ 350.00
7	8100371	Post, Steel, 3 lb	Ft	1042	\$ 5.50	\$ 5,731.00	\$ 6.00	\$ 6,252.00
8	8100404	Sign, Type IIIA	Sft	76	\$ 15.00	\$ 1,140.00	\$ 16.00	\$ 1,216.00
9	8100405	Sign, Type IIIB	Sft	328	\$ 15.00	\$ 4,920.00	\$ 17.00	\$ 5,576.00
10	8100616	Reflective Panel for Permanent Sign Support, 6 foot	Ea	65	\$ 30.00	\$ 1,950.00	\$ 35.00	\$ 2,275.00
11	8107050	Sign, Type III, Erect, Salv, Modified	Ea	35	\$ 100.00	\$ 3,500.00	\$ 35.00	\$ 1,225.00
12	8107050	Sign, Type III, Rem, Modified	Ea	126	\$ 50.00	\$ 6,300.00	\$ 25.00	\$ 3,150.00
13	8110024	Pavt Mrkg, Ovly Cold Plastic, 6 inch, Crosswalk	Ft	960	\$ 2.50	\$ 2,400.00	\$ 2.50	\$ 2,400.00
14	8110040	Pavt Mrkg, Ovly Cold Plastic, 12 inch, Cross Hatching, Yellow	Ft	130	\$ 5.00	\$ 650.00	\$ 4.75	\$ 617.50
15	8110044	Pavt Mrkg, Ovly Cold Plastic, 18 inch, Stop Bar	Ft	403	\$ 8.00	\$ 3,224.00	\$ 6.00	\$ 2,418.00
16	8110063	Pavt Mrkg, Ovly Cold Plastic, Lt Turn Arrow Sym	Ea	20	\$ 125.00	\$ 2,500.00	\$ 150.00	\$ 3,000.00
17	8110068	Pavt Mrkg, Ovly Cold Plastic, Only	Ea	4	\$ 150.00	\$ 600.00	\$ 150.00	\$ 600.00
18	8110071	Pavt Mrkg, Ovly Cold Plastic, Rt Turn Arrow Sym	Ea	1	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
19	8110077	Pavt Mrkg, Ovly Cold Plastic, Thru and Rt Turn Arrow Sym	Ea	1	\$ 150.00	\$ 150.00	\$ 250.00	\$ 250.00
20	8110231	Pavt Mrkg, Waterborne, 4 inch, White	Ft	1010	\$ 0.50	\$ 505.00	\$ 0.15	\$ 151.50
21	8110232	Pavt Mrkg, Waterborne, 4 inch, Yellow	Ft	29439	\$ 0.50	\$ 14,719.50	\$ 0.15	\$ 4,415.85
22	8110233	Pavt Mrkg, Waterborne, 6 inch, White	Ft	22365	\$ 0.60	\$ 13,419.00	\$ 0.15	\$ 3,354.75
23	8110343	Rem Spec Mrkg	Sft	525	\$ 2.00	\$ 1,050.00	\$ 2.50	\$ 1,312.50
24	8120012	Barricade, Type III, High Intensity, Double Sided, Lighted, Furn	Ea	2	\$ 100.00	\$ 200.00	\$ 70.00	\$ 140.00
25	8120013	Barricade, Type III, High Intensity, Double Sided, Lighted, Oper	Ea	2	\$ 50.00	\$ 100.00	\$ 5.00	\$ 10.00
26	8120022	Barricade, Type III, High Intensity, Lighted, Furn	Ea	32	\$ 60.00	\$ 1,920.00	\$ 70.00	\$ 2,240.00
27	8120023	Barricade, Type III, High Intensity, Lighted, Oper	Ea	32	\$ 5.00	\$ 160.00	\$ 5.00	\$ 160.00
28	8120140	Lighted Arrow, Type C, Furn	Ea	2	\$ 1,200.00	\$ 2,400.00	\$ 400.00	\$ 800.00
29	8120141	Lighted Arrow, Type C, Oper	Ea	2	\$ 50.00	\$ 100.00	\$ 100.00	\$ 200.00
30	8120170	Minor Traf Devices	LSUM	1	\$ 5,000.00	\$ 5,000.00	\$ 19,000.00	\$ 19,000.00
31	8120210	Pavt Mrkg, Longit, 6 inch or Less Width, Rem	Ft	2400	\$ 0.60	\$ 1,440.00	\$ 0.50	\$ 1,200.00
32	8120250	Plastic Drum, High Intensity, Furn	Ea	182	\$ 20.00	\$ 3,640.00	\$ 17.00	\$ 3,094.00
33	8120251	Plastic Drum, High Intensity, Oper	Ea	182	\$ 1.00	\$ 182.00	\$ 1.00	\$ 182.00
34	8120350	Sign, Type B, Temp, Prismatic, Furn	Sft	1624	\$ 4.00	\$ 6,496.00	\$ 3.00	\$ 4,872.00
35	8120351	Sign, Type B, Temp, Prismatic, Oper	Sft	1624	\$ 1.00	\$ 1,624.00	\$ 1.00	\$ 1,624.00
36	8120352	Sign, Type B, Temp, Prismatic, Special, Furn	Sft	79	\$ 8.00	\$ 632.00	\$ 8.00	\$ 632.00
37	8120353	Sign, Type B, Temp, Prismatic, Special, Oper	Sft	79	\$ 1.00	\$ 79.00	\$ 1.00	\$ 79.00
38	8190010	Cable Pole, TS, Disman	Ea	3	\$ 150.00	\$ 450.00	\$ 200.00	\$ 600.00
39	8190505	Wood Pole, Rem	Ea	1	\$ 300.00	\$ 300.00	\$ 450.00	\$ 450.00
40	8197001	Recable, TS	Ft	450	\$ 2.50	\$ 1,125.00	\$ 8.00	\$ 3,600.00
41	8200020	Case Sign, Rem	Ea	13	\$ 100.00	\$ 1,300.00	\$ 250.00	\$ 3,250.00
42	8200022	Case Sign (LED), Two Way, 24 inch by 30 inch	Ea	3	\$ 1,800.00	\$ 5,400.00	\$ 2,750.00	\$ 8,250.00
43	8200023	Case Sign (LED), Four Way, 24 inch by 30 inch	Ea	1	\$ 2,500.00	\$ 2,500.00	\$ 2,800.00	\$ 2,800.00
44	8200029	Case Sign (LED), One Way, 24 inch by 30 inch	Ea	7	\$ 1,800.00	\$ 12,600.00	\$ 2,500.00	\$ 17,500.00
45	8200030	Controller and Cabinet, Rem	Ea	1	\$ 200.00	\$ 200.00	\$ 400.00	\$ 400.00

46	8200106	Pedestal Fdn, Rem	Ea	2	\$ 250.00	\$ 500.00	\$ 300.00	\$ 600.00
47	8200110	Pedestal, Rem	Ea	2	\$ 100.00	\$ 200.00	\$ 150.00	\$ 300.00
48	8200122	Pushbutton, Rem	Ea	4	\$ 100.00	\$ 400.00	\$ 125.00	\$ 500.00
49	8200140	Span Wire	Ea	3	\$ 800.00	\$ 2,400.00	\$ 2,500.00	\$ 7,500.00
50	8200141	Span Wire, Rem	Ea	3	\$ 250.00	\$ 750.00	\$ 400.00	\$ 1,200.00
51	8200168	Strut Guy	Ea	1	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
52	8200170	Traf Loop	Ea	2	\$ 1,600.00	\$ 3,200.00	\$ 3,000.00	\$ 6,000.00
53	8200175	TS, Bracket Arm Mtd, Rem	Ea	1	\$ 100.00	\$ 100.00	\$ 250.00	\$ 250.00
54	8200179	TS, Pedestal Mtd, Rem	Ea	1	\$ 100.00	\$ 100.00	\$ 250.00	\$ 250.00
55	8200180	TS, Pedestrian, Bracket Arm Mtd, Rem	Ea	6	\$ 100.00	\$ 600.00	\$ 250.00	\$ 1,500.00
56	8200181	TS, Pedestrian, Pedestal Mtd, Rem	Ea	2	\$ 100.00	\$ 200.00	\$ 250.00	\$ 500.00
57	8200182	TS, Span Wire Mtd, Rem	Ea	13	\$ 100.00	\$ 1,300.00	\$ 250.00	\$ 3,250.00
58	8200191	TS, One Way Span Wire Mtd, Salv	Ea	4	\$ 600.00	\$ 2,400.00	\$ 800.00	\$ 3,200.00
59	8200313	TS, One Way Span Wire Mtd (LED)	Ea	6	\$ 1,200.00	\$ 7,200.00	\$ 1,400.00	\$ 8,400.00
60	8200325	TS, Three Way Span Wire Mtd (LED)	Ea	4	\$ 2,000.00	\$ 8,000.00	\$ 2,400.00	\$ 9,600.00
61	8200333	TS, One Way Bracket Arm Mtd (LED)	Ea	2	\$ 1,200.00	\$ 2,400.00	\$ 1,500.00	\$ 3,000.00
62	8200334	TS, One Way Bracket Arm Mtd, FYA (LED)	Ea	3	\$ 1,400.00	\$ 4,200.00	\$ 2,000.00	\$ 6,000.00
63	8200338	TS, Pedestrian, Two Way Bracket Arm Mtd (LED)	Ea	4	\$ 1,400.00	\$ 5,600.00	\$ 2,000.00	\$ 8,000.00
64	8200381	Video Traf Detection Camera	Ea	1	\$ 3,500.00	\$ 3,500.00	\$ 8,500.00	\$ 8,500.00
65	8200458	TS Face, Bag	Ea	2	\$ 100.00	\$ 200.00	\$ 300.00	\$ 600.00
66	8207050	TS, One Way Pedestal Mtd, FYA (LED)	Ea	1	\$ 1,400.00	\$ 1,400.00	\$ 1,900.00	\$ 1,900.00
67	8207050	TS, Two Way Span Wire Mtd, FYA (LED)	Ea	2	\$ 1,600.00	\$ 3,200.00	\$ 2,600.00	\$ 5,200.00

\$ -

= apparent low bidder

BID TOTAL:	\$ 168,556.50	\$ 205,247.10
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Commission Meeting Date: June 25, 2019

Date: June 13, 2019
To: Honorable Mayor and City Commissioners
From: Finance Director
RE: Sanitation Service Fee Resolution

SUMMARY OF REQUEST: To adopt the resolution to continue charging a sanitation service fee of \$1.20 per month per residential utility bill plus an additional .80 to provide recycling. The total charge per month per residential utility will be \$2.00. This charge will cover the difference between what is currently being collected through property taxes and what the City currently pays for residential sanitation.

FINANCIAL IMPACT: This fee will generate an estimated \$318,000.

BUDGET ACTION REQUIRED: None at this time. The rate was incorporated into the FY 2019-20 budget that was recently approved by the City Commission.

STAFF RECOMMENDATION: Adoption of the attached resolution.

CITY OF MUSKEGON
RESOLUTION NO. _____

At a regular meeting of the City Commission of Muskegon, Michigan, held at the City Commission Chambers on June 25, 2019.

RECITALS

After reviewing the cost to provide sanitation services for the residents of the City of Muskegon, the City Commission has determined that the funds generated from the 3 mills dedicated to sanitation currently does not cover the costs to provide the service at its current level.

THEREFORE, THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY RESOLVES:

1. Effective July 1, 2019, a monthly service fee of \$1.20 will continue to be charged to all residential utility billings along with an additional .80 cents for recycling. The total monthly fee charged to all residential utility bills will be \$2.00 for sanitation services.
2. This rate increase will be in effect until June 30, 2020 at which time it will be re-evaluated with the proposed budget.

The above changes to be effective as noted above.

This resolution adopted.

YEAS:

NAYS:

CITY OF MUSKEGON

By: _____
Ann Marie Meisch, MMC, City Clerk

STATE OF MICHIGAN COUNTY OF MUSKEGON

I hereby certify that the foregoing is a true and complete copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Muskegon, Michigan, held on the 26th day of June, 2018 and that the minutes of the meeting are on file in the office of the City Clerk and are available to the public. Public notice of the meeting was given pursuant to and in compliance with Act 267, Public Acts of Michigan, 1976.

Commission Meeting Date: June 25, 2019

Date: June 17, 2019
To: Honorable Mayor and City Commissioners
From: Finance Director
RE: Sewer Rate Adjustment

SUMMARY OF REQUEST: In 2018 a resolution with a treatment rate for our customers that is based on a multiplier of 1.73 times the rate the county bills the city for wastewater was adopted. The 2019/20 budget calls for the multiplier to be raised to 1.81 to cover the costs of capital improvement needs of our aging infrastructure over the next ten years.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: None at this time. The proposed rate change was incorporated into the FY 2019-20 budget that was recently approved by the City Commission.

STAFF RECOMMENDATION: Adoption of the attached fee adjustment resolution.

CITY OF MUSKEGON
RESOLUTION NO. _____

At a regular meeting of the City Commission of Muskegon, Michigan, held at the City Commission Chambers on June 25, 2019.

RECITALS

A review of the rates for sewer service has been accomplished by the city's staff, recommendations received, and the City Commission has determined that the following rate changes are justified. Accordingly, this resolution is made for the purpose of maintaining the financial viability of the city's sewer system.

THEREFORE, THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY RESOLVES:

1. Effective June 25, 2019, to rescind City of Muskegon Resolution No. 2018-46(M), which was adopted June 26, 2018.
2. Charges for residential sewer service shall be changed from a multiplier of 1.73 to 1.81 of the rate the county bills the city for wastewater treatment effective July 1, 2019, with future rates to be adjusted as the county charges are adjusted. The monthly sewer administration charge shall remain unchanged at \$3.00.
3. Charges for commercial/industrial sewer service shall continue to be billed at a rate of 1.25 times (1.25x) the city rate for residential sewer service. The monthly sewer administration charge shall remain unchanged to \$3.00.
4. Charges for all non-metered residential sewer customers will be calculated based on an assumed usage rate of 12 hundred cu. ft. per month.
5. Unless there is a separate agreement specifying a different billing method, non-resident users of the city sewer system will be billed at a rate that is double (2x) the city rate for that class of user.

The above changes to be effective as noted above.

This resolution adopted.

YEAS:

NAYS:

CITY OF MUSKEGON

By: _____
Ann Marie Meisch, MMC, City Clerk

STATE OF MICHIGAN COUNTY OF MUSKEGON

I hereby certify that the foregoing is a true and complete copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Muskegon, Michigan, held on the 26th day of June, 2018 and that the minutes of the meeting are on file in the office of the City Clerk and are available to the public. Public notice of the meeting was given pursuant to and in compliance with Act 267, Public Acts of Michigan, 1976.

Date: 6/25/2019

To: Honorable Mayor and City Commissioners

From: Department of Planning and Economic Development

RE: Park Storage Environmental Review

SUMMARY OF REQUEST:

Authorize staff to enter into an agreement with Envirologic to complete environmental investigation of city owned property at 1713 Seventh Street. Phase I and II environmental site assessments and a baseline environmental assessment are needed before the city can sell the property for development.

The requested consultant provided oversight during the removal of an underground storage tank during demolition activities on the site and has familiarity with the history and future needs at this location. They have submitted a reasonable cost estimate for the work.

FINANCIAL IMPACT:

\$16,865 for environmental services as follow up to demolition costs, covered by the Public Improvement Fund

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Envirologic for environmental services related to the property located at 1713 Seventh Street.

June 6, 2019

Ms. LeighAnn Mikesell
City of Muskegon Director of Municipal Services
City of Muskegon
933 Terrance Street
Muskegon, MI 49440

Re: Proposal for Environmental Services, 1713 7th Street, Muskegon, Michigan.

Dear Ms. Mikesell:

Thank you for providing Envirologic Technologies, Inc. (Envirologic) this opportunity to be of service. We are pleased to provide the following proposal to conduct environmental services at the above referenced subject property. Envirologic understands that the Catholic Charities of West Michigan plans to acquire a currently undeveloped parcel of property located at 1713 7th Street to construct a proposed new two-story office building located at the southeast corner of Park Street and W. Dale Street in Muskegon, Michigan.

BACKGROUND

The vacant parcel located at 1713 7th Street is one of two undeveloped parcels totaling approximately 3.9 acres situated within the City of Muskegon. The parcel identification number for this property is 61-24-205-450-0001-00. The property was developed with residences until the mid-1920s, when the initial industrial development of the subject property occurred. Muskegon Motor Works, a camshaft manufacturer, was the first company to operate at the subject property. In the mid-1900s, Misco (then later Howmet/Misco) took over the expanded industrial building and manufactured turbine blades for aircraft along with golf club heads with titanium casting methods. Towards the end of Howmet/Misco's operation in the 1980s, the facility was primarily used to store hazardous waste from other Howmet/Misco plants. The property was vacant until approximately 2010, when a new owner utilized the industrial building for a storage facility until approximately 2015.

The industrial complex was demolished in June 2018, at which time three underground storage tanks (USTs) were discovered at the subject property, with one of the three USTs formerly located on the 1713 7th Street parcel. Envirologic provided oversight during removal activities, which resulted in three independent releases being reported to the Michigan Department of Licensing and Regulatory Affairs (LARA), one from each tank. There have been no additional environmental investigations of these reported releases.

An 8,500-gallon-capacity UST containing waste oil was formerly located on the 1713 7th Street parcel. The analytical results from the soil site assessment samples collected following the removal of the UST on October 8, 2018, indicated the detection of trichloroethene (TCE), a chlorinated volatile organic compound (VOC), and lead. VOCs (primarily tetrachloroethene [PCE]), petroleum VOC constituents, and lead were also detected in soil site assessment samples collected from the other two UST locations located on the southern parcel.

The concentrations of chlorinated solvents (specifically TCE and PCE) detected in soil samples collected in the UST areas exceeded the soil residential and nonresidential Michigan Department of Environment, Great Lakes, and Energy (EGLE) media-specific volatilization to indoor air interim action screening levels for soil dated August 2017. Recent EGLE guidance regarding vapor intrusion has indicated the lateral inclusion zone for chlorinated vapor intrusion (VI) is 100 feet. The definition of lateral inclusion zone is the “horizontal distance beyond a vapor source that may make a property or structure vulnerable to the migration of vapors.” However, investigation efforts to date have not included either groundwater or vapor intrusion sampling. Envirologic recommends a site assessment that includes the evaluation of (1) groundwater which provides a transport mechanism and source for VI and (2) soil vapor from the source area, the former location of the UST, and the former buildings located on this parcel to evaluate possible contaminated vapor impact to the proposed building. Although the proposed location of the new building is in an area that was formerly a paved parking area for the Howmet/Misco company, an additional sampling location will be placed in the proposed building footprint. The proposed boring locations are shown on the Figure.

SCOPE OF SERVICES

The environmental services have been separated into the following components to address site-specific objectives:

Phase I Environmental Site Assessment

- Envirologic will complete a Phase I Environmental Site Assessment (ESA) in accordance with the American Society for Testing & Materials (ASTM) Standard Practice methodology (Standard E 1527-13).
- In an effort to evaluate the historical use and ownership of the site, Envirologic will attempt to interview past land owners and users of the site; analyze historical aerial photographs; review historical city directories, land development maps, and Sanborn fire insurance maps (if available); and request and analyze file information.

Ms. LeighAnn Mikesell

June 6, 2019

Page 3 of 6

- In accordance with the ASTM Standard Practice for Phase I ESAs, Envirologic will review appropriate state and federal agency databases within recommended search radii to identify known and potential environmental concerns at or near the project site.
- Envirologic will perform a visual site inspection of the property. The purpose of the site inspection is to further identify potential environmental concerns associated with the site. The visual inspection will include both interior and exterior observations.
- Upon completion of the aforementioned services, the data collected from the Phase I ESA will be compiled into a project report. At that time, recommendations for further action, if appropriate, will be presented.

Phase II Environmental Site Assessment

- Prepare a Health and Safety Plan (HASP) to be utilized by Envirologic's on-site personnel.
- Complete a Miss Dig utility request.
- Utilize ground-penetrating radar (GPR) to map subgrade utilities and demarcate the proposed boring locations.
- Advance six (6) soil boring locations on the parcel to a depth of approximately 20 feet below ground surface (bgs).
- Install four (4) temporary monitoring wells at each boring location for the collection of groundwater samples.
- Collect four (4) groundwater samples from each well location for the analysis of VOCs using USEPA Method 8260.
- Install six (6) vapor monitoring ports at each boring location for the collection of soil gas samples.
- Analyze six (6) soil gas samples for VOCs using USEPA Method TO-15.
- Collect one (1) soil sample from the former UST excavation area for analysis of VOCs and lead.

Baseline Environmental Assessment

- Following the review of the analytical results from the newly conducted site assessment activities conducted at the site, if chlorinated solvent contaminants exceed Michigan residential cleanup criteria, the site meets the definition of a "facility" as defined in Part 201 of the Natural Resources and Environmental Protection Act

(NREPA). Envirologic will complete a Baseline Environmental Assessment and Due Care Plan to ensure protection from environmental cleanup liabilities. The Baseline Environmental Assessment must be conducted within 45 days of ownership or occupancy.

- An owner/operator of a facility has due care obligations to comply with Part 201 and operate in a manner to prevent unacceptable exposures to property occupants. Due care obligations broadly include the following: prevent exacerbation, mitigate unacceptable exposure and operate in a manner that protects the public health and safety, take reasonable precautions against third-party omissions, reasonably cooperate with parties authorized to conduct response activities, comply with land or resource use restrictions, and do not impede any land or resource use restrictions. If the completion of a VI assessment demonstrates that there is an immediate exposure risk via volatilization to the indoor air pathway, further action would be needed to meet due care obligations, thereby protecting the general public from unacceptable exposure via the volatilization to indoor air pathway. The installation of a sub-slab depressurization (SSD) system to mitigate soil vapor from the area where elevated concentrations of PCE and TCE are identified underneath the proposed building may be necessary. Costs associated with the installation of a mitigation system would be prepared under separate cover as a separate scope of services, if necessary.

ESTIMATED COSTS

Envirologic proposes to perform the services described in the *Scope of Services* on a time and materials basis.

Phase I Environmental Site Assessment

Professional Services (Site Visit, Report Preparation) \$ 2,200

Phase II Environmental Site Assessment

Project Management (Health & Safety Plan, Communications)..... \$ 1,200
Field Activities (Two Days) \$ 1,700
Ground-penetrating Radar Survey (Subcontracted) \$ 1,165
Drilling Services (Subcontracted) \$ 3,700
Laboratory Services (Subcontracted) \$ 2,400
Field Expenses (PID, Disposable Equipment, Travel, etc.)..... \$ 500
Professional Services (Report Preparation) \$ 2,000

Ms. LeighAnn Mikesell
June 6, 2019
Page 5 of 6

Baseline Environmental Assessment

Professional Services (Project Management, Report Preparation) \$ 2,000

TOTAL ESTIMATED PROJECT COSTS.....\$16,865

COMPLETION SCHEDULE

Envirologic proposes to initiate the project immediately upon receiving authorization to proceed.

If you desire to have Envirologic conduct the aforementioned services, please sign and date one copy of the authorization page and return it to our office. A signed copy of the authorization page will serve as our authorization to proceed. This proposal is subject to the attached terms and conditions.

If you have any questions, comments, or require additional information, please contact our office at (269) 342-1100.

Sincerely,

ENVIROLOGIC TECHNOLOGIES, INC.



Gary T. Blinkiewicz, CPG, LPG
Project Manager – Hydrogeologist



David A. Stegink
Vice President
Manager of Redevelopment Services

GTB:sns

Attachment

Ms. LeighAnn Mikesell

June 6, 2019

Page 6 of 6

AUTHORIZATION

To authorize this project, please email, fax, or mail a signed copy of this signature page to our office.

Re: Proposal for Environmental Services, 1713 7th Street, Muskegon, Michigan.

Authorized Representative:

Signature

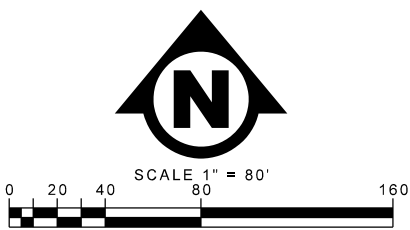
Date

Title

Purchase Order No. (if applicable)



● Proposed Soil Boring/Temporary Monitoring Well/Vapor Monitoring Location



NOTE:
THIS IS NOT A PROPERTY BOUNDARY SURVEY, PROPERTY BOUNDARIES SHOWN ON THIS MAP ARE BASED ON AVAILABLE FURNISHED INFORMATION AND ARE APPROXIMATE ONLY AND SHOULD NOT BE USED TO ESTABLISH PROPERTY BOUNDARY LOCATION IN THE FIELD.

**Proposed Sampling Locations
1713 7th Street
Muskegon, MI 49441**

30 years 
envirollogic
environmental consulting + services
2960 INTERSTATE PARKWAY
KALAMAZOO, MICHIGAN 49048
PH: (269) 342-1100 FAX: (269) 342-4945

PROJECT NO.
190065

FIGURE No.

2

PROFESSIONAL SERVICES

Terms and Conditions

The services to be rendered by **Envirologic Technologies, Inc. (Envirologic)** or its divisions in the attached proposal are expressly contingent upon the Client's acceptance of these Terms and Conditions. Any additional or conflicting Terms and Conditions of the Client are hereby expressly objected to and rejected by Envirologic.

1. **Payment.** Envirologic shall invoice Client on a monthly basis for services incurred the previous month. Invoices are due and payable within 30 days of receipt. A service charge of 1.5 percent will be added to all outstanding balances each month they are past due. Envirologic reserves the right, upon 30 days written notice to client, to modify the attached Schedule of Fees. If payment of Envirologic invoices is not maintained on a 30-day current basis, Envirologic may, upon seven (7) days written notice to Client, suspend further performance and withhold any and all data from Client until such invoice payments are restored to a current basis without incurring any liability whatsoever to client.

Client shall be responsible for and pay Envirologic at 1 1/2 times their prevailing rates for any time spent by its personnel in connection with any legal proceedings arising from or relating to services provided under this Agreement, regardless of whether Envirologic is subpoenaed to appear by Client or a third party.

Nothing in this Agreement shall preclude Envirologic from filing a construction lien against Client's property in order to secure the payment provided for in this Agreement.

2. **Additional Work.** Envirologic agrees to modify the work proposal as authorized in writing by the Client. Client agrees to pay Envirologic for any increases in the cost of performing the additional work. Unless otherwise agreed to in writing, the cost of the modifications shall be determined on a time and material basis in accordance with the attached rate schedule.

Costs and schedule commitments shall be subject to renegotiation for delays in performance caused by circumstances beyond the reasonable control of Envirologic including, but not limited to: Acts of God; fire; flood; explosion; war, action, inaction or request of governmental authority; injunction; adverse weather conditions; accident; labor trouble or shortage; inability to obtain material, equipment, fuel or transportation. No liability shall result to either party from the delay in performance caused by the circumstances described above except for the obligation of the Client to pay Envirologic for (i) work performed, and (ii) additional labor, equipment and other costs associated with Envirologic's maintenance of its work force and equipment available during the interruptions. Should any of the circumstance described above occur causing delay, both parties shall use their best efforts to overcome the difficulties arising and to resume as soon as reasonably possible the work under this Agreement.

Whenever Envirologic is of the opinion that the timely completion of its responsibilities pursuant to this Agreement has been or will be adversely affected by events which are beyond its control, it shall, as soon as practicable orally notify the Client and within ten (10) calendar days thereafter notify the Client in writing, stating the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of these measures.

3. **Site Security and Safety.** Envirologic attempts to conduct its field activities in such a manner as to protect themselves and others from injury. If the Client is aware of special precautions to insure safety, the Client should immediately advise Envirologic. The Client grants to Envirologic, its agents and employees, during the term of this Agreement, reasonable access to the subject premises for the purposes of fulfilling Envirologic's obligations under this Agreement. Envirologic shall comply with any reasonable safety procedures delivered by the Client to Envirologic in writing.

It is hereby further agreed and understood that while Envirologic is on the premises of the Client, Envirologic, its employees and representatives will not unreasonably interfere with the business activities being performed by the Client on or about the premises without the Client's permission. It is further agreed and understood that the employees and representative of the Client will act to reasonably facilitate Envirologic's performance of its obligations under this Agreement.

4. **Utilities.** Client shall be responsible for disconnecting electrical lines, and staking utilities, both private and public, if necessary and assume all responsibility for damage during and after execution of Envirologic's services. In no event shall Envirologic be responsible for additional costs resulting from unknown property conditions.

It shall be the responsibility of Client or its duly authorized representative to disclose the presence and accurate location of all hidden or obscure manmade objects relative to field tests or installations. If Envirologic is cautioned, advised or given data in writing that reveal the presence or potential presence of underground or overground obstructions, Envirologic will give special instructions to its field personnel and subcontractors, however, all additional costs caused by the existence of the obstruction(s) shall be paid by Client on a time and material basis. As evidenced by acceptance of this proposal, the Client agrees to indemnify and save harmless Envirologic and subcontractors from all claims, suits, losses, personal injuries, death and property liability, resulting from unusual subsurface conditions or damages to subsurface structures, owned by the Client or third parties, occurring in the performance of the proposed work, whose presence and exact locations were not revealed to Envirologic in writing, and to reimburse Envirologic for expenses in connection with any such claims or suits, including reasonable attorneys' fees.

5. **Property Access.** Client shall arrange and provide such access to the site as is necessary for Envirologic to perform their services. Client shall be solely responsible for all aspects of site security and for obtaining any necessary permission from any third party property owners for use of their lands.

Client hereby agrees to indemnify, defend and hold Envirologic harmless from any damages to Client's or third party's property, except that caused by the gross negligence of Envirologic or its agents. Client acknowledges that certain damage may be caused by Envirologic vehicles and equipment being on site and will hold Envirologic harmless for said damages.

6. **Performance of Services.** Envirologic shall exercise due care in performing its services hereunder and shall render them in accordance with prevailing professional standards and ethics as measured on the date hereof and in the locale of this project in performing services for Client. If Envirologic believes that compliance with Client's requests could violate professional standards, ethics, laws or regulations, Envirologic shall advise Client and a mutually satisfactory solution shall be discussed. If the parties are unable to reach a satisfactory solution, either party may terminate this agreement as stated herein.

7. **Limitation on Warranty.** ENVIROLOGIC DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM SAMPLING OR ANALYTICAL ACTIVITIES. CLIENT IS LIABLE FOR LOSS AND/OR DAMAGES TO THE SURFACE OR SUBSURFACE CAUSED BY SAMPLING OR DRILLING ACTIVITIES OR FOR DAMAGE TO WELLS AS A RESULT OF TRESPASS OR FROM OPERATION SERVICES, INCLUDING BUT NOT LIMITED TO CONTAMINATION OR LOSS OF EQUIPMENT IN WELL, UNLESS SUCH LOSS RESULTS FROM ENVIROLOGIC'S NEGLIGENCE OR WILLFUL MISCONDUCT.

CLIENT ACKNOWLEDGES THAT STATEMENTS IN REPORTS ARE DEEMED TO BE OPINIONS BASED ON PROFESSIONAL JUDGMENT AND THAT ENGINEERING, ENVIRONMENTAL, GEOLOGIC, HYDROGEOLOGIC AND GEOTECHNICAL CONDITIONS FREQUENTLY VARY FROM THOSE ENCOUNTERED AT THE TIMES AND LOCATIONS WHERE DATA ARE OBTAINED BY ENVIROLOGIC. THEREFORE, LIMITED DATA MAY RESULT IN UNCERTAINTY WITH RESPECT TO INTERPRETATION OF THESE CONDITIONS, DESPITE THE USE OF PROFESSIONAL CARE, AND THAT GOVERNMENTAL REGULATIONS RELATING TO HAZARDOUS SUBSTANCE(S) MAY CHANGE OR THEY MAY REQUIRE RESULTS WHICH CANNOT BE ACCOMPLISHED OR ADDITIONAL ACTIVITIES BE CONDUCTED.

8. **UST Site Closure.** Pursuant to Part 213 of NREPA, 1994 PA 451, as amended, if Envirologic shall submit a Release Closure Report to the Michigan Department of Environmental Quality upon confirmation that cleanup standards have been met, said report shall relate to only contaminants identified in the area(s) associated with the reported release set forth in the scope of services and shall only be released when, in Envirologic's best scientific judgment, all applicable cleanup criteria have been met.

9. **Disposal of Contaminated/Hazardous Wastes.** Any hazardous or toxic wastes, pollutants, contaminants or other waste materials encountered by or associated with services provided by Envirologic on this project shall at no time be or become the property of Envirologic. Arrangements for the treatment, storage, transport or disposal of any waste materials, which may be made by Envirologic, shall be construed as being made solely and exclusively on Client's behalf and Client shall indemnify, defend and hold Envirologic harmless from and against any and all liability which arises out of the treatment, storage, transport or disposal of any waste materials. It is agreed and understood that any manifests or other forms required for the disposal of hazardous waste will be properly completed and signed by the Client or a duly authorized representative.

10. **Subcontractors.** Envirologic may, in its own discretion, hire subcontractors on behalf of Client to perform any such portion of the services hereunder. If Client selects its own subcontractor(s), Envirologic shall not be responsible for,
(Revised 5/02)

or in any manner guarantee, the performance of such subcontractor(s) or their agents or employees, nor shall Envirologic be liable for any negligent acts, errors or omissions of said subcontractor.

Estimated subcontractor costs will depend upon their actual current prices. Any increased prices will be passed on to Client.

11. **Term of Agreement.** Envirologic agrees to proceed with implementation of the proposal on a timely basis. However, due to its unknown site conditions and delays in state processing, no definite time period can be established for completion of services.

12. **Confidentiality and Use of Documents.** Envirologic shall retain, as confidential, all information and data furnished to it by Client and/or others which is designated as confidential. Said information shall not be disclosed to any third party except as directed by Client or as required by law or regulation.

Provided that Envirologic has been fully paid for its services, Client shall have the right to copies of all documents, maps, photographs, drawings and reports resulting from services hereunder for purposes reasonably contemplated by the parties. Any work product generated by Envirologic shall remain in its possession.

Reuse of any material described above by Client on extensions of a project or on any other project or by a third party without Envirologic's written consent shall be at Client's or third party's risk and Client agrees to indemnify, defend and hold Envirologic, its employees, agents and subcontractors, harmless from all claims, damages and expenses, including attorney fees, arising out of such use.

13. **Information Provided by Client or Others.** Envirologic shall indicate to Client the information needed for rendering the Services described in each Work Order. Envirologic shall review existing information provided by others and shall give Client its opinion as to the risks associated with reliance on such information. To the extent that Envirologic is required to rely solely upon existing information, without the opportunity for Envirologic to appropriately validate the accuracy and reliability of such information, Client agrees to waive any claim against Envirologic and to indemnify and hold harmless Envirologic from and against any and all claims, damages, losses, liability, and expenses, including attorney's fees, which may arise from errors, omissions or inaccuracies in existing information provided to Envirologic by Client or others.

14. **Rights of Third Parties.** This Agreement shall not create any rights or benefits to parties other than Client and Envirologic.

15. **Indemnification of Client by Envirologic.** Except as otherwise provided herein, Envirologic agrees to indemnify, defend and hold harmless client from all claims, losses, liabilities, damages and expenses, including attorney's fees which may occur as the result of any claims or damages sustained by person or property, arising out of the sole negligence or willful misconduct of Envirologic in the performance of its work.

16. **Indemnification of Envirologic by Client.** Client shall indemnify, defend and hold Envirologic, its agents and employees, harmless against all liability, claims, demands, losses, damages, expenses and costs, including attorney fees that Envirologic may incur by reason of any injury or damage to person or property arising out of the performance of the work, alleged or actual contaminant migration as a result of the work or any prior work performed at the site and for all matters relating to this Agreement except for acts caused by the sole negligent performance of Envirologic under this Agreement.

17. **Insurance.** Upon request, Envirologic shall furnish copies of insurance certificates evidencing that it maintains, at a minimum, the following coverage:

<u>Type</u>	<u>Limits</u>
Worker's Compensation	Statutory
Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
General Liability	\$5,000,000 occurrence
	\$5,000,000 aggregate
Personal & Adv. Injury	\$5,000,000
Products – COMP/OP AGG	\$5,000,000
Umbrella	\$2,000,000 each claim
	\$2,000,000 aggregate
Contractor Pollution	\$5,000,000 total all claims
Automotive Liability	\$1,000,000 combined single limit (ea. accident)

With respect to only such loss, damage, injury, or liability as is covered under the policies of insurance and policy limits identified above, Envirologic agrees to save Client harmless from and against loss, damage, injury, or liability arising directly from the negligent acts or omissions of Envirologic employees, agents, and subcontractors, and their employees and agents. If Client requires higher insurance limits, additional coverage, or performance or payment bonding, Envirologic will endeavor to obtain such coverage, at Client's expense. It is the understanding and agreement of the parties, however, that Envirologic is unable to save Client harmless from and against any loss, damage, injury, or liability arising from any cause, beyond the amount and coverage listed in this section. In addition, Envirologic shall be included as an additional and intended beneficiary under any hold harmless agreements against third-party suits between Client and owner or any other third party, including without limitation any other contractor, subcontractor, or supplier who may perform "Services" or provide material in connection with any study or report or design prepared by Envirologic.

In no event shall Envirologic be responsible for any incidental, indirect, special, punitive, impact, consequential damages (including but not limited to loss of profits) or cost of defense incurred by Client or any third party, except as otherwise provided herein.

All claims, including claims for indemnification, whether based upon contract, tort, breach of warranty, professional negligence, or otherwise, shall be deemed waived unless the claim is made within the time required under insurance coverage provided, by Envirologic. Non-insured claims must be made within one (1) year after completion of that work or event giving rise to the claim.

18. **Compliance With Laws.** The Client shall be responsible for notifying all appropriate Federal, State, municipal or other governmental agencies of the existence of any hazardous, toxic or dangerous materials located on or in the site, or discovered during the performance of this Agreement.

19. **Equal Employment.** Envirologic is an Equal Opportunity Employer and shall not discriminate against any employee or applicant for employment based on race, color, religion, sex or national origin.

20. **Waiver.** No waiver, discharge or renunciation of any claim or right of Envirologic arising out of breach of this Agreement by Client shall be effective unless in writing, signed by Envirologic.

21. **Termination.** Either party may terminate this Agreement without cause upon seven (7) days written notice to the other party. In the event of termination, Client shall pay Envirologic for all costs incurred to date plus reasonable costs associated with termination of the work.

22. **Complete Agreement.** These terms and conditions together with the proposal to perform work and rate schedule constitute the complete and entire agreement between the parties. Any modification thereto must be in writing signed by both parties.

23. **Governing Law.** This proposal and its terms and conditions shall be interpreted under and governed by the laws of the State of Michigan.

Commission Meeting Date: June 25, 2019

Date: June 24, 2019

To: Honorable Mayor and City Commission

From: Community and Neighborhood Services Department

RE: Approval of Sale: City Home at 1015 E. Forest Avenue

SUMMARY OF REQUEST: To approve the attached resolution and instruct the Community and Neighborhood Services department to complete the sales transaction with Kathryn Schmidt for the rehabilitated home at 1015 East Forest Avenue: purchase price \$115,000.

FINANCIAL IMPACT: The proceeds from the sale will be used to continue the rehabilitation of affordable homes through the HOME program and provide funding for our Homebuyer's Assistance 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 SALE OF
HUD PROPERTY AT 1015 E FOREST AVENUE

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 the property at 1015 E Forest Avenue to Kathryn Schmidt. This home has been rehabilitated by Community and Neighborhood Services Department through the Home-Buyer Program.

Adopted this 25th of June, 2019.

Ayes:

Nays:

By _____
Stephen J. Gawron, Mayor

By _____
Ann Marie Meisch, MMC City Clerk

Commission Meeting Date: June 25, 2019

Date: June 20, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing – Establishment of a Commercial Rehabilitation District –292 W Western Ave

SUMMARY OF REQUEST:

Pursuant to Public Act 255 of 1978, as amended, Sweetwater Development, LLC has requested the establishment of a Commercial Redevelopment District. The creation of the district will allow the building owner to apply for a Commercial Facilities Exemption Certificate, which will freeze the taxable value of the building and exempt the new real property investment from local taxes.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Establishment of the Commercial Redevelopment District.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING THE CREATION OF A COMMERCIAL REDEVELOPMENT DISTRICT
292 W Western Ave**

WHEREAS, pursuant to PA 255 of 1978, the City of Muskegon has the authority to establish "Commercial Redevelopment Districts" within the City of Muskegon at request of a commercial business enterprise or on its own initiative; and

WHEREAS, Sweetwater Development, LLC has filed a written request with the clerk of the City of Muskegon requesting the establishment of the Commercial Redevelopment District for an area in the vicinity of 292 W Western Ave located in the City of Muskegon hereinafter described; and

WHEREAS, the City Commission of the City of Muskegon determined that the district meets the requirements set forth in section 5 of PA 255 of 1978; and

WHEREAS, written notice has been given by certified mail to all owners of real property located within the proposed district as required by section 5(3) of PA 255 of 1978; and

WHEREAS, on June 25, 2019 a public hearing was held and all residents and taxpayers of the City of Muskegon were afforded an opportunity to be heard thereon; and

WHEREAS, the City of Muskegon deems it to be in the public interest of the City of Muskegon to establish the Commercial Redevelopment District as proposed;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Muskegon that the following described parcel(s) of land situated in the City of Muskegon, County of Muskegon, and State of Michigan, to wit:

Unit 24A, Downtown Muskegon Development Center No. 1, a Site Condominium according to the Master Deed dated May 31, 2006 and recorded June 2, 2006 in Liber 3702, Page 204, First Amended and Restated Master Deed recorded in Liber 3748, Page 758, First Amendment to First Amended and Restated Master Deed recorded in Liber 4133, Page 876, Second Amendment to Master Deed recorded in Liber 4164 Page 744 and designated as Muskegon County Condominium Subdivision Plan No. 160, together with rights in general common elements and limited common elements, as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

Adopted this 25th Day of June 2019

Ayes:

Nays:

Absent:

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on June 25, 2019.

Ann Meisch
Clerk

Commission Meeting Date: June 25, 2019

Date: June 20, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing – Issuance of a Commercial Facilities Exemption Certificate – Sweetwater Development, LLC

SUMMARY OF REQUEST:

Pursuant to Public Act 255 of 1978, as amended, Sweetwater Development, LLC has requested the issuance of a Commercial Facilities Exemption Certificate for their project at 292 W Western Ave. The certificate provides a 50% reduction in the number of mills levied as ad valorem taxes, excluding the State Education Tax, for the commercial portion of the development. The company will be investing \$4,154,539 in the commercial space and will create up to 30 jobs, which qualifies them for an abatement of 12 years.

FINANCIAL IMPACT:

The certificate provides a 50% reduction in the number of mills levied as ad valorem taxes, excluding the State Education Tax.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Issuance of the Commercial Facilities Exemption Certificate

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING APPLICATION FOR ISSUANCE
OF A COMMERCIAL FACILITIES EXEMPTION CERTIFICATE
*Sweetwater Development, LLC***

WHEREAS, the City of Muskegon legally established the Commercial Redevelopment District, 292 W Western Ave District, after a public hearing held on June 25, 2019; and

WHEREAS, the state equalized value of the property proposed to be exempt plus the aggregate state equalized value of property previously exempt and currently in force under Public Act 255 of 1978 and under Public Act 198 of 1974 (IFT's) does not exceed 5% of the total state equalized value of the City of Muskegon; and

WHEREAS, the application was approved at a public hearing as provided by section 6(2) of Public Act 255 of 1978 on March 26, 2019; and

WHEREAS, Sweetwater Development, LLC is not delinquent in any taxes related to the facility; and

WHEREAS, the application is for commercial property as defined in section 3(3) of Public Act 255 of 1978; and

WHEREAS, Sweetwater Development, LLC had provided answers to all required questions under Section 6(1) of PA 255 of 1978 to the City of Muskegon; and

WHEREAS, the City of Muskegon requires that the construction, restoration or replacement of the facility shall be completed by June 25, 2019; and

WHEREAS, the Commercial Facilities Exemption Certificate is granted for a period of twelve (12) years and no extensions will be allowed; and

WHEREAS, the commencement of the construction, restoration or replacement of the facility did not occur more than 45 days prior to the filing of the application for exemption; and

WHEREAS, the commencement of the construction, restoration or replacement of the facility did not occur prior to the establishment of the Commercial Redevelopment District; and

WHEREAS, the application relates to a construction, restoration or replacement program which when completed constitutes a new, replacement or restored facility within the meaning of Public Act 255 of 1978 and that is situated within a Commercial Redevelopment District established under Public Act 255 of 1978; and

WHEREAS, completion of the facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to increase commercial activity, create employment, retain employment and prevent a loss of employment in the community in which the facility is situated; and

WHEREAS, the restoration includes improvements aggregating 10% or more of the true cash value of the property at commencement of the restoration as provided by section 4(6) of Public Act 255 of 1978.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City Commission

Be and hereby is granted a Commercial Facilities Exemption for the real property, excluding land, located in Commercial Redevelopment District, 292 W Western Ave District at 292 W Western Ave for a period of twelve (12) years, beginning December 31, 2019, and ending December 30, 2030, pursuant to the provisions of PA 255 of 1978, as amended.

Adopted this 25th Day of June, 2019.

Ayes:

Nays:

Absent:

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on June 25, 2019.

Ann Meisch
Clerk

**Application for Commercial Facilities Exemption
Certificate
City of Muskegon,
Michigan**

General description of the facility: The Property is comprised of a single parcel of land containing approximately .340 acres. The site is currently vacant and was historically occupied by the former Muskegon Mall. The Mall was demolished in 2003 and the site has been vacant since that time awaiting development.

General description of the facility's proposed use: Sweetwater Development, LLC ("Sweetwater") is proposing to construct a new six-story mixed use building that will contain approximately 49,900 sf and include a mix of first floor retail, office and residential space above approximately 8,000 sf of underground parking that would provide an estimated twenty-eight (28) parking spaces (the "Project"). The Project's first floor retail space would include an estimated two (2) units with approximately 7,550 sf with two (2) stories of commercial office space above what would contain approximately 7,650 sf on each floor. The Project's remaining three (3) floors would include six (6) units on each floor (18 total units) with a mix of one and two bedroom units.

General description of the nature and extent of the restoration, replacement, or construction to be undertaken: The Project will include site preparation, including excavation of soils for construction of underground parking and construction of a new mixed-use building containing approximately 49,900 sf that will include a mix of one and two bedroom residential apartment units above first floor retail and second and third floor commercial office space with underground parking spaces to serve the Project. The Project will provide mixed use infill development along W. Western Avenue in the heart of downtown Muskegon.

Legal Description:

Unit 24A, Downtown Muskegon Development Center No. 1, a Site Condominium according to the Master Deed dated May 31, 2006 and recorded June 2, 2006 in Liber 3702, Page 204, First Amended and Restated Master Deed recorded in Liber 3748, Page 758, First Amendment to First Amended and Restated Master Deed recorded in Liber 4133, Page 876, Second Amendment to Master Deed recorded in Liber 4164 Page 744 and designated as Muskegon County Condominium Subdivision Plan No. 160, together with rights in general common elements and limited common elements, as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

Unit 24B, Downtown Muskegon Development Center No. 1, a Site Condominium according to the Master Deed dated May 31, 2006 and recorded June 2, 2006 in Liber 3702, Page 204, First Amended and Restated Master Deed recorded in Liber 3748, Page 758, First Amendment to First Amended and Restated Master Deed recorded in Liber 4133, Page 876, Second Amendment to Master Deed recorded in Liber 4164 Page 744 and designated as Muskegon County

Condominium Subdivision Plan No. 160, together with rights in general common elements and limited common elements, as set forth in the above Master Deed and as Described in Act 59 of the Public Acts of 1978, as amended.

Descriptive list of the fixed building equipment that will be a part of the facility: The following equipment will be installed as part of the proposed project:

- HVAC System
- Electrical
- Fire Suppression
- Plumbing
- Elevator

Time schedule for undertaking and completing the facility's restoration, replacement or construction: The Project is expected to begin in mid-2019 with completion expected by mid-2020.

Statement of the economic advantages expected from the receiving the exemption:

The exemption will allow the Project to defray some of the annual expenses associated with the increased property taxes generated as a result of the proposed project and investment. This will allow the developer to complete the project in a timely manner, stabilize following construction, and provide a long-term benefit to the taxing jurisdictions through increased commercial activity, new jobs and revitalization of the underutilized site. Without the exemption benefit, the Project would not be feasible and would not take place.

Commission Meeting Date: June 25, 2019

Date: June 19, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
**RE: Public Hearing - Request to Create a new Neighborhood
Enterprise Zone district at 292 W Western Ave**

SUMMARY OF REQUEST:

Pursuant to Public Act 147 of the Michigan Public Acts of 1992, Sweetwater Development, LLC has requested to create a new Neighborhood Enterprise Zone (NEZ) district for the parcel at 292 W Western Ave for a new mixed-use building.

FINANCIAL IMPACT:

For those properties that are approved for a NEZ Certificate, taxation will be levied using half of the State average of millages of local entities.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To hold the public hearing

COMMITTEE RECOMMENDATION:

None

Background

Properties located in NEZ districts are eligible to apply for NEZ certificates, which will lower the residential property taxes on new or rehab construction. The State requires that notices are to be sent to the local taxing jurisdictions regarding the request and that the resolution may not be passed until after 60 days of the notice letters being sent. Also, a public hearing must be held no more than 45 days after the notice is sent. Notices were mailed on June 11, 2019. The resolution approving the district is planned to come back in front of the City Commission on August 13, 2019. The NEZ will only affect the residential component of the project.

Commission Meeting Date: June 25, 2019

Date: June 13, 2019
To: Honorable Mayor and City Commissioners
From: City Manager
RE: Transmittal of 2019-20 Proposed Budget

SUMMARY OF REQUEST: At this time staff is transmitting to the City Commission the proposed budget for fiscal year 2019-20 which starts July 1, 2019. Both hardcopy and electronic versions of the budget have been distributed to Commissioners. Additionally, the budget is available for public inspection on the City's website and at the City Clerk's office.

The proposed budget was reviewed in detail with staff at the June 6th work session. A public hearing on the budget will be held at the regular Commission meeting on June 25th. City ordinance requires that the budget be adopted by the Commission on or before the second Commission meeting in June.

FINANCIAL IMPACT: The budget is the City's financial plan for the coming fiscal year.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approval of the proposed budget for fiscal year 2019-20.

**CITY OF MUSKEGON
RESOLUTION OF APPROPRIATION
2019-20 BUDGET**

WHEREAS, the City Manager has submitted a proposed Budget for 2019-20 in accordance with City Ordinance and Michigan Public Act 621 of 1978 known as the "Uniform Budgeting and Accounting Act"; and,

WHEREAS, the 2019-20 proposed Budget has been reviewed by the City Commission following a public hearing for which due notice was given; NOW, THEREFORE, BE IT RESOLVED that the Budget for the City of Muskegon for the fiscal year beginning July 1, 2019 is hereby determined and adopted as follows:

GENERAL FUND

FUND ACTIVITY NUMBER	FUND/ACTIVITY NAME	AMOUNT
101-10101	City Commission	85,936
101-10102	City Promotions & Public Relations	88,000
101-10145	City Attorney	360,000
101-10172	City Manager	419,762
101-10875	Support to Outside Agencies	424,513
101-10891	Contingency and Bad Debt Expense	100,000
101-20215	City Clerk & Elections	547,208
101-20220	Employee Relations	210,412
101-30202	Finance Administration	611,136
101-30205	Income Tax Administration	378,431
101-30209	Assessing Services	332,000
101-30248	Information Systems Administration	492,581
101-30253	City Treasurer	609,617
101-30851	Insurance Premiums	287,041
101-30906	Debt Retirement	449,750
101-30999	Transfers to Other Funds	845,000
101-40301	Police	10,190,969
101-50336	Fire	3,752,106
101-50338	Central Fire Station	75,000
101-50387	Building Code Inspections and Enforcement	2,296,579
101-60265	City Hall Maintenance	276,491
101-60446	Community Event Support/Downtown BID	103,159
101-60448	Streetlighting	490,000
101-60523	Sanitation	1,969,345
101-60550	Stormwater Management	14,000
101-70276	Cemeteries Maintenance	507,902
101-70751	Parks Maintenance	1,624,617
101-70757	McGraft Park Maintenance	120,076
101-80400	Planning, Zoning and Economic Development	417,911
101-90000	Major Capital Improvements	895,201
	Grand Total General Fund Appropriations	<u>\$28,974,743</u>

OTHER BUDGETED FUNDS

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
202,204	Major Streets and State Trunklines	5,328,443
203	Local Streets	1,819,723
264	Criminal Forfeitures	28,314

BE IT FURTHER RESOLVED that the revenues and other financing sources (including use of prior year balances) for Fiscal Year 2019-20 are estimated as follows:

GENERAL FUND

<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
Taxes	\$ 16,062,055
Licenses and Permits	2,500,000
Federal Grants	40,000
State Grants	776,000
State Shared Revenue	4,376,711
Charges for Sales & Services	3,677,210
Interest & Operating Transfers	428,500
Fines & Fees	628,667
Other Revenue	<u>504,000</u>
 Total General Fund Revenue	
Appropriations	<u>\$28,993,143</u>

OTHER BUDGETED FUNDS

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
202,204	Major Streets and State Trunklines	6,310,774
203	Local Streets	1,645,452
264	Criminal Forfeitures	5,400

BE IT FURTHER RESOLVED that the operating expense projections for the following non-budget funds are hereby approved:

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
305	TIFA Debt Service	\$42,000
394	Downtown Development Authority Debt	1,134,944
290	Local Finance Development Authority Debt	456,100
295	Brownfield Redevelopment Authority (Betten)	30,813
296	Brownfield Redevelopment Authority (Former Mall)	162,000
298	Brownfield Redevelopment Authority (Terrace Point)	225,000
252	Farmers Market & Kitchen 242	200,306
254	L C Walker Arena	1,561,843
404	Public Improvement Fund	1,481,035
482	State Grants Fund	3,850,000
590	Sewer	17,102,424
591	Water	11,008,060
594	Marina/Launch Ramp	638,800
661	Equipment	3,256,214
642	Public Service Building	1,240,852
643	Engineering Services Fund	484,682
677	General Insurance Fund	4,685,656

BE IT FURTHER RESOLVED, that there is hereby appropriated for said fiscal year the several amounts set forth above which, pursuant to the "Uniform Budget and Accounting Act", define the City of Muskegon's appropriation centers, and

BE IT FURTHER RESOLVED, that the City Manager is hereby empowered to transfer appropriations within appropriation centers, and

BE IT FURTHER RESOLVED, that there is hereby levied a general tax as herein fixed on each dollar of taxable valuation for the purposes herein outlined, said levy to be applied on all taxable real and personal property in the City of Muskegon as set forth in the assessment roll dated May 2018:

<u>PURPOSE</u>	<u>MILLAGE (MILLS)</u>
General Operating	10.0000
Sanitation Service	3.0000
Promotion	<u>.0865</u>
Total	13.0865

At a meeting of the City Commission of the City of Muskegon, on the _____ Day of June 2019, the foregoing resolution was moved for adoption by Commissioner _____ . Commissioner _____ supported the motion.

Resolution declared adopted.

Mayor

City Clerk

Date: June 25, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

**RE: Concurrence with the Housing Board of Appeals Notice
and Order to Demolish. Dangerous Building Case
#EN1900596**

SUMMARY OF REQUEST:

This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structure located at 769 Catawba Ave. (between Harnau St. and Getty St.) is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent, or responsible party if they do not demolish the structure.

Staff Correspondence: A Dangerous Building Inspection was conducted on April 10, 2019. The Notice and Order to Repair or Remove was issued on April 25, 2019. On June 6, 2019 the HBA declared the structure substandard and dangerous. The Notice and Order to Demolish was issued on June 7, 2019.

FINANCIAL IMPACT:

General Funds

BUDGET ACTION REQUIRED:

None

STATE EQUALIZED VALUE:

\$18,700.00

Estimated cost to repair: \$50,000.00

STAFF RECOMMENDATION:

To concur with the Housing Board of Appeals decision to demolish.

Case

EN1900596DB – 769 Catawba Ave.

1

William L. Deback
769 Catawba Ave.
Muskegon, MI 49442

Information:

On March 19, 2019 the Muskegon Police Dept. report # 2019-04573 responded to an open door complaint. The responding officer files a "Health & Safety" report regarding the condition of the home sighting excessive filth, garbage and excrement.

There is an excessive amount of garbage and debris inside the home. The residence contains several buckets of human waste throughout. No Building permit history for this property.

Complaint Notice

March 22, 2019 a complaint letter was sent.

April 10, 2019 a DB inspection report was sent.

April 10, 2019 a final DB complaint letter sent.

Notice & Order:

On April 25, 2019 the Notice & Order to repair or remove was sent and posted.

On May 16, 2019 A ten day Notice was sent and posted for the June 6, 2019 HBA hearing.

All notices are sent First Class and Certified Mail and posted on the property in question.

Additional Information:

- This a 1 ½ -story, 1250 square foot single family residential structure with a basement.
- Built in N/A
- Property taxes are delinquent with 2017 and 2018 taxes due totaling \$2409.76
- 2019 SEV \$18,700.00
- Staff estimates cost to repair at \$50,000.00
- 11 enforcement actions since 2017 for trash and grass including board up request
In May 2019
- The structure is located in the Angell Neighborhood

CITY OF MUSKEGON



BUILDING DEPT.

DANGEROUS BUILDING INSPECTION REPORT
04/10/2019

Owner DEBACK WILLIAM L
769 CATAWBA AVE
MUSKEGON, MI 49442

Enforcement # EN1900596

Property Address: 769 CATAWBA AVE

Parcel # 24-620-001-0005-00

Date completed: April 10, 2019

DEFICIENCIES:

1. Foundation is failing, mortar is cracked or missing
2. Exterior siding is deteriorated, missing and falling off
3. Exterior trim is rotten and or missing
4. Windows are broken out and or missing
5. Roof fascia appears to be rotten
6. Roofing is deteriorated and or missing
7. Residence is a public nuisance due to the amount of garbage and debris littering entire parcel


Lance Bonifield, Building Inspector
Dangerous Building Inspector

4-10-2019
Date

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)

If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.



CITY OF MUSKEGON INSPECTIONS

NOTICE AND ORDER TO REPAIR OR REMOVE (DEMOLISH) A STRUCTURE

DATE: 04/25/2019

PROPERTY ADDRESS: 769 CATAWBA AVE

TO: DEBACK WILLIAM L, 769 CATAWBA AVE, MUSKEGON, MI 49442

The City of Muskegon has determined that the structures above described are dangerous, substandard, and constitute a nuisance in violation of the Dangerous Buildings Ordinance of the City.

You are hereby notified that the City will proceed to demolish or cause the demolition and removal of the said structure or may issue Civil Infractions until the order is complied with, unless you accomplish the actions indicated below within the time limits indicated:

1. By 05/05/2019 obtain a "Trades Inspection" with the Inspections Department to identify the said code violations. Provide a plan of abatement with a reasonable timeline including costs for the repairs to the Building Official. Your approved plan of abatement by the Building Official may forgo a HBA hearing. If you fail to provide a plan of abatement or if the plan of abatement is not approved by the Building Official, a hearing will be scheduled with the Housing Board of Appeals (HBA) at their next scheduled meeting. You will be notified of the date, time, and location of the meeting so you or your representative may attend the meeting and answer any questions. Provided the HBA approves the submitted timeline with cost estimates; you will need to obtain permits and commence work within 30 days of the HBA meeting. All repairs shall be accomplished within the times set forth in the permits.
2. Obtain the issuance of the appropriate permit for the demolition of structures within 30 days and accomplish the demolition thereof within 60 days of this notice. The conditions which cause the said structures to be dangerous, substandard and a nuisance are listed in the attached schedule.

FAILURE TO COMPLY

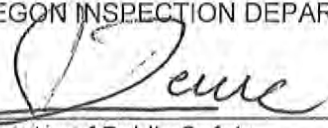
After 30 days from mailing this notice, if you have not complied with this notice, a hearing will be scheduled before the City of Muskegon Housing Board of Appeals for the purpose of enforcing this notice and order and instituting City action to remove the structure. You will receive notice of that hearing. You may appear and present any relevant evidence to the Housing Board of Appeals and have counsel of your choice present, if you desire. You will have the opportunity to "show cause" why the structure shall not be ordered demolished.

SCHEDULE OF CONDITIONS

The following conditions are present at the structure at 769 CATAWBA AVE Muskegon, Michigan and cause said structure to be a dangerous or substandard building and a public nuisance.

Please contact Building Inspector Lance Bonifield at 231-724-3900 or email lbbonifield@safebuilt.com with any questions or concerns.

CITY OF MUSKEGON INSPECTION DEPARTMENT


Jeffrey Lewis, Director of Public Safety



CITY OF MUSKEGON INSPECTIONS

CITY OF MUSKEGON HOUSING (BUILDING) BOARD OF APPEALS

Date: 06/07/2019

To: DEBACK WILLIAM L, 769 CATAWBA AVE, Muskegon, MI, 49442

ORDER TO DEMOLISH STRUCTURE

The Housing Board of Appeals, having received evidence at a scheduled and noticed meeting held on Thursday, June 6, 2019 does hereby order that the following structure(s) located at 769 CATAWBA AVE, Muskegon, Michigan, shall be demolished for the reason that the said structure or structures are found, based upon the evidence before the Board of Appeals, to be dangerous, substandard and a public nuisance.

The owners or persons interested shall apply for the required permits to demolish the structure(s) within 30 days from the final determination to concur and demolish, if it is made by the City Commission or Infraction Tickets may be issued. Demolition shall be accomplished no later than 60 days after a concurrence by the City Commission.

The Director of Public Safety is ordered to place before the Muskegon City Commission, this order and the record in this case to seek concurrence by the City Commission with the decision of this board, and further to give notice to the owner and interested parties of the date and time when this matter shall be considered by the City Commission.

NOTICE TO OWNER AND INTERESTED PARTIES

Please take notice that this decision of the Housing Board of Appeals will be presented to the City Commission of the City of Muskegon on Tuesday, June 25, 2019 at 5:30 p.m. You are hereby notified that you will have an opportunity to appear before the said City Commission at that time and to present any and all evidence or matters relevant to the issue of demolition or repair of the said structures. This order of the Housing Board of Appeals is not final but will become final if and when the City Commission has considered the record and this order and has concurred.

The City Commission may concur with this order or disapprove or modify the order.

FOR THE HOUSING BOARD OF APPEALS:



Jeffrey Lewis, Director of Public Safety

MUSKEGON POLICE DEPARTMENT
HOUSING HEALTH & SAFETY
ACTION REQUEST FORM

Location/Address: 769 Catawba

Date: 3/19/19 Time: 1905

Observing Officer: Wilson

Complaint Number: 201904573

- ☐ Lack of ☐ Gas, ☐ Heat, or ☐ Electricity
- ☐ Infestation of ☐ cockroaches, ☐ fleas, ☐ lice, or ☐ other _____
- ☐ Inside of house excessive ☐ filth, ☐ garbage, ☐ animal excrement, or ☐ human excrement
- ☒ Outside of house excessive ☒ filth, ☒ garbage, ☒ animal excrement, or ☐ human excrement
- ☐ Facilities not working ☐ water, or ☐ sewer
- ☐ Exposed or unsafe wiring (including use of extension cords for permanent wiring)
- ☐ Smoke detectors not in place or working
- ☒ Broken windows
- ☐ Using basement or cellar for sleeping area
- ☐ Standing water in basement
- ☐ Vacant house that needs to be secured so it is not accessible to the public

Comments/Observations:

Unsafe conditions on the front porch of the residence. There are piles of garbage and holes in the porch floor. Also large piles of garbage strewn throughout the yard.

Owner = William L. Deback
769 Catawba Ave

(Please forward to COPS Bureau)

3 **SCANNED**



5.1.2019 09:26



5.1.2019 09:28

Date: June 25, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

**RE: Concurrence with the Housing Board of Appeals Notice
and Order to Demolish. Dangerous Building Case
#EN1901354**

SUMMARY OF REQUEST:

This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structure located at 1285 Eighth St. (between Muskegon Ave. and Webster Ave.) is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent, or responsible party if they do not demolish the structure.

Staff Correspondence: A Dangerous Building Inspection was conducted on May 9, 2019. The Notice and Order to Repair or Remove was issued on May 13, 2019. On June 6, 2019 the HBA declared the structure substandard and dangerous. The Notice and Order to Demolish was issued on June 7, 2019.

FINANCIAL IMPACT:

General Funds

BUDGET ACTION REQUIRED:

None

STATE EQUALIZED VALUE:

\$17,100.00

Estimated cost to repair: \$55,000.00

STAFF RECOMMENDATION:

To concur with the Housing Board of Appeals decision to demolish.

Case

EN1901354DB – 1285 Eighth St.

2

FWC Muskegon LLC
1479 E. Ellis Rd.
Muskegon, MI 49444

Information:

On May 2019 a complaint was received regarding the condition of the home. Staff investigated complaint and performed exterior inspection. Several structural deficiencies were noted as well as siding, windows, roofing and paint.
No Building permit history for this property.

Complaint Notice

May 8, 2019 a complaint letter was sent.
May 9, 2019 a DB inspection report was sent.
May 22,2019 a final DB complaint letter sent.

Notice & Order:

On May 13, 2019 the Notice & Order to repair or remove was sent and posted.
On May 16, 2019 A ten day Notice was sent and posted for the June 6, 2019 HBA hearing.

All notices are sent First Class and Certified Mail and posted on the property in question.

Additional Information:

- This a 2 -story, 1440 square foot single family residential structure with a basement.
- Built in 1961
- Property taxes are current
- 2019 SEV \$17,100.00
- Staff estimates cost to repair at \$55,000.00
- 8 enforcement actions since 2016 for trash and grass
- The structure is located in the Nelson Neighborhood

CITY OF MUSKEGON



BUILDING DEPT.

DANGEROUS BUILDING INSPECTION REPORT
05/09/2019

Owner FWC MUSKEGON LLC
1478 E ELLIS RD
MUSKEGON, MI 49444

Enforcement # EN1901354

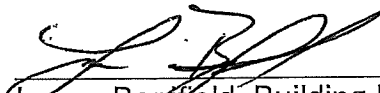
Property Address: 1285 8TH ST

Parcel # 24-205-340-0011-30

Date completed: May 9, 2019

DEFICENCIES:

1. Foundation failing @ southeast side of residence
2. Exposed framing @ floor joist / wall frame intersection is rotten and failing
3. Foundation @ front porch crumbling / failing
4. Support post @ covered front porch are supported by failing masonry columns and failing foundation
5. Roof structure @ front porch is in danger of collapsing
6. Exterior siding and trim rotten and or missing
7. Wood window frames are rotten and failing
8. Roofing is deteriorated
9. Paint is peeling


Lance Bonfield, Building Inspector
Dangerous Building Inspector

5-9-2019
Date

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)

If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.



CITY OF MUSKEGON INSPECTIONS

NOTICE AND ORDER TO REPAIR OR REMOVE (DEMOLISH) A STRUCTURE

DATE: 05/13/2019

PROPERTY ADDRESS: 1285 8TH ST

TO: FWC MUSKEGON LLC, 1478 E ELLIS RD, MUSKEGON, MI 49444

The City of Muskegon has determined that the structures above described are dangerous, substandard, and constitute a nuisance in violation of the Dangerous Buildings Ordinance of the City.

You are hereby notified that the City will proceed to demolish or cause the demolition and removal of the said structure or may issue Civil Infractions until the order is complied with, unless you accomplish the actions indicated below within the time limits indicated:

1. By 05/23/2019 obtain a "Trades Inspection" with the Inspections Department to identify the said code violations. Provide a plan of abatement with a reasonable timeline including costs for the repairs to the Building Official. Your approved plan of abatement by the Building Official may forgo a HBA hearing. If you fail to provide a plan of abatement or if the plan of abatement is not approved by the Building Official, a hearing will be scheduled with the Housing Board of Appeals (HBA) at their next scheduled meeting. You will be notified of the date, time, and location of the meeting so you or your representative may attend the meeting and answer any questions. Provided the HBA approves the submitted timeline with cost estimates; you will need to obtain permits and commence work within 30 days of the HBA meeting. All repairs shall be accomplished within the times set forth in the permits.
2. Obtain the issuance of the appropriate permit for the demolition of structures within 30 days, and accomplish the demolition thereof within 60 days of this notice. The conditions which cause the said structures to be dangerous, substandard and a nuisance are listed in the attached schedule.

FAILURE TO COMPLY

After 30 days from mailing this notice, if you have not complied with this notice, a hearing will be scheduled before the City of Muskegon Housing Board of Appeals for the purpose of enforcing this notice and order and instituting City action to remove the structure. You will receive notice of that hearing. You may appear and present any relevant evidence to the Housing Board of Appeals and have counsel of your choice present, if you desire. You will have the opportunity to "show cause" why the structure shall not be ordered demolished.

SCHEDULE OF CONDITIONS

The following conditions are present at the structure at 1285 8TH ST Muskegon, Michigan and cause said structure to be a dangerous or substandard building and a public nuisance.

Please contact Building Inspector Lance Bonifield at 231-724-3900 or email lbbonifield@safebuilt.com with any questions or concerns.

CITY OF MUSKEGON INSPECTION DEPARTMENT



Jeffrey Lewis, Director of Public Safety



CITY OF MUSKEGON INSPECTIONS

CITY OF MUSKEGON HOUSING (BUILDING) BOARD OF APPEALS

Date: 06/07/2019

To: FWC MUSKEGON LLC, 1478 E ELLIS RD, Muskegon MI, 49444

ORDER TO DEMOLISH STRUCTURE

The Housing Board of Appeals, having received evidence at a scheduled and noticed meeting held on Thursday, June 6, 2019 does hereby order that the following structure(s) located at **1285 8TH ST**, Muskegon, Michigan, shall be demolished for the reason that the said structure or structures are found, based upon the evidence before the Board of Appeals, to be dangerous, substandard and a public nuisance.

The owners or persons interested shall apply for the required permits to demolish the structure(s) within 30 days from the final determination to concur and demolish, if it is made by the City Commission or Infraction Tickets may be issued. Demolition shall be accomplished no later than 60 days after a concurrence by the City Commission.

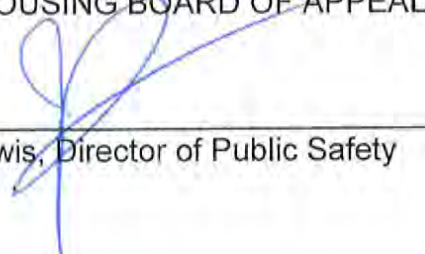
The Director of Public Safety is ordered to place before the Muskegon City Commission, this order and the record in this case to seek concurrence by the City Commission with the decision of this board, and further to give notice to the owner and interested parties of the date and time when this matter shall be considered by the City Commission.

NOTICE TO OWNER AND INTERESTED PARTIES

Please take notice that this decision of the Housing Board of Appeals will be presented to the City Commission of the City of Muskegon on Tuesday, June 25, 2019 at 5:30 p.m. You are hereby notified that you will have an opportunity to appear before the said City Commission at that time and to present any and all evidence or matters relevant to the issue of demolition or repair of the said structures. This order of the Housing Board of Appeals is not final but will become final if and when the City Commission has considered the record and this order and has concurred.

The City Commission may concur with this order or disapprove or modify the order.

FOR THE HOUSING BOARD OF APPEALS:



Jeffrey Lewis, Director of Public Safety



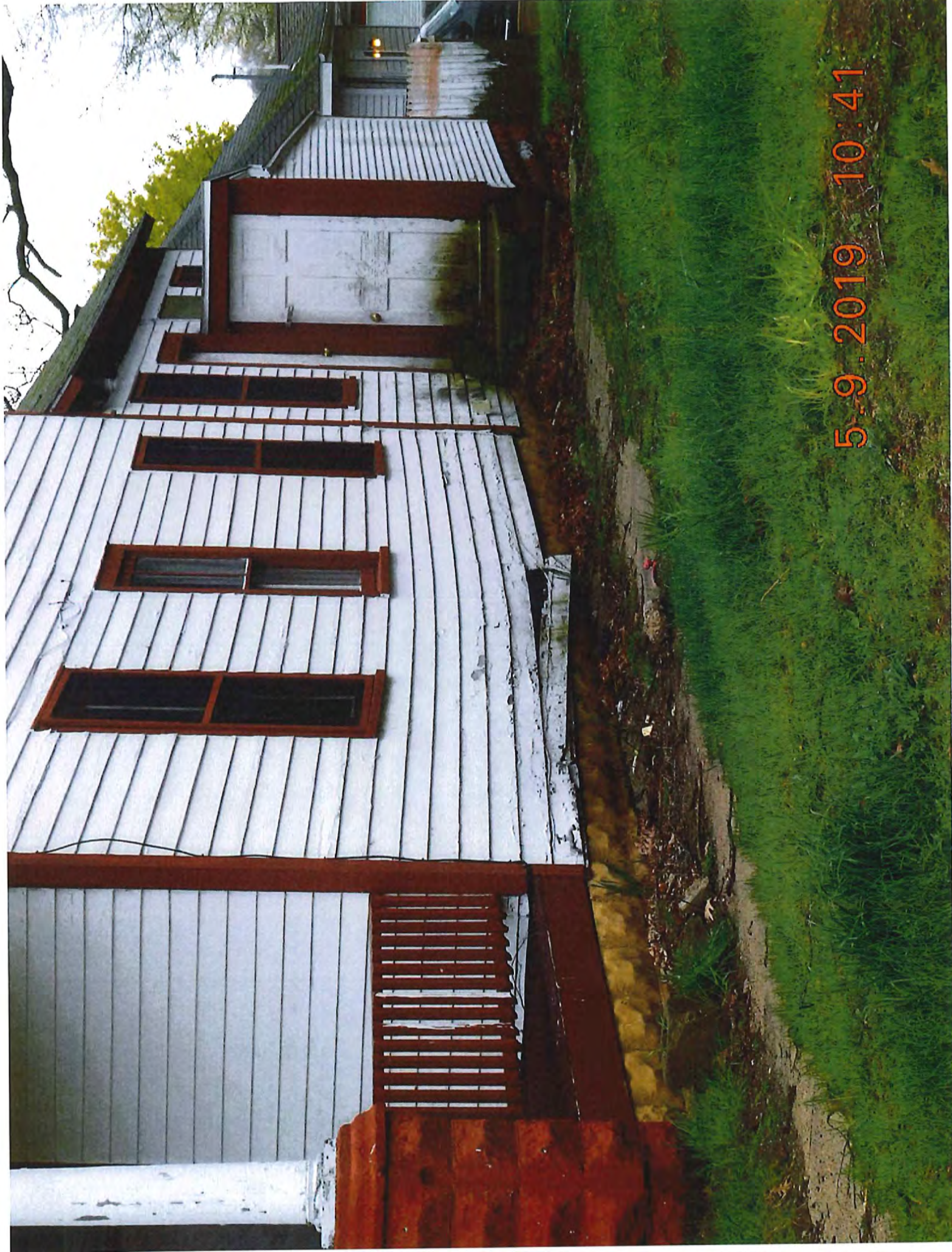
5.9.2019 10:40



5:9:2019 10:43



5:9 2019 10:42



5-9-2019 10:41



5.9.2019 10:44

Date: June 25, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

**RE: Concurrence with the Housing Board of Appeals Notice
and Order to Demolish. Dangerous Building Case
#EN1900529**

SUMMARY OF REQUEST:

This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structure located at 1619 Superior St. (between E. Forest Ave. and E. Dale Ave.) is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent, or responsible party if they do not demolish the structure.

Staff Correspondence: A Dangerous Building Inspection was conducted on April 11, 2019. The Notice and Order to Repair or Remove was issued on April 25, 2019. On June 6, 2019 the HBA declared the structure substandard and dangerous. The Notice and Order to Demolish was issued on June 7, 2019.

FINANCIAL IMPACT:

General Funds

BUDGET ACTION REQUIRED:

None

STATE EQUALIZED VALUE:

\$15,200.00

Estimated cost to repair: \$40,000.00

STAFF RECOMMENDATION:

To concur with the Housing Board of Appeals decision to demolish.

Case

EN1900529DB 1619 Superior St.

3

Affordable Rental Properties
683 E. Sternberg Rd.
Norton Shores, MI 49441

Information:

On February 2019 a complaint was received regarding the condition of the home. Staff investigated complaint and performed exterior inspection. Several structural deficiencies were noted including collapsing front covered porch as well as windows, roofing and paint.

Building permit history for this property, electrical permit finalized in 2008.

No contact with owner

Complaint Notice

February 19, 2019 a complaint letter was sent.

May 1, 2019 final complaint sent

May 7, 2019 a DB inspection report was sent.

Notice & Order:

On May 13, 2019 the Notice & Order to repair or remove was sent and posted.

On May 16, 2019 A ten day Notice was sent and posted for the June 6, 2019 HBA hearing.

On June 7, 2019 the Notice & Order to demolish was sent and posted

All notices are sent First Class and Certified Mail and posted on the property in question.

Additional Information:

- This a 1 -story, 1160 square foot single family home with a basement
- Built in N/A
- Property taxes are current
- 2019 SEV \$16,700.00 (entire property)
- Staff estimates cost to repair at \$40,000.00
- 8 enforcement actions grass and trash since 2017
- The structure is located in the Nelson Neighborhood

CITY OF MUSKEGON



BUILDING DEPT.

DANGEROUS BUILDING INSPECTION REPORT
04/11/2019

Owner AFFORDABLE RENTAL PROPERTIES LLC
683 E STERNBERG RD
NORTON SHORES, MI 49441

Enforcement # EN1900529

Property Address: 1619 SUPERIOR ST

Parcel # 24-185-100-0018-00

Date completed: April 11, 2019

DEFICIENCIES:

1. Exterior siding is rotten and or missing
2. Exterior trim is rotten or missing
3. Wood windows are rotten throughout residence
4. Windows are broken out and glass missing
5. Exterior doors are rotten and falling apart
6. Wood entry stairs and handrails are rotten and collapsing

DEFICIENCIES

7. Detached garage is failing
8. Foundation is cracked and crumbling
9. Wall framing is rotten and failing
10. Exterior siding is deteriorated, cracked and or missing
11. Exterior doors are rotten and falling apart
12. Detached garage is in danger of collapsing


Lance Benifield, Building Inspector
Dangerous Building Inspector

4-11-2019

Date

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)

If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.



CITY OF MUSKEGON INSPECTIONS

NOTICE AND ORDER TO REPAIR OR REMOVE (DEMOLISH) A STRUCTURE

DATE: 04/25/2019

PROPERTY ADDRESS: 1619 SUPERIOR ST

TO: AFFORDABLE RENTAL PROPERTIES LLC, 683 E STERNBERG RD, NORTON SHORES, MI 49441

The City of Muskegon has determined that the structures above described are dangerous, substandard, and constitute a nuisance in violation of the Dangerous Buildings Ordinance of the City.

You are hereby notified that the City will proceed to demolish or cause the demolition and removal of the said structure or may issue Civil Infractions until the order is complied with, unless you accomplish the actions indicated below within the time limits indicated:

1. By 05/05/2019 obtain a "Trades Inspection" with the Inspections Department to identify the said code violations. Provide a plan of abatement with a reasonable timeline including costs for the repairs to the Building Official. Your approved plan of abatement by the Building Official may forgo a HBA hearing. If you fail to provide a plan of abatement or if the plan of abatement is not approved by the Building Official, a hearing will be scheduled with the Housing Board of Appeals (HBA) at their next scheduled meeting. You will be notified of the date, time, and location of the meeting so you or your representative may attend the meeting and answer any questions. Provided the HBA approves the submitted timeline with cost estimates; you will need to obtain permits and commence work within 30 days of the HBA meeting. All repairs shall be accomplished within the times set forth in the permits.
2. Obtain the issuance of the appropriate permit for the demolition of structures within 30 days and accomplish the demolition thereof within 60 days of this notice. The conditions which cause the said structures to be dangerous, substandard and a nuisance are listed in the attached schedule.

FAILURE TO COMPLY

After 30 days from mailing this notice, if you have not complied with this notice, a hearing will be scheduled before the City of Muskegon Housing Board of Appeals for the purpose of enforcing this notice and order and instituting City action to remove the structure. You will receive notice of that hearing. You may appear and present any relevant evidence to the Housing Board of Appeals and have counsel of your choice present, if you desire. You will have the opportunity to "show cause" why the structure shall not be ordered demolished.

SCHEDULE OF CONDITIONS

The following conditions are present at the structure at 1619 SUPERIOR ST Muskegon, Michigan and cause said structure to be a dangerous or substandard building and a public nuisance.

Please contact Building Inspector Lance Bonifield at 231-724-3900 or email lbbonifield@safebuilt.com with any questions or concerns.

CITY OF MUSKEGON INSPECTION DEPARTMENT


Jeffrey Lewis, Director of Public Safety



CITY OF MUSKEGON INSPECTIONS

CITY OF MUSKEGON HOUSING (BUILDING) BOARD OF APPEALS

Date: 06/07/2019

To: AFFORDABLE RENTAL PROPERTIES LLC, 683 STERNBERG RD, MI, 49441

ORDER TO DEMOLISH STRUCTURE

The Housing Board of Appeals, having received evidence at a scheduled and noticed meeting held on Thursday, June 6, 2019 does hereby order that the following structure(s) located at 1619 SUPERIOR ST, Muskegon, Michigan, shall be demolished for the reason that the said structure or structures are found, based upon the evidence before the Board of Appeals, to be dangerous, substandard and a public nuisance.

The owners or persons interested shall apply for the required permits to demolish the structure(s) within 30 days from the final determination to concur and demolish, if it is made by the City Commission or Infraction Tickets may be issued. Demolition shall be accomplished no later than 60 days after a concurrence by the City Commission.

The Director of Public Safety is ordered to place before the Muskegon City Commission, this order and the record in this case to seek concurrence by the City Commission with the decision of this board, and further to give notice to the owner and interested parties of the date and time when this matter shall be considered by the City Commission.

NOTICE TO OWNER AND INTERESTED PARTIES

Please take notice that this decision of the Housing Board of Appeals will be presented to the City Commission of the City of Muskegon on Tuesday, June 25, 2019 at 5:30 p.m. You are hereby notified that you will have an opportunity to appear before the said City Commission at that time and to present any and all evidence or matters relevant to the issue of demolition or repair of the said structures. This order of the Housing Board of Appeals is not final but will become final if and when the City Commission has considered the record and this order and has concurred.

The City Commission may concur with this order or disapprove or modify the order.

FOR THE HOUSING BOARD OF APPEALS:



Jeffrey Lewis, Director of Public Safety

MUSKEGON POLICE DEPARTMENT
HOUSING HEALTH & SAFETY
ACTION REQUEST FORM

Location/Address: 1619 SUPERIOR

Date: JUNE 8 2019 Time: 1230

Observing Officer: DZIACHIAN

Complaint Number: 201909918

- ☐ Lack of ☐ Gas, ☐ Heat, or ☐ Electricity
- ☒ Infestation of ☐ cockroaches, ☐ fleas, ☐ lice, or ☐ other _____
- ☒ Inside of house excessive ☒ filth, ☒ garbage, ☐ animal excrement, or ☐ human excrement
- ☒ Outside of house excessive ☒ filth, ☒ garbage, ☐ animal excrement, or ☐ human excrement
- ☐ Facilities not working ☐ water, or ☐ sewer
- ☐ Exposed or unsafe wiring (including use of extension cords for permanent wiring)
- ☐ Smoke detectors not in place or working
- ☒ Broken windows
- ☐ Using basement or cellar for sleeping area
- ☐ Standing water in basement
- ☒ Vacant house that needs to be secured so it is not accessible to the public

Comments/Observations:

THE PROPERTY AND GARAGE ARE COMPLETELY COVERED IN FILTH. TIRES, MATTRESSES,
CLOTHING, DOLLS, AND OTHER RUBBISH OBJECTS STREWN ABOUT THE PROPERTY. THE PROPERTY
IS UNSECURED AND BELIEVED TO BE FREQUENTED BY VAGRANTS AS REPORTED BY A NEIGHBOR.

(Please forward to COPS Bureau)



INCIDENT DATA

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OTHERS INVOLVED

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06/10/2019 02:43

REPORTING OFFICER NARRATIVE

Muskegon Police Department

Victim <i>Society</i>	Offense <i>HEALTH & SAFETY</i>	OCA <i>2019-09918</i> Date / Time Reported <i>Sat 06/08/2019 23:30</i>
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THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

JUNE 8, 2019

HEALTH AND SAFETY VIOLATION

INFORMATION

I was notified by Jose Coleman that 1619 Superior was unsecured. Coleman indicated that 1619 Superior is a vacant home that is unsecured. Coleman was concerned that someone may be using the residence for shelter unlawfully. Upon arrival I observed several unsecured locations on the residence including a southwest entry door, a northern basement window, and spaces in the foundation that are large enough for someone to enter. I observed an appalling amount of trash, clothing, mattresses and tires outside of the residence. The unsecured garage was repugnant. Officer Woodard and I searched the residence, which was vacant.

The neighbors expressed that they are disgusted by the residence and wished it were demolished.

DISPOSITION

The owner is listed as Affordable Rental Properties LLC. There is no RMS information for this business. There is a similarly named business in RMS. I attempted to contact their TX. There was no answer and their voice mailbox was full. There is no informatoin online relating to this business.

I photographed the property. I completed a health and safety form.

S.Dziachan.





Date: June 20, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Approval of Midtown Square 2 Construction Contracts

SUMMARY OF REQUEST:

Staff is seeking approval of the seven attached contracts totaling \$2,999,230 for the construction of ten attached townhomes and six detached single family homes.

FINANCIAL IMPACT:

\$2,999,230 – funded via a loan from the Michigan State Land Bank

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of and authorization to sign the attached construction contracts.

COMMITTEE RECOMMENDATION:

None

NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")

Builder Address: P.O. Box 110 Comstock Park, MI. 49321

State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon

Contact Person: City Manager Franklin Peterson

Home Address: 235,239,240,250 Monroe Ave Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 1,743,382.00
The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

☒ Description of Property (A)	☒ Sworn Statement (F)
☒ Plans/Specifications (B)	☒ Limited Warranty (G)
☒ FTC Insulation Disclosure (C)	
☒ Payment Schedule (D)	
☒ Outside Work (E)	

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. Purchase Price and Payment Terms.

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. Closing.

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. **Dispute Resolution; Limitation on Time to Commence Action and Damages.**

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. **Limitation on Consequential Damages.** UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: *David L. Hunsdang*

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

_____ 24-205-379-0003-10, 24-205-379-0003-00, 24-205-367-0010-00, 24-205-367-0009-00 _____

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

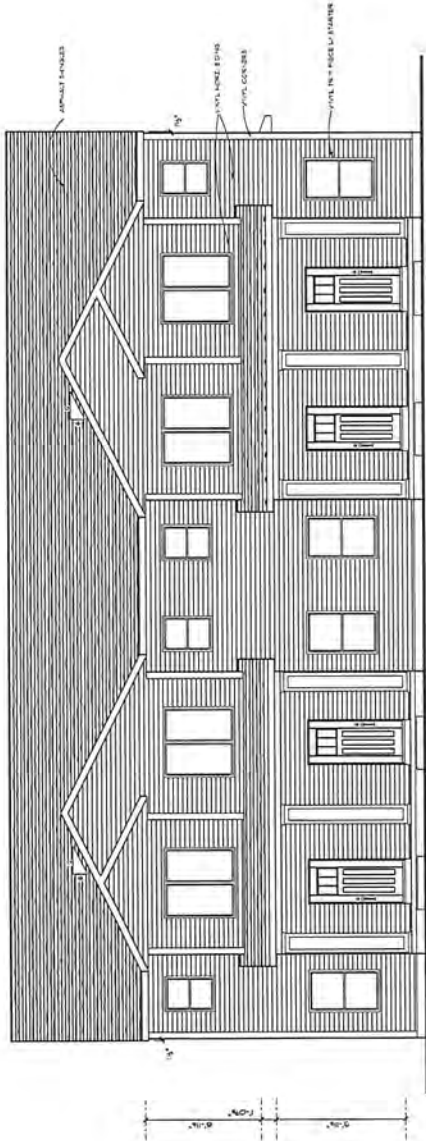
OWNER

By: David L. Rhundang

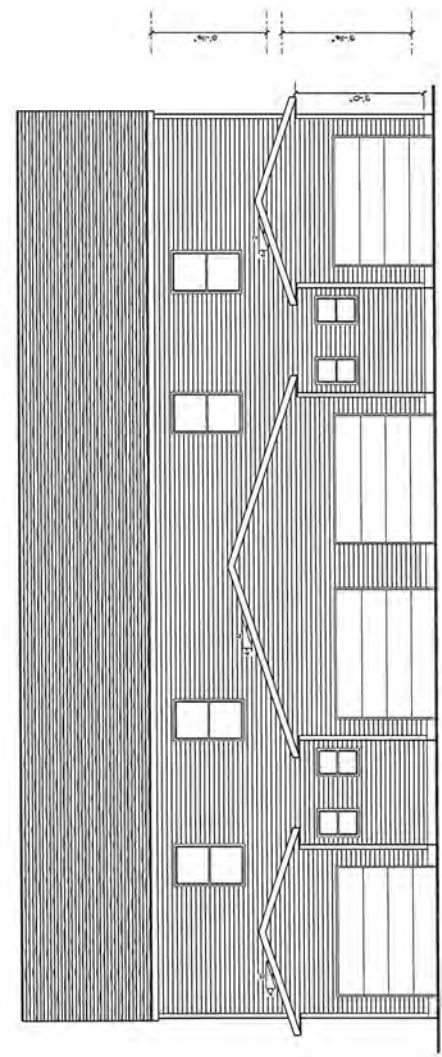
Its: _____ President



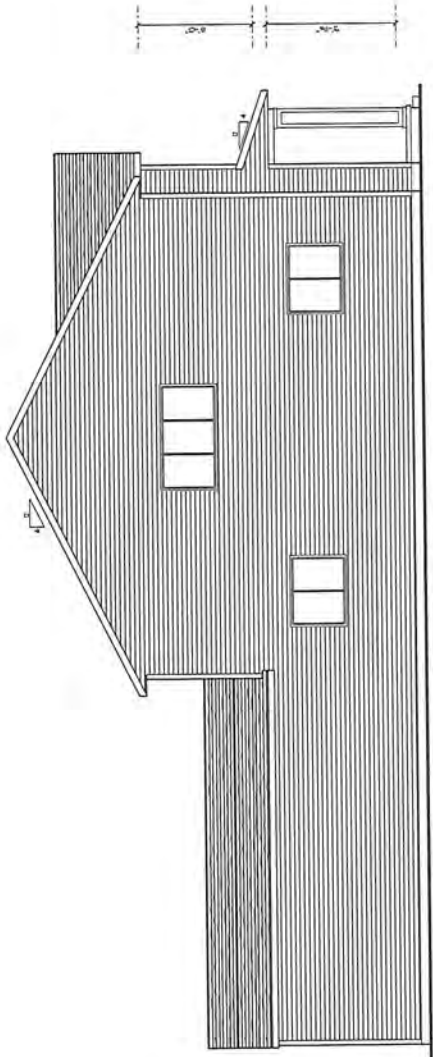
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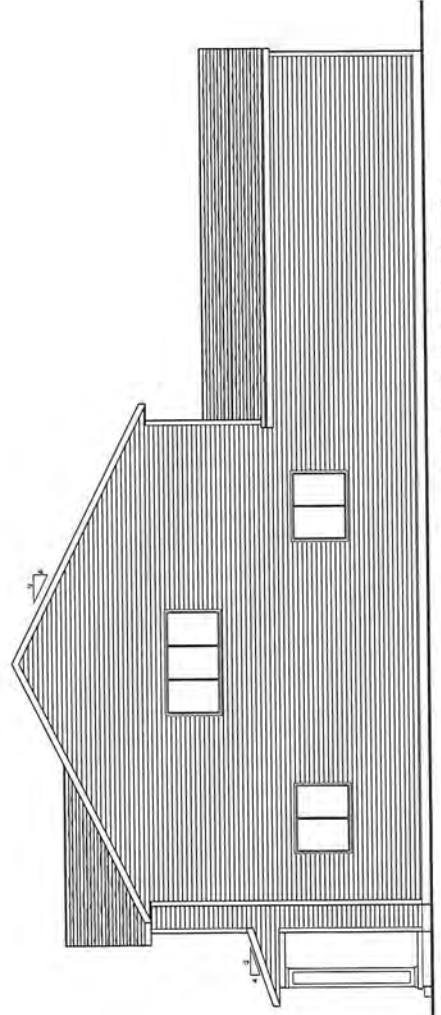
FRONT ELEVATION
 1/4" = 1'-0"



REAR ELEVATION
 1/4" = 1'-0"



LEFT ELEVATION
1/4" = 1'-0"



RIGHT ELEVATION
1/4" = 1'-0"



THE PLANNING
STAGE

PROJECT: 180513

DATE: 08-08-2018

BY: [Signature]

FOR: [Signature]

PROJECT: 180513

DATE: 08-08-2018

BY: [Signature]

FOR: [Signature]

PROJECT: 180513

DATE: 08-08-2018

BY: [Signature]

FOR: [Signature]

PROJECT: 180513

DATE: 08-08-2018

BY: [Signature]

FOR: [Signature]

PROJECT: 180513

DATE: 08-08-2018

BY: [Signature]

FOR: [Signature]

PROJECT: 180513

DATE: 08-08-2018

BY: [Signature]

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PROJECT: 180513

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PROJECT: 180513

DATE: 08-08-2018

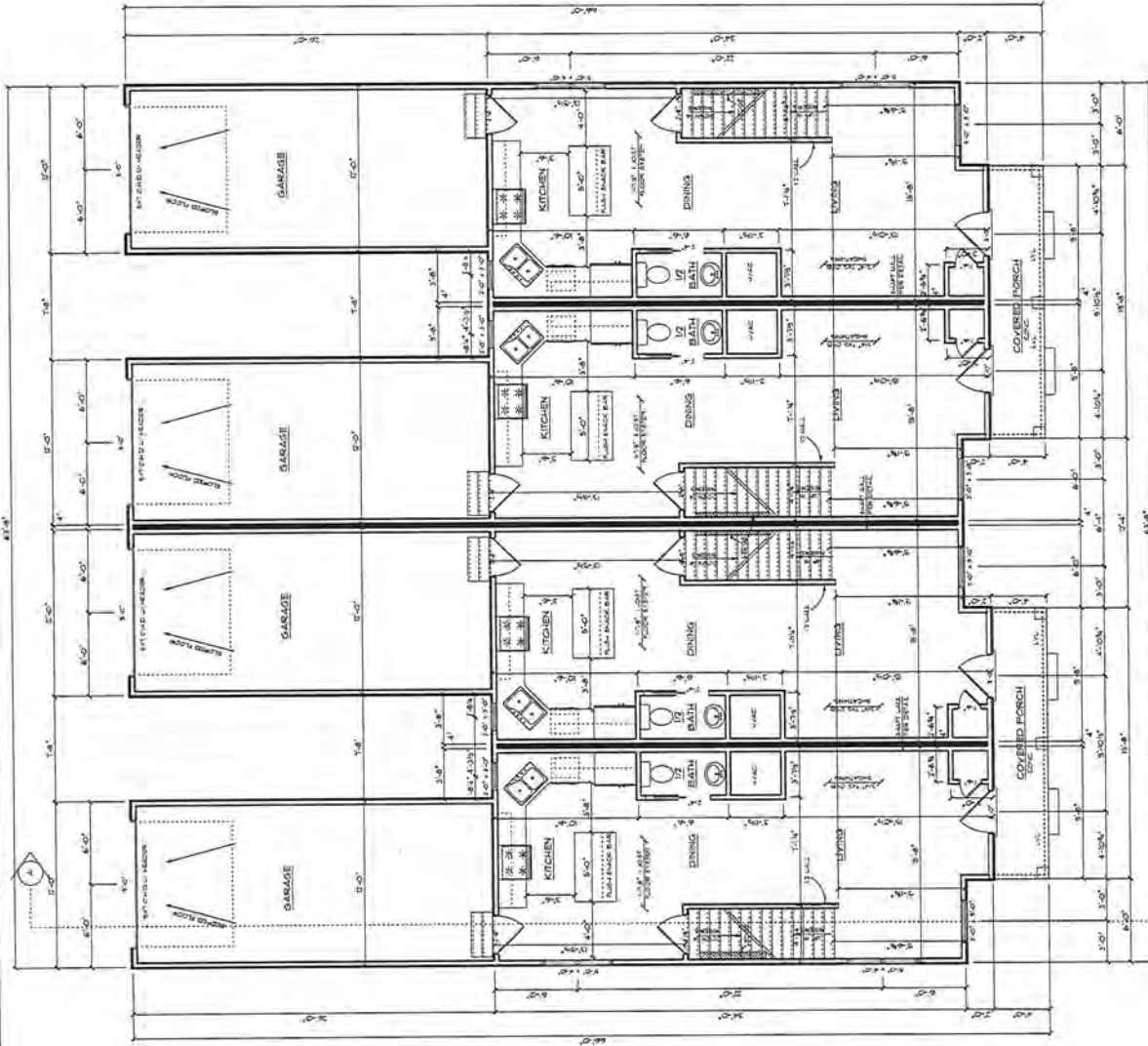
BY: [Signature]

FOR: [Signature]

MIDTOWN FOUR PLEX
235/239 MONROE, MUSKEGON, MI 49440

PROJECT
180513

A1.1



MAIN FLOOR PLAN

1/4" = 1'-0" EACH UNIT 552 SQ. FT.



TITLE PLANNING
STAGE

PROJECT 235/239 MONROE, MUSKEGON, MI 49440

DATE 10/25/13
DRAWN BY
CHECKED BY
P.L.C.

235/239 MONROE, MUSKEGON, MI 49440

WEST URBAN PROPERTIES LLC

MIDTOWN FOUR PLEX

PROJECT #190513

A1.2

WEST URBAN PROPERTIES, LLC

1/4" = 1'-0"

EACH UNIT 552 SQ. FT.

2ND FLOOR PLAN

1/4" = 1'-0"

EACH UNIT 552 SQ. FT.

2ND FLOOR PLAN

1/4" = 1'-0"

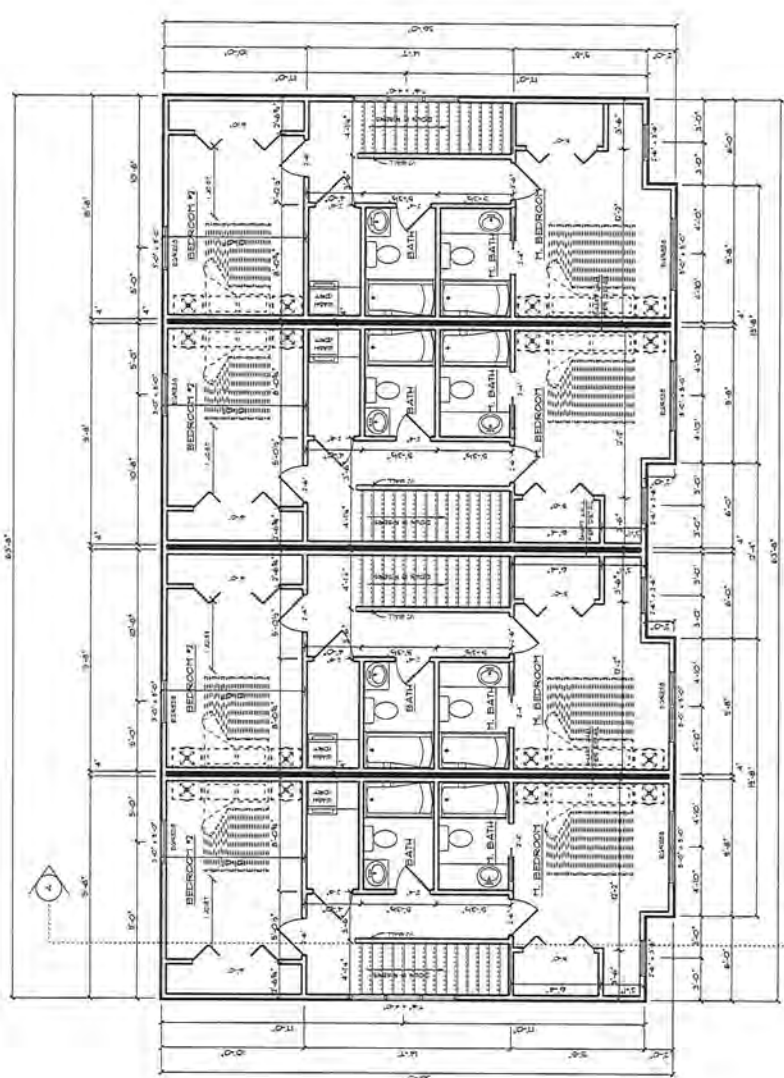
EACH UNIT 552 SQ. FT.

2ND FLOOR PLAN

1/4" = 1'-0"

EACH UNIT 552 SQ. FT.

2ND FLOOR PLAN



2ND FLOOR PLAN

1/4" = 1'-0"

EACH UNIT 552 SQ. FT.



THE PLANNING
STAGE
PROJECT # 190513
www.westurbanproperties.com

PROJECT BY:
CHECKED BY:
P.E.

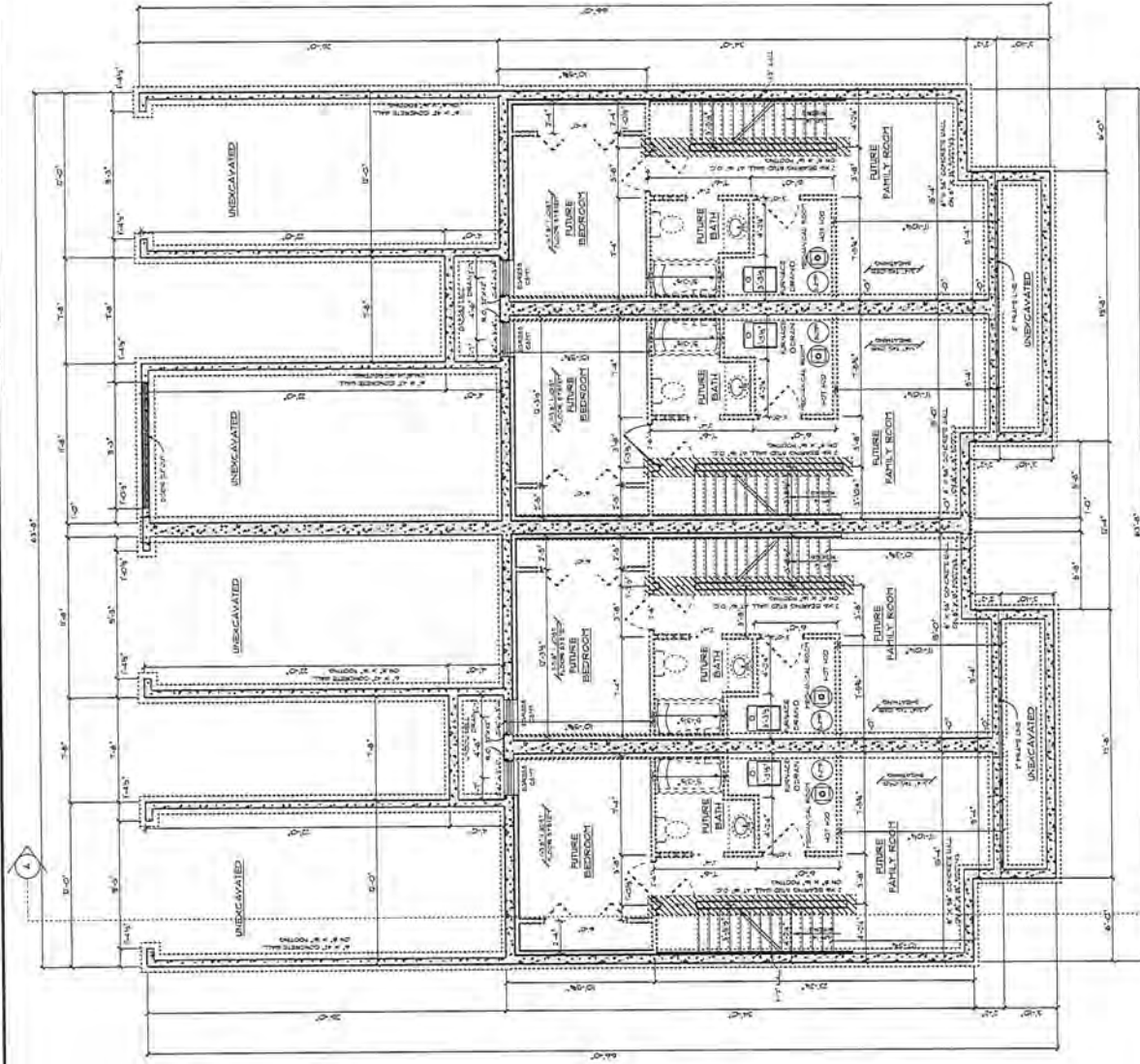
MIDTOWN FOUR PLEX
WEST URBAN PROPERTIES LLC
235/239 MONROE, MUSKEGON, MI 49440

DATE: 12/15/2019

THIS PLAN IS THE PROPERTY OF WEST URBAN PROPERTIES, LLC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS PLAN WITHOUT THE WRITTEN CONSENT OF WEST URBAN PROPERTIES, LLC IS STRICTLY PROHIBITED.

PROJECT
#190513

A1.0



FOUNDATION PLAN

1/4" = 1'-0" 4711 FUTURE SQ. FT. PER UNIT



**THE PLANNING
STAGE**
PHONE: 480-886-1449
www.westurbanproperties.com

DESIGNED BY:
CHECKED BY:
P.L.C.

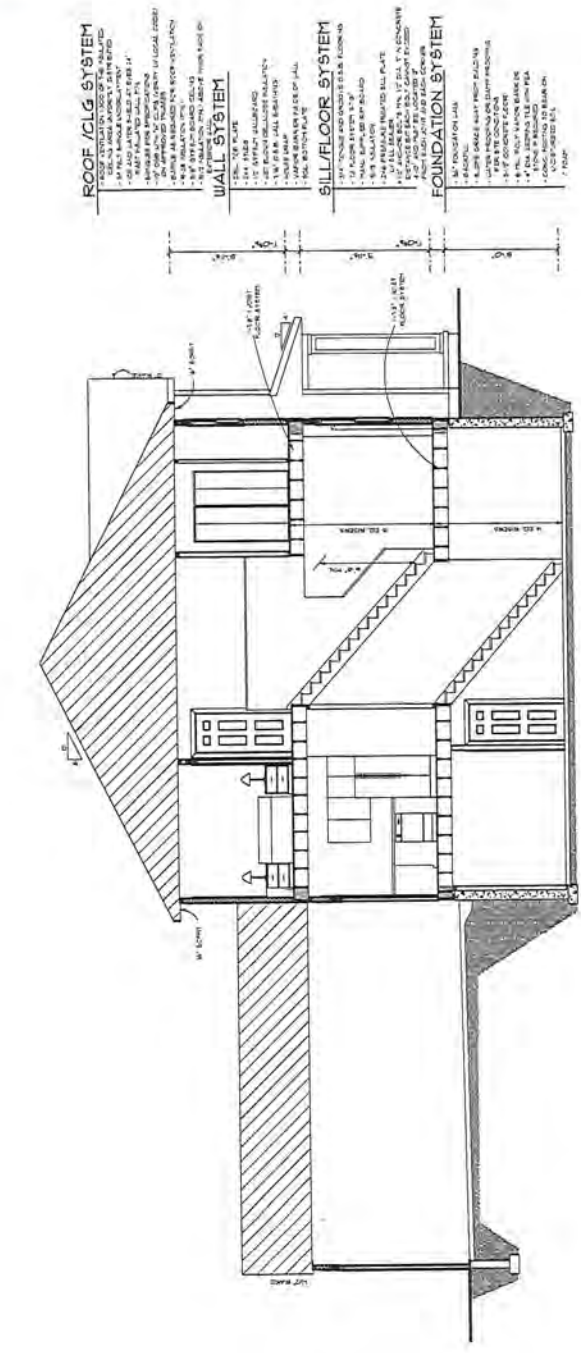
MIDTOWN FOUR PLEX
WEST URBAN PROPERTIES LLC
255/239 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

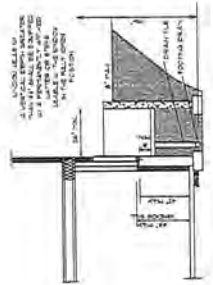
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PROJECT
#190513

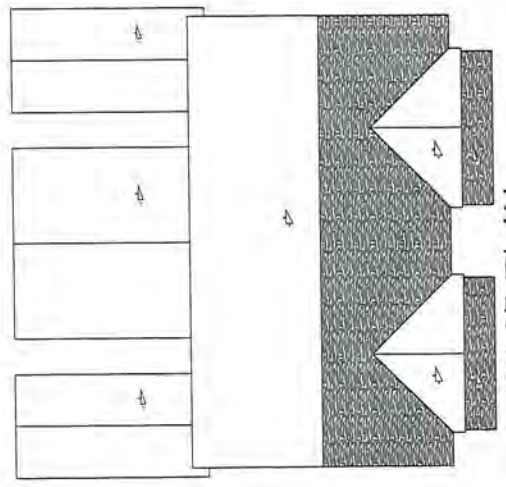
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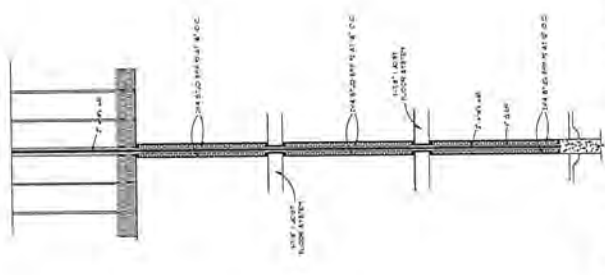
BUILDING SECTION
1/4" = 1'-0"



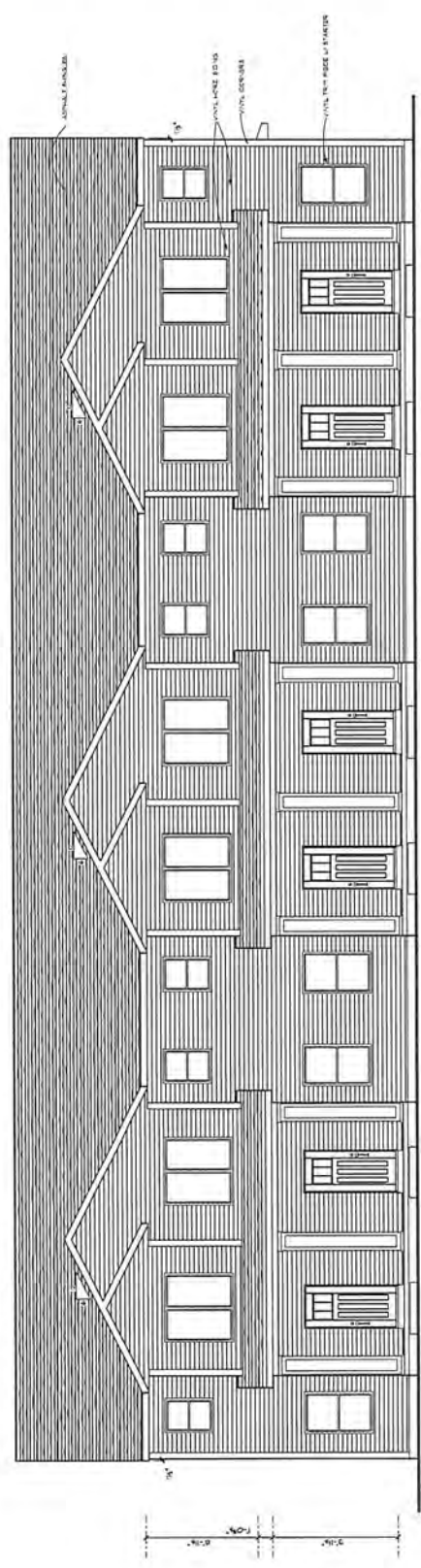
EGRESS WINDOW WELL
NOT TO SCALE



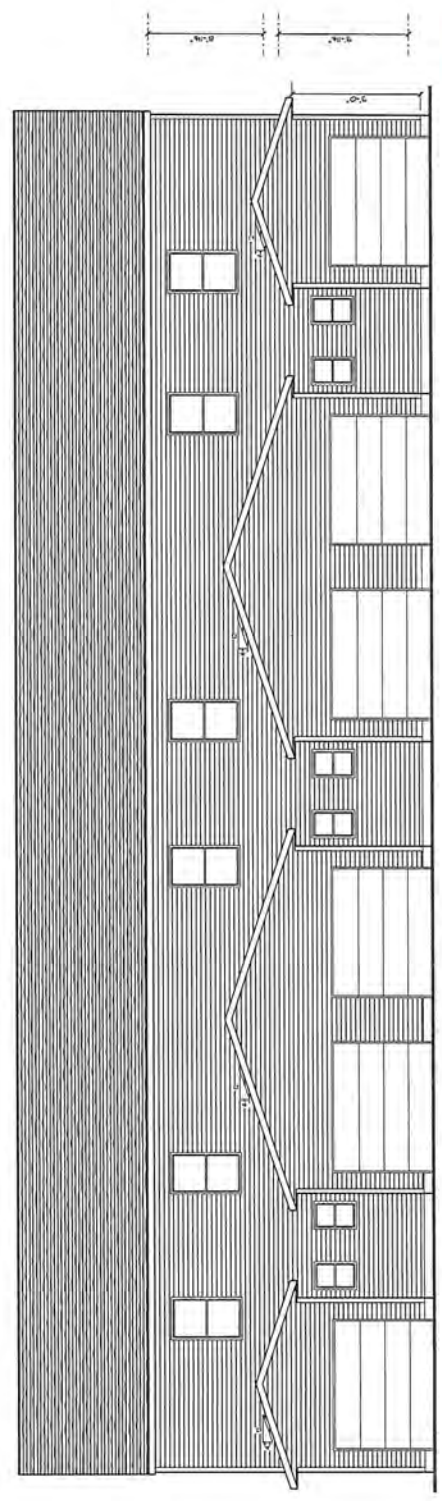
ROOF PLAN
1/8" = 1'-0"



BEARING PARTY WALL DETAIL



FRONT ELEVATION
1/4" = 1'-0"



REAR ELEVATION
1/4" = 1'-0"



TILE PLANNING
STAGE
PROJECT: 240/250 MONROE, MUSKEGON, MI 49440
DATE: 10/10/2018

DRAWN BY:
REVISED BY:
P.C.

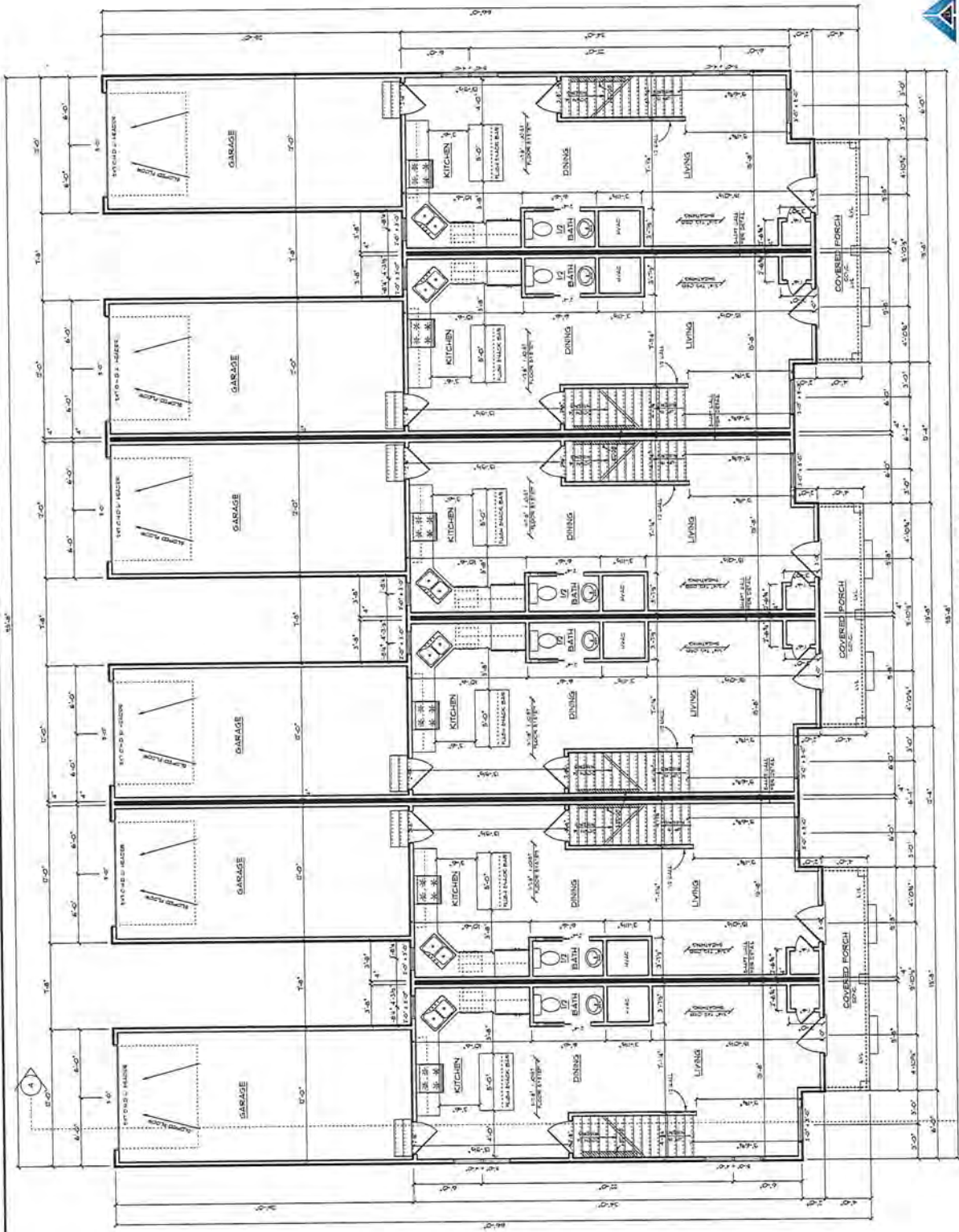
MIDTOWN SIX PLEX
WEST URBAN PROPERTIES LLC
240/250 MONROE, MUSKEGON, MI 49440
© COPYRIGHT 2018 THE PLANNING STAGE

DATE: 10/10/2018
DATE: 10/10/2018
DATE: 10/10/2018

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440
DATE: 10/10/2018

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440
DATE: 10/10/2018

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440
DATE: 10/10/2018



MAIN FLOOR PLAN

1/4" = 1'-0" EACH UNIT 552 SQ. FT.



TITLE PLANNING
STAGE

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

BY: [Signature]

FOR: WEST URBAN PROPERTIES, LLC

SCALE: 1/4" = 1'-0"

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

BY: [Signature]

FOR: WEST URBAN PROPERTIES, LLC

SCALE: 1/4" = 1'-0"

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

BY: [Signature]

FOR: WEST URBAN PROPERTIES, LLC

SCALE: 1/4" = 1'-0"

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

BY: [Signature]

FOR: WEST URBAN PROPERTIES, LLC

SCALE: 1/4" = 1'-0"

PROJECT: 240/250 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

BY: [Signature]

FOR: WEST URBAN PROPERTIES, LLC

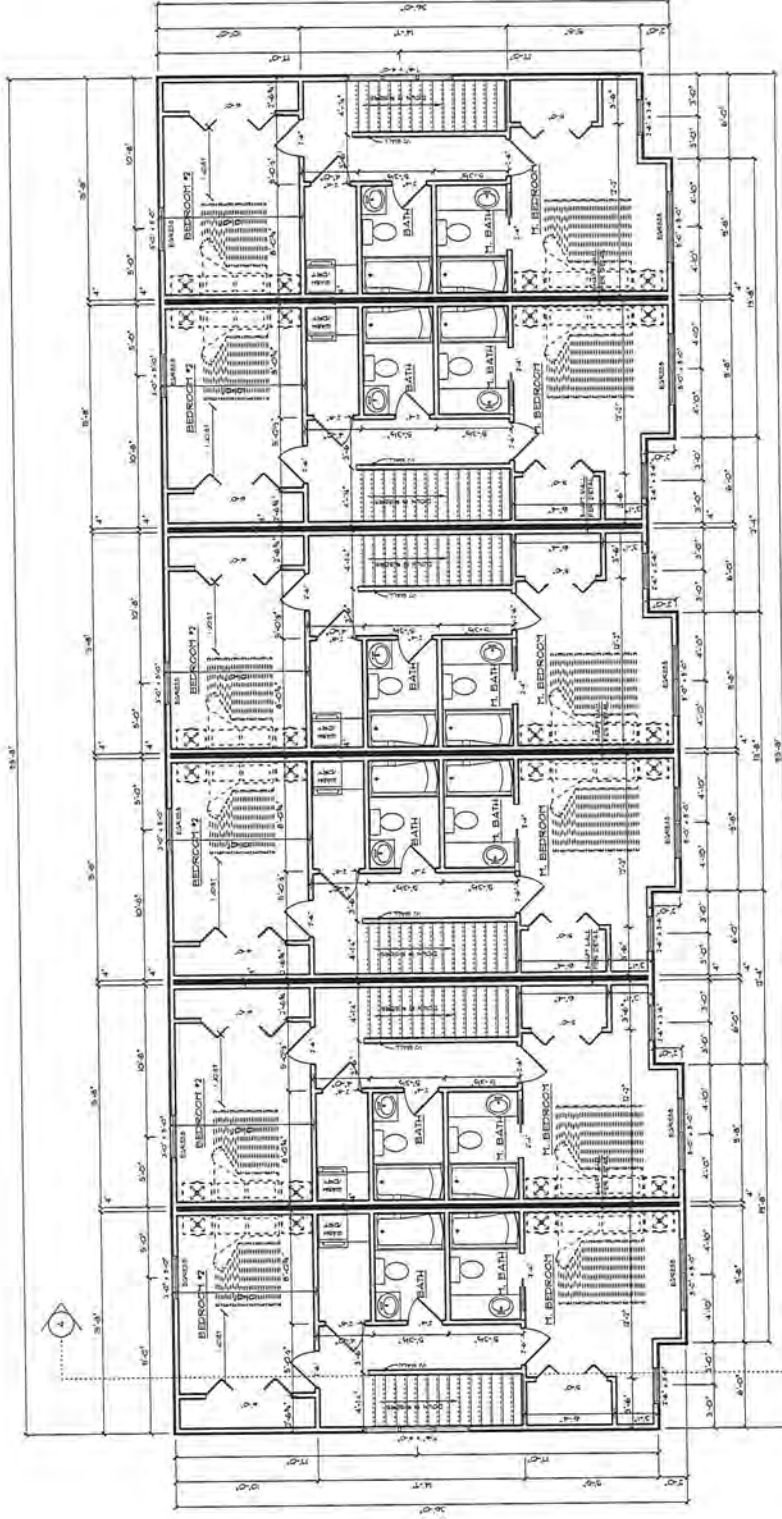
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PROJECT: 240/250 MONROE, MUSKEGON, MI 49440

DATE: 10/1/2019

BY: [Signature]

FOR: WEST URBAN PROPERTIES, LLC



2ND FLOOR PLAN

1/4" = 1'-0"

EACH UNIT 552 SQ. FT.



THE PLANNING
STAGE

PROJECT #190506
DATE 05/01/2018

DESIGNED BY:
CHECKED BY:
DATE

SCALE: 1/4" = 1'-0"

PROJECT #190506
DATE 05/01/2018

MIDTOWN SIX PLEX
WEST URBAN PROPERTIES LLC
240/250 MONROE, MUSKEGON, MI 49440

DATE 05/01/2018
DATE 05/01/2018
DATE 05/01/2018

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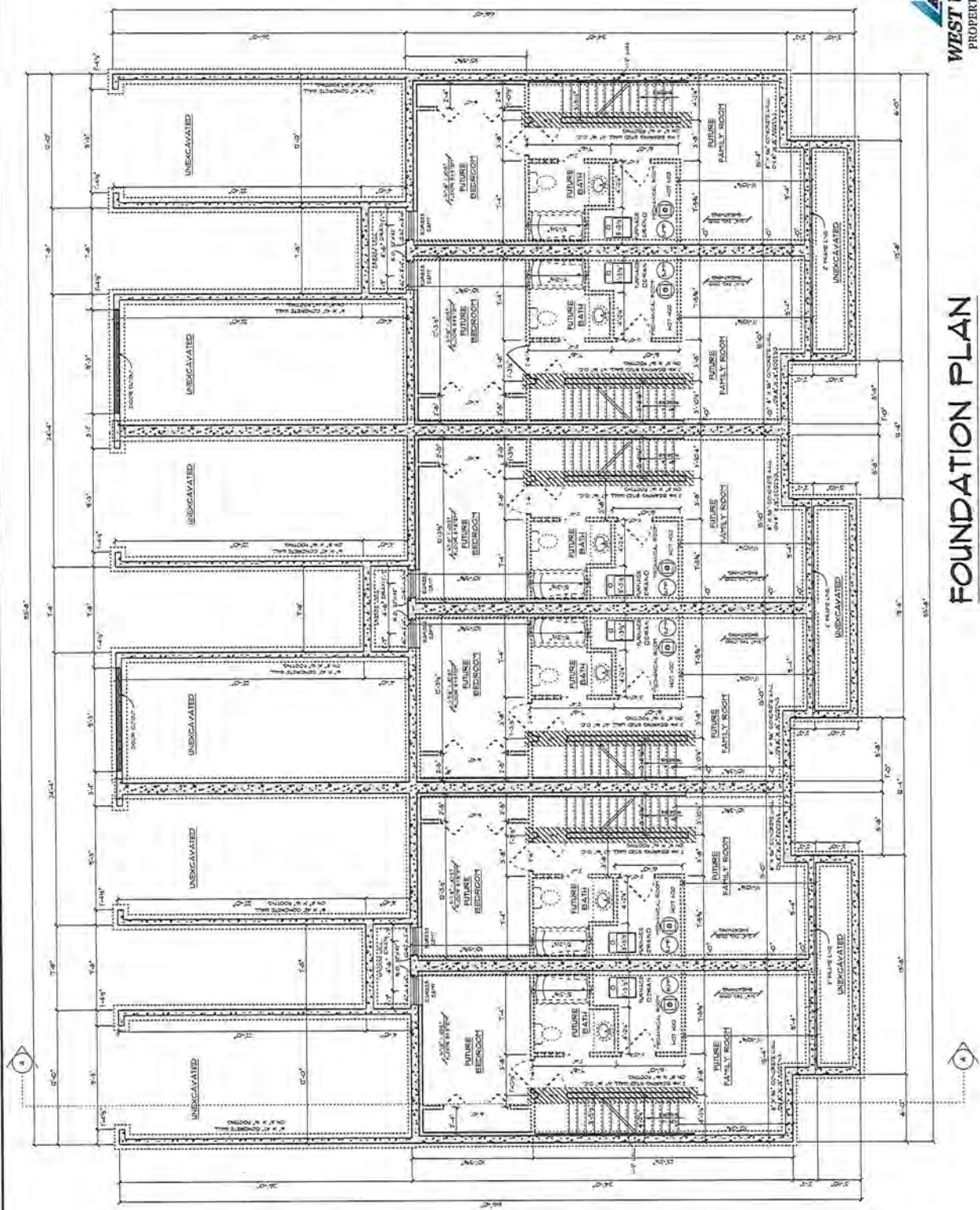
PROJECT #190506

A1.0



FOUNDATION PLAN

1/4" = 1'-0" 471 FUTURE SQ. FT. PER UNIT



THE PLANNING STAGE
PROJECT #190506
www.thepanningstage.com

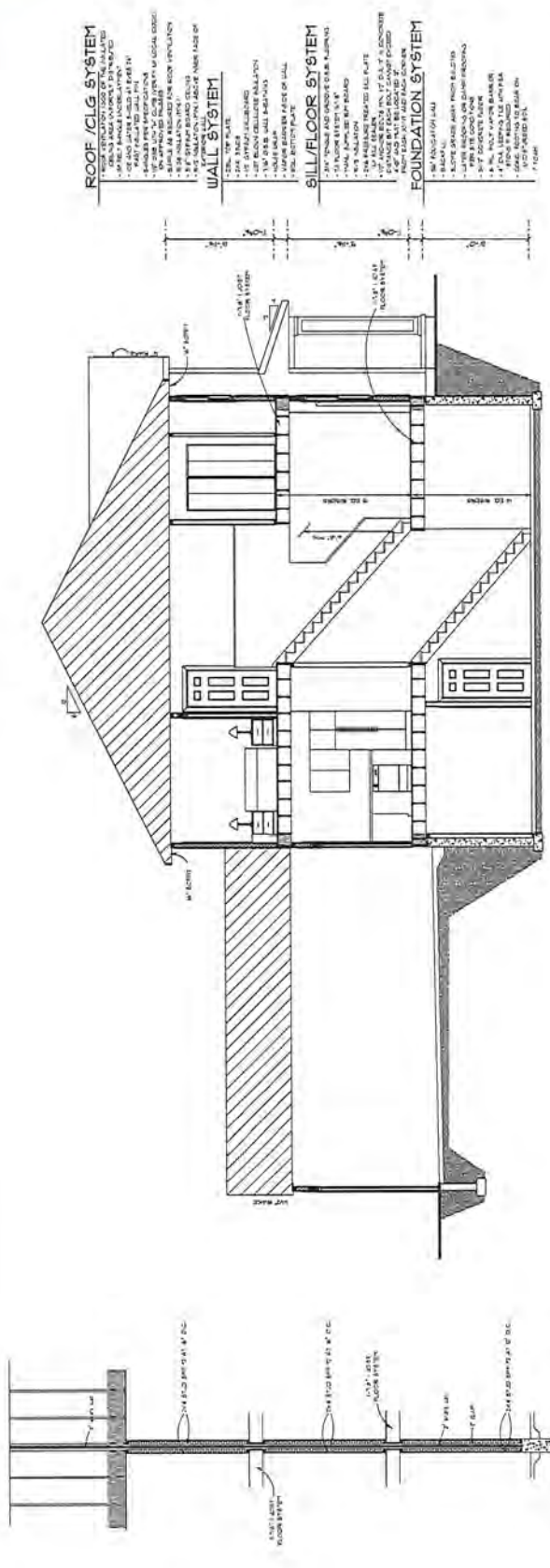
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WEST URBAN PROPERTIES, LLC

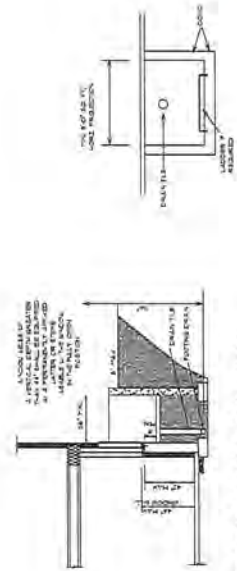
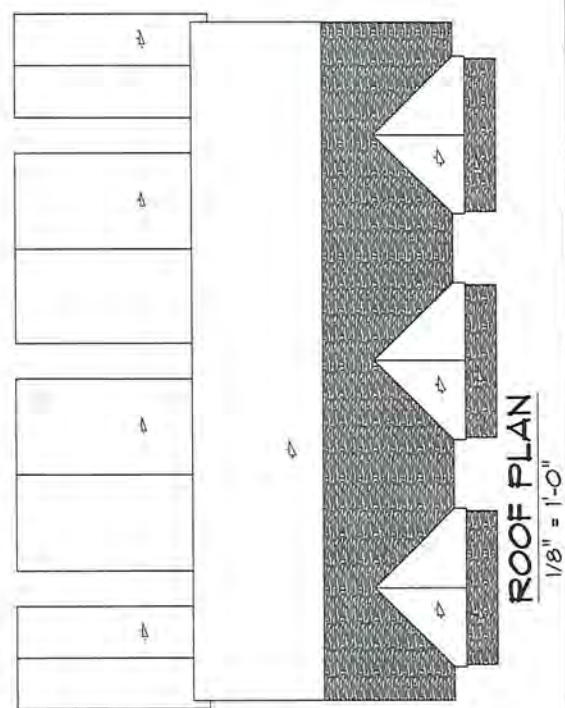
MIDTOWN SIX PLEX
WEST URBAN PROPERTIES LLC
240/250 MONROE, MUSKEGON, MI 49440
© COPYRIGHT 2015 THE PLANNING STAGE

DATE 1.2018
DATE 2.2018
DATE 3.2018
DATE 4.2018
DATE 5.2018
DATE 6.2018
DATE 7.2018
DATE 8.2018
DATE 9.2018
DATE 10.2018
DATE 11.2018
DATE 12.2018

DESIGN BY
CHECKED BY
PAC



BUILDING SECTION
1/4" = 1'-0"





PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jambs: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.

Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 9'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:

- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

A. EXTERIOR WALLS:	Type of insulation: Blown in Cellulose _____ (1)
	Thickness of insulation: 3 1/2" _____ (2)
	R-value of insulation: R- 13.3 _____ (3)
B. CEILING:	Type of insulation: Loose Fill Cellulose _____ (4)
	Thickness of insulation: 13" _____ (5)
Unrefrigerated storage rooms)	R-value of insulation: R- 49 _____ (6)

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: David M. Musendang

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender /Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: David H. Henselberg
Its: President _____

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

_____ Irrigation/Landscaping/Lawn Seed _____

BUILDER

OWNER

By: David L. Hunsdang

Its: President _____



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Commitment No.:

Draw # 0 Date:

SWORN STATEMENT

Lender: City of Muskegon Address: 933 Terrace Muskegon, MI 49440 Phone: 231-724-6705
Contractor: Dave Dusendang Custom Homes Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544 Cell: 616-874-7085
Alt. Contact: Dave Dusendang/Nickole Wassely Phone: 616-874-7085
Owner: City of Muskegon Address: 933 Terrace Muskegon, MI 49440 Phone: 231-724-6705
Dependent: Dave Dusendang State of Michigan, County of Muskegon being duly sworn, deposes and says that City of Muskegon
Is the (owner, contractor or sub-contractor) offer an improvement to the following described real property situated in the
County of Muskegon, Michigan, described as follows:
Property Address: 235/239/240/250 Monroe Ave Muskegon, MI

That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgagee and LandAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders + / -	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes	Permits/Fees/Dumpster	81,640.00		81,640.00	0.00			81,640.00	
B									
C									
2A North Kent Well & Pump	Well System L/M	0.00		0.00	0.00			0.00	
B									
C									
3A Busscher's Septic & Excavating	Septic System L/M	0.00		0.00	0.00			0.00	
B									
C									
4A Accurate Excavating	Excavating/Grading L/M	66,170.00		66,170.00	0.00			66,170.00	
B									
C									
5A Nobel Foundations	Footings/Foundation L/M	78,896.00		78,896.00	0.00			78,896.00	
B									
C									
6A MC Concrete	Concrete Drive/Walks L/M	63,270.00		63,270.00	0.00			63,270.00	
B									
C									
7A BBS Masonry	Masonry L/M	0.00		0.00	0.00			0.00	
B									
C									
8A Keene Lumber	Framing Materials	143,504.00		143,504.00	0.00			143,504.00	
B									
C									
SUBTOTALS CONTINUED ON NEXT PAGE		433,480.00	0.00	433,480.00	0.00	0.00	0.00	433,480.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109, to the designee or to the owner or lessee if the designee is not named or has died.

	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A	Carter Lumber 7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Trim Materials	24,000.00		24,000.00	0.00			24,000.00	
B										
C										
10A	Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI	Labor - Drywall/Carpentry/Siding/ Roofing/Cabinets/Door	205,422.00		205,422.00	0.00			205,422.00	
B										
C										
11A	Carter Lumber 7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Windows & Ext. Doors L/M	26,808.00		26,808.00	0.00			26,808.00	
B										
C										
12A	Godwin Plumbing 3703 S. Division Ave, Grand Rapids 616-243-3131	Plumbing L/M	97,300.00		97,300.00	0.00			97,300.00	
B										
C										
13A	Turner Heating & Cooling 1960 Lilypad Dr. SW Byron Center, MI 49315	HVAC L/M	103,250.00		103,250.00	0.00			103,250.00	
B										
C										
14A	Bolt & Regneres P.O. Box 20, Hudsonville, MI 616-869-6373	Electrical L/M	78,994.00		78,994.00	0.00			78,994.00	
B										
C										
15A	Leading Edge 859 74th St. Byron Center, MI 616-583-9300	Insulation L/M	27,460.00		27,460.00	0.00			27,460.00	
B										
C										
16A	Preferred Drywall 5720 Madison Ave SE Kentwood, MI 49548 616-799-3381	Drywall L/M	77,000.00		77,000.00	0.00			77,000.00	
B										
C										
17A	True North Painting 14170 Lake Michigan Drive West Olive, MI 231-499-2279	Interior Painting L/M	48,540.00		48,540.00	0.00			48,540.00	
B										
C										
18A	True North Painting 14170 Lake Michigan Drive West Olive, MI 231-499-2279	Exterior Painting L/M	5,000.00		5,000.00	0.00			5,000.00	
B										
C										
19A	Carter Lumber 7474 Alpine Ave NW Comstock Park, MI 616-784-3460	Siding L/M	43,542.00		43,542.00	0.00			43,542.00	
B										
C										
20A	American Classic Construction 11823 Walnut Ave Grant, MI 231-834-5905	Roofing L/M	22,902.00		22,902.00	0.00			22,902.00	
B										
C										
21A	Skyline Gutter Systems P.O. Box 446 Middleville, MI 49333 269-795-4887	Gutters L/M	1,632.00		1,632.00	0.00			1,632.00	
B										
C										
22A	Discount Doors 4780 West River Dr. NE Comstock Park, MI 616-363-5692	Overhead Garage Door L/M	8,550.00		8,550.00	0.00			8,550.00	
B										
C										
23A	Godwin Plumbing 3703 S. Division Ave, Grand Rapids 616-243-3131	Plumbing Allowance	26,450.00		26,450.00	0.00			26,450.00	
B										
C										
24A	Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI	Electrical Allowance	10,000.00		10,000.00	0.00			10,000.00	
B										
C										
25A	Preferred Flooring 530 32nd Street SE Wyoming, MI 49548 616-805-4645	Flooring/Tile Allowance	54,910.00		54,910.00	0.00			54,910.00	
B										
C										
	SUBTOTALS CONTINUED ON NEXT PAGE		1,295,240.00	0.00	1,295,240.00	0.00	0.00	0.00	1,295,240.00	
	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A	Williams Distributing 658 Richmond St. SW Grand Rapids, MI	Cabinet Allowance	46,840.00		46,840.00	0.00			46,840.00	
B										

[illegible]

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

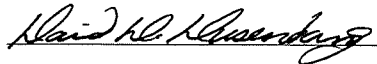
7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By: 

Its: President _____



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NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")

Builder Address: P.O. Box 110 Comstock Park, MI. 49321

State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon

Contact Person: City Manager Franklin Peterson

Home Address: 219 Merrill Ave Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 209,308.00

The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

☒ **Description of Property (A)**

☒ **Plans/Specifications (B)**

☒ **FTC Insulation Disclosure (C)**

☒ **Payment Schedule (D)**

☒ **Outside Work (E)**

☒ **Sworn Statement (F)**

☒ **Limited Warranty (G)**

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. **Purchase Price and Payment Terms.**

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. **Closing.**

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. **Dispute Resolution; Limitation on Time to Commence Action and Damages.**

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. **Limitation on Consequential Damages.** UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: David H. Huseman

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

24-205-386-0012-00

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

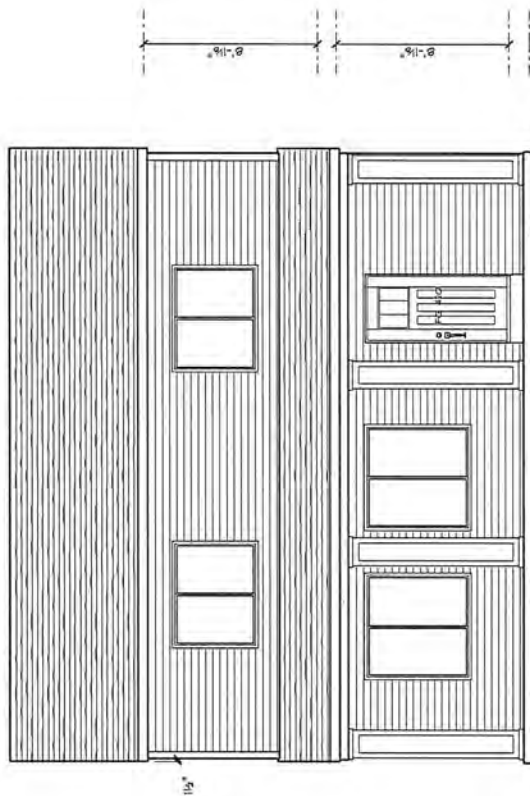
OWNER

By: David H. Hunsdang

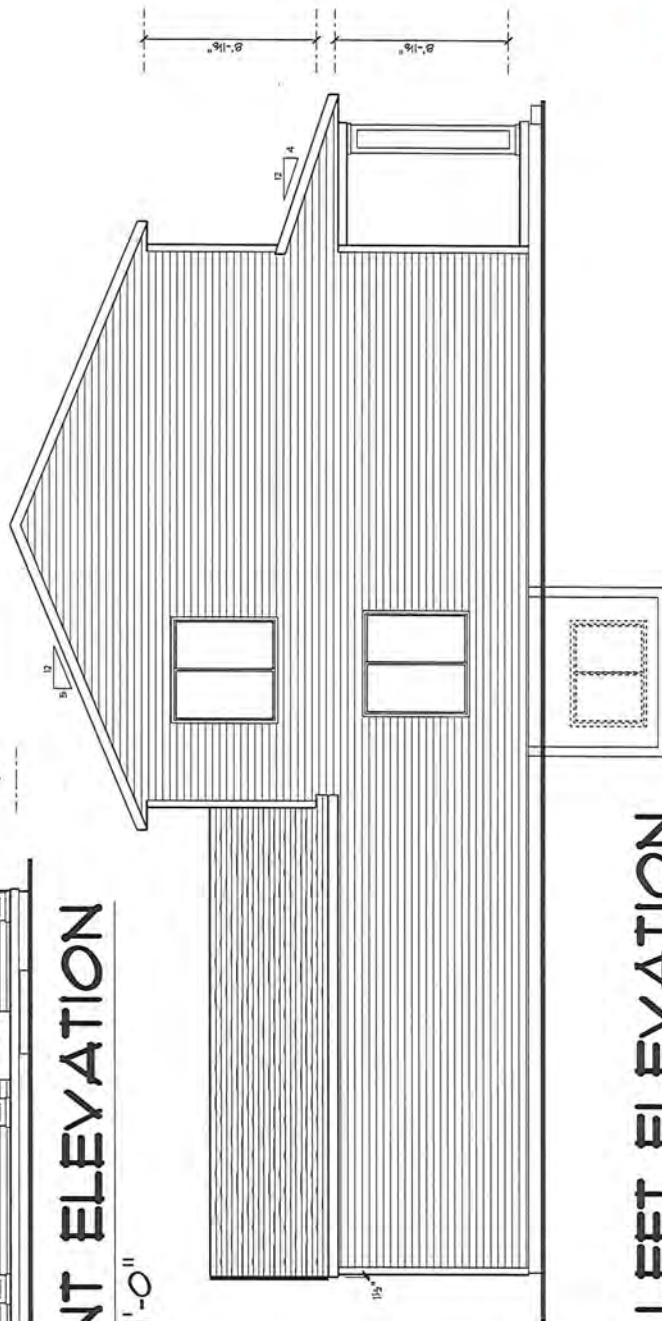
Its: _____ President _____



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FRONT ELEVATION

$$\underline{1/4'' = 1'-0''}$$


LEFT ELEVATION

$$\underline{1/4'' = 1'-0''}$$



THE PLANNING
STAGE

PHONE: 816-866-1469
WWW.WESTURBANPROPERTIES.COM

Architect: West Urban
Properties, LLC

DRAWN BY:
S.V.
CHECKED BY:
P.K.

© COPYRIGHT 2019 THE PLANNING STAGE
TIMBERWOOD
WEST URBAN
PROPERTIES LLC
THE PLANNING STAGE

MAY 14, 2019
MAY 14, 2019

DESIGNER: THE FACT THAT ALL
POSSIBLE CAUTIONS, TAKEN IN
CONSIDERATION OF THE
PROJECT, THE PLANNING STAGE
IS GRANTING ACCEPTANCE OF THE
DESIGN. THE DESIGNER IS NOT
RESPONSIBLE FOR THE
PERFORMANCE OF THE
CONSTRUCTION. THE
DESIGNER IS NOT
CHECKING ALL DETAILS AND
CONSTRUCTION BEFORE
CONSTRUCTION.

PROJECT
#190511

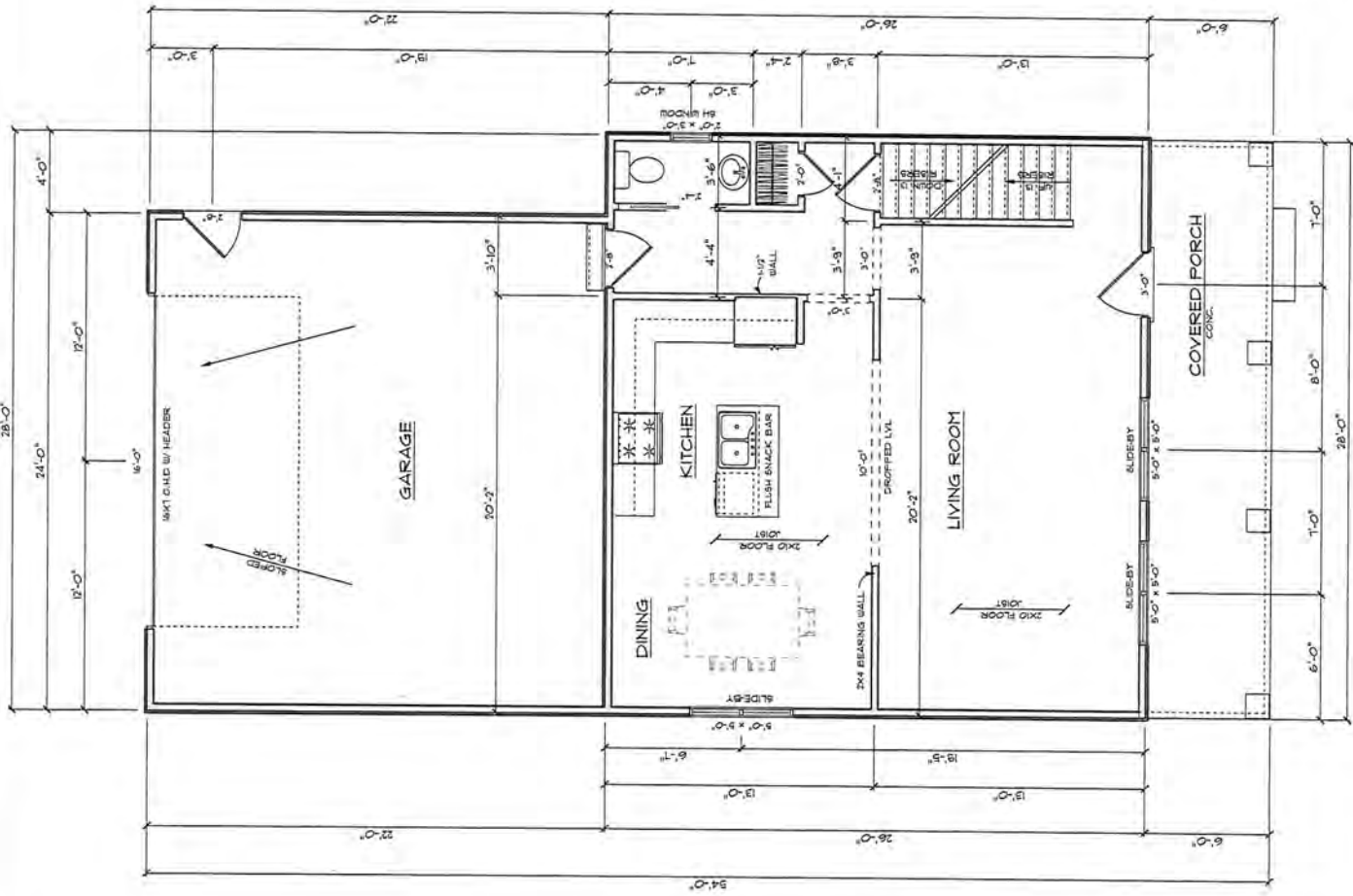


MAIN FLOOR

PLAN

1/4" = 1'-0"

128 SQ. FT.



- ROOF VENTILATION (U300) OF THE INSULATED CEILING AREA UNIFORMLY DISTRIBUTED
- 1/4" FELT SINGLE DOCKMENTATION
- ICE AND WATER SHIELD AT EYES 24"
- PAST INSULATED WALL 1/4"
- SINGLES PER SPECIFICATIONS
- 1/2" ORB LUM 1/4" CLIPS (VERIFY W/ LOCAL CODE)
- ON APPROVED TRUSSES
- DAIFLE AS REQUIRED FOR ROOF VENTILATION
- R-38 INSULATION (1/4")
- 3/8" GYPSUM BOARD CEILING
- R-10 INSULATION (1/4") ABOVE INNER FACE OF EXTERIOR WALL

- METAL DRAIN EDGE
- 3X6 FASCIA BACKER
- ALUMINUM VERTICED SOFFIT

- DBL TOP PLATE
- 2X4 STUDS AT 16" O.C.
- 1/2" GYPSUM WALLBOARD
- LET BLOWN CELLULOSE INSULATION
- 1/4" O.D.D. WALL SHEATHING
- HOUSE WRAP (HOUSE AND GARAGE)
- SOL. BOTTOM PLATE

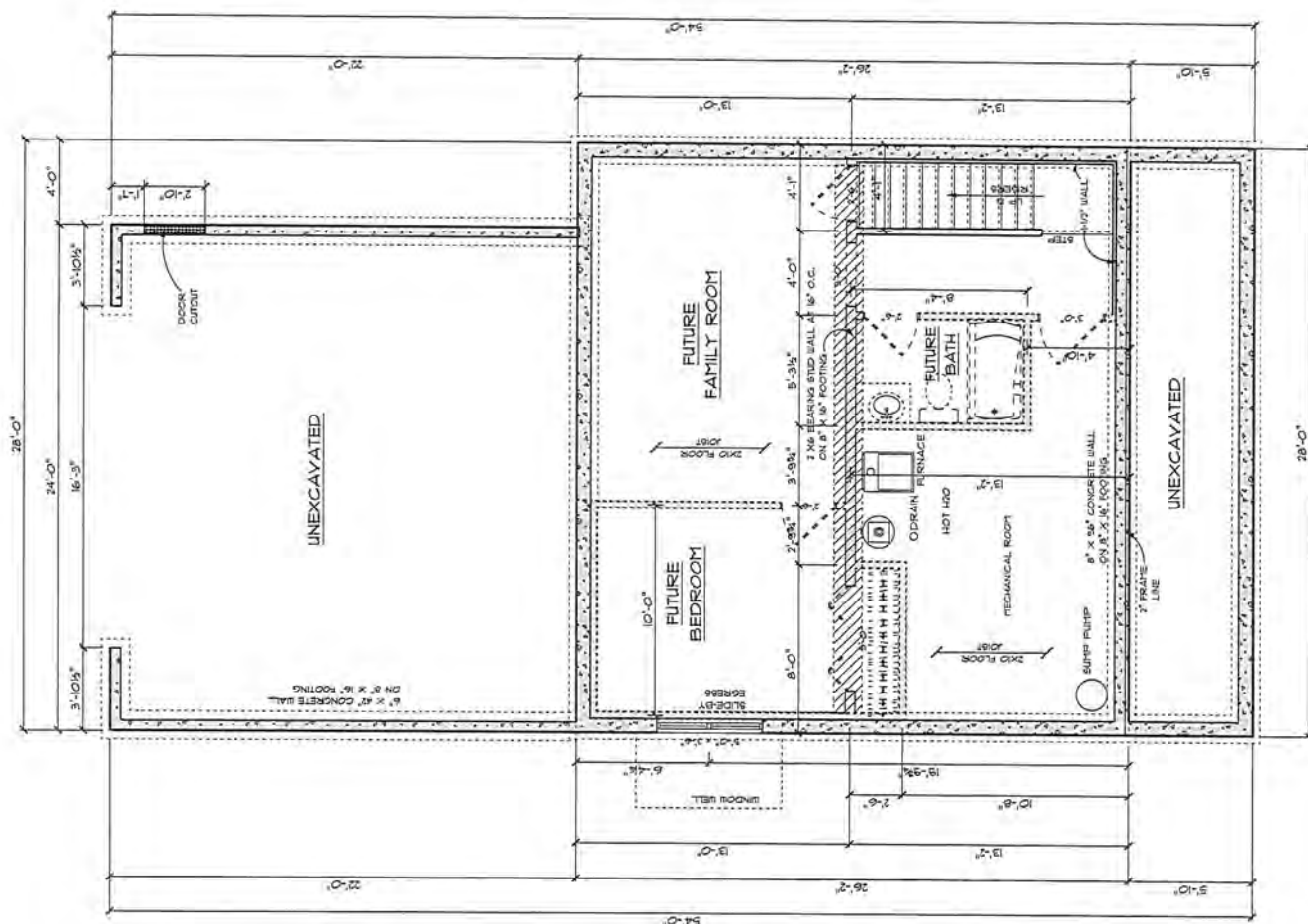
- DEL TOP PLATE
- 2x4 STUDS AT 16" O.C.
- 1/2" GYPSUM WALLBOARD
- LET BLOW CELLULOSE INSULATION
- 1/4" O.D.D. WALL SHEATHING
- HOUSE WRAP (HOUSE AND GARAGE)
- 66L BOTTOM PLATE

- 3/4" TONGUE AND GROOVE OSB, FLOORING
- 2X10 FLOOR JOIST
- 1/2" RIM BOARD
- R-15 INSULATION
- 2X6 PRESSURE TREATED SILL PLATE
- 1/2" SILL SEALER
- 1/2" ANCHOR BOLTS MIN. 1/2" DIA. 1" IN CONCRETE
- DISTANCE BT EACH BOLT CANNOT EXCEED 4'-0"
- FROM EACH CORNER AND EACH CORNER

- 8'-0" FOUNDATION WALL 6X6TFT
- BACKFILL
- SLOPE GRADE AWAY FROM BUILDING
- WATER PROOFING ON EXTERIOR PROTECTS PER SITE CONDITIONS
- 3'-0" CONCRETE FLOOR
- 6" TIL. POLY VAPOR BARRIER
- 3" DIA. SLEEPING TIE WITH FEA
- STONE IF REQUIRED
- CONC. FOOTING TO BEAR ON UNDISTURBED SOL.

NOT TO SCALE





WEST URBAN
PROPERTIES, LLC

FOUNDATION PLAN

 $1/4" = 1'-0"$

542 FUTURE SQ. FT.



PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jamb: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.

Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eaves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 16'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:

- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

- | | |
|-------------------------------|--|
| A. EXTERIOR WALLS: | Type of insulation: Blown in Cellulose _____ (1) |
| | Thickness of insulation: 3 1/2" _____ (2) |
| | R-value of insulation: R- 13.3 _____ (3) |
| B. CEILING: | Type of insulation: Loose Fill Cellulose _____ (4) |
| | Thickness of insulation: 13" _____ (5) |
| Unrefrigerated storage rooms) | R-value of insulation: R- 49 _____ (6) |

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: David M. Huseburg

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender /Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: *David L. Rosenberg*
Its: President _____

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

_____ Irrigation/Landscaping/Lawn Seed _____

BUILDER

OWNER

By: David L. Muscalano

Its: President _____



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Commitment No.:

Lender:

Contractor:

All Contact:

Owner:

Dependent:

County of:

Property Address:

Draw # 0

Date:

City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440

Dave Dusendang Custom Homes Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Dave Dusendang/Nickole Wessely

City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440

Dave Dusendang State of Michigan, County of Muskegon

City of Muskegon

Michigan, described as follows.

219 Merrill Ave Muskegon, MI 49441

Phone: 231-724-6705

Cell: 616-874-7085

Phone: 616-874-7085

Phone: 231-724-6705

City of Muskegon

City of Muskegon

City of Muskegon

SWORN STATEMENT

That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the contractor (subcontractor) has contracted (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgagee and LandAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR, SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes	Permits/Fees/Dumpster	8,169.00	0.00	8,169.00	0.00			8,169.00	
B 3265 Walker Ave Suite D NW									
C Grand Rapids, MI 49544									
2A North Kent Well & Pump	Well System L/M	0.00	0.00	0.00	0.00			0.00	
B 6085 17 Mile Rd Cedar Springs, MI									
C 616-696-2699									
3A Busscher's Septic & Excavating	Septic System L/M	0.00	0.00	0.00	0.00			0.00	
B 11305 E Lakewood Blvd Holland, MI									
C 616-392-9653									
4A Accurate Excavating	Excavating/Grading L/M	9,700.00	0.00	9,700.00	0.00			9,700.00	
B 2821 Central Road Muskegon, MI									
C 231-766-0557									
5A Nobel Foundations	Footings/Foundation L/M	12,198.00	0.00	12,198.00	0.00			12,198.00	
B 1777 Dewent Dr. Jenson, MI 49428									
C 616-437-6385									
6A MC Concrete	Concrete Drive/Walks L/M	6,906.00	0.00	6,906.00	0.00			6,906.00	
B 8300 18 Mile Cedar Springs, MI 49319									
C 616-885-0501									
7A BBS Masonry	Masonry L/M	0.00	0.00	0.00	0.00			0.00	
B 14701 Peach Ridge Ave Kent City, MI 49330									
C 616-889-4636									
8A Keene Lumber	Framing Materials	13,980.00	0.00	13,980.00	0.00			13,980.00	
B 346 W. Laketon Ave, Muskegon, MI									
C 231-726-2706									
SUBTOTALS CONTINUED ON NEXT PAGE		50,953.00	0.00	50,953.00	0.00	0.00	0.00	50,953.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1989 PA 497, MCL 570.1109, to the designee or to the owner or lessee if the designee is not named or has died.

	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A	Carter Lumber	Trim Materials	3,200.00	0.00	3,200.00	0.00			3,200.00	
B	7474 Alpine Ave NW, Comstock Park, MI 616-784-3460									
C										
10A	Dave Dusendang Custom Homes	Labor -								
B	3265 Walker Ave Suite D NW	Drywall/Carpentry/Siding/	26,458.00		26,458.00	0.00			26,458.00	
C	Grand Rapids, MI	Roofing/Cabinets/Door								
11A	Carter Lumber	Windows & Ext. Doors	3,925.00	0.00	3,925.00	0.00			3,925.00	
B	7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	L/M								
C										
12A	Godwin Plumbing	Plumbing L/M	9,695.00	0.00	9,695.00	0.00			9,695.00	
B	3703 S. Division Ave, Grand Rapids MI 616-243-3131									
C										
13A	Turner Heating & Cooling	HVAC L/M	11,565.00	0.00	11,565.00	0.00			11,565.00	
B	1960 Lilypad Dr. SW Byron Center, MI 49315									
C	616-336-9744									
14A	Bolt & Regneres	Electrical L/M	7,648.00	0.00	7,648.00	0.00			7,648.00	
B	P.O. Box 20, Hudsonville, MI 616-669-6373									
C										
15A	Leading Edge	Insulation L/M	2,958.00	0.00	2,958.00	0.00			2,958.00	
B	859 74th St. Byron Center, MI 616-583-9300									
C										
16A	Preferred Drywall	Drywall L/M	9,100.00	0.00	9,100.00	0.00			9,100.00	
B	5720 Madison Ave SE Kentwood, MI 49548									
C	616-799-3381									
17A	True North Painting	Interior Painting L/M	5,391.00	0.00	5,391.00	0.00			5,391.00	
B	14170 Lake Michigan Drive West Olive, MI 231-499-2279									
C										
18A	True North Painting	Exterior Painting L/M	1,000.00	0.00	1,000.00	0.00			1,000.00	
B	14170 Lake Michigan Drive West Olive, MI 231-499-2279									
C										
19A	Carter Lumber	Siding L/M	7,260.00	0.00	7,260.00	0.00			7,260.00	
B	7474 Alpine Ave NW Comstock Park, MI 616-784-3460									
C										
20A	American Classic Construction	Roofing L/M	3,780.00	0.00	3,780.00	0.00			3,780.00	
B	11823 Walnut Ave Grant, MI 231-834-5905									
C										
21A	Skyline Gutter Systems	Gutters L/M	950.00	0.00	950.00	0.00			950.00	
B	P.O. Box 446 Middleville, MI 49333									
C	269-795-4887									
22A	Discount Doors	Overhead Garage Door	1,090.00	0.00	1,090.00	0.00			1,090.00	
B	4780 West River Dr. NE Comstock Park, MI 616-363-5692	L/M								
C										
23A	Godwin Plumbing	Plumbing Allowance	2,730.00	0.00	2,730.00	0.00			2,730.00	
B	3703 S. Division Ave, Grand Rapids MI 616-243-3131									
C										
24A	Dave Dusendang Custom Homes	Electrical Allowance	1,000.00	0.00	1,000.00	0.00			1,000.00	
B	3265 Walker Ave Suite D NW									
C	Grand Rapids, MI									
25A	Preferred Flooring	Flooring/Tile Allowance	6,816.00	0.00	6,816.00	0.00			6,816.00	
B	530 32nd Street SE Wyoming, MI 49548									
C	616-805-4645									
	SUBTOTALS CONTINUED ON NEXT PAGE		155,519.00	0.00	155,519.00	0.00	0.00	0.00	155,519.00	
	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A	Williams Distributing	Cabinet Allowance	5,845.00	0.00	5,845.00	0.00			5,845.00	
B	658 Richmond St. SW Grand Rapids, MI									

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

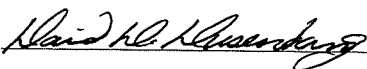
8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By:



Its: President



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NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")
Builder Address: P.O. Box 110 Comstock Park, MI. 49321
State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon
Contact Person: City Manager Franklin Peterson

Home Address: 1261 5th St. Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 209,308.00
The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

- | | |
|--|---|
| ☒ Description of Property (A) | ☒ Sworn Statement (F) |
| ☒ Plans/Specifications (B) | ☒ Limited Warranty (G) |
| ☒ FTC Insulation Disclosure (C) | |
| ☒ Payment Schedule (D) | |
| ☒ Outside Work (E) | |

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



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the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. **Purchase Price and Payment Terms.**

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. **Closing.**

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. **Dispute Resolution; Limitation on Time to Commence Action and Damages.**

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out of this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. **Limitation on Consequential Damages.** UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: David L. Huseman

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

24-205-377-0011-00

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

OWNER

By: David H. Plummer

Its: _____ President



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THE PLANNING
STAGE

PHONE: 616-866-1469
www.thepanningstage.net

Scott Weaver
info@thepanningstage.com

DRAWN BY:
S.V.
CHECKED BY:
P.K.

© COPYRIGHT 2019 THE PLANNING STAGE
TIMBERWOOD
WEST URBAN
PROPERTIES LLC

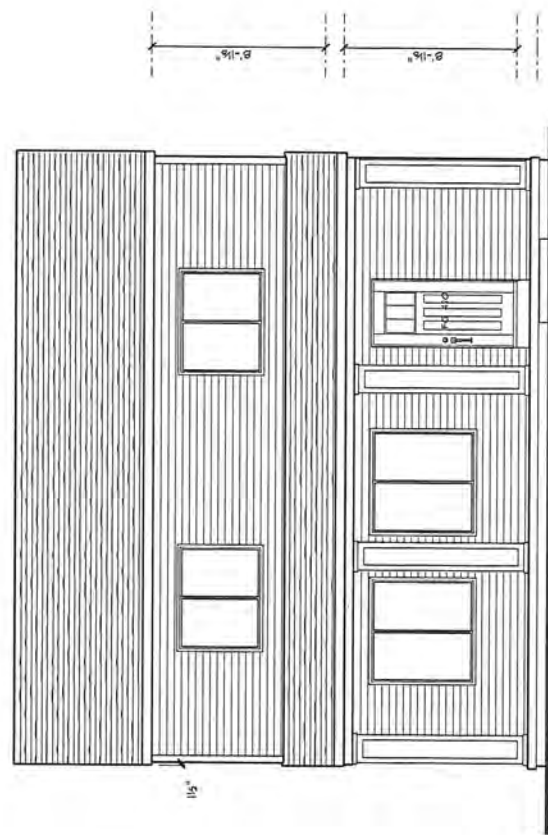
THE PLANNING STAGE

MAY 13, 2019

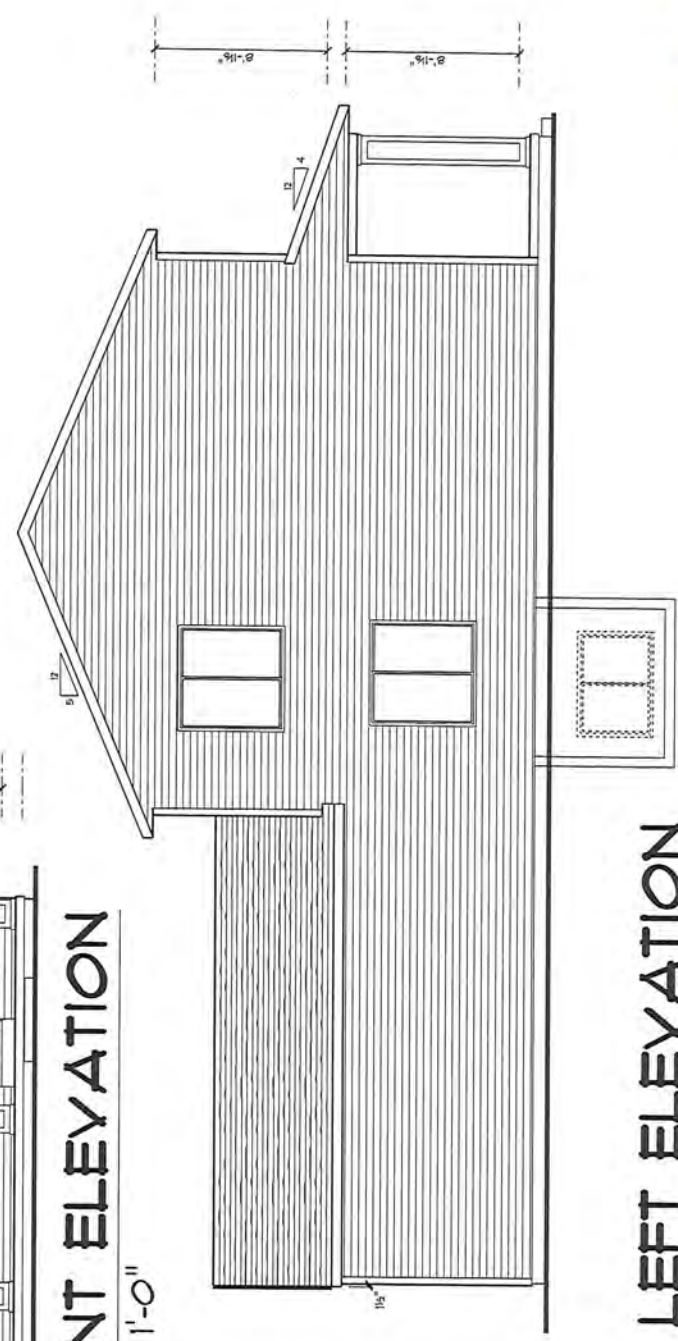
DISPUTE THE FACT THAT ALL
CONTRACTS ARE MADE IN
THE PRESENCE OF THE
PLANNING STAGE
THE CONTRACTOR SHALL
BE RESPONSIBLE FOR
OBTAINING ALL NECESSARY
PERMITS AND INSURANCE
FOR CHECKING ALL DETAILS AND
CONSTRUCTION OF THE
CONSTRUCTION.

PROJECT
#190511


WEST URBAN
PROPERTIES, LLC



FRONT ELEVATION
1/4" = 1'-0"



LEFT ELEVATION
1/4" = 1'-0"





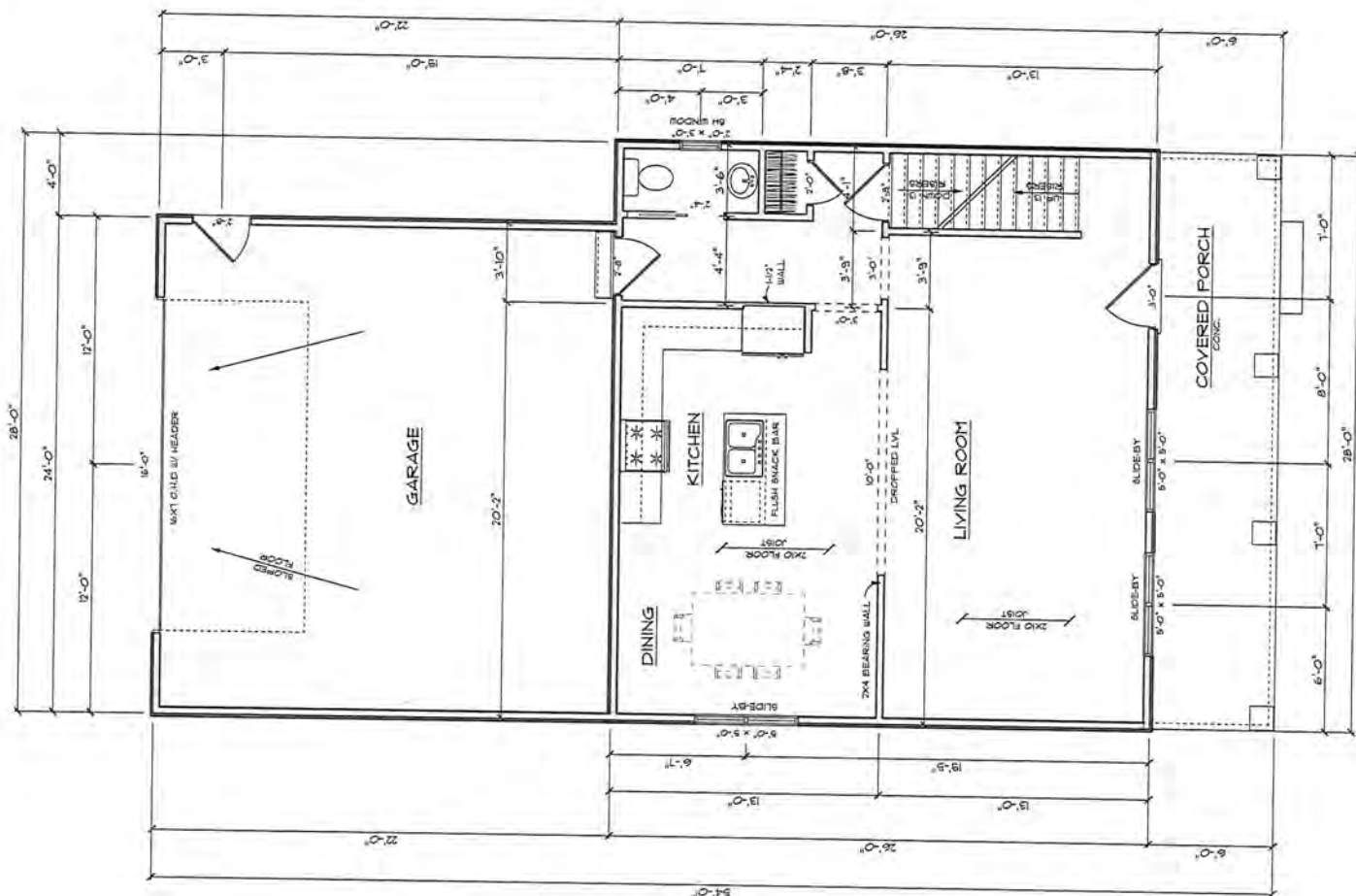
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WEST URBAN
PROPERTIES, LLC

MAIN FLOOR

PLAN

1/4" = 1'-0"
128 SQ. FT.





THE PLANNING
STAGE

PHONE: 816-366-1469
www.thepanningstage.net

DESIGN BY:
S.V.

CHECKED BY:
P.K.

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TIMBERWOOD
WEST URBAN
PROPERTIES LLC

THE PLANNING STAGE

MAY 13, 2019
MAY 14, 2019

DISCLAIMER: THE FACT THAT ALL
CONSTRUCTION SHALL BE IN
ACCORDANCE WITH THE
LATEST EDITION OF THE
INTERNATIONAL RESIDENTIAL
BUILDING CODE IS NOT
WARRANTY OF THE
DESIGN OR THE
CONSTRUCTION.

PROJECT
#190511

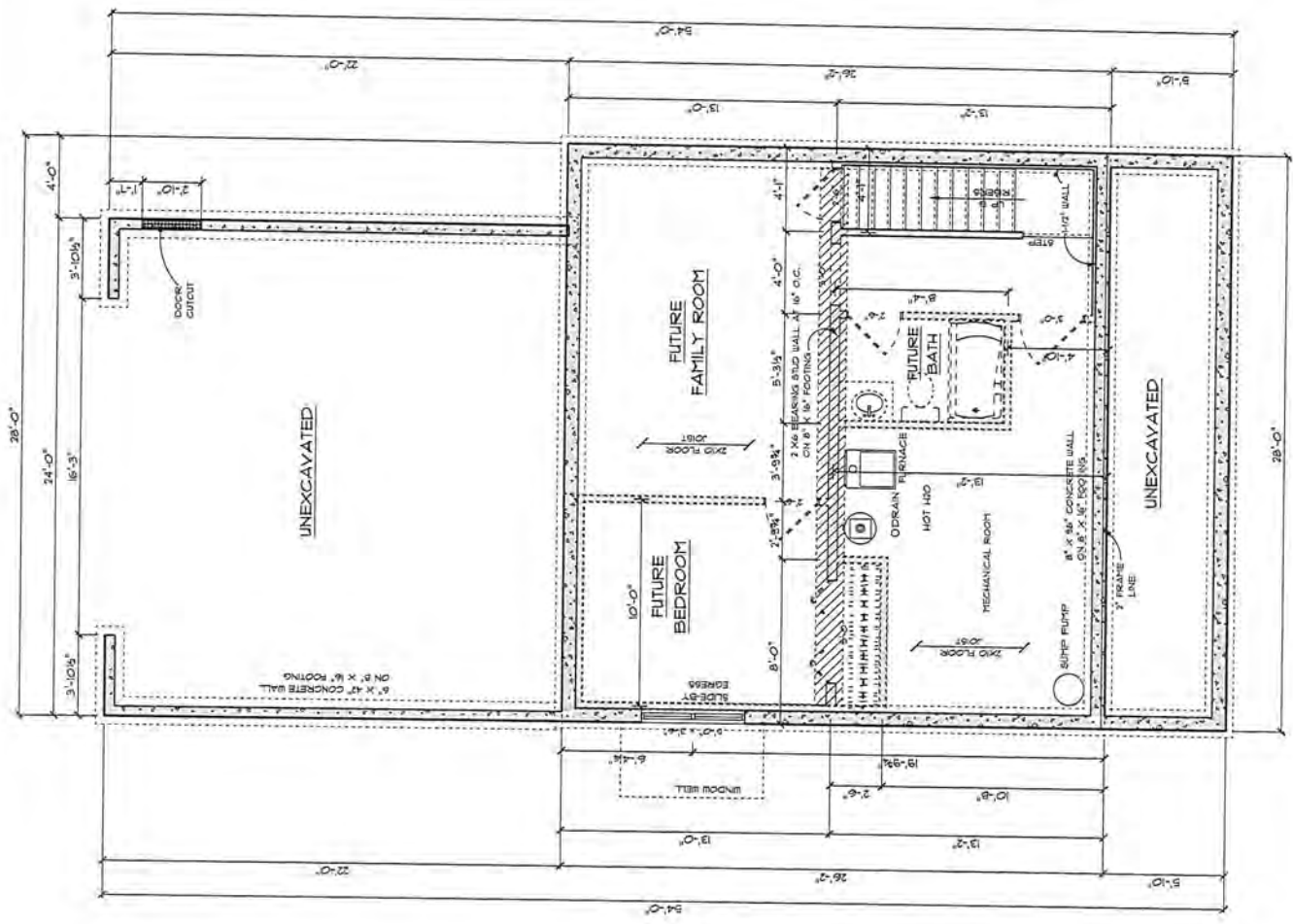


WEST URBAN
PROPERTIES, LLC

FOUNDATION PLAN

1/4" = 1'-0"

542 FUTURE SQ. FT.





PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jambs: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.

Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eaves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 16'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:
- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

- | | |
|-------------------------------|--|
| A. EXTERIOR WALLS: | Type of insulation: Blown in Cellulose _____ (1) |
| | Thickness of insulation: 3 1/2" _____ (2) |
| | R-value of insulation: R- 13.3 _____ (3) |
| B. CEILING: | Type of insulation: Loose Fill Cellulose _____ (4) |
| | Thickness of insulation: 13" _____ (5) |
| Unrefrigerated storage rooms) | R-value of insulation: R- 49 _____ (6) |

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: David H. Musendang

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender /Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: *David D. Musenberg*
Its: President _____

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

_____ **Irrigation/Landscaping/Lawn Seed** _____

BUILDER

By:

David L. Muschling

Its: President _____

OWNER



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Commitment No.:

Draw # 0

Date:

SWORN STATEMENT

Lender: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440
 Contractor: Dave Dusendang Custom Homes Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544
 All Contact: Dave Dusendang/Nickole Wessely
 Owner: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440
 Dependent: Dave Dusendang State of Michigan, County of Muskegon
 Is the (owner, contractor or sub-contractor) offer an improvement to the following described real property situated in the
 County of Muskegon Michigan, described as follows:
 Property Address: 1261 5th St. Muskegon, MI 49441

Phone: 231-724-6705
 Cell: 616-874-7085
 Phone: 616-874-7085
 Phone: 231-724-6705
 being duly sworn, deposes and says that
 City of Muskegon
 or Muskegon

That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgage and LandAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR, SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Charge Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes	Permits/Fees/Dumpster	8,169.00	0.00	8,169.00	0.00			8,169.00	
B 3265 Walker Ave Suite D NW									
C Grand Rapids, MI 49544									
2A North Kent Well & Pump	Well System L/M	0.00	0.00	0.00	0.00			0.00	
B 6085 17 Mile Rd Cedar Springs, MI									
C 616-696-2699									
3A Busscher's Septic & Excavating	Septic System L/M	0.00	0.00	0.00	0.00			0.00	
B 11305 E Lakewood Blvd Holland, MI									
C 616-392-9653									
4A Accurate Excavating	Excavating/Grading L/M	9,700.00	0.00	9,700.00	0.00			9,700.00	
B 2821 Central Road Muskegon, MI									
C 231-766-0557									
5A Nobel Foundations	Footings/Foundation L/M	12,198.00	0.00	12,198.00	0.00			12,198.00	
B 1777 Dewent Dr. Jenson, MI 49428									
C 616-437-6385									
6A MC Concrete	Concrete Drive/Walks L/M	6,906.00	0.00	6,906.00	0.00			6,906.00	
B 8300 18 Mile Cedar Springs, MI 49319									
C 616-885-0501									
7A BBS Masonry	Masonry L/M	0.00	0.00	0.00	0.00			0.00	
B 14701 Peach Ridge Ave Kent City, MI 49330									
C 616-889-4636									
8A Keene Lumber	Framing Materials	13,980.00	0.00	13,980.00	0.00			13,980.00	
B 346 W Lakeland Ave, Muskegon, MI									
C 231-726-2706									
SUBTOTALS CONTINUED ON NEXT PAGE		50,953.00	0.00	50,953.00	0.00	0.00	0.00	50,953.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109, to the designee or to the owner or lessee if the designee is not named or has died.

	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders + / -	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A	Carter Lumber	Trim Materials	3,200.00	0.00	3,200.00	0.00			3,200.00	
B	7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Labor -								
C	Dave Dusendang Custom Homes	Drywall/Carpentry/Siding/	26,458.00		26,458.00	0.00			26,458.00	
10A	3265 Walker Ave Suite D NW	Roofing/Cabinets/Door								
B	Grand Rapids, MI	Windows & Ext. Doors	3,925.00	0.00	3,925.00	0.00			3,925.00	
C	Carter Lumber	L/M								
11A	7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Plumbing L/M	9,695.00	0.00	9,695.00	0.00			9,695.00	
B	Godwin Plumbing									
C	3703 S. Division Ave, Grand Rapids MI 616-243-3131	HVAC L/M	11,565.00	0.00	11,565.00	0.00			11,565.00	
13A	Turner Heating & Cooling	Electrical L/M	7,648.00	0.00	7,648.00	0.00			7,648.00	
B	1960 Lilypad Dr. SW Byron Center, MI 49315	Insulation L/M	2,958.00	0.00	2,958.00	0.00			2,958.00	
C	616-336-9744	Drywall L/M	9,100.00	0.00	9,100.00	0.00			9,100.00	
14A	Bolt & Regneres	Interior Painting L/M	5,391.00	0.00	5,391.00	0.00			5,391.00	
B	P.O. Box 20, Hudsonville, MI 616-669-6373	Exterior Painting L/M	1,000.00	0.00	1,000.00	0.00			1,000.00	
C	Leading Edge	Siding L/M	7,260.00	0.00	7,260.00	0.00			7,260.00	
15A	859 74th St. Byron Center, MI 616-583-9300	Roofing L/M	3,780.00	0.00	3,780.00	0.00			3,780.00	
C	Preferred Drywall	Gutters L/M	950.00	0.00	950.00	0.00			950.00	
16A	5720 Madison Ave SE Kentwood, MI 49548	Overhead Garage Door	1,090.00	0.00	1,090.00	0.00			1,090.00	
B	616-799-3381	Plumbing Allowance	2,730.00	0.00	2,730.00	0.00			2,730.00	
C	True North Painting	Electrical Allowance	1,000.00	0.00	1,000.00	0.00			1,000.00	
17A	14170 Lake Michigan Drive West Olive, MI 231-499-2279	Flooring/Tile Allowance	6,816.00	0.00	6,816.00	0.00			6,816.00	
B	True North Painting									
C	14170 Lake Michigan Drive West Olive, MI 231-499-2279									
18A	Carter Lumber									
B	7474 Alpine Ave NW Comstock Park, MI 616-784-3460									
C	American Classic Construction									
20A	11823 Walnut Ave Grant, MI 231-834-5905									
B	Skyline Gutter Systems									
C	P.O. Box 446 Middleville, MI 49333									
21A	Discount Doors									
B	4780 West River Dr. NE Comstock Park, MI 616-363-5692									
C	Godwin Plumbing									
23A	3703 S. Division Ave, Grand Rapids MI 616-243-3131									
B	Dave Dusendang Custom Homes									
C	3265 Walker Ave Suite D NW									
24A	Grand Rapids, MI									
B	Preferred Flooring									
C	530 32nd Street SE Wyoming, MI 49548									
25A	616-805-4645									
B	SUBTOTALS CONTINUED ON NEXT PAGE		155,519.00	0.00	155,519.00	0.00	0.00	0.00	155,519.00	
C	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders + / -	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A	Williams Distributing									
B	658 Richmond St. SW Grand Rapids, MI	Cabinet Allowance	5,845.00	0.00	5,845.00	0.00			5,845.00	

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

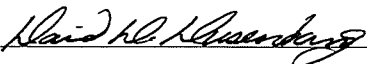
7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By: 

Its: President _____



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NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")

Builder Address: P.O. Box 110 Comstock Park, MI. 49321

State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon

Contact Person: City Manager Franklin Peterson

Home Address: 395 (A) Houston Ave Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 209,308.00
The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

☒ Description of Property (A)	☒ Sworn Statement (F)
☒ Plans/Specifications (B)	☒ Limited Warranty (G)
☒ FTC Insulation Disclosure (C)	
☒ Payment Schedule (D)	
☒ Outside Work (E)	

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



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the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. **Purchase Price and Payment Terms.**

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. **Closing.**

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. Dispute Resolution; Limitation on Time to Commence Action and Damages.

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. Limitation on Consequential Damages. UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: David A. Blusendang

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

24-205-369-0004-00

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

OWNER

By: David R. Blumberg

Its: _____ President _____



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THE PLANNING
STAGE
PHONE: 616-866-1469
www.thepanningstage.net
6001 Veterans
thepanningstage.com

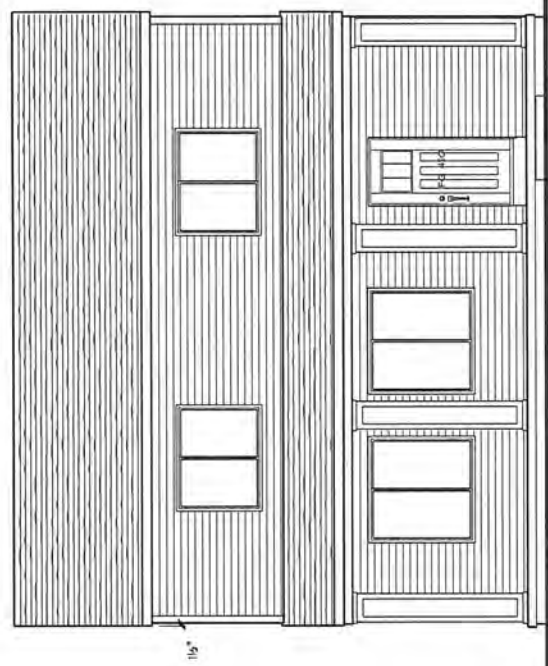
DRAWN BY:
S.V.
CHECKED BY:
P.K.

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TIMBERWOOD
WEST URBAN
PROPERTIES LLC
THE PLANNING STAGE

MAY 12, 2019
MAY 14, 2019

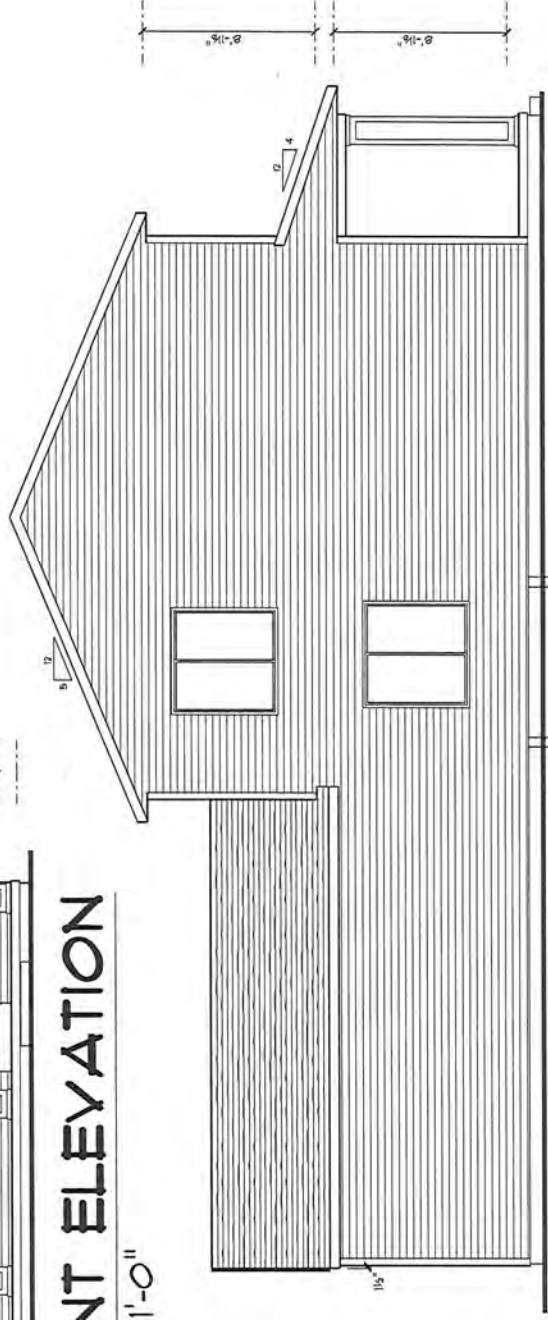
ESSENTIALS THE FACT THAT ALL
CONSTRUCTION SHALL BE IN
ACCORDANCE WITH THE
PLANNING STAGE
JEANETTE, MICHIGAN
ALPHA BENCH AND
FEDERAL RESERVE, THE
BANK OF AMERICA AND
THE CREDIT UNION
CONSTRUCTION

PROJECT
#190511



FRONT ELEVATION

1/4" = 1'-0"



LEFT ELEVATION

1/4" = 1'-0"



THE PLANNING STAGE
 PHONE: 616-866-1469
 www.thepanningstage.net
 Scott Veenstra
 thepanningstage@gmail.com

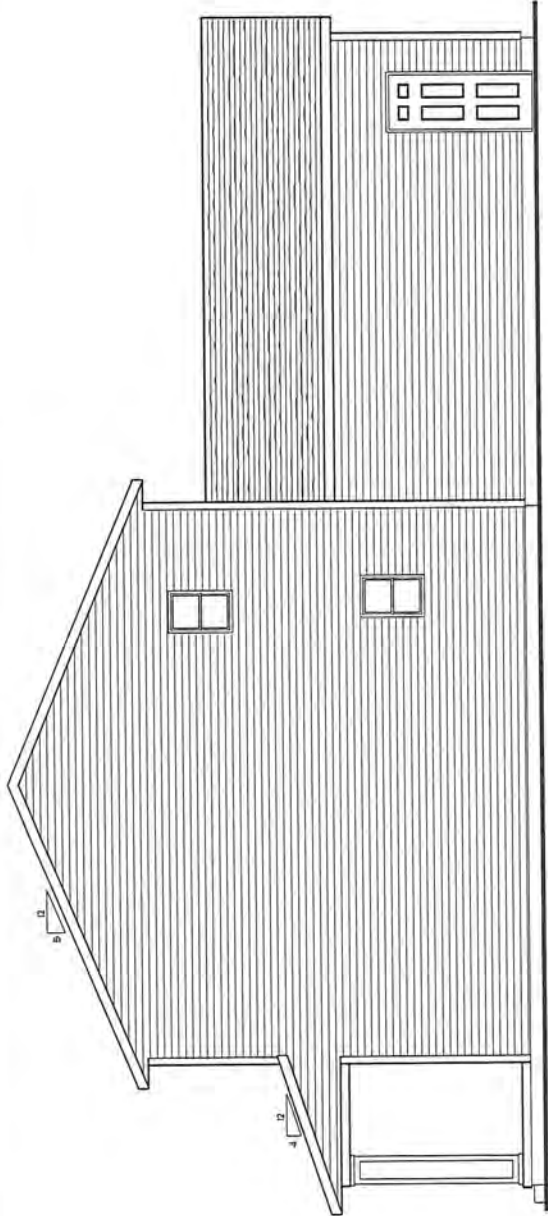
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 G.V.
 CHECKED BY:
 P.K.

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 PROPERTIES LLC
 THE PLANNING STAGE
 COPYRIGHT 2019

MAY 12, 2019
 MAY 14, 2019

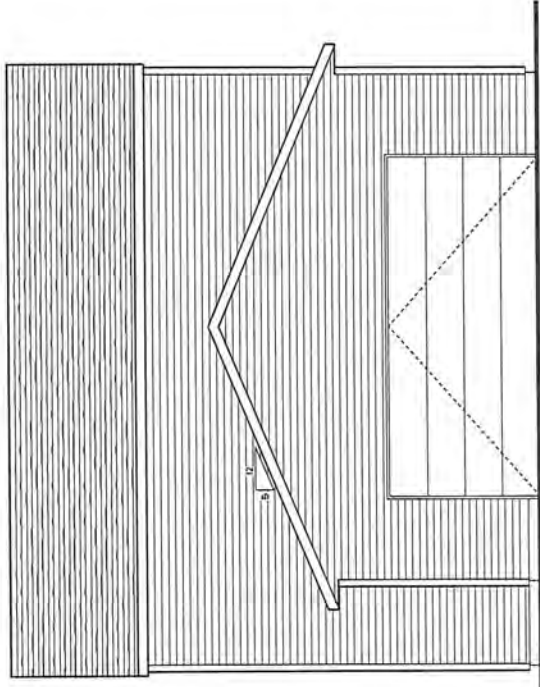
SUBMIT THE PAGE THAT ALL
 THE INFORMATION OF THESE
 DRAWINGS IS BASED UPON
 AT ANY TIME, WITHOUT
 UPON ERROR AND
 THE INFORMATION IS
 FOR DESIGN AND DETAILS AND
 NOT FOR CONSTRUCTION
 CONNECTION.

PROJECT
#190511



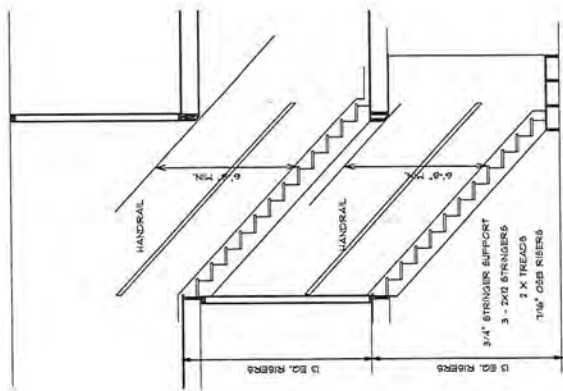
RIGHT ELEVATION

1/4" = 1'-0"



REAR ELEVATION

1/4" = 1'-0"



STAIR SECTION

1/4" = 1'-0"



WEST URBAN
 PROPERTIES, LLC



THE PLANNING
STAGE

PHONE: 816-866-4469
www.thepanningstage.com

Scott Vreeman
thepanningstage.com

DRAWN BY:
S.V.
CHECKED BY:
P.K.

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TIMBERWOOD
WEST URBAN
PROPERTIES LLC
THE PLANNING STAGE

MAY 18, 2019
MAY 14, 2019

DESIGNER: THE PLANNING STAGE
ARCHITECT: WEST URBAN PROPERTIES, LLC
ENGINEER: MECHANICAL ENGINEER, THE
PLANNING STAGE
NOTED: ALL DIMENSIONS ARE IN FEET AND INCHES
UNLESS OTHERWISE NOTED.
DIMENSIONS SHOWN BEFORE FINISHES.

PROJECT
#190511

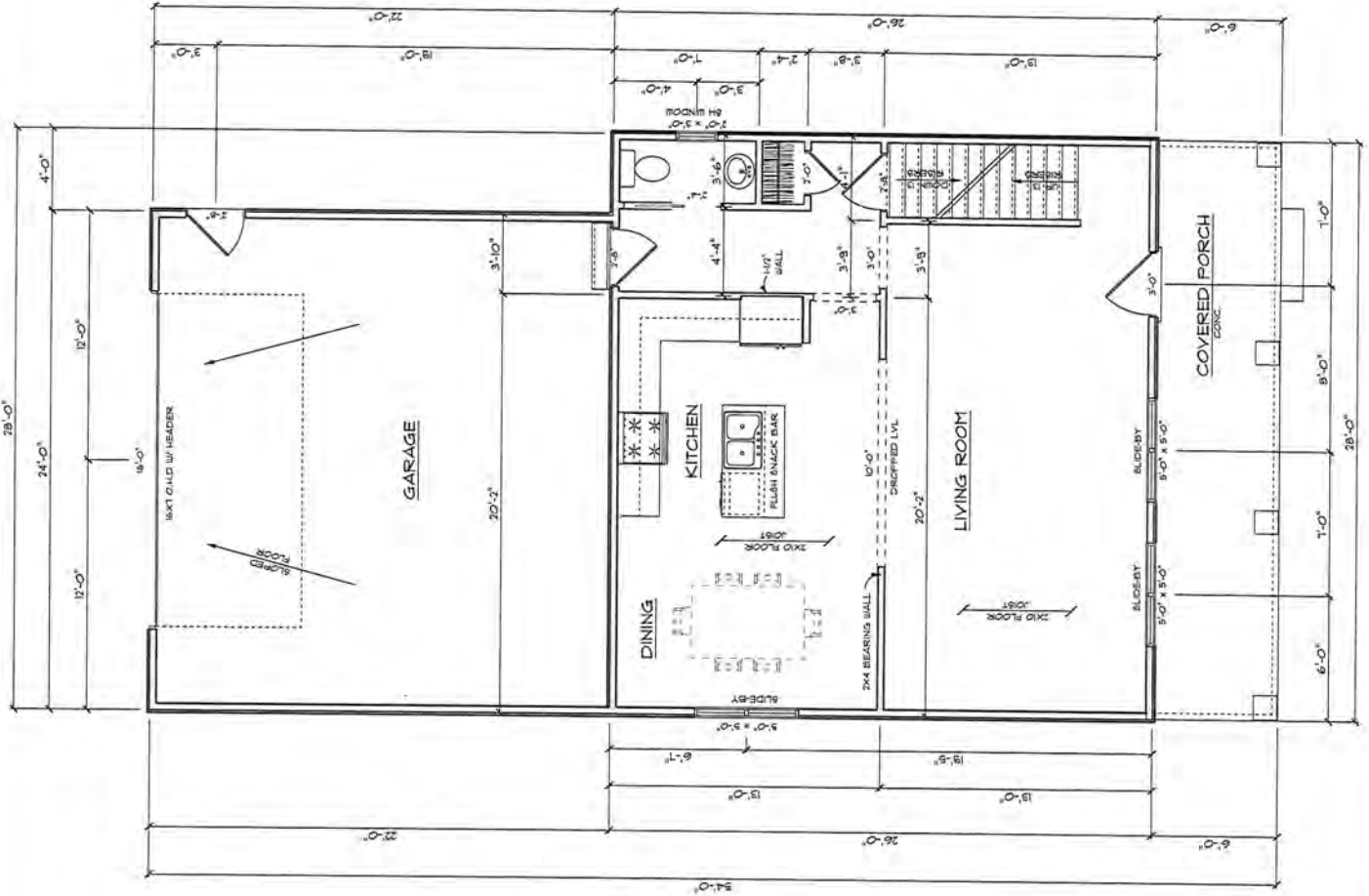


MAIN FLOOR

PLAN

1/4" = 1'-0"

128 SQ. FT.



ROOF /CLG SYSTEM

- ROOF VENTILATION 1300 OF THE INSULATED CEILING AREA UNIFORMLY DISTRIBUTED
- 10" FELT SINGLE UNDISLANTMENT
- ICE AND WATER SHIELD AT EYES 24" PAST INSULATED WALL MIN.
- BUNGLES PER SPECIFICATIONS
- 1/2" GIB WITH 1" CLIPS (VERIFY W/ LOCAL CODES) ON APPROVED TRUSSES
- RAFTLE AS REQUIRED FOR ROOF VENTILATION
- R-38 INSULATION (MIN.)
- 1/8" GYPSUM BOARD CEILING
- R-10 INSULATION (MIN.) ABOVE INNER FACE OF EXTERIOR WALL

SOFFIT SYSTEM

- | |
|-----------|
| OVERHANG |
| 1/4" GCHT |
| 1/2" RAKE |

WALL SYSTEM

- 1/2" T&G PLATE
- 2x4 STUDS AT 16" O.C.
- 1/2" GYPSUM WALLBOARD
- NET BLOWN CELLULOSE INSULATION
- 1/4" O.S.B. WALL SHEATHING
- HOUSE WRAP (HOUSE AND GARAGE)
- 5/8" BOTTOM PLATE

WALL SYSTEM

- DEL. TOP PLATE
- 2x4 STUDS AT 16" O.C.
- 1/2" GYPSUM WALLBOARD
- 1" PET BLOWN CELLULOSE INSULATION
- 1/2" O.S.B. WALL SHEATHING
- HOUSE WRAP (HOUSE AND GARAGE)
- SOL. BOTTOM PLATE

BILL/FLOOR SYSTEM

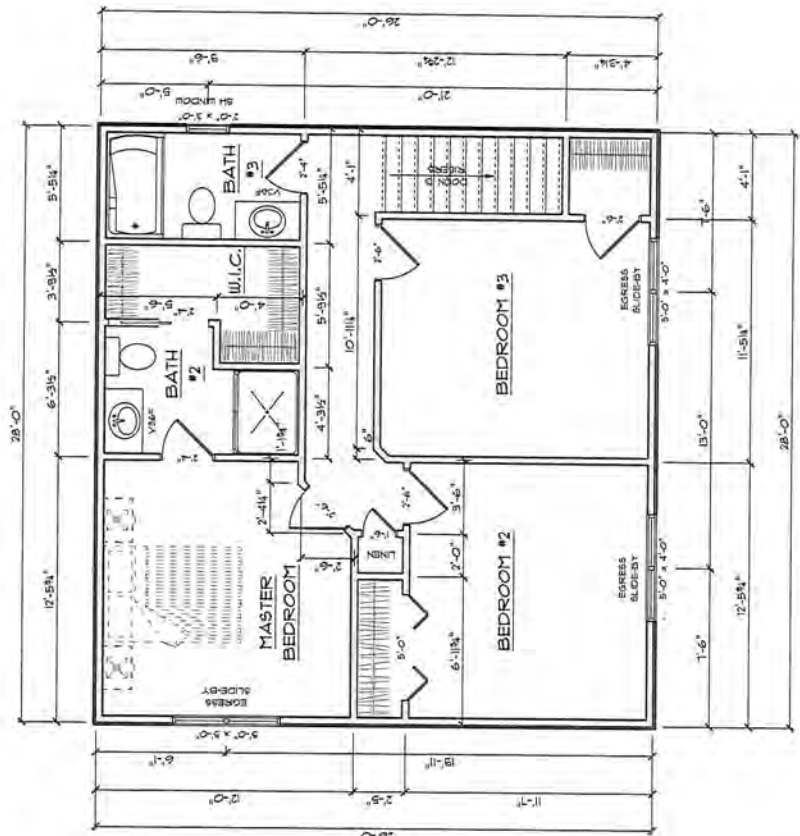
- 3/4" TONGUE AND GROOVE O.S.B. FLOORING
2X10 FLOOR JOIST
MANT. SUPPLIED RHM BOARDS
R-15 INSULATION
2X6 PRESSURE TREATED SILL PLATE
1X6 SILL SEALER
1/2" ANCHOR BOLTS MIN. 1/2" DIA. 1" IN CONCRETE
DISTANCE BET EACH BOLT CANNOT EXCEED 4'
FROM EACH JOIST AND EACH CORNER

FOUNDATION SYSTEM

- 8'-0" FOUNDATION WALL SYSTEM
BACKFILL
SLOPE GRADE AWAY FROM BUILDING
WATER PROOFING OR DAMP PROOFING
PER SITE CONDITIONS
3-4" CONCRETE FLOOR
6 MIL POLY VAPOR BARRIER
4" DIA. REEFING TILE WITH FEA
STONE IF REQUIRED
CONC. FOOTING TO BEAR ON
UNDISTURBED SOIL

WALL SECTION

NOT TO SCALE



2ND FLOOR PLAN

1/4" = 1'-0" T28 SQ. FT.



WEST URBAN
PROPERTIES, LLC

PROJECT
#190511

DEBITE THE FACT THAT ALL POSSIBLE CAUTION IS TAKEN IN THE PREPARATION OF THESE PLANS, THE PLANNING STAGE CANNOT ACCEPT LIABILITY AGAINST HUMAN ERROR AND FINANCIAL ERROR. THE BUILDING OWNER IS RESPONSIBLE FOR CHECKING ALL DETAILS AND PROVIDING BEFORE BEGINNING CONSTRUCTION.

MAY 13, 2019	MAY 14, 2019
--------------	--------------

TIMBERWOOD
 WEST URBAN
 PROPERTIES LLC

DRAWN BY:
A.V.
CHECKED BY:
P.K.

THE PLANNING STAGE

PHONE: 616-866-1469
www.thepainhighlife.net
Scott Vasserman
thepainhighlife.com





THE PLANNING
STAGE

PHONE: 616-666-1469
www.thepanningstage.net

Drawn By:
S.V.
Checked By:
P.K.

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TIMBERWOOD
WEST URBAN
PROPERTIES LLC

THE PLANNING STAGE

MAY 14, 2019
MAY 14, 2019

OWNER IS TO VERIFY ALL
DIMENSIONS, MATERIALS,
AND CONDITIONS OF THE
SITE PRIOR TO CONSTRUCTION.
THESE PLANS ARE FOR
GENERAL INFORMATION ONLY
AND DO NOT CONSTITUTE A
WARRANTY OR GUARANTEE.
THE ARCHITECT ASSUMES NO
RESPONSIBILITY FOR THE
ACCURACY OF THE INFORMATION
PROVIDED BY THE OWNER.

PROJECT
#190511

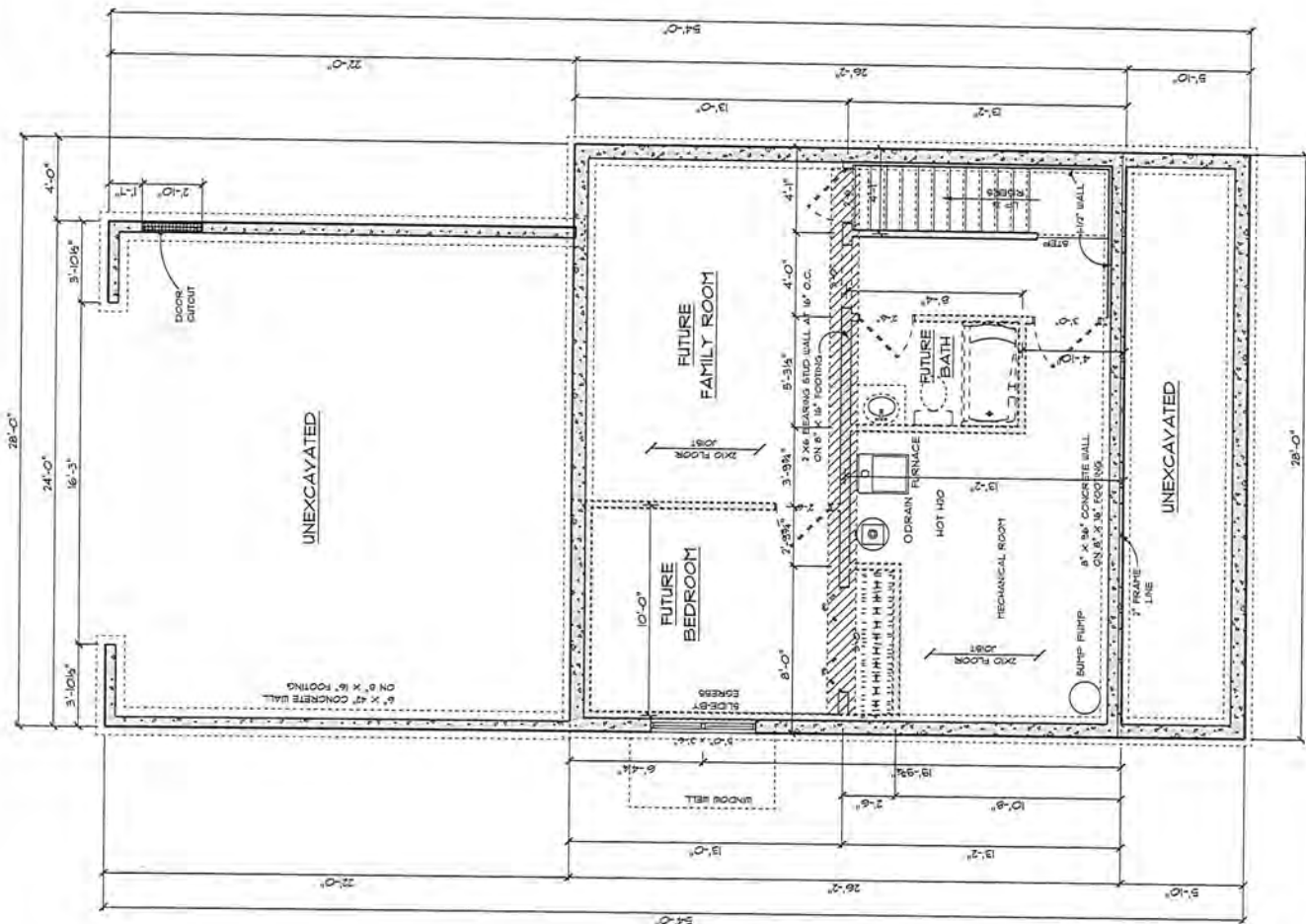


WEST URBAN
PROPERTIES, LLC

FOUNDATION PLAN

1/4" = 1'-0"

542 FUTURE SQ. FT.





PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jambs: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.
Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eaves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 16'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:

- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

- | | |
|-------------------------------|--|
| A. EXTERIOR WALLS: | Type of insulation: Blown in Cellulose _____ (1) |
| | Thickness of insulation: 3 1/2" _____ (2) |
| | R-value of insulation: R- 13.3 _____ (3) |
| B. CEILING: | Type of insulation: Loose Fill Cellulose _____ (4) |
| | Thickness of insulation: 13" _____ (5) |
| Unrefrigerated storage rooms) | R-value of insulation: R- 49 _____ (6) |

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: Mark H. Huseendang

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender /Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: *David L. Rosenberg*
Its: President _____

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

Irrigation/Landscaping/Lawn Seed

BUILDER

By: David L. Husek

Its: President _____

OWNER



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Commitment No.:

SWORN STATEMENT

Draw # 0 Date:

Lender: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440 Phone: 231-724-6705
Contractor: Dave Dusendang Custom Homes Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544 Cell: 616-874-7085
Alt. Contact: Dave Dusendang/Nickole Weesely
Owner: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440 Phone: 231-724-6705
Dependent: Dave Dusendang State of Michigan, County of Muskegon City of Muskegon
is the (owner, contractor or sub-contractor) offer an improvement to the following described real property situated in the City of Muskegon being duly sworn, deposes and says that
County of Muskegon, Michigan, described as follows:
Property Address: 395 "A" Houston Ave Muskegon, MI 49441

That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgagee and LendAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Order's +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes B 3265 Walker Ave Suite D NW C Grand Rapids, MI 49544	Permits/Fees/Dumpster	8,169.00	0.00	8,169.00	0.00			8,169.00	
2A North Kent Well & Pump B 6085 17 Mile Rd Cedar Springs, MI C 616-896-2699	Well System L/M	0.00	0.00	0.00	0.00			0.00	
3A Busscher's Septic & Excavating B 11305 E Lakewood Blvd Holland, MI C 616-392-9653	Septic System L/M	0.00	0.00	0.00	0.00			0.00	
4A Accurate Excavating B 2821 Central Road Muskegon, MI C 231-766-0557	Excavating/Grading L/M	9,700.00	0.00	9,700.00	0.00			9,700.00	
5A Nobel Foundations B 1777 Dewent Dr. Jenson, MI 49428 C 616-437-6385	Footings/Foundation L/M	12,198.00	0.00	12,198.00	0.00			12,198.00	
6A MC Concrete B 8300 18 Mile Cedar Springs, MI 49319 C 616-885-0501	Concrete Drive/Walks L/M	6,906.00	0.00	6,906.00	0.00			6,906.00	
7A BBS Masonry B 14701 Peach Ridge Ave Kent City, MI 49330 C 616-889-4636	Masonry L/M	0.00	0.00	0.00	0.00			0.00	
8A Keene Lumber B 346 W. Laketon Ave, Muskegon, MI C 231-726-2706	Framing Materials	13,980.00	0.00	13,980.00	0.00			13,980.00	
SUBTOTALS CONTINUED ON NEXT PAGE		50,953.00	0.00	50,953.00	0.00	0.00	0.00	50,953.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1980 PA 497, MCL 570.1105, to the designee or to the owner or lessee if the designee is not named or has died.

	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A	Carter Lumber 7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Trim Materials	3,200.00	0.00	3,200.00	0.00			3,200.00	
B										
C										
10A	Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI	Labor - Drywall/Carpentry/Siding/ Roofing/Cabinets/Door	26,458.00		26,458.00	0.00			26,458.00	
B										
C										
11A	Carter Lumber 7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Windows & Ext. Doors L/M	3,925.00	0.00	3,925.00	0.00			3,925.00	
B										
C										
12A	Godwin Plumbing 3703 S. Division Ave, Grand Rapids MI 616-243-3131	Plumbing L/M	9,695.00	0.00	9,695.00	0.00			9,695.00	
B										
C										
13A	Turner Heating & Cooling 1960 Lilypad Dr. SW Byron Center, MI 49315	HVAC L/M	11,565.00	0.00	11,565.00	0.00			11,565.00	
B										
C										
14A	Bolt & Regneres P.O. Box 20, Hudsonville, MI 616-669-6373	Electrical L/M	7,648.00	0.00	7,648.00	0.00			7,648.00	
B										
C										
15A	Leading Edge 859 74th St. Byron Center, MI 616-583-9300	Insulation L/M	2,958.00	0.00	2,958.00	0.00			2,958.00	
B										
C										
16A	Preferred Drywall 5720 Madison Ave SE Kentwood, MI 49548	Drywall L/M	9,100.00	0.00	9,100.00	0.00			9,100.00	
B										
C										
17A	True North Painting 14170 Lake Michigan Drive West Olive, MI 231-499-2279	Interior Painting L/M	5,391.00	0.00	5,391.00	0.00			5,391.00	
B										
C										
18A	True North Painting 14170 Lake Michigan Drive West Olive, MI 231-499-2279	Exterior Painting L/M	1,000.00	0.00	1,000.00	0.00			1,000.00	
B										
C										
19A	Carter Lumber 7474 Alpine Ave NW Comstock Park, MI 616-784-3460	Siding L/M	7,260.00	0.00	7,260.00	0.00			7,260.00	
B										
C										
20A	American Classic Construction 11823 Walnut Ave Grant, MI 231-834-5905	Roofing L/M	3,780.00	0.00	3,780.00	0.00			3,780.00	
B										
C										
21A	Skyline Gutter Systems P.O. Box 446 Middleville, MI 49333	Gutters L/M	950.00	0.00	950.00	0.00			950.00	
B										
C										
22A	Discount Doors 4780 West River Dr. NE Comstock Park, MI 616-363-5692	Overhead Garage Door L/M	1,090.00	0.00	1,090.00	0.00			1,090.00	
B										
C										
23A	Godwin Plumbing 3703 S. Division Ave, Grand Rapids MI 616-243-3131	Plumbing Allowance	2,730.00	0.00	2,730.00	0.00			2,730.00	
B										
C										
24A	Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI	Electrical Allowance	1,000.00	0.00	1,000.00	0.00			1,000.00	
B										
C										
25A	Preferred Flooring 530 32nd Street SE Wyoming, MI 49548	Flooring/Tile Allowance	6,816.00	0.00	6,816.00	0.00			6,816.00	
B										
C										
SUBTOTALS CONTINUED ON NEXT PAGE			155,519.00	0.00	155,519.00	0.00	0.00	0.00	155,519.00	
NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER			TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A	Williams Distributing 658 Richmond St. SW Grand Rapids, MI	Cabinet Allowance	5,845.00	0.00	5,845.00	0.00			5,845.00	

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By: *David H. Henderson*

Its: President _____



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NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")
Builder Address: P.O. Box 110 Comstock Park, MI. 49321
State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon
Contact Person: City Manager Franklin Peterson

Home Address: 395 (B) Houston Ave Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 209,308.00
The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

☒ Description of Property (A)	☒ Sworn Statement (F)
☒ Plans/Specifications (B)	☒ Limited Warranty (G)
☒ FTC Insulation Disclosure (C)	
☒ Payment Schedule (D)	
☒ Outside Work (E)	

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



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the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. **Purchase Price and Payment Terms.**

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. **Closing.**

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. **Dispute Resolution: Limitation on Time to Commence Action and Damages.**

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out of this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. **Limitation on Consequential Damages.** UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: David L. Huseendang

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

_____ 24-205-369-0004-00 _____

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

OWNER

By: David V. Henderson

Its: _____ President _____



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THE PLANNING
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PHONE: 616-866-1463
www.thepanningstage.com
6001 1st Avenue
Naperville, IL 60563

DRAWN BY:
A.K.
CHECKED BY:
P.K.

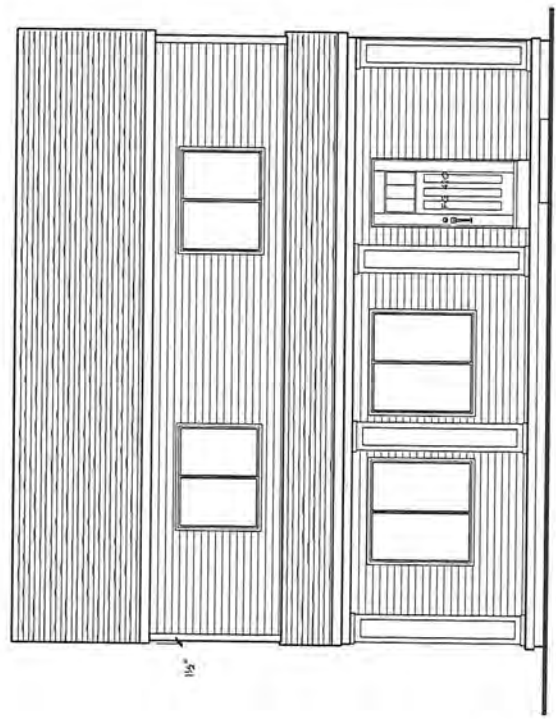
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TIMBERWOOD
WEST URBAN
PROPERTIES LLC
THE PLANNING STAGE

MAY 14, 2019

DESPIITE THE FACT THAT ALL
THESE PLANS ARE PREPARED
IN THE PREPARATION OF THE
PLANNING STAGE, THE PLANNING
STAGE ARCHITECTS AND DESIGNERS
DO NOT WARRANT OR GUARANTEE
THE ACCURACY OF THE PLANS
FOR ANY PURPOSES OTHER THAN
FOR CHECKING ALL DETAILS AND
FOR PREPARING THE PLANS FOR
CONSTRUCTION.

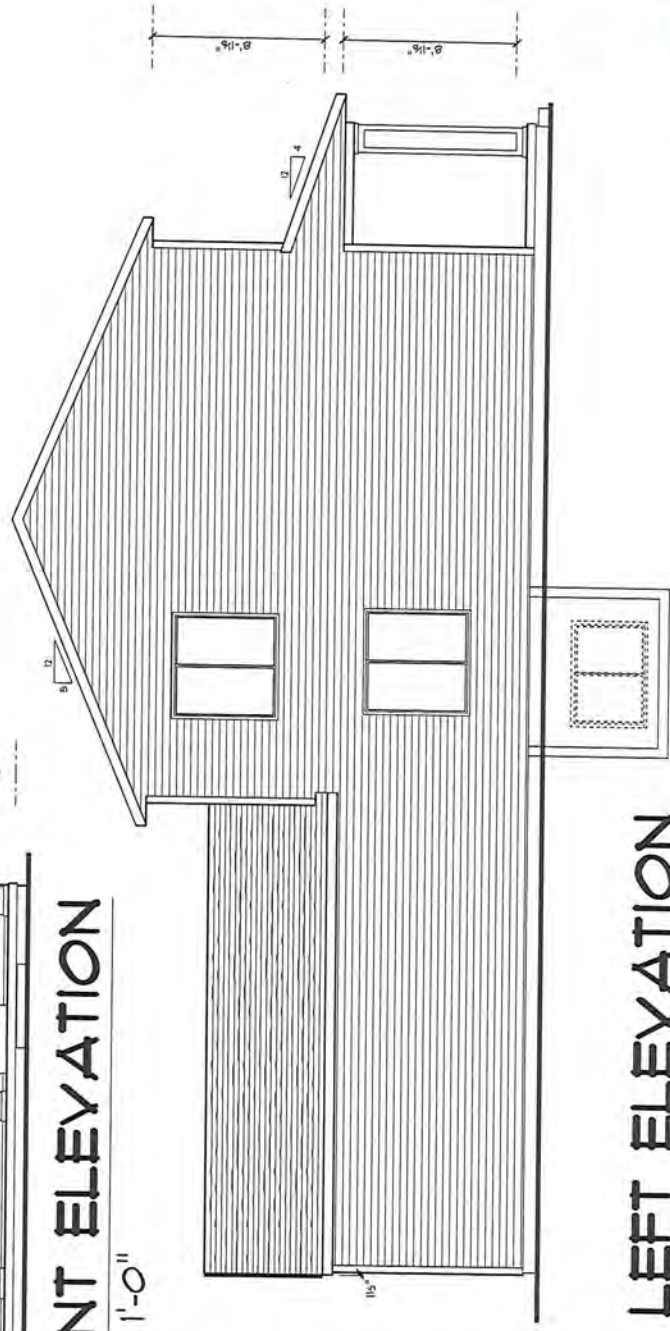
PROJECT
#190511


WEST URBAN
PROPERTIES, LLC



FRONT ELEVATION

1/4" = 1'-0"



LEFT ELEVATION

1/4" = 1'-0"



THE PLANNING
STAGE

PHONE: 616-266-1469
www.thepanningstage.net

Scott Tressner
thepanningstage.com

DRAWN BY:
S.V.
CHECKED BY:
P.K.

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WEST URBAN
PROPERTIES LLC

THE PLANNING STAGE

MAY 14, 2019

DESIGN THE FACT THAT ALL
THESE PLANS ARE PRELIMINARY
AND NOT TO BE USED FOR
CONSTRUCTION. THE PLANNING
STAGE SHALL NOT BE RESPONSIBLE
FOR CHECKING ALL DETAILS AND
CONSTRUCTION.

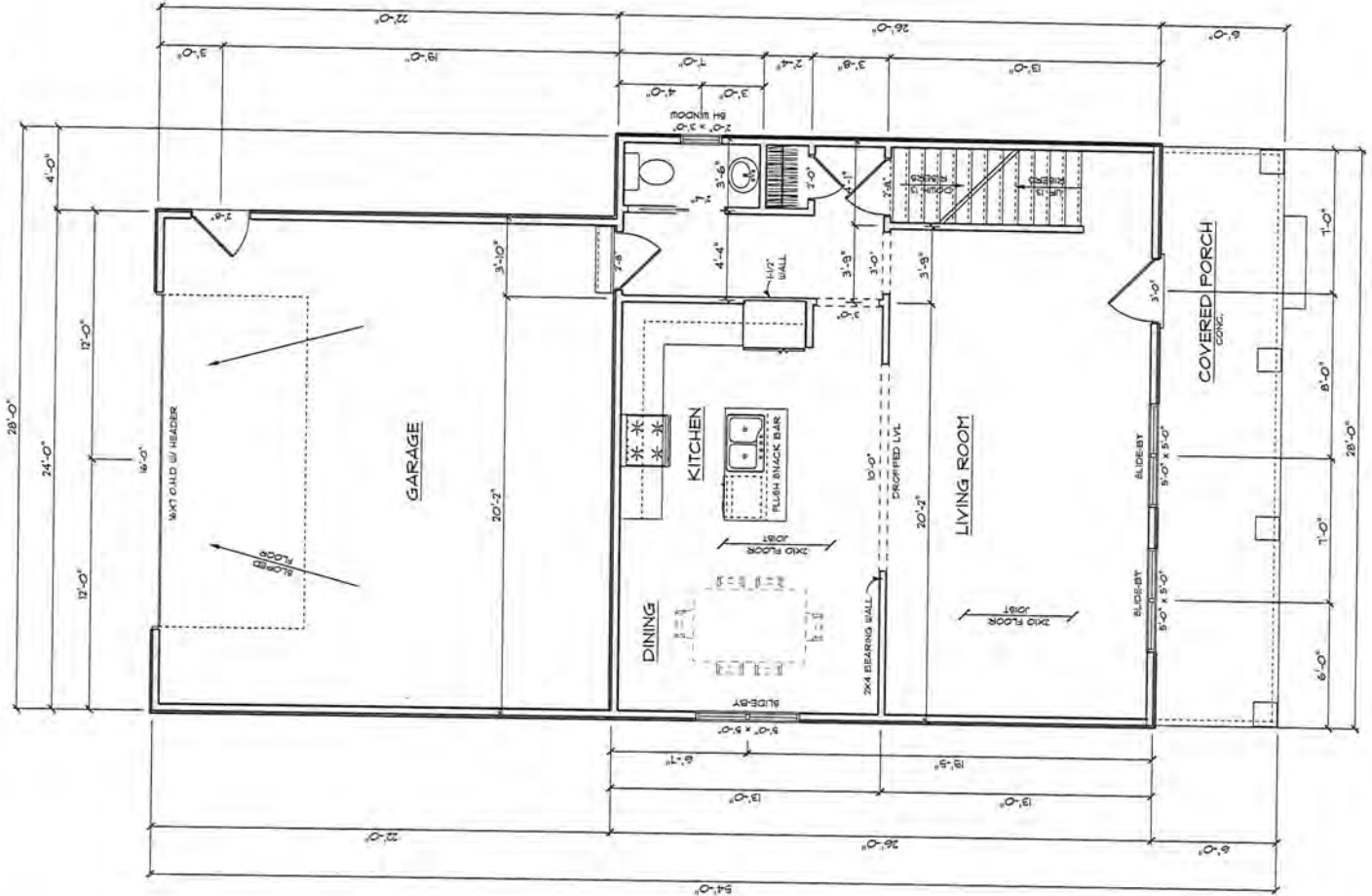
PROJECT
#190511

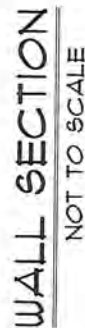


MAIN FLOOR

PLAN

1/4" = 1'-0"
728 SQ. FT.





1/4" = 1'-0" 728 SQ. FT.



PROJECT
#190511

DEBATES THE FACT THAT ALL POSSIBLE CLUTTONS TAKEN IN THE PREPARATION OF THESE PLANS, THE PLANNING BOARD CANNOT ACCEPT LIABILITY AGAINST HUMAN ERROR AND MECHANICAL ERROR. THE BUILDING OWNER IS RESPONSIBLE FOR CHECKING ALL DETAILS AND EXTERIOR BEFORE BEGINNING CONSTRUCTION.

MAY 13 2016
MAY 14 2016

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 THE PLANNING STAGE

THE PLANNING STAGE



THE PLANNING STAGE

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Scott Varnum
http://www.hugoboss.com

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THE PLANNING
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April Vreeman
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P.K.

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PROPERTIES LLC

THE PLANNING STAGE

MAY 12, 2019
MAY 14, 2019

DESIGNER: THE PLANNING STAGE
THE PREPARATION OF THIS
DRAWING IS THE PROPERTY OF
THE PLANNING STAGE. NO
PART OF THIS DRAWING IS TO
BE REPRODUCED OR
TRANSMITTED IN ANY FORM
OR BY ANY MEANS, ELECTRONIC
OR MECHANICAL, INCLUDING
PHOTOCOPYING, RECORDING,
OR BY ANY INFORMATION
STORAGE AND RETRIEVAL
SYSTEM, WITHOUT THE
WRITTEN PERMISSION OF
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DESIGN GROUP, INC.

PROJECT
#190511

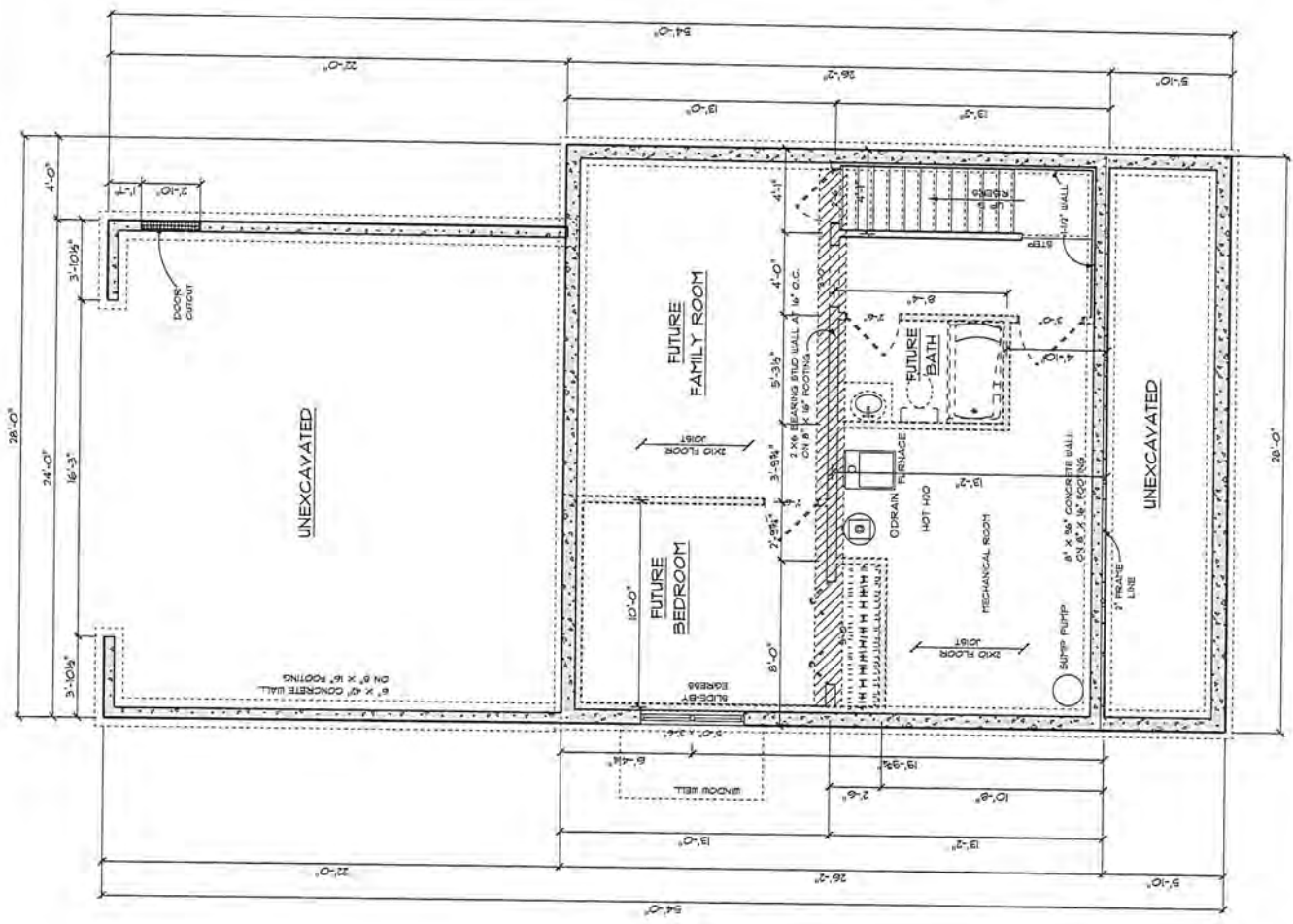


WEST URBAN
PROPERTIES, LLC

FOUNDATION PLAN

1/4" = 1'-0"

542 FUTURE SQ. FT.





PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jambs: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.

Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eaves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 16'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:

- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

- | | |
|-------------------------------|--|
| A. EXTERIOR WALLS: | Type of insulation: Blown in Cellulose _____ (1) |
| | Thickness of insulation: 3 1/2" _____ (2) |
| | R-value of insulation: R- 13.3 _____ (3) |
| B. CEILING: | Type of insulation: Loose Fill Cellulose _____ (4) |
| | Thickness of insulation: 13" _____ (5) |
| Unrefrigerated storage rooms) | R-value of insulation: R- 49 _____ (6) |

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: David H. Musendang

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender/Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: David H. Henderson
Its: President _____

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

_____ **Irrigation/Landscaping/Lawn Seed** _____

BUILDER

OWNER

By:

David L. Hurdman

Its: President



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Commitment No.2:

SWORN STATEMENT

Draw # 0 Date:

Lender: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440

Contractor: Dave Dusendang Custom Homes Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

All Contact: Dave Dusendang/Nickole Wessely

Owner: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440

Disponent: Dave Dusendang State of Michigan, County of Muskegon

Is the (owner, contractor or sub-contractor) offer an improvement to the following described real property situated in the _____ City of Muskegon or Muskegon

County of _____

Property Address: 395 "B" Houston Ave Muskegon, MI 49441

being duly sworn, deposes and says that _____

Transnation
TITLE AGENCY OF MICHIGAN

Phone: 231-724-6705

Cell: 616-874-7085

Phone: 616-874-7085

Phone: 231-724-6705

City of Muskegon
or Muskegon

That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That the (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That the (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgagee and LandAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes									
B 3265 Walker Ave Suite D NW	Permits/Fees/Dumpster	8,169.00	0.00	8,169.00	0.00			8,169.00	
C Grand Rapids, MI 49544									
2A North Kent Well & Pump									
B 6085 17 Mile Rd Cedar Springs, MI	Well System L/M	0.00	0.00	0.00	0.00			0.00	
C 616-666-2699									
3A Busscher's Septic & Excavating									
B 11305 E Lakewood Blvd Holland, mi	Septic System L/M	0.00	0.00	0.00	0.00			0.00	
C 616-392-9653									
4A Accurate Excavating									
B 2821 Central Road Muskegon, MI	Excavating/Grading L/M	9,700.00	0.00	9,700.00	0.00			9,700.00	
C 231-766-0557									
5A Nobel Foundations									
B 1777 Dewent Dr. Jenson, MI 49428	Footings/Foundation L/M	12,198.00	0.00	12,198.00	0.00			12,198.00	
C 616-437-6385									
6A MC Concrete									
B 8300 18 Mile Cedar Springs, MI 49319	Concrete Drive/Walks L/M	6,906.00	0.00	6,906.00	0.00			6,906.00	
C 616-885-0501									
7A BBS Masonry									
B 14701 Peach Ridge Ave Kent City, MI 49330	Masonry L/M	0.00	0.00	0.00	0.00			0.00	
C 616-889-4636									
8A Keene Lumber									
B 346 W. Laketon Ave, Muskegon, MI	Framing Materials	13,980.00	0.00	13,980.00	0.00			13,980.00	
C 231-726-2706									
SUBTOTALS CONTINUED ON NEXT PAGE		50,953.00	0.00	50,953.00	0.00	0.00	0.00	50,953.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1980 PA 497, MCL 570.1108, to the designee or to the owner or lessee if the designee is not named or has died.

	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A	Carter Lumber	Trim Materials	3,200.00	0.00	3,200.00	0.00			3,200.00	
B	7474 Alpine Ave NW, Comstock Park, MI 616-784-3460									
C										
10A	Dave Dusendang Custom Homes	Labor -								
B	3265 Walker Ave Suite D NW	Drywall/Carpentry/Siding/	26,458.00		26,458.00	0.00			26,458.00	
C	Grand Rapids, MI	Roofing/Cabinets/Door								
11A	Carter Lumber	Windows & Ext. Doors	3,925.00	0.00	3,925.00	0.00			3,925.00	
B	7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	L/M								
C										
12A	Godwin Plumbing	Plumbing L/M	9,695.00	0.00	9,695.00	0.00			9,695.00	
B	3703 S. Division Ave, Grand Rapids MI 616-243-3131									
C										
13A	Turner Heating & Cooling	HVAC L/M	11,565.00	0.00	11,565.00	0.00			11,565.00	
B	1960 Lilypad Dr. SW Byron Center, MI 49315									
C	616-336-9744									
14A	Bolt & Regneres	Electrical L/M	7,648.00	0.00	7,648.00	0.00			7,648.00	
B	P.O. Box 20, Hudsonville, MI 616-669-6373									
C										
15A	Leading Edge	Insulation L/M	2,958.00	0.00	2,958.00	0.00			2,958.00	
B	859 74th St. Byron Center, MI 616-583-9300									
C										
16A	Preferred Drywall	Drywall L/M	9,100.00	0.00	9,100.00	0.00			9,100.00	
B	5720 Madison Ave SE Kentwood, MI 49548									
C	616-799-3381									
17A	True North Painting	Interior Painting L/M	5,391.00	0.00	5,391.00	0.00			5,391.00	
B	14170 Lake Michigan Drive West Olive, MI 231-499-2279									
C										
18A	True North Painting	Exterior Painting L/M	1,000.00	0.00	1,000.00	0.00			1,000.00	
B	14170 Lake Michigan Drive West Olive, MI 231-499-2279									
C										
19A	Carter Lumber	Siding L/M	7,260.00	0.00	7,260.00	0.00			7,260.00	
B	7474 Alpine Ave NW Comstock Park, MI 616-784-3460									
C										
20A	American Classic Construction	Roofing L/M	3,780.00	0.00	3,780.00	0.00			3,780.00	
B	11823 Walnut Ave Grant, MI 231-834-5905									
C										
21A	Skyline Gutter Systems	Gutters L/M	950.00	0.00	950.00	0.00			950.00	
B	P.O. Box 446 Middleville, MI 49333									
C	269-795-4887									
22A	Discount Doors	Overhead Garage Door L/M	1,090.00	0.00	1,090.00	0.00			1,090.00	
B	4780 West River Dr. NE Comstock Park, MI 616-363-5692									
C										
23A	Godwin Plumbing	Plumbing Allowance	2,730.00	0.00	2,730.00	0.00			2,730.00	
B	3703 S. Division Ave, Grand Rapids MI 616-243-3131									
C										
24A	Dave Dusendang Custom Homes	Electrical Allowance	1,000.00	0.00	1,000.00	0.00			1,000.00	
B	3265 Walker Ave Suite D NW									
C	Grand Rapids, MI									
25A	Preferred Flooring	Flooring/Tile Allowance	6,816.00	0.00	6,816.00	0.00			6,816.00	
B	530 32nd Street SE Wyoming, MI 49548									
C	616-805-4645									
SUBTOTALS CONTINUED ON NEXT PAGE			155,519.00	0.00	155,519.00	0.00	0.00		155,519.00	
NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER			TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A	Williams Distributing	Cabinet Allowance	5,845.00	0.00	5,845.00	0.00			5,845.00	
B	658 Richmond St. SW Grand Rapids, MI									

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

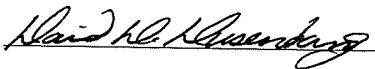
8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By:



Its: President



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NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")
Builder Address: P.O. Box 110 Comstock Park, MI. 49321
State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon
Contact Person: City Manager Franklin Peterson

Home Address: 271 (A) Merrill Ave Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 209,308.00
The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

☒ Description of Property (A)	☒ Sworn Statement (F)
☒ Plans/Specifications (B)	☒ Limited Warranty (G)
☒ FTC Insulation Disclosure (C)	
☒ Payment Schedule (D)	
☒ Outside Work (E)	

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



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the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. **Purchase Price and Payment Terms.**

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. **Closing.**

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. **Dispute Resolution; Limitation on Time to Commence Action and Damages.**

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. **Limitation on Consequential Damages.** UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: *David H. Husemeyer*

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

24-205-387-0005-00

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

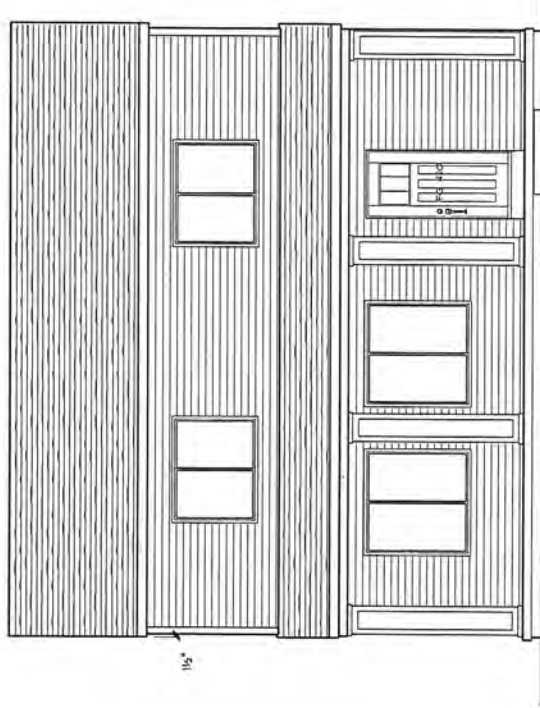
OWNER

By: David H. Henderson

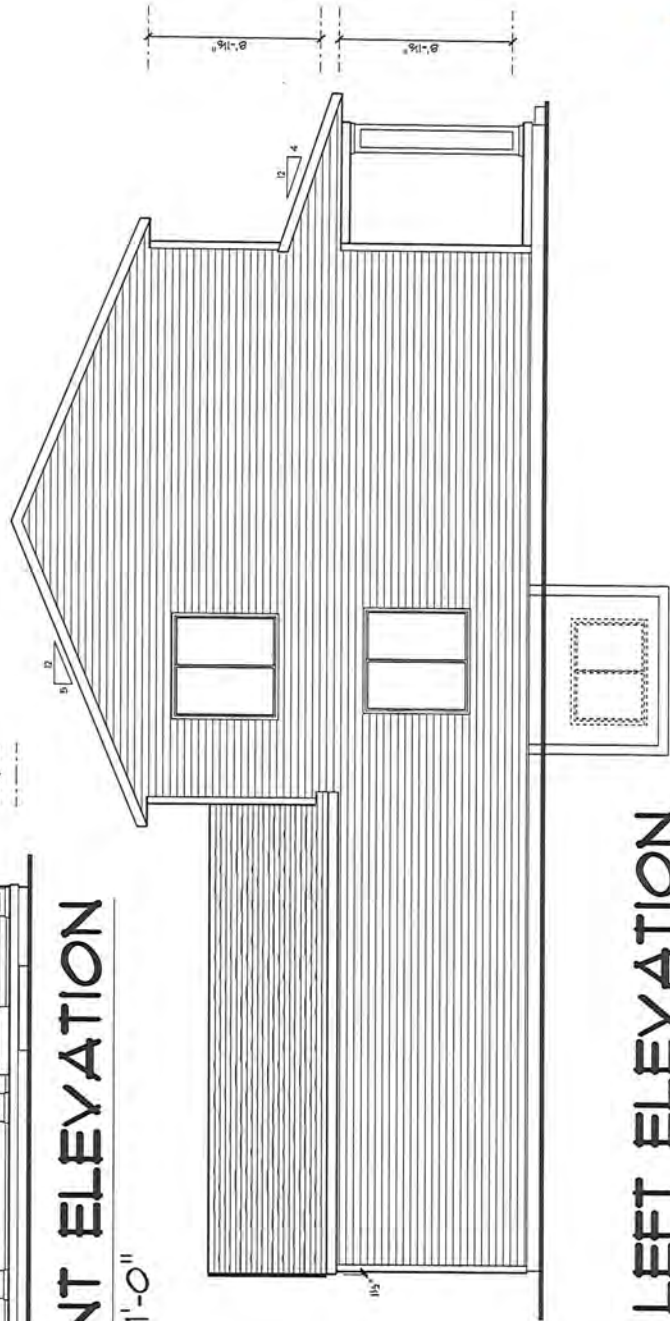
Its: _____ President _____



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FRONT ELEVATION
1/4" = 1'-0"



LEFT ELEVATION
1/4" = 1'-0"

WEST URBAN
PROPERTIES, LLC



**THE PLANNING
STAGE**
PHONE: 816-866-1469
www.thepanningstage.net
Scott Treanor
thepanningstage.com

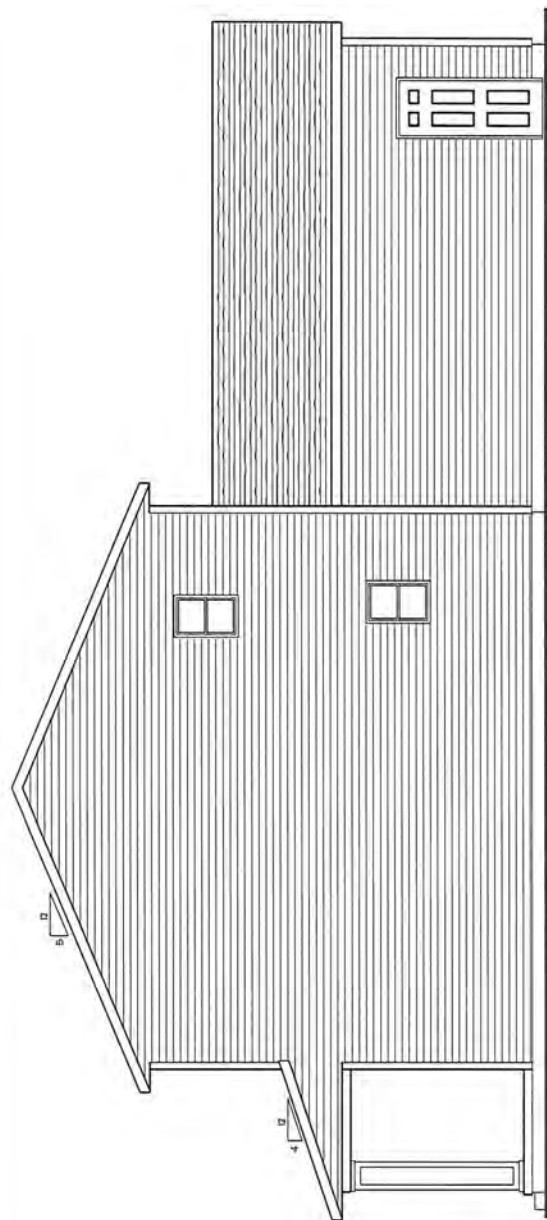
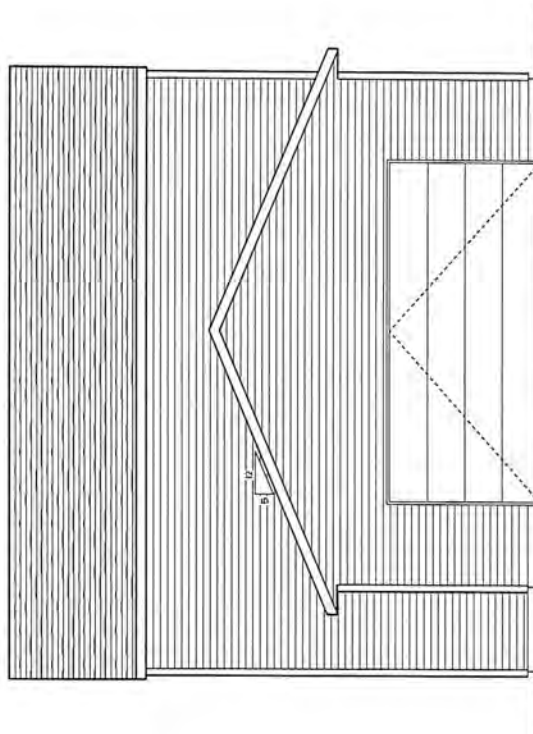
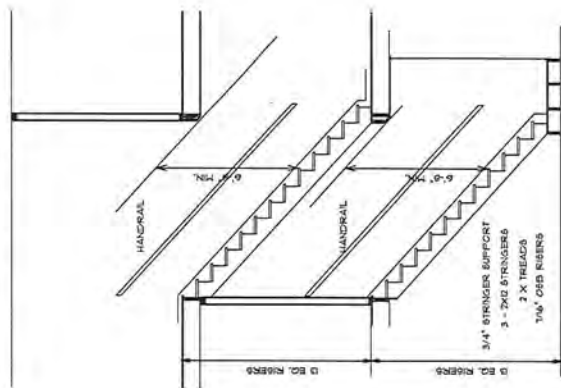
**DRAWN BY,
B.V.
CHECKED BY,
P.K.**

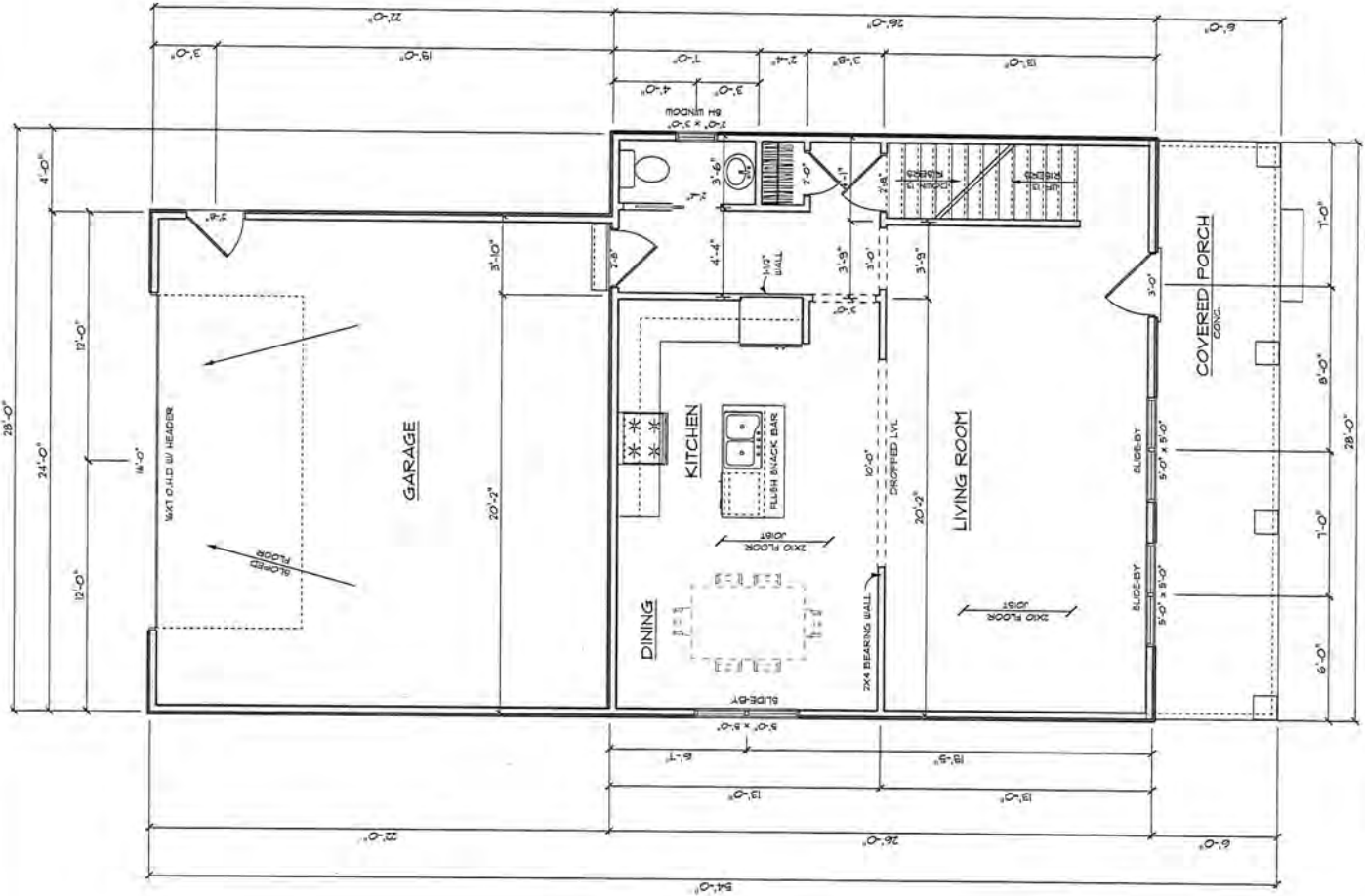
**TIMBERWOOD
WEST URBAN
PROPERTIES LLC**
© COPYRIGHT 2019 THE PLANNING STAGE
THE PLANNING STAGE

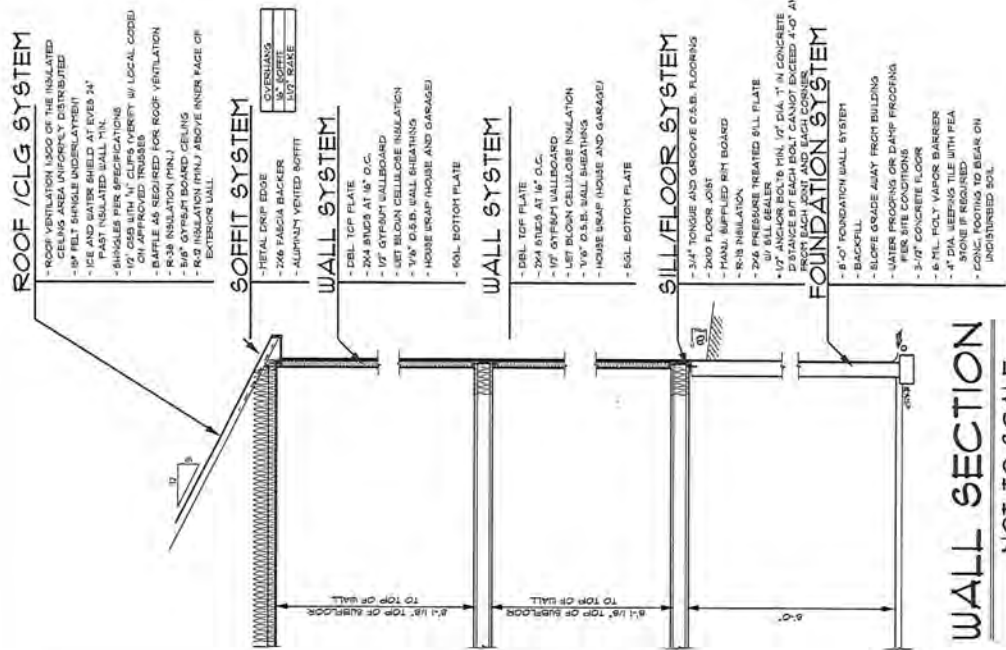
MAY 12, 2019
MAY 14, 2019

DESIGNER: THE FACT THAT ALL
CONSTRUCTION IS TAKEN IN
CONFORMANCE WITH THE
PLANNING STAGE
IS GUARANTEED. THE
ARCHITECTURAL FIRM, THE
PLANNING STAGE, IS NOT
FOR CHECKING ALL DETAILS AND
CONSTRUCTION.

**PROJECT
#190511**


$$1/4'' = 1'-0''$$
 $1/4'' = 1'-0''$ 
$$1/4'' = 1'-0''$$





2ND FLOOR PLAN

1/4" = 1'-0" 728 SQ. FT.

WALL SECTION
NOT TO SCALE

NOT TO SCALE



WEST URBAN
PROPERTIES, LLC

PROJECT
#190511

DISMISSE THE FACT THAT ALL POSSIBLE CAUTION IS TAKEN IN THE PREPARATION OF THESE PLANS. THE PLANNING STAGE CANNOT ACCEPT LIABILITY AGAINST HUMAN ERROR AND THE FINANCIAL ERROR. THE BUDGETING IS RESPONSIBLE FOR CHECKING ALL DETAILS AND DISMISSING BEFORE BEGINNING CONSTRUCTION.

MAY 19 2019

TIMBERWOOD
 WEST URBAN
 PROPERTIES LLC
 THE PLANNING STAGE

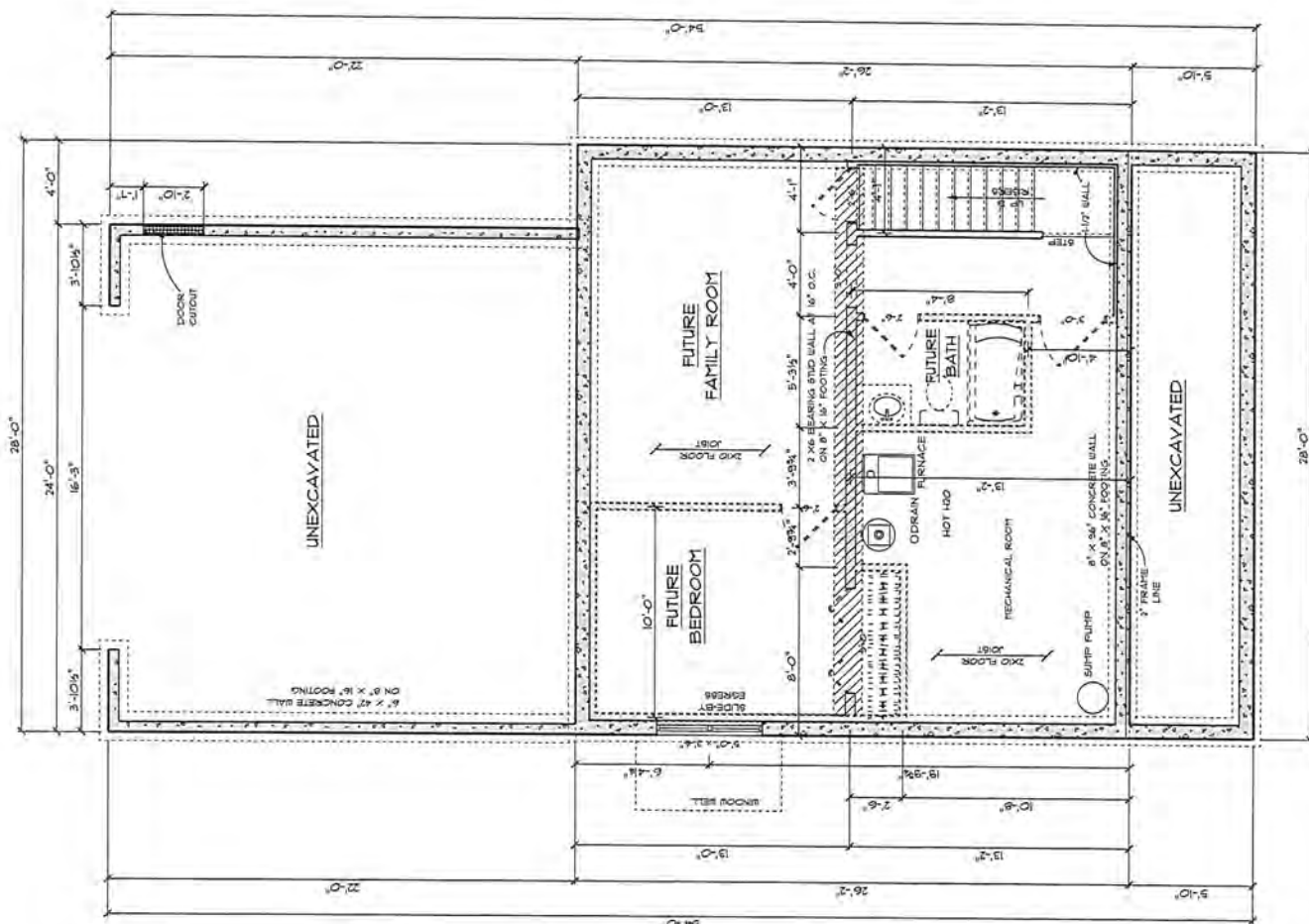
THE PLANNING STAGE

THE PLANNING STAGE

PHONE: 616-865-1469
www.thepaintingagency.net

Book Number
0000000000







PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jambs: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.

Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eaves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 16'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:

- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

- | | |
|-------------------------------|--|
| A. EXTERIOR WALLS: | Type of insulation: Blown in Cellulose _____ (1) |
| | Thickness of insulation: 3 1/2" _____ (2) |
| | R-value of insulation: R- 13.3 _____ (3) |
| B. CEILING: | Type of insulation: Loose Fill Cellulose _____ (4) |
| | Thickness of insulation: 13" _____ (5) |
| Unrefrigerated storage rooms) | R-value of insulation: R- 49 _____ (6) |

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: David M. Huseburg

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender /Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: *David L. Rosenberg*
Its: President _____

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

_____ Irrigation/Landscaping/Lawn Seed _____

BUILDER

OWNER

By: David L. Mueselung

Its: President _____



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Commitment No.:

Draw # 0

Date:

SWORN STATEMENT

Lender:

City of Muskegon

Address: 933 Terrace St. Muskegon, MI 49440

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Phone: 231-724-6705

Cell: 616-874-7085

Phone: 616-874-7085

Phone: 231-724-6705

being duly sworn, deposes and says that

City of Muskegon

or Muskegon

Depositor:

Dave Dusendang

Address: 933 Terrace St. Muskegon, MI 49440

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Phone: 231-724-6705

Cell: 616-874-7085

Phone: 616-874-7085

Phone: 231-724-6705

being duly sworn, deposes and says that

City of Muskegon

or Muskegon

County of:

Muskegon

Address: 933 Terrace St. Muskegon, MI 49440

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Phone: 231-724-6705

Cell: 616-874-7085

Phone: 616-874-7085

Phone: 231-724-6705

being duly sworn, deposes and says that

City of Muskegon

or Muskegon

Property Address:

271 "A" Merrill Ave Muskegon, MI 49441

Address: 933 Terrace St. Muskegon, MI 49440

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544

Phone: 231-724-6705

Cell: 616-874-7085

Phone: 616-874-7085

Phone: 231-724-6705

being duly sworn, deposes and says that

City of Muskegon

or Muskegon

That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgage and LandAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI 49544	Permits/Fees/Dumpster	8,169.00	0.00	8,169.00	0.00			8,169.00	
2A North Kent Well & Pump 6085 17 Mile Rd Cedar Springs, MI 616-696-2699	Well System L/M	0.00	0.00	0.00	0.00			0.00	
3A Busscher's Septic & Excavating 11305 E Lakewood Blvd Holland, MI 616-392-9653	Septic System L/M	0.00	0.00	0.00	0.00			0.00	
4A Accurate Excavating 2821 Central Road Muskegon, MI 231-766-0557	Excavating/Grading L/M	9,700.00	0.00	9,700.00	0.00			9,700.00	
5A Nobel Foundations 1777 Dewent Dr. Jenson, MI 49428 616-437-6385	Footings/Foundation L/M	12,198.00	0.00	12,198.00	0.00			12,198.00	
6A MC Concrete 8300 18 Mile Cedar Springs, MI 49319 616-885-0501	Concrete Drive/Walks L/M	6,906.00	0.00	6,906.00	0.00			6,906.00	
7A BBS Masonry 14701 Peach Ridge Ave Kent City, MI 49330 616-889-4636	Masonry L/M	0.00	0.00	0.00	0.00			0.00	
8A Keene Lumber 346 W. Laketon Ave, Muskegon, MI 231-726-2706	Framing Materials	13,980.00	0.00	13,980.00	0.00			13,980.00	
SUBTOTALS CONTINUED ON NEXT PAGE		50,953.00	0.00	50,953.00	0.00	0.00	0.00	50,953.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1960 PA 497, MCL 570.1109, to the designee or to the owner or lessee if the designee is not named or has died.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A Carter Lumber B 7474 Alpine Ave NW, Comstock Park, MI 49315 C 616-784-3460	Trim Materials	3,200.00	0.00	3,200.00	0.00			3,200.00	
10A Dave Dusendang Custom Homes B 3265 Walker Ave Suite D NW C Grand Rapids, MI 49508	Labor - Drywall/Carpentry/Siding/ Roofing/Cabinets/Door	26,458.00		26,458.00	0.00			26,458.00	
11A Carter Lumber B 7474 Alpine Ave NW, Comstock Park, MI 49315 C 616-784-3460	Windows & Ext. Doors L/M	3,925.00	0.00	3,925.00	0.00			3,925.00	
12A Godwin Plumbing B 3703 S. Division Ave, Grand Rapids, MI 49508 C 616-243-3131	Plumbing L/M	9,695.00	0.00	9,695.00	0.00			9,695.00	
13A Turner Heating & Cooling B 1960 Lilypad Dr. SW Byron Center, MI 49315 C 616-336-9744	HVAC L/M	11,565.00	0.00	11,565.00	0.00			11,565.00	
14A Bolt & Regneres B P.O. Box 20, Hudsonville, MI 49421 C 616-669-6373	Electrical L/M	7,648.00	0.00	7,648.00	0.00			7,648.00	
15A Leading Edge B 859 74th St. Byron Center, MI 49309 C 616-583-9300	Insulation L/M	2,958.00	0.00	2,958.00	0.00			2,958.00	
16A Preferred Drywall B 5720 Madison Ave SE Kentwood, MI 49548 C 616-799-3381	Drywall L/M	9,100.00	0.00	9,100.00	0.00			9,100.00	
17A True North Painting B 14170 Lake Michigan Drive West Olive, MI 48091 C 231-499-2279	Interior Painting L/M	5,391.00	0.00	5,391.00	0.00			5,391.00	
18A True North Painting B 14170 Lake Michigan Drive West Olive, MI 48091 C 231-499-2279	Exterior Painting L/M	1,000.00	0.00	1,000.00	0.00			1,000.00	
19A Carter Lumber B 7474 Alpine Ave NW Comstock Park, MI 49315 C 616-784-3460	Siding L/M	7,260.00	0.00	7,260.00	0.00			7,260.00	
20A American Classic Construction B 11823 Walnut Ave Grant, MI 49323 C 231-834-5905	Roofing L/M	3,780.00	0.00	3,780.00	0.00			3,780.00	
21A Skyline Gutter Systems B P.O. Box 446 Middleville, MI 49333 C 269-795-4887	Gutters L/M	950.00	0.00	950.00	0.00			950.00	
22A Discount Doors B 4780 West River Dr. NE Comstock Park, MI 49315 C 616-363-5692	Overhead Garage Door L/M	1,090.00	0.00	1,090.00	0.00			1,090.00	
23A Godwin Plumbing B 3703 S. Division Ave, Grand Rapids, MI 49508 C 616-243-3131	Plumbing Allowance	2,730.00	0.00	2,730.00	0.00			2,730.00	
24A Dave Dusendang Custom Homes B 3265 Walker Ave Suite D NW C Grand Rapids, MI 49508	Electrical Allowance	1,000.00	0.00	1,000.00	0.00			1,000.00	
25A Preferred Flooring B 530 32nd Street SE Wyoming, MI 49548 C 616-805-4645	Flooring/Tile Allowance	6,816.00	0.00	6,816.00	0.00			6,816.00	
SUBTOTALS CONTINUED ON NEXT PAGE		155,519.00	0.00	155,519.00	0.00	0.00	0.00	155,519.00	
NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A Williams Distributing B 658 Richmond St. SW Grand Rapids, MI 49503	Cabinet Allowance	5,845.00	0.00	5,845.00	0.00			5,845.00	

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

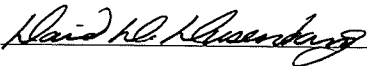
8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By:



Its: President



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NEW HOME CONSTRUCTION AGREEMENT

1. **THIS AGREEMENT** is made between the Builder and Owner for the construction of a New Home.

Builder Name: Dave Dusendang Custom Homes, Inc. ("Builder")
Builder Address: P.O. Box 110 Comstock Park, MI. 49321
State of Michigan Builder License No. 2101143807

Owner Name: City of Muskegon
Contact Person: City Manager Franklin Peterson

Home Address: 271 (B) Merrill Ave Muskegon, MI 49441

Owner Phone: 231-724-6724

2. **Estimated Completion Date of New Home: approximately 7-8 months AFTER BREAKING GROUND** (See Sections 7.1 and 7.2 below).

3. **Base Purchase Price of New Home:** \$ 209,308.00
The Base Purchase Price of the New Home may include construction allowances and or material price protections (See Section 8 below). If so, the Base Purchase Price may change as the actual cost of the individual allowance items or essential materials are determined during the course of construction.

This agreement includes the following Exhibits (check if applicable):

☒ Description of Property (A)	☒ Sworn Statement (F)
☒ Plans/Specifications (B)	☒ Limited Warranty (G)
☒ FTC Insulation Disclosure (C)	
☒ Payment Schedule (D)	
☒ Outside Work (E)	

4. **Construction of New Home.**

4.1 Builder will provide all labor, material and supervision to construct on the property described on Exhibit A (the "Property"), the building(s), structure(s) and/or other improvements described on Exhibit B (the "New Home") in substantial compliance with the plans and specifications of the New Home. This agreement does not include any terms of purchase of the Property.

4.2 If brand names are shown on the plans or specifications, every reasonable effort will be made to use, install or provide the brand products or services. In the event a brand product or service becomes unavailable to the Builder for reasons beyond the control of Builder, Owner will be notified immediately and Builder may substitute a comparable product or service of equal quality and/or price, if possible. Slight deviations from the plans and specifications are considered substantial compliance with this agreement; provided, however, that all major changes or deviations to the plans or specifications must be approved in writing by Owner, which approval will not be unreasonably withheld, conditioned or delayed.

4.3 If the plans and specifications are prepared by or at the direction of the Builder, the Builder will be deemed the author of them and will retain all common law, statutory and other reserve rights to the copyright. All copies of these documents must be accounted for and returned to the Builder, upon request, upon the completion of the New Home. The plans and specifications are not to be used by any person on any other project or for additions to



the New Home outside of this agreement, without the specific written consent of the Builder. Builder may condition any further use upon the payment of a fee.

4.4 All workmanship of the New Home will be completed in a manner which meets all applicable building codes for residential construction presently in force for the unit of government in which the Property is located, and unless superseded by the codes, all construction will be consistent with the current standards set forth in *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). The Guidelines may be purchased from the Home & Building Association of Greater Grand Rapids.

4.5 The terms of this agreement include those found in this instrument, any Exhibit(s) or other amendment(s) or rider(s) to this instrument signed by the parties, the plans and specifications and change orders, and the construction performance guidelines described in Section 4.4 above. In case of a discrepancy between the plans and the specifications, the specifications will take precedence over the plans.

5. Purchase Price and Payment Terms.

5.1 Owner must pay Builder:

- a. the Base Purchase Price identified above, and
- b. any additional charges described in Section 5.3 of this agreement.

5.2 Owner must pay the Base Purchase Price in the manner described by Exhibit D, or if Exhibit D is not attached, then from time to time upon invoice by Builder.

5.3 Additional costs associated with change orders and all charges payable by the Owner under this agreement and not included in the Base Purchase Price, are designated as "additional charges". Owner must pay additional charges separately to Builder.

5.4 Unless this agreement specifies another time period, payment of amounts owed to Builder are due seven (7) days after Owner's receipt of an invoice from Builder. All invoices from Builder will be deemed received by Owner upon personal delivery, or upon the second day after they are faxed, emailed, or mailed by first class mail, postage prepaid to the address or number of Owner specified on the first page of this agreement. All payments due from Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of Ten percent (10 %) of the late payment.

5.5 Any amount due Builder from Owner that is not paid within five days of its due date will bear interest at the lower rate of twelve percent (12%) per annum or the maximum rate permitted by law from the due date until paid. This charge is a time price differential. Payments received from Owner will be applied by Builder as follows. First, to accrued interest under Section 5.5; second, to late charges under Section 5.4; third, to other additional charges under Section 5.3; and fourth, to the Base Purchase Price as provided by Section 5.1.

5.6 Owner acknowledges that:

- a. Any late payment to Builder causes Builder to incur costs not contemplated by this agreement,
- b. The exact amount of these costs may be extremely difficult and impractical to fix, and
- c. The charges of this Section 5 are reasonable estimates of Builder's additional costs.

6. Closing.

6.1 Closing must occur within five days after Builder has provided notice to Owner that the New Home is approved for permanent occupancy by the building inspector for the local unit of government in which the Property is located. Closing will be at a time and place identified by Builder. At closing, Owner must pay Builder all amounts which have not otherwise been paid to Builder under this agreement. Builder will furnish Owner with all keys and, if specified, all garage door openers for the New Home. Owner must transfer utilities into Owner's name by the time of closing.

6.2 If any work remains unfinished at the time of closing, Owner and Builder will identify these items in writing and Builder must finish the items within a reasonable time following the closing. The Owner must not delay the closing or any payments to Builder as a result of the unfinished items the parties may identify.

6.3 Builder must obtain appropriate sworn statements and lien waivers from laborers, subcontractors, and suppliers with whom it contracts to furnish labor, services and/or materials for the construction of the New Home in compliance with the Michigan Construction Lien Act, being Public Act 497 of 1980, as amended.



7. **Completion.**

7.1 The parties will hold a preconstruction meeting when Builder receives written notice from Owner that all contingencies which would relieve Owner from the obligation to proceed with this agreement have been waived or satisfied. Builder must commence construction of the New Home within thirty (30) days after the last to occur of the following events: (1) the preconstruction meeting; (2) written notice from Owner that all contingencies which would relieve the Owner from the obligation to proceed with this agreement have been waived or satisfied, (3) Builder's receipt of all monies which are due under this agreement prior to the commencement of construction; (4) Builder's receipt of all information which Owner is obligated to furnish Builder under this agreement, including satisfactory evidence of Owner's ownership of the Property; (5) the expiration of any rescission period afforded Buyer under applicable law; and (6) the receipt of a credit report, loan commitment or other evidence acceptable to Builder which indicates the Owner's creditworthiness to purchase the New Home. Builder will have the option to terminate this agreement upon notice to Owner if items (2), (3), (4), (5) and (6) are not resolved to Builder's satisfaction within forty-five (45) days following the execution of this agreement. For purposes of this agreement, the "construction period" will commence when Builder commences physical construction of the New Home and it will terminate at the closing of the New Home sale.

7.2 The Estimated Completion Date described on page one of this agreement is a good faith attempt by the Builder to estimate the time of completion of the New Home, based upon available information concerning the Property, and Builder's specialized knowledge of the availability of construction materials, subcontractors and laborers. This date is not intended by the parties to establish a closing date or a legally binding deadline for the Builder to complete the New Home. The actual date of completion may be earlier or later depending upon the circumstances. If any Acts of God, any actions of a governmental unit, insurable casualty, or other event beyond the control of Builder cause the construction of the New Home to be stopped or delayed, including but not limited to Owner's failure or delay in providing Builder with items (2), (3), (4) of Section 7.1 above, or if Owner defaults under this agreement, the Estimated Completion Date for the New Home will be extended for a reasonable period of time to accommodate the event causing the delay.

7.3 IN NO EVENT WILL BUILDER BE RESPONSIBLE FOR ANY LOSS, OR ANY CONSEQUENTIAL OR SPECIAL DAMAGES SHOULD THE NEW HOME NOT BE COMPLETED BY A SPECIFIED DATE.

8. **Construction Allowances/Fluctuating Material Price Protection.**

8.1 Some of the costs of constructing the New Home may be uncertain at the time of execution of this agreement; they may not be known until the Owner has made certain decisions about the New Home or until an item is actually installed. In order to accommodate flexibility into the administration of this agreement, the Base Purchase Price of the New Home may incorporate the use of estimates known as "construction allowances" in order to budget for the anticipated expenses and ensure that neither Builder nor Owner are unfairly rewarded or prejudiced by a change in nature of the work or the costs associated with the allowance work. Any cost which references the term "allowance" in the specifications portion and Exhibit F of this agreement is subject to this Section 8. To the extent the costs associated with a particular category of construction allowances are exceeded, the Base Purchase Price of the New Home will increase and Owner will be responsible for all costs in excess of the allowance category. Likewise, the Base Purchase Price of the New Home will be reduced to the extent a construction allowance category is not fully used. Owner may use credits from one construction allowance category towards another allowance category. At closing, Builder will provide Owner with an itemization of the costs incurred with respect to each of the construction allowance categories. Builder will subtract the costs associated with each of the construction allowances from the amount attributed to each category, and then total the differences from each of the individual construction allowance calculations. If the total budgeted allowance items exceed the total cost incurred by Builder on behalf of Owner for the allowance items, then Builder will refund the difference to Owner at the time of itemization.

8.2 Lumber (including OSB), cement, and drywall are essential materials used in the construction of the New Home and the cost of the New Home is significantly related to the cost of these materials. Unfortunately, in recent years, the cost of these materials have become subject to significant market fluctuations due to uncontrollable forces, including fuel costs, wars, storm events and acts of God. In order to prevent either party from being unfairly prejudiced or benefited by an increase or decrease in the cost of these essential materials, the parties agree that if the cost of any one of these materials increases or decreases by more than Five (5) percent from the time this agreement



is executed until the time the material is purchased by Builder, then one half of the difference (decrease or increase) shall be shared by each of the parties, and the Base Purchase Price shall be adjusted accordingly. This Section 8.2 shall not apply to the extent that the cost of an essential material is included under an allowance category. The terms of the allowance provision shall control over this paragraph.

9. **Change Orders.** Any change to this agreement must be the subject of a written change order signed by both Builder and Owner. All requests for changes to the plans and specifications must be made by Owner to the Builder prior to any scheduled performance by the trade involved with the change. If construction allowances are incorporated into this agreement, and they are exceeded by any decision of the Owner, Builder may require Owner to execute a change order or other amendment to this agreement to reflect the additional cost of the New Home to the Owner; provided however, that Owner is responsible for the additional cost even if a change order or other amendment is not executed. If a change order results in an increase in the Base Purchase Price of the agreement, Owner will pay Builder for the additional amount at the time the change order is executed by the parties. If, as a result of a written change order, the plans and specifications for the New Home are modified in such a manner that the Base Purchase Price of the New Home is reduced, a credit adjustment to the Base Purchase Price will be made at the time of closing of the New Home. Owner may also apply the credit to the cost of any other change orders for the New Home.

10. **Site Selection.**

10.1 Builder will assist Owner in identifying a desirable site for the New Home to be constructed on the Property and the parties will preliminarily stake the area where the foundation of the structure is to be constructed. Owner must have a licensed surveyor stake the boundary of the Property, at Owner's expense, prior to the commencement of construction, and prepare a boundary survey map.

10.2 The boundary survey map must show the location of all improvements and easements of record, the location of utilities servicing the Property, flood hazard areas and wetlands, the legal description of the Property, and if requested by Builder, the staked corners of the New Home to be constructed on the Property. If the corner stakes of the New Home are described on the survey, the surveyor must certify on the face of the survey that the proposed location of the structure complies with all applicable building restrictions of record, and with all applicable building setback and size requirements of the zoning ordinance for the local unit of government.

10.3 If Owner fails to provide Builder with the survey required by this Section 10, Builder may cause a survey to be prepared or updated at Owner's expense and all amounts incurred by Builder for this purpose will be deemed additional charges under this agreement. The Estimated Time for Completion of the New Home will be extended to accommodate any delay in the survey work.

10.4 Owner is relying upon Owner's own judgment and /or the judgment of the surveyor for a description of the boundaries of the Property and for the location of the foundation of the New Home. Builder is not responsible for any errors or omissions in any survey work, or for any problems attributable to the location of any building constructed in reliance upon survey work or Owner's representations about boundary lines.

11. **Concealed Conditions.**

11.1 Owner understands that Builder does not possess any specialized knowledge about the subsurface condition of the Property. In entering into this agreement Builder has assumed that the area of the proposed building site has soils which are suitable for the New Home to be constructed by Builder upon the land and that no recognized environmental condition exists. If unknown, unusual, unforeseen or unexpected soils or conditions are encountered by Builder below the surface of the ground during the course of construction (an "underground condition"), Builder will notify Owner of the underground condition and all work may stop, at the option of the Builder. After notification from Builder, Owner and Builder will meet and determine a course of action to undertake to further identify, avoid and/or remedy the underground condition. All costs associated with the underground condition will be borne by Owner. If the additional work is performed by Builder, the cost of the additional work will be an additional charge under this agreement. The Estimated Time for Completion of this agreement will be extended a reasonable time to accommodate any delay from the discovery of an underground condition. If the parties are unable to agree upon a course of action to continue the construction of the New Home on the Property or if Owner desires to abandon the construction project due to the underground condition, then either party will have the option to terminate this agreement upon written notice given to the other at any time within thirty (30) days following Builder's notice to Owner of the underground condition. Upon termination of this agreement, Owner will



reimburse Builder for all costs incurred by Builder up to and including the date of termination, together with a fee to compensate the Builder for his lost overhead and profit on the undertaking equal to fifteen percent (15%) of Builder's costs incurred through the date of termination.

11.2 Builder has the right to stop work on the New Home if Owner refuses to execute any change order associated with an underground condition, or if Builder is not provided adequate assurances that Owner is able to afford any additional cost required to address an underground condition. Notwithstanding anything else contained in this agreement, Builder may refuse to place footings on any soils which Builder believes may not be suitable bearing soils.

11.3 Soil limitations may exist on a site when, among other things, the Property has fill dirt or it lies in close proximity to any wetlands, stream, lake or other watercourse. If Owner has any reason to suspect that subsurface problems may exist with the Property, Owner should contract with an engineer to inspect and test the Property, and to advise Owner about any physical limitations of the site selection prior to the time construction commences on the Property. Owner has exclusive responsibility for the natural physical conditions of the site, both visible and concealed (latent and patent), and Builder undertakes no responsibility for these matters, including but not limited to the availability of adequate groundwater for an on-site water system, the suitability of soils for septic waste disposal, the presence of unusual hydrostatic pressure, or the ability of the subsurface to support the weight of the New Home. All of these matters should be determined by Owner prior to the commencement of construction.

12. **Workers and Employees.** The direction and supervision of Builder's employees and subcontractors rests exclusively with Builder, and Owner agrees not to issue any instructions to or otherwise interfere with these persons. Owner further agrees not to negotiate for additional work with the Builder's sub-contractors or employees, nor engage other contractors or sub-contractors to perform work on the New Home ("outside work") during the term of this agreement, except with the Builder's prior written consent. Builder and its subcontractors will keep the New Home and surrounding areas of the Property free from the accumulation of waste materials or rubbish caused by work performed under this agreement and Builder will deliver the New Home in a broom clean condition at the time of closing. Builder is not responsible for unclean conditions caused by Owner, or by other contractors or subcontractors. If the closing of this agreement is delayed as a result of any outside work being performed or not being performed to the New Home, Owner will be responsible for any additional costs incurred by Builder due to the delay.

13. **Temporary Utilities.** Builder will provide and pay for all temporary heat and power to the New Home during the construction period.

14. **Permits and Inspections.**

14.1 Builder is responsible for obtaining any and all permits and inspections necessary for the completion of the New Home. These permits include a building permit, and electric, mechanical, and plumbing permits and inspections, a sewage disposal and well permit, if applicable, and also obtaining all authorizations necessary for the New Home to be permanently connected to available utility services.

14.2 Owner is exclusively responsible for the payment of any special assessments, deferred billings, frontage charges, or other similar expenses associated with water or sewer mains or laterals associated with the Property or New Home and, unless otherwise indicated on the plans and specifications of this agreement, for the cost of any utility line, main or lateral extensions required for the New Home, including the cost of obtaining any easements or right of way for utility purposes from adjoining property owners.

14.3 Owner will promptly pay any amounts which are the Owner's obligation under this paragraph at the time they arise. Builder may, but is not obligated to, pay these amounts on behalf of the Owner in order to prevent construction of the New Home from being delayed. Any amounts paid by Builder will be deemed additional charges under this agreement.



15. **Insurance.**

15.1 Owner will obtain and maintain a builder's risk policy for the New Home during the construction period. All costs of the builder's risk policy will be paid by Owner as an additional charge under this agreement. Prior to the commencement of construction, Builder will also obtain workers' compensation insurance at statutory limits or waivers covering all employees who assist in the work, and commercial general liability insurance with such limits as Builder may determine, at Builder's expense. Owner will maintain casualty insurance for any property, other than the New Home, located or stored on the Property during the construction period and liability insurance to protect Owner from claims arising from death or injuries to persons or damage to property occurring on the Property during the construction period, with such limits as Owner determines to be appropriate.

15.2 Builder and Owner hereby waive any right of recovery against the other for loss or damage that would be insured under the terms of any property insurance required under this agreement, or is insured against under the terms of any property insurance actually carried, regardless of whether the insurance is required under this agreement; to the extent of the loss covered by insurance. This waiver will be binding upon the insurers for both the Builder and Owner.

16. **Limited Warranty.** Builder may provide Owner with a written limited warranty for the New Home if this agreement includes Exhibit G. Any written warranty provided by the Builder precludes all other express and/or implied warranties. There may be other manufacturer warranties which supersede the Builder's warranty and must be handled by the Owner directly with manufacturers. Builder will deliver to Owner copies of all manufacturers warranties affecting the Premises within thirty (30) days after Builder has been paid all amounts due Builder under this agreement. Builder's warranty work will only be performed after all monies due the Builder under this agreement have been paid. If no written warranty is furnished by Builder, the New Home is sold on an "as-is" basis, and with all faults.

17. **Possession of Property.** From the date construction begins on the New Home under this agreement, and until Builder has been paid all monies due it from Owner under this agreement, Builder will have the exclusive right to possession of the New Home and a non-exclusive license to use the balance of the Property to perform its work and exercise its rights and obligations under this agreement. During the construction period, Builder and its agents may bring laborers, equipment and materials to the Property for the purposes of constructing the New Home in the manner described by this agreement, removing its equipment and materials, and undertaking any inspections of the Property. Owner must fully cooperate in allowing Builder or Builder's agents to have full access to the Property and all portions thereof. Upon full payment by Owner, Builder will deliver physical possession of the New Home to Owner and all licenses described under this paragraph will cease.

18. **Historical Documents.** Owner will make available to Builder prior to construction of the New Home, to the extent they are available, all abstracts, title insurance policies, building or plat restrictions, deeds, contracts, blueprints, plans, surveys, permits and architect's renderings affecting the Property, and all environmental reports or correspondence regarding the Property, without charge to Builder.

19. **Work Stoppage.** If the work of Builder is stopped under any Court order or by other public authority through no act or fault of Builder, his employees or agents, or for any reason outside Builder's control (such as the neglect, delay or fault of the Owner), for a period of thirty (30) days, or if Owner defaults in the payment of any amount due Builder hereunder, and the default continues for five (5) days after notice from Builder, or if Owner becomes a debtor in a bankruptcy proceeding, or if Owner's lender begins foreclosure of the Property, or if a tax lien is filed against the Property, or if Builder learns that any representation and warranty of the Owner was untrue when made or has subsequently become untrue due to no act or fault of the Builder, then Builder may, in addition to any legal or equitable rights otherwise available to Builder, stop work and/or terminate this agreement and recover from the Owner payment for all work completed and any losses sustained by Builder through the date of termination, together with the profit that Builder might have derived had the work been completed as contemplated by this agreement. All rights of the Builder will be cumulative and no election of remedies is required.

20. **Owner's Representations and Warranties.** Owner represents and warrants to Builder that as of the date of this agreement, and through the date of the closing of this agreement, the performance of the obligations of



Owner under this agreement will not violate any contract, statute, ordinance, judicial or administrative order or judgment applicable to Owner or the Property; there are no outstanding notices of any uncorrected violations of any laws, statutes, ordinances, rules or regulations with respect to the Property nor any litigation or proceeding pending against or involving the Owner or the Property, including but not limited to condemnation or eminent domain proceedings; there is no default in any mortgage on Property; the Owner has adequate financial resources to purchase the New Home from Builder and to perform the obligations of Owner under this agreement in a timely manner; and that Owner is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks on the Property except as otherwise disclosed in writing to Builder.

21. **Builder's Costs.** Whenever this agreement refers to the Builder's "cost", the term "cost" includes the entire actual cost of accomplishing the work, including, without limitation, the (1) salaries or wages of all labor necessary for the proper conduct of the work, together with any social security and unemployment insurance taxes in connection with the labor; (2) disbursements made and obligations incurred for, or in connection with, the furnishing, delivery, and installation of all materials, structural accessories, machinery, equipment, and other items required to be furnished and done under and pursuant to this agreement, including charges from subcontractors, and for or in connection with all insurance, bonds, fees, royalties, and permits, if any; (3) all loading and unloading, demurrage, express, freight, and delivery charges, to and from the New Home; (4) drawings; (5) expenses associated with Builder's equipment; and (6) disbursements for materials or supplies furnished from Builder's stock which will be charged at a fair market price reasonably determined by Builder. Refunds, returns, or credits received for return of materials will be credited to the cost of work. Trade discounts earned by Builder from subcontractors and suppliers of materials are not credited against costs.

22. **Notices.** All notices required to be given or appropriate under this agreement will be deemed to be given when delivered personally, by delivery to a national delivery service for next day delivery, or upon the mailing by certified mail, return receipt requested and postage prepaid, to the party at the address of the party above described.

23. **Copies of Agreement.** The parties have executed multiple originals of this agreement as of the effective date set forth below. Owner has read this agreement and acknowledges a copy of this agreement as receipt. For purposes of this agreement, any signed document transmitted by FAX machine or email ("electronically transmitted document") will be treated in all manner and respects as an original document. The signature of any party will be considered for these purposes as an original signature; any electronically transmitted document will be considered to have the same binding legal effect as an original document; at the request of either party, any electronically transmitted document will be re-executed by both parties in an original form. The parties hereby agree that neither will raise the use of an electronically transmitted document as a defense to the formation of this agreement (including any exhibit, amendment(s), rider(s) or change orders), and forever waive this defense.

24. **Licensing Requirements.** A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Act 299 of the Public Acts of 1980, as amended, being Sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being Sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 to 338.917 of the Michigan Compiled Laws. A mechanical contractor is required to be licensed under the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.971 to 338.988. Builder is required to be licensed in order to provide the contracted improvement and is so licensed. Builder's license number is identified on page one of this agreement.

25. **Warning of Construction Site Dangers.** While Builder encourages you to follow the construction of the New Home through to completion, visits to construction sites can be hazardous to you, and others who may accompany you. For this reason, if you wish to inspect the New Home before closing, you must be accompanied by an authorized representative of the Builder.

26. **Indemnification for Unaccompanied Visits.** In recognition of the hazards present on construction sites and the fact that it is not reasonably possible for Builder to ensure the safety of Owner, Owner's family, and others on visits to the New Home which are not accompanied by Builder or its representatives, Owner agrees to release and



hold Builder, its agents and employees, harmless from any damage, loss or injury to persons or property, arising from an unaccompanied entrance upon or visitation to the Property by Owner, Owner's family or any guest or invitee of Owner. The indemnities provided to Builder by this paragraph will survive the closing of this agreement. No personal property of the Owner may be stored in the New Home without the prior written consent of Builder. Owner releases and indemnifies Builder for any damage, loss or injury to the personal property of the Owner stored within the New Home prior to the time of closing.

27. Dispute Resolution; Limitation on Time to Commence Action and Damages.

27.1 Any controversy or claim between the Builder and Owner arising out of or related to this agreement, the breach of this agreement, or the construction of the New Home, may, at the option of the Builder, be settled by arbitration which will be conducted by a single arbitrator of either the West Michigan Chapter of the Better Business Bureau ("BBB") under the Better Business Bureau Arbitration (Binding) rules or the American Arbitration Association ("AAA") under its construction industry rules. Builder will select the forum to be used. By signing this agreement, Builder and Owner agree that they are respectively giving up any right to file suit and to have a trial by a judge or a jury of the claims submitted to arbitration. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The parties will equally share the cost of the AAA arbitration.

27.2 The following provisions are only applicable if the Better Business Bureau conducts the arbitration. A volunteer arbitrator will render a decision that the arbitrator considers to be fair; in doing so, the arbitrator is not required to apply legal principles. All administrative fees for arbitration will be paid by the Builder. Further information about BBB arbitration may be obtained by calling the BBB of Western Michigan at 616-774-8236. This agreement to arbitrate affects important legal rights. THE OWNER WILL NOT BE COMMITTED TO ARBITRATE WITH THE BETTER BUSINESS BUREAU UNLESS OWNER SIGNS HIS OR HER INITIALS BELOW. THE OWNER IS STILL OBLIGATED TO ARBITRATE WITH THE AAA EVEN THOUGH THE BELOW PARAGRAPH IS NOT INITIALED.

27.3 Notwithstanding the provisions of this Section 27, in the event that any controversy or claim involves an allegation by the Builder that the Owner failed to pay any amount which was owed under this agreement, Builder will have the right to record a construction lien against the Property at any time that the law otherwise permits the filing of the lien. The validity of the lien and the lien amount may, however, be determined by the dispute resolution processes described in this Section if any amount remains unpaid, and a Judgment of Foreclosure may enter upon the arbitration award in a court of competent jurisdiction.

27.4 No action, regardless of its form and arising out this agreement, the construction of the New Home or any warranty work performed on the New Home may be brought by Owner against Builder more than two (2) years after the cause of action has accrued, and no action against Builder may be commenced unless Owner first provides Builder with ten (10) days prior written notice before the commencement of the action.

Owner's Signature/Initials:

28. Limitation on Consequential Damages. UNDER NO CIRCUMSTANCES WILL BUILDER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE DWELLING, OR ANY DAMAGES ARISING FROM THE PRESENCE OF INSECT OR ANIMAL INFESTATION, MOLD, OR OTHER BIOLOGICAL AGENTS IN OR ABOUT THE DWELLING.



29. **Entire Agreement.** This agreement, including the attached exhibits and plans and specifications, represents the entire agreement between the parties and supersedes any prior understandings or agreements between them respecting the subject matter. NO REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, OR PROMISES, WHETHER ORAL, IMPLIED OR OTHERWISE CAN BE MADE OR HAVE BEEN MADE BY ANY OF THE PARTIES TO THIS AGREEMENT TO ANOTHER PARTY TO THIS AGREEMENT UNLESS EXPRESSLY STATED OR UNLESS MUTUALLY AGREED IN WRITING BY THE PARTIES. All modifications to this agreement will be made in writing and signed by the parties before they become binding. This agreement is governed by Michigan law. No third party will be a beneficiary of any provision of this agreement. Nothing in this agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto. The headings contained in this agreement are for convenience only and will not be used to define, explain, modify or aid in the interpretation or construction of the contents of this agreement. All warranties and representations made by the parties will survive payment and performance of the obligations imposed by this agreement.

This agreement has been signed by the parties to be effective on this date: _____, 20____.

BUILDER:

OWNER:

By: David A. Blusendang

Its: President _____



Exhibit A

DESCRIPTION OF PROPERTY

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner, for a New Home to be constructed on property commonly known as:
Address:

(the "Premises"), and more particularly described as:

- ☐ A. See attached exhibit (legal description, copy of deed, title commitment or survey).
- ☒ B. Property description:

24-205-387-0005-00

Please check applicable box

☐ A. Present Ownership. Owner warrants that he/she owns the Premises and holds all rights to possession of the Premises. The New Home Construction Agreement is not contingent upon Owner's purchase of the Premises.

☐ B. Purchase Contingency. Owner does not presently own the Premises but Owner is under contract/option to purchase the Premises under an agreement dated _____ with _____, as seller/option or Both Builder's and the Owner's obligation to proceed with the Purchase Agreement are contingent upon the receipt of a deed to the Premises by Owner, and the transfer of all possessory rights to the Owner, on or before _____, 20____. In the event the transfer of ownership and possession of the Premises does not occur by this date, then this New Home Construction Agreement shall be voidable at the written election of either party. Builder shall have no obligation to proceed with the construction of the New Home upon the Premises until thirty (30) days after Builder receives written notice from Owner that the contingency provided in this paragraph has been waived or satisfied. If Owner is purchasing the Premises from Builder, then any default in any of the terms and conditions of the agreement for the purchase of the Premises, or in any amendment of such agreement, shall be a default under this New Home Construction Agreement. Any default in any of the terms and conditions of the New Home Construction Agreement shall be a default in the purchase agreement for the Premises.

BUILDER

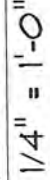
OWNER

By: David L. Henderson

Its: _____ President _____



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RIGHT ELEVATION

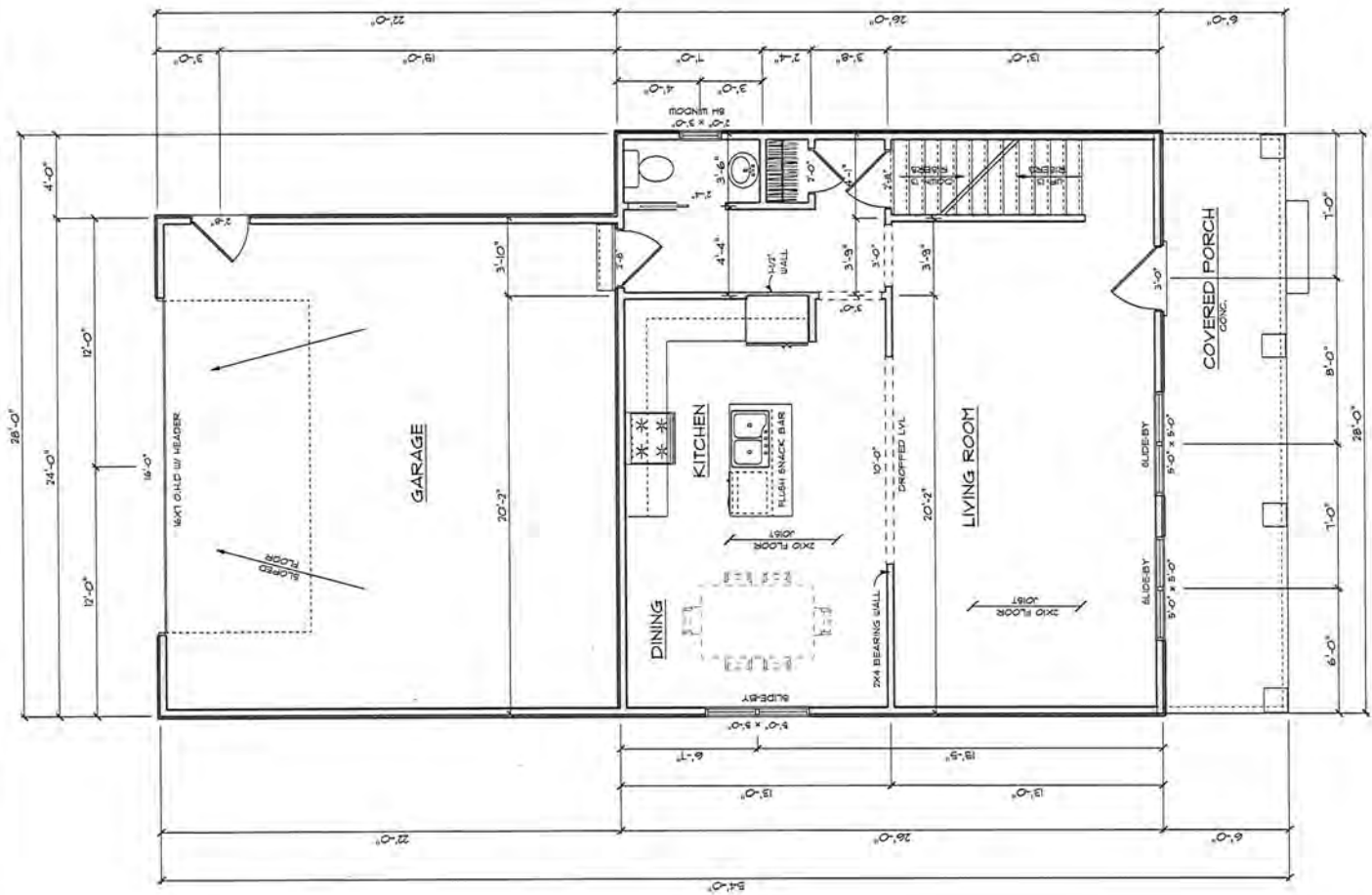
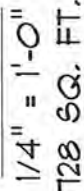


REAR ELEVATION

$$1/4'' = 1'-0''$$


STAIR SECTION

 $1/4" = 1'-0"$



ROOF / CLG SYSTEM

- ROOF VENTILATION (3000 OF THE INSULATED CEILING AREA UNIFORMLY DISTRIBUTED)
- 8" FELT SINGLE INCERPLANT
- ICE AND WATER SHIELD AT EAVES 34"
- 2" POLYURETHANE INSULATION
- 1" GIB WITH 1" CLIPS (VERIFY W/ LOCAL CODE)
- ON APPROVED TRUSSES
- RAFTER AS REQUIRED FOR ROOF VENTILATION
- R-38 INSULATION (MIN.)
- 5/8" GYFAM BOARD CEILING
- ROOF VENTILATION ABOVE INNER FACE OF EXTERIOR WALL

SOFFIT SYSTEM

- METAL Drip EDGE
- 2x4 FASCIA BACKER
- ALUMINUM VENTED SOFFIT

WALL SYSTEM

- 2x4 TOP PLATE
- 2x4 STUDS AT 16" O.C.
- 1/2" GYFAM WALLBOARD
- 1/2" BLOK CELLULOSE INSULATION
- 1/4" O.S.B. WALL SHEATHING
- HOUSE WRAP HOUSE AND GARAGE
- SOL BOTTOM PLATE

WALL SYSTEM

- DEL TOP PLATE
- 2x4 STUDS AT 16" O.C.
- 1/2" GYFAM WALLBOARD
- 1/2" BLOK CELLULOSE INSULATION
- 1/4" O.S.B. WALL SHEATHING
- HOUSE WRAP HOUSE AND GARAGE
- SOL BOTTOM PLATE

SILL/FLOOR SYSTEM

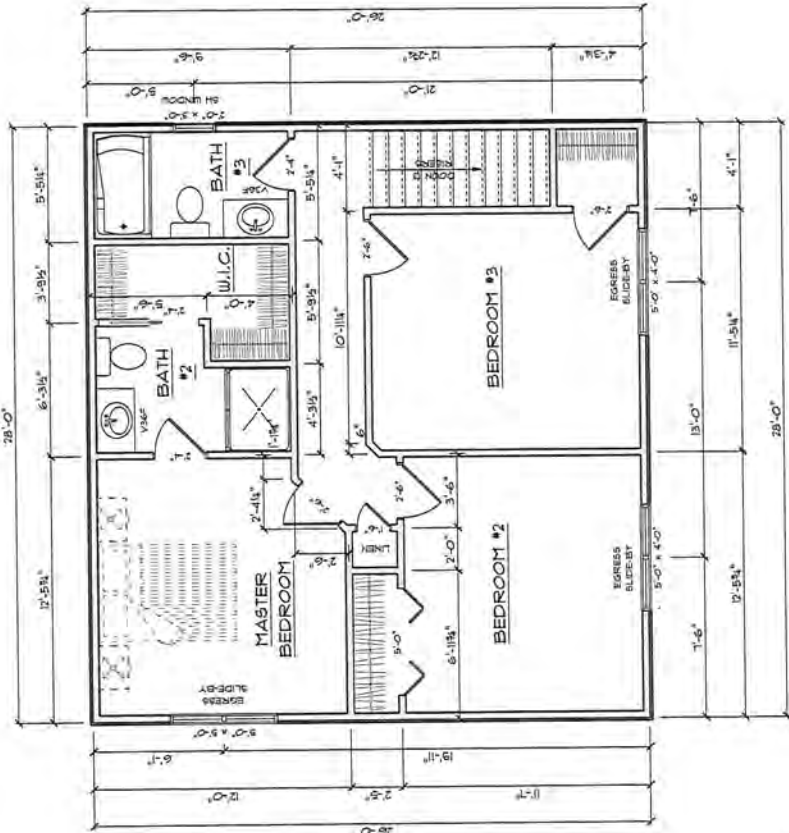
- 2x4 TONGUE AND GROOVE O.S.B. FLOORING
- 2x4 FLOOR JOIST
- 1/2" BLOK CELLULOSE INSULATION
- 1/4" O.S.B. WALL SHEATHING
- HOUSE WRAP HOUSE AND GARAGE
- SOL BOTTOM PLATE

FOUNDATION SYSTEM

- 8" O.C. FOUNDATION WALL SYSTEM
- BACKFILL
- SLOPE GRADE AWAY FROM BUILDING
- WATER PROOFING OR DAMP PROOFING PER SITE CONDITIONS
- 3/4" CONCRETE FLOOR
- 6 MIL POLY VAPOR BARRIER
- 4" DOLITE INSULATION WITH FEA
- 4" DOLITE INSULATION WITH FEA
- CONCRETE FOOTING TO BREAK ON UNDISTURBED SOL.

WALL SECTION

NOT TO SCALE



2ND FLOOR PLAN

1/4" = 1'-0" 728 SQ. FT.



THE PLANNING
STAGE

PHONE: 616-866-1469
www.thepanningstage.com
Scott Johnson
thepanningstage.com

DRAWN BY:
S.V.
CHECKED BY:
P.K.

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TIMBERWOOD
WEST URBAN
PROPERTIES LLC
THE PLANNING STAGE

MAY 12, 2019
MAY 14, 2019

DESIGNER: THE FACT THAT ALL
CONSTRUCTION SHALL BE IN
ACCORDANCE WITH THE
LATEST EDITIONS OF THE
INTERNATIONAL RESIDENTIAL
BUILDING CODE (IRC) AND
ALL OTHER APPLICABLE
REGULATIONS AND ORDINANCES.
CONSTRUCTION

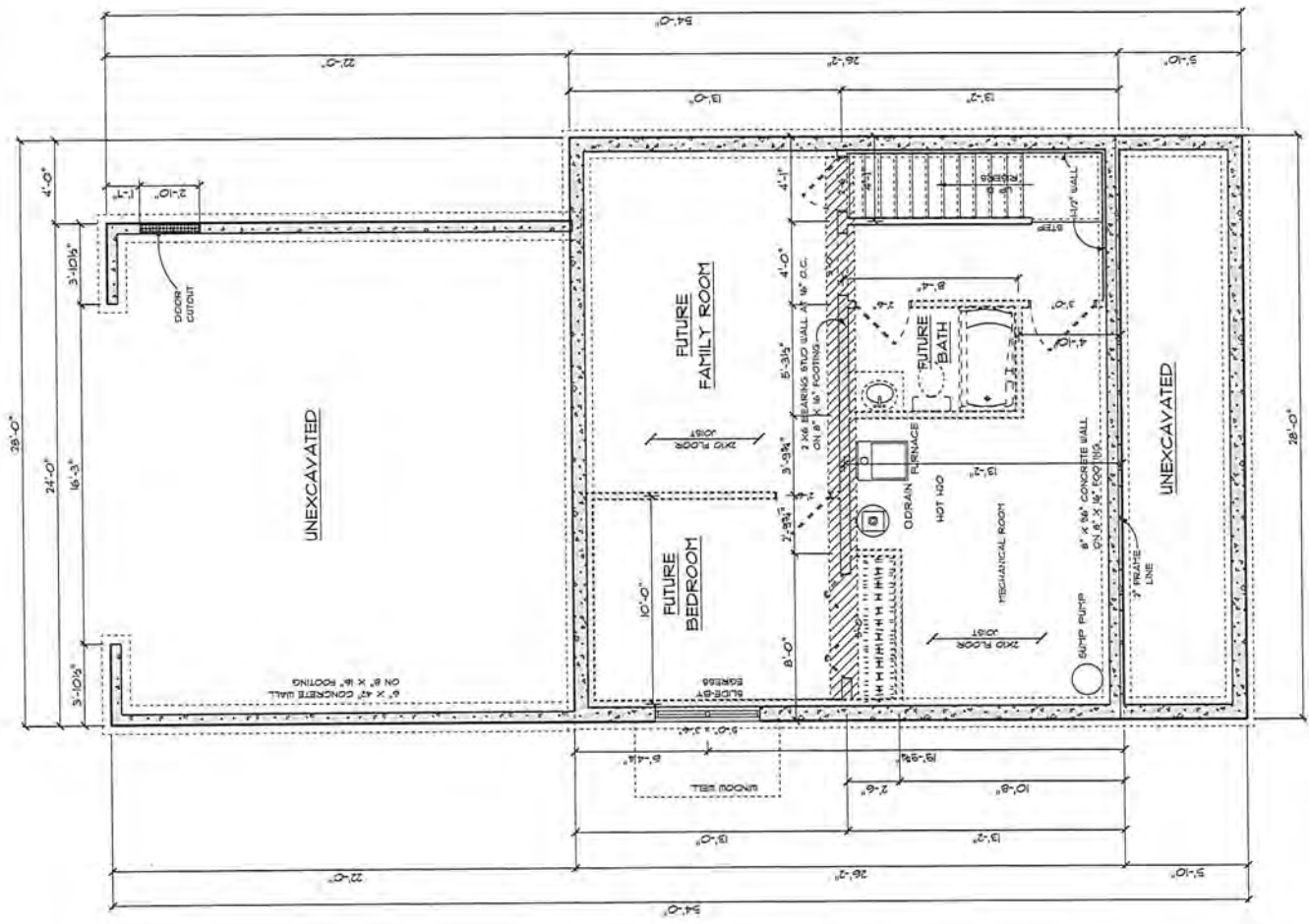
PROJECT
#190511



FOUNDATION PLAN

1/4" = 1'-0"

542 FUTURE SQ. FT.





PO Box 110 • Comstock Park, MI 49321 • Phone: 616-874-7085 • Fax: 616-874-7885

Print-date: 6-18-2019

Home Specifications

Permits/Fees/Dumpster

Water & Sewer Hook Up/Septic System

Excavating/Grading

Excavating and Grading includes:

- Builder will remove and discard of all-natural objects including trees/brush which interferes with the construction of the New Home, and its garage(s), driveway(s), sidewalk(s), deck(s), patio(s), and other related structures erected by Builder. The Builder will give a Change Order to the city for these items.
- The building site will be excavated to a sufficient depth to facilitate the construction of the New Home at the elevation shown on the plan or if no elevation is shown, a reasonable elevation determined by Builder on Vacant Land or Civil Engineer in a Development Lot
- Exterior Finish - Builder will clear the building site of construction debris and provide positive drainage away from the foundation of the New Home as required by applicable building codes.

Footing/Foundation Labor & Material

Footing/Foundation Includes:

- Type of footings & foundation: Concrete
- Moisture barrier: Yes
- Lower level bath pipe rough-in: yes (Unfinished Basement)

Concrete Drive/Walk Labor & Material

- Driveway: approx. 16' x 30' Finish: Broom
- Front walk: approx. 3' x 25' Finish: Broom
- Back Patio: N/A
- Porch: Per Print Finish: Smooth
- City sidewalk: N/A (we will notify the city if sidewalk is broken prior to construction and will fix and invoice the city)
- Stoop at garage entry door: 3' x 3' Finish: Broom
- Floor Drain: N/A

Masonry Labor & Material

N/A

Labor & Material Rough Carpentry

Includes the following for Rough Carpentry material and labor:

- Exterior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Interior Walls/Plate Height: 2x4 / 8' Basement, 8' Main Level, 8' 2nd level.
- Sub-floor Material: ¾" OSB
- floor structure: 2' x 12'
- Exterior Sheathing: 7/16" OSB

Windows/Exterior Doors

Windows include the following:

- Window Manufacturer/Model: Jeld-wen- White Vinyl Builder Series
- Style: Vinyl - Single Hung & Slide By windows with screens per plan
- Screen doors: Slider's only

Exterior Doors included the following :

- one (1) Milliken Prefinished Fiberglass Front Door: Style FG-420 three panels with three lite clear glass window: color TBD
- one (1) Milliken Steel service door from the garage to the yard: Style MJ-21: color TBD
- one (1) Milliken Steel service door from the garage to home: Style MJ-21: color TBD

Plumbing Labor & Material

Installation of the following:

- Water supply (public or well): Public Water
- Plumbing Fixtures (Sinks/Faucets/Drains, Toilets/Seats, shower/tubs, sinks/strainers, shower fixtures/drains)
- Kitchen Garbage Disposal: yes, Badger 5
- All water supply lines to be Copper & PEX unless otherwise identified.
- Water softener: N/A - Water Softener Loop: N/A
- Waste disposal (Sewer or Septic): Public Sewer
- All waste disposal lines to be PVC
- Hot water heater Manufacturer/Model: 50 Gallon Natural Gas Power Vent Water Heater -Bradford White-TTI
- Water stops/shutoffs: yes (1) at the main water supply.
- Hot & Cold Spigot in Garage: N/A

HVAC Labor & Material

Installation of the following:

- Gas Supply: yes
- Gas Outlets:
 - Dryer: yes
 - Furnace: yes
 - Range/Oven: yes
 - Water Heater: yes
- Furnace Name/Model: (1) 95% Efficient comfortmaker furnace
- Zones: (1) - Air-conditioning: (1) Comfort maker
- Air Cleaner: 1" Standard Pleated Filter.
- Thermostat(s): (1) Programmable Digital White Roger (1F80-0471)
- Vents: (1) Dryer
- Exhaust Fans:
 - Bath: yes (3) 1-standard exhaust fan, 1-exhaust fans/light comb, 1-continuous run with motion detector per electrical
 - Kitchen: yes (1)

Electrical Labor & Material

Installation of the following:

- The location of all interior and exterior light fixtures and switches to be installed per code and shall be shown on the Electrical Plan.
- Exterior Receptacles: (1) on the front porch
- Type of electrical service: underground
- Total amperage in breaker box: 100 Amp
- Type of electrical receptacles: Standard white
- Type of switches: Standard white toggle switch
- Special high voltage wiring: N/A
- Special low voltage wiring: yes, Garage Door opener and Door Bell
- Telephone outlets: (2) per electrical plan
- Television outlets: (4) per electrical plan
- Home Media: N/A
- Smoke detector(s): yes and carbon monoxide detectors per code

Insulation Labor & Material

Home insulation includes:

- Main sidewalls: R-13.3 cellulose
- Basement sidewalls: R-11 vinyl blanket on concrete walls.
- Ceiling insulation: 13 Inch of loose fill cellulose an R-49 value

Garage insulation Includes:

- Ceiling insulation: N/A
- Firewall adjoining the home: R-13.3 cellulose
- Sidewalls: N/A

Drywall Labor & Material

Home drywall includes:

- Walls: 1/2 Drywall Finished at a level 4 finish
- Corner Bead: 1/2" Bullnose
- Ceiling: 5/8" Drywall with a light crows feet finish.

Garage drywall includes:

- Firewall adjoining the home: 5/8" drywall with 1 coat fire tape
- Ceiling: 5/8" Drywall with 1 coat fire tape
- Sidewalls: N/A

Labor & Material Finish Carpentry

Interior door (type and material): Milliken Cambridge Doors Hollow Core, 2-panel MDF Painted

Door Trim/Casing (material): 1x4x3/4" MDF Painted

Base Board Trim (material): 1X6x1/2" MDF Painted.

Window Trim/Casing (material):

- Casing: 1x4x3/4" MDF Painted
- Extension Jamb: 1x4x3/4" poplar (finger jointed). Painted

Stairs Treads (material):

- Treads: Particle Board.
- Risers: Particle Board.
- Side Skirt Boards: 1x10x3/4" MDF Painted

Interior Painting Labor & Material

Interior wall color: Sherwin Williams- Super Paint Velvet/Emerald Finish. Color TBD.

Interior trim color: Benjamin Moore - Scuff X

Garage Finish Paint: N/A

Siding/Roofing/Gutter Labor & Material

Siding includes the following:

- Siding: Vinyl, Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
Dbl 4" lap siding with matching corners on side & rear elevations per plan color TBD.

- Shakes: Exterior Portfolio - (Standard Stock Premium Color) Choice of Samples displayed in the showroom. (.042)
elevations per plan color TBD.

- Board & Batten: N/A

- Exterior Trim: LP Smart Trim- 3/8" on front porch beams and columns

- Front Porch Soffit (Ceilings): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Color-white

- Fascia & Soffit (Eaves): Aluminum 6" fascia, Aluminum Triple 4" Soffit, Colors-white

Roofing Includes the following:

- CertainTeed Landmark 25 year Dimensional Shingles with xt-25 cap shingles. Color-TBD

- Pitch of the roof: 5/12

- synthetic felt- rhino or equal

- Underlay: two (2) courses ice/water shield, iko storm-shield or equal Synthetic 15lbs. felt
- drip edge: Aluminum, color-TBD

Gutters system to be installed with 5" seamless (.027) Aluminum gutters, (.019) 2"x3" Downspouts with hidden fasteners, color TBD (Does not include drain tile and pop up drains)

Exterior Painting Labor & Material

- Two (2) coats duration - Color - White

Overhead Garage Door

Overhead Garage Door Includes:

- Type of garage doors: Amarr (1000 Series) non-insulated
- Hillcrest Collection or Lincoln Collection with Decra-Trim, (1) White 16'x7'.

Overhead Garage Door Opener includes:

- Type of garage door openers: Lift Master 8165. ½ hp, (1) 7' Chain Driven Remote - (2) wireless remotes.

Interior and Exterior Finishes

Flooring/Tile covers include:

- Main Floor and Baths: vinyl plank
- Bedrooms: carpet
- Stairs: carpet

Cabinets:

- AWC Cabinets. Style-Shaker

Counter Tops:

- Kitchen: Laminate. Color-TBD
- Bathrooms: Laminate. Color-TBD

Hardware Includes:

- Interior & Exterior Door knobs
- Cabinet pulls/knobs
- Towel bars
- Hinge Stops
- Toilet paper holders

Closet Shelving

- Wire shelving

Appliances includes Stainless Steel:

- Range/oven:
- Microwave:
- Dishwasher:
- Refrigerator/freezer

Underground Irrigation:

- included on all grass areas

Landscaping:

- front elevation only

Grass Seed:

- included on all final graded areas

I confirm that my action here represents my electronic signature and is binding.

Signature

Print Name:

Date:

Exhibit C

FTC INSULATION DISCLOSURE

These are additional terms to a New Home Construction Agreement between the undersigned Builder and Owner.

Builder and Owner agree that the following insulation will be installed in the New Home constructed on the Premises, where construction allows:

- | | |
|-------------------------------|--|
| A. EXTERIOR WALLS: | Type of insulation: Blown in Cellulose _____ (1) |
| | Thickness of insulation: 3 1/2" _____ (2) |
| | R-value of insulation: R- 13.3 _____ (3) |
| B. CEILING: | Type of insulation: Loose Fill Cellulose _____ (4) |
| | Thickness of insulation: 13" _____ (5) |
| Unrefrigerated storage rooms) | R-value of insulation: R- 49 _____ (6) |

Insulation may be of lesser thickness and R-value than indicated above in certain areas where the design of the New Home does not permit greater thickness. These locations include, without limitation, areas of the New Home where studs are placed in walls, at corners and windows, and where roof rafters are attached to outside walls. Builder has the right to make substitutions to the type, thickness and R-value of insulation in the New Home without obtaining the consent of the Owner, as long as there are no substantial decreases in the R-value of the insulation installed in the New Home.

The R-values described above are based on the representations of the manufacturer and/or installer of the insulation and Builder does not warrant or represent that these R-values are correct.

BUILDER

OWNER

By: David H. Huseendang

Its: President _____



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Exhibit D

EVENT PAYMENT SCHEDULE

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

Section 2.1 of the Agreement is amended to specify the following terms for payment. Payment of the Base Purchase Price of the New Home shall be made by Owner as follows:

Based on work completed to date. An Application for Payment, either G702 & G703 forms or a Lender Provided Sworn Statement Form will be completed and submitted by the 1st day of each month for payment. Payment of amounts owed to Builder must be paid within seven (7) business days after Lender's/Title Company's receipt of an application for payment from Builder. All applications for payment from Builder will be deemed received by Lender /Title Company upon personal delivery, faxed, emailed, or mailed by first class mail. All payments due from Lender/Title Company and Owner under this agreement must be paid by check, money order or cashier's check and delivered to Builder at the address designated on the first page of this agreement, or as otherwise designated by Builder. In the event of any failure by Owner or Lender to pay any amount due Builder by its due date, Owner must also pay to Builder, on demand, a late charge of ten percent (10%) of the late payment.

BUILDER

By: David H. Musending
Its: President

OWNER

Exhibit E
OUTSIDE WORK

These are additional terms to the New Home Construction Agreement between the undersigned Builder and Owner.

The purchase price of the New Home does include the following undertakings (the "outside work") which:

_____Irrigation/Landscaping/Lawn Seed _____

BUILDER

OWNER

By: David L. Hurdman

Its: President _____



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SWORN STATEMENT

Commitment No.: _____ Draw # 0 Date: _____

Lender: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440 Phone: 231-724-6705

Contractor: Dave Dusendang Custom Homes Address: 3265 Walker Ave Suite D Grand Rapids, MI 49544 Cell: 616-874-7085

All Contact: Dave Dusendang/Nickole Wessely Phone: 616-874-7085

Owner: City of Muskegon Address: 933 Terrace St. Muskegon, MI 49440 Phone: 231-724-6705

Deponent: Dave Dusendang State of Michigan, County of Muskegon being duly sworn, deposes and says that

Is the (owner, contractor or sub-contractor) affor an improvement to the following described real property situated in the City of Muskegon or Muskegon

County of _____

Property Address: 271 "B" Merrill Ave Muskegon, MI 49441



That the following is a complete statement of each contractor, subcontractor, supplier, and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, and for which laborer the payment of fringe benefits and withholdings is earned by unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee thereof, and that the amount due to the persons as of the date hereof are correctly and fully set forth opposite their names.

That (he) (she) has not employed or procured material from, contracted or subcontracted with, any person or persons, firm, or corporations other than those below-mentioned, and owes no monies for the construction of said buildings or improvements other than the sums set forth hereinafter.

That (he) (she) makes the foregoing statements as the (owner) (contractor) (subcontractor) or as of the (owner) (contractor) (subcontractor) for the purpose of representing to the owner or lessee of the aforementioned premises and his or her agents and the mortgagee and LendAmerica that the aforementioned property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth below.

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
1A Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI 49544	Permits/Fees/Dumpster	8,169.00	0.00	8,169.00	0.00			8,169.00	
2A North Kent Well & Pump 6085 17 Mile Rd Cedar Springs, MI 616-696-2699	Well System L/M	0.00	0.00	0.00	0.00			0.00	
3A Busscher's Septic & Excavating 11305 E Lakewood Blvd Holland, MI 616-392-9653	Septic System L/M	0.00	0.00	0.00	0.00			0.00	
4A Accurate Excavating 2821 Central Road Muskegon, MI 231-766-0557	Excavating/Grading L/M	9,700.00	0.00	9,700.00	0.00			9,700.00	
5A Nobel Foundations 1777 Dewant Dr. Jenson, MI 49428 616-437-6385	Footings/Foundation L/M	12,198.00	0.00	12,198.00	0.00			12,198.00	
6A MC Concrete 8300 18 Mile Cedar Springs, MI 49319 616-885-0501	Concrete Drive/Walks L/M	6,906.00	0.00	6,906.00	0.00			6,906.00	
7A BBS Masonry 14701 Peach Ridge Ave Kent City, MI 49330 616-889-4636	Masonry L/M	0.00	0.00	0.00	0.00			0.00	
8A Keene Lumber 346 W. Laketon Ave, Muskegon, MI 231-726-2706	Framing Materials	13,980.00	0.00	13,980.00	0.00			13,980.00	
SUBTOTALS CONTINUED ON NEXT PAGE		50,953.00	0.00	50,953.00	0.00	0.00	0.00	50,953.00	

WARNING TO OWNER OR LESSEE: An owner or lessee of the above-described property shall not rely on this sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing or a laborer who may provide a notice of furnishing under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109, to the designee or to the owner or lessee if the designee is not named or has died.

	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Charge Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
9A	Carter Lumber 7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Trim Materials	3,200.00	0.00	3,200.00	0.00			3,200.00	
B										
C										
10A	Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI	Labor - Drywall/Carpentry/Siding/ Roofing/Cabinets/Door	26,458.00		26,458.00	0.00			26,458.00	
B										
C										
11A	Carter Lumber 7474 Alpine Ave NW, Comstock Park, MI 616-784-3460	Windows & Ext. Doors L/M	3,925.00	0.00	3,925.00	0.00			3,925.00	
B										
C										
12A	Godwin Plumbing 3703 S. Division Ave, Grand Rapids 616-243-3131	Plumbing L/M	9,695.00	0.00	9,695.00	0.00			9,695.00	
B										
C										
13A	Turner Heating & Cooling B 1960 Lilypad Dr. SW Byron Center, MI 49315	HVAC L/M	11,565.00	0.00	11,565.00	0.00			11,565.00	
B										
C										
14A	Bolt & Regneres P.O. Box 20, Hudsonville, MI 616-669-6373	Electrical L/M	7,648.00	0.00	7,648.00	0.00			7,648.00	
B										
C										
15A	Leading Edge 859 74th St. Byron Center, MI 616-583-9300	Insulation L/M	2,958.00	0.00	2,958.00	0.00			2,958.00	
B										
C										
16A	Preferred Drywall 5720 Madison Ave SE Kentwood, MI 49548	Drywall L/M	9,100.00	0.00	9,100.00	0.00			9,100.00	
B										
C										
17A	True North Painting 14170 Lake Michigan Drive West Olive, MI 231-499-2279	Interior Painting L/M	5,391.00	0.00	5,391.00	0.00			5,391.00	
B										
C										
18A	True North Painting 14170 Lake Michigan Drive West Olive, MI 231-499-2279	Exterior Painting L/M	1,000.00	0.00	1,000.00	0.00			1,000.00	
B										
C										
19A	Carter Lumber 7474 Alpine Ave NW Comstock Park, MI 616-784-3460	Siding L/M	7,260.00	0.00	7,260.00	0.00			7,260.00	
B										
C										
20A	American Classic Construction 11823 Walnut Ave Grant, MI 231-834-5905	Roofing L/M	3,780.00	0.00	3,780.00	0.00			3,780.00	
B										
C										
21A	Skyline Gutter Systems P.O. Box 446 Middleville, MI 49333 269-795-4887	Gutters L/M	950.00	0.00	950.00	0.00			950.00	
B										
C										
22A	Discount Doors 4780 West River Dr. NE Comstock Park, MI 616-363-5692	Overhead Garage Door L/M	1,090.00	0.00	1,090.00	0.00			1,090.00	
B										
C										
23A	Godwin Plumbing 3703 S. Division Ave, Grand Rapids 616-243-3131	Plumbing Allowance	2,730.00	0.00	2,730.00	0.00			2,730.00	
B										
C										
24A	Dave Dusendang Custom Homes 3265 Walker Ave Suite D NW Grand Rapids, MI	Electrical Allowance	1,000.00	0.00	1,000.00	0.00			1,000.00	
B										
C										
25A	Preferred Flooring 530 32nd Street SE Wyoming, MI 49548 616-805-4645	Flooring/Tile Allowance	6,816.00	0.00	6,816.00	0.00			6,816.00	
B										
C										
SUBTOTALS CONTINUED ON NEXT PAGE										
	NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR SUPPLIER, OR LABORER	TYPE OF IMPROVEMENT FURNISHED	TOTAL CONTRACT PRICE	Change Orders +/-	ADJUSTED CONTRACT AMOUNT	AMOUNT ALREADY PAID	CURRENT REQUEST	RETAINAGE	BALANCE TO COMPLETE	WAIVER
26A	Williams Distributing 658 Richmond St. SW Grand Rapids, MI	Cabinet Allowance	5,845.00	0.00	5,845.00	0.00			5,845.00	

Exhibit G LIMITED WARRANTY

These are additional terms to the New Home Construction Agreement between the undersigned Buyer and Owner. At the time of closing, Owner shall enjoy a limited warranty on the New Home which contains the following terms:

LIMITED WARRANTY

NOTE: CONSEQUENTIAL AND INCIDENTAL DAMAGES ARE EXCLUDED AND THERE ARE LIMITATIONS IN THE DURATION OF IMPLIED WARRANTIES.

1. **Term.** The terms of the various coverage's of this warranty begin on the date of closing or the date of the Certificate of Occupancy issued by the Building Department, whichever comes first.
2. **Coverage.** Builder warrants that all construction related to the New Home has been in substantial conformity with the plans and specifications and change orders for the New Home under the New Home Construction Agreement. Within one (1) year from the date of closing or occupancy by the Owner, whichever is first, Builder will repair or replace, at the Builder's option, any latent defects in material or workmanship of the New Home. All workmanship and materials shall satisfy the standards of construction described in the current version of *The Residential Construction Performance Guidelines -- For Professional Builders and Remodelers*, published by the National Association of Home Builders (the "Guidelines"). A latent defect is defined as one which was not apparent/ascertainable at the time of occupancy. The owner agrees to accept a reasonable match in any repair or replacement in the event the original item is no longer available. If any latent defects in material or workmanship results in water, mold, insect or animal infestation, or damage from any other agent, Builder's responsibility will be limited to repairing or replacing the portions of the dwelling which allowed water, mold, insects, animals, or other agents to enter or occupy the New Home. Builder is not responsible for any damages caused by water, mold, insect or animal infestation, or damage by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.
3. **Manufacturers' Warranties.** Builder assigns and passes through to Owner, to the extent they are assignable, the manufacturers' warranties on all appliances and equipment. The following are examples of such appliances and equipment, though not every home includes all of these items and some homes may include appliances or equipment not in this list: refrigerator, range, space heater, washing machine, dishwasher, garbage disposal, ventilating, attic fan, and air conditioner.
4. **Exclusions from Coverage.** WE DO NOT ASSUME RESPONSIBILITY FOR ANY OF THE FOLLOWING, ALL OF WHICH ARE EXCLUDED FROM THE COVERAGE OF THIS LIMITED WARRANTY:
 - (a) Consequential or incidental damages, including but not limited to claims asserting a diminution in the value of the dwelling, or damages arising from the presence of insect or animal infestation, mold, or other biological agents in or about the dwelling.
 - (b) Defects in appliances and equipment that are covered by manufacturers' warranties. (We have assigned these manufacturers' warranties to you, to the extent they are assignable, and you should follow the procedures in these warranties if defects appear in these items.)
 - (c) Damage resulting from fires, floods, storms, electrical malfunctions, accidents, acts of God; or damages from alterations, misuse or abuse of the covered items by any person; or damage resulting from the owner's failure to observe any operating instructions furnished by the builder at the time of installation; or damage resulting from a malfunction of telephone, gas company, power company, or water company equipment or lines.
 - (d) Damage due to ordinary wear and tear, abusive use, or lack of proper maintenance of your home, or animals/pets.



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- (e) Defects that are the results of characteristics common to the materials used, such as (but not limited to) warping and deflection of wood, fading, chalking, and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks, and masonry; drying, shrinking and cracking of caulking and weather-stripping.
- (f) Defects in items purchased or installed by you or anyone else except us or, if requested by us, our subcontractors.
- (g) Work done by you or anyone else except us or, if requested by us, our subcontractors.
- (h) Conditions resulting from condensation on, or expansion or contraction of, materials.
- (i) Paint applied over newly plastered interior walls.

5. **No Other Warranties.** This Limited Warranty is the only express warranty given by Builder. Implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, habitability, and good workmanship are expressly excluded, or to the extent not excludable by law, limited to the warranty period set forth above. This Limited Warranty gives you specific legal rights, and you may also have other rights.

6. **Claims Procedure.** If a defect appears that you think is covered by this Limited Warranty, you must write a letter describing it to our office and email it to us. You must tell us in your letter what times during the day you will be at home, so that we can schedule service calls appropriately. If delay will cause extra damage (e.g., if a pipe has burst) telephone us. Only emergency reports will be taken by phone.

7. **Repairs.** Upon receipt of your written report of a defect, if the defective item is covered by this warranty, we will repair or replace it at no charge to you within 60 days (longer if weather conditions, labor problems, or material shortages cause delays). The work will be done by us or subcontractors chosen by us. The choice between repair or replacement is ours.

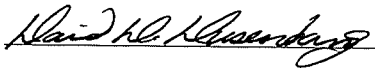
8. **Not Transferable.** This Limited Warranty is extended to you only if you are the first purchaser of the home. When the first purchaser sells the home or moves out of it, this Limited Warranty automatically terminates. It is not transferable to subsequent purchasers of the home.

9. **This is the Only Warranty Given by Builder.** Owner acknowledges that he/she/they has/have thoroughly examined the property to be conveyed and relies solely on his judgment in signing this Limited Warranty, and that there are no guarantees, warranties, understandings, or representations made by Builder, or any representatives of Builder, that are not set forth in this document.

BUILDER

OWNER

By:



Its: President



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AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners
FROM: Jake Eckholm, Director of Economic Development
DATE: June 25th, 2019
RE: BoomTown Market Economic Development Revolving Loan Fund Application

SUMMARY OF REQUEST:

BoomTown Market is seeking a loan from the City's Economic Revolving Loan Fund for \$55,000 in order to complete their necessary capital accrual to open a downtown grocery store in the first floor of Lakeview Lofts on Western Avenue.

FINANCIAL IMPACT:

\$55,000 to be repaid at prime interest rate at time of closing +2% over a 5 year term

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To authorize the loan application and release necessary funds to BoomTown Market as presented

COMMITTEE RECOMMENDATION:



**BOOMTOWN MARKET
BUSINESS PLAN**

Prepared by:

Dana Precious

702 4th St
North Muskegon, Michigan 49445
310-717-0399

danaprecious27@gmail.com

dana@boomtownmarket.com

I. EXECUTIVE SUMMARY

BOOMTOWN MARKET (referred to from hereon in as the "Company") is established as a Limited Liability Company at 848 First St. Muskegon, MI. 49440. with the expectation of rapid growth in the grocery industry.

Business Description

The Company shall be formed as Limited Liability Company under Michigan state laws and headed by Dana Precious.

The Company will employ 2 full-time employees and up to 8 part-time employees.

Product

The Company's primary product will be Basic Grocery, Produce, 'Food To Go', Organics, Fresh Meat, Fish, Chicken, Soft Drinks, Beer, Wine, Toiletries, Sundries.

CITY OVERVIEW

Muskegon, MI. has been, in the recent past, a city that was considered irrelevant. Despite its proximity to the shorelines of Muskegon Lake and Lake Michigan it's reputation was one of industry rather than tourism or a living center.

Changes began approximately five years ago with the opening of two craft breweries downtown and a locally made vodka sold at a local bar. These three businesses renovated existing industrial buildings downtown and made efforts to retain the original flavor of the historical buildings. Downtown Muskegon now boasted a lively night scene.

Abandoned buildings suddenly were being renovated into apartments, offices and retail spaces. New office / residential buildings are springing up by the handful. Several hundred million dollars flooded into downtown Muskegon for new buildings during 2016 – 2017 alone.

What has not kept pace are groceries and conveniences for the residents and tourists.

There is no grocery store. No convenience market. No beer and wine store. The nearest place to buy a can of pop or a candy bar is Walgreens or which is nearly a mile away from city center.

The nearest location to purchase beer and wine is half a mile away. However the image this particular store portrays is not appealing to the demographic that is moving into downtown.

http://www.mlive.com/news/muskegon/index.ssf/2017/11/fast-paced_growth_in_downtown.html

<http://www.rapidgrowthmedia.com/features/121417-On-The-Ground-Muskegon-Lakeshore10.aspx>

<https://mibiz.com/news/real-estate/item/25774-watch-them-go-once-nearly-vacant-and-abandoned,-downtown-muskegon-finds-new-life>

http://www.mlive.com/news/muskegon/index.ssf/2017/11/fast-paced_growth_in_downtown.html

CONVENIENCE STORE OVERVIEW

Research shows that consumers of the grocery industry primarily focus on the following factors when making purchasing decisions:

1. **Convenience** BoomTown Market is within three blocks of at least seven work / live buildings. 2500 residents and 4000 workers are within a one mile radius of the location.
2. **Price** The majority of goods for sale will be competitively priced with other local grocery stores.
3. **Product Availability** Basic Groceries, 'cook at home' items such as boxed pasta, rice. Toiletries such as disposable razors, shampoo, combs, toothpaste, etc. Sundries such as suntan lotion, bug spray, toilet paper, diapers, etc. Dog and cat food. The top sellers, as well as providing the highest profit margins, are: Hot Beverages, Fountain Soda Pop, Water, Cigarettes, 'Grab and Go' food which is prepared meals. 'Grab and Go' can range from a hotdog to a full dinner entrée with sides. This market is not intended to have a full range of items such as a Kroger. It is intended to fulfill immediate needs in between a customer's 'big grocery shopping day'.
4. **Upscale Choices** Craft Beer, Wine, Cheese, High End Deli foods.

Legal Issues

The Company affirms that its promoters will acquire all legally required trademarks and patents. The Company affirms it will obtain all necessary permits for operation.

III. MARKETING SUMMARY

Target Markets

The Company's major target markets are as follows:

Residents

Workers

Students

Boaters

Festival Go-ers

Hotel guests

Pricing Strategy

The Company has completed a thorough analysis of its competitors' pricing. Keeping in mind our competition's pricing and the costs of customer acquisition, we have determined the following pricing strategy:

A vast differential exists for price markup and margin of particular items. Items such as those sold by a convenience store generally have the highest profit margin. 'Grab and go' food, candy, pop, salted snacks, etc., reflect a 100%+ markup with a 50%+ margin. Hot beverages, bottled water and fountain drinks reflect a 2,000 – 4,000% markup. Beer and wine reflect a 35% markup. General groceries reflect a wide range of markup and margin between 35% to 100%+.

Services

First-rate service is intended to be the focus of the Company and a cornerstone of the brand's success. BoomTown Market employees are expected to be 'Ambassadors' for Muskegon. If a tourist asks for directions or such, they will cheerfully be helped. All customers will receive conscientious, one-on-one, timely service in all capacities, be they transactions, conflicts or complaints. This is expected to create a loyal brand following and return business.

S.W.O.T REPORT

Strengths, Weaknesses, Opportunities, Threats

STRENGTHS

1. Currently there is no competition. The closest markets are three miles away. There is nowhere to buy basics such as milk or bread. The only place to buy a can of pop is a pharmacy $\frac{3}{4}$ of a mile away from city center. One beer, wine / liquor store is located approximately $\frac{3}{4}$ of a mile from city center however it caters to a different demographic.
2. Convenience Store has an ideal location within one block of seven existing or new apartment and / or condominium buildings. 175 new apartment units within one block of the location have been added or are in the process of being built within the past year alone.
3. Muskegon Community College just opened a new building two blocks away with several hundred students attending daily.
4. Muskegon Culinary Arts school is located one block away with approximately 100 students.
5. The Holiday Inn and Shoreline Hotels have actively been asking for a market for their hotel guests for the past several years. The Holiday Inn is 2 blocks away from the location. The Shoreline Hotel is less than $\frac{1}{2}$ mile away.
6. A convention center is scheduled for construction three blocks away. This should attract several thousand people per year.
7. The resident and / or worker tends to be middle to upper class. Condos sell for upwards of \$350,000 in the immediate area. Rent ranges from \$600 - \$1,300 per month.
8. The new walking street of small businesses, Western Market, is across the street from this location.
9. The new Farmer's Market which draws hundreds of people per week is one block from the location.

10. Unruly Brewery, 18th Amendment, Pidgeon Hill and Boer's Head restaurant / bars are located one to three blocks from the location.
11. Festivals held at Heritage Landing, 3/4 mile away, draw thousands of people 8 - 11 times during the summer. Yet there is nowhere to buy a bottle of water, etc. unless it is at Festival Rates inside the gates.

WEAKNESSES

1. The owner is new to the grocery industry.

OPPORTUNITIES

1. Establish a foothold early as the one and only place to buy 'food on the go', organic items and 'immediate need' grocery and sundries.

THREATS

1. The city has actively been searching for a large grocery such as Trader Joes. However after several years no such grocery has committed. I believe this is because the population may not be large enough to sustain a large grocery – however it is large enough to sustain a market. The possibility exists a large grocery will come in at a later date. However this market is not intended, in any case, to try and compete with a Meijer or a Great Lakes Fresh Market.

IV. FINANCIAL PLAN

Please refer to the BoomTown Market Cash Flow Statements



THANK YOU



351 W. Western Ave Muskegon, MI. 49440

Operating Team

Dana Precious, Owner

Advisory Board

Sylvia Precious

Eric Seifert

David Susko

Prospective Customers

Within One Mile

2,500 Residents

4,000 Workers

Marinas

Hotels

Festival Go-ers

Convention Center

Students

Particulars

BoomTown Market, LLC

Law Firm: TBD

Accounting Firm: Gunter

Investment Stage: Market

Opening Imminent

Current Revenue: \$0

Current Investors:

\$50,000. G.R.O.W.

\$16,000. Martin Gueulette

\$152,000. Northern Initiatives

\$10,000. Sylvia Precious

\$6,000. David Susko

Investment Sought:

\$55,000.

Use Of Funds:

Inventory

Working Capital

Target Launch

July / August, 2019

Business Overview. BoomTown Market fills a specific and urgent need for downtown Muskegon. This area has been listed for years as a Food Desert by the State of Michigan. No grocery exists within several miles to purchase basic food items. Hundreds of millions of dollars are pouring into the area to create housing and office space. Yet a key reason people hesitate to live or work in downtown Muskegon is the fact that there is no grocery store. BoomTown Market fills this need. The existence of BoomTown Market will help propel economic growth and prosperity throughout downtown Muskegon.

Company. The proprietor, Dana Precious, has successfully started-up three business, each in a different industry, Henry Ranch Beef, Go Gangnam and Datomana. Dana Precious has 25 years of experience leading global marketing and advertising teams and has been responsible for over one Billion dollars in budgets.

Market Opportunity. Little to no competition in the grocery space exists for a three-mile radius. Research conducted by BoomTown Market indicates a strong need for basic grocery, healthy and organic foods, 'grab and go' food options and more in the downtown Muskegon area. Research also indicates a strong preference for Locally Sourced products.

Market Solution.

BoomTown Market will solve this urgent need in downtown Muskegon. The store will sell grocery staples, fresh produce (organic as well), fresh meat, chicken and fish, 'grab and go' foods, sundries, craft beer and wine. BoomTown intends to purchase Locally Sourced foods for the majority of the grocery; thereby helping the local economy grow even further.

Target Market / Competition. There is no competition as there is no grocery store for miles around. The target demographic is the general year round work / live population, tourists, festival go-ers, students, boaters and hotel guests. Extensive research has provided a strong overview of what types of products will sell to each demographic.

Marketing Sales Strategy. When money is a consideration, as it is with BoomTown Market, most traditional types of advertising are not recommended. Traditional advertising (Mixture of TV / Radio / Outdoor) works best when the message reaches the consumer a minimum of three to five times. This is not possible on the BoomTown Market marketing budget. Therefore a focus on Publicity, Social Media and some Traditional Advertising is recommended.

- Publicity To Date: Muskegon Chronicle (full page article), MLive.com (Several articles), Muskegon Times.com (Article), Fox News.com and Fox News (Article / Story), Grand Rapids Press (Article).
- Publicity Upcoming: WZZM BoomTown feature story planned late May. More TBD through outreach to local news outlets.
- Social Media: FaceBook and Twitter have been live and active for three months. Downtown Muskegon Now (Teaser with BoomTown logo), Blogs upcoming. More TBD through outreach to campgrounds, marinas, etc.
- Traditional Advertising. Radio spots. Grass roots efforts through door hangers and flyers in the area adjacent to BoomTown Market. Street decals. Sandwich boards announcing BoomTown set in key downtown locations.

Marketing Messaging Strategy. The brand message strategy is fairly straightforward given the market conditions surrounding BoomTown. First, and most importantly, make people aware that a grocery now actually *exists* in Muskegon. Second, speak to what people are searching for in terms of products; locally sourced, fresh and organic foods, grab and go foods, pantry staples, beer, wine, sundries, toiletries, etc.

Pricing Strategy. Some products will, by necessity, be priced approximately 8% more than a bulk, chain grocery store or because the product is organic. Products that fall into a 'convenience store' category will be a similar or same price as any local convenience store.

Management Team. The proprietor, Dana Precious, will be the hands-on, on-site leader of BoomTown Market. Ms. Precious has experience as the driving force in starting up three successful companies; each in different industries. She has identified eight local employees several of whom have experience in the grocery industry. She plans to four employees as of July, 2019 and add an additional four employees on a part-time basis by November, 2019. Ms. Precious has managed teams of up to one hundred people.

Financial Projection. BoomTown Market is a start-up company.
Cash Flow Projections: see separate Excel spreadsheet

Investment Opportunity. BoomTown is seeking \$55,000. to complete the total project cost of \$289,000. BoomTown Market is approved for \$50,000 from Grand Rapids Opportunities for Women; approved for \$152,000 from Northern Initiatives; \$32,000 is committed from Investors.

Application for Term Loan
City of Muskegon Revolving Loan Fund

Application Date: 6/5/19
Applicant Business: BOOMTOWN MARKET, LLC
 Sole Proprietorship Partnership X Corporation

Principals: Name Address %Ownership
 DANA PRECIOUS 100%
 702 Fourth St.
 N. MUSKEGON, MI. 49445

Business Address: 351 W. Western Ave. MUSKEGON, MI. 49446
Project Address: SAME
Employment: X Now On Project Completion After One Year

Source of Funds Equity amount in business
 (Including new loan): \$ 32,000 11 % of total
GROW/NORTHERN Bank Participation: \$ 202,000 70 % of total
Initiatives City RLF Loan Requested: \$ 55,000 19 % of total

TOTAL SOURCES: \$ 289,000 100%

Use of Funds: Land and Building: \$ 0
 Site Improvements: \$ 0
 Construction/Renovation: \$ 42,834 Preopen store costs / menu / signage / website / advertising
 Machinery & Equipment: \$ 180,441 Inventory + Equipment
CABINETS/Furniture and Fixtures: \$ 85,161
Working Capital: \$ 23,000
Legal and Closing: \$ 3,000 (Due & payable at closing from loan proceeds)
TOTAL USES: \$ 334,436

Collateral Offered: \$ 50,000 CABINETRY / FURNITURE

(I) or (We) certify that the information in the application and other supporting documents is true and accurate. Any other use of City of Muskegon Revolving Loan Funds than as requested constitutes fraud. (I) or (We) further agree to comply with the Federal Civil Rights and Equal Opportunity statutes of Title VI and Title VIII and Michigan Civil Rights Act and Fair Employment Practices Act and related rules and regulations.

(s) Dana Precious (DANA PRECIOUS)

Date: 4/12/19

Loan Request: \$100,436

Company Information:

Current Location:

351 W. Western Muskegon MI
49440

Project Location: SAME

Principal:

DANA Precious

Address:

Summary of Project:

See email Attachment

Employment:

8 Muskegon Residents to be hired immediately
on a part time basis. These people are already identified.
3 employees to be full time by December.

Sources and Uses Summary:

SOURCES

USES

See email Attachment

Other Financial Comments:

please see 2019/2020 CASH FLOW Attached

Loan Package Structure:

please see Loan Package Structure Attached.

Collateral:

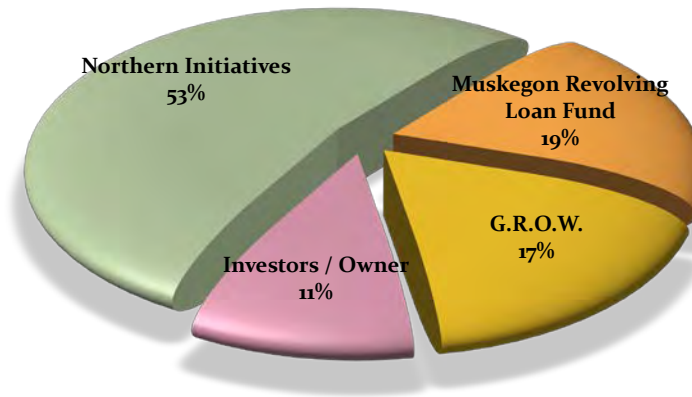
\$50,000 (CABINETS)

Recommendation:

*Information contained in this application and supporting documentation may be subject to review by the public if a Freedom of Information Request is filed.

Asset Type	Amount	Interest Rate	Length
Northern Initiatives	\$ 152,000	\$ 9	7 years
Muskegon Revolving Loan Fund	\$ 55,000	\$ 5	5 Years
G.R.O.W.	\$ 50,000	\$ 8	5 Years
Investors / Owner	\$ 32,000	\$ 6	5 Years

BoomTown Loan Structure



COMMERCIAL TRIPLE NET LEASE CONTRACT

THIS LEASE is made as of June, 12, 2019

between 351 W Western LLC, ("Landlord"), with an address of
370 Mid Oak Dr., North Muskegon, MI, 49445

and Boom Town Market LLC, ("Tenant"), with an address of
702 Fourth Street North Muskegon, MI, 49445

who hereby agree as follows:

1. **PREMISES.** Subject to the covenants and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the premises (the "Premises") commonly known and numbered as 351 W. Western Ste. 101, Muskegon, Michigan 49440, consisting of approximately 3,200 sq ft, and further described on **Exhibit A** attached hereto, together with the right of ingress and egress and the non-exclusive use of Common Areas, defined as any space available to tenants and invitees that is not included in any tenant lease.
 - a. Common Areas include:
 - i. Front sidewalk use for tables, chairs, décor upon landlord approval of design.
 - ii. Ground floor residents hallway and entrance, egress doors.
 - iii. Loading dock at back of building.
 - b. Landlord shall deliver the Premises in conditions per schedule as described in **Addendum A**. Addendum A will also include Tenant Improvement based on the Contractor's Punch List – of which items are to be mutually agreed upon and noted of what Landlord will pay and Tenant will take care of.
2. **USE OF PREMISES and EXCLUSIVE RIGHTS.** The Premises shall be used as a commercial business (collectively, the "Permitted Use"). Landlord hereby warrants that the building is properly zoned as will permit Tenant to obtain all necessary permits, licenses, and approvals to operate a kitchen, tasting room and retail sales on the Premises.
3. **PREMISE VEHICLES.** Parking and Traverse Use.
 - a. Employee Parking: Employee parking shall be at Tenant's choice, in public lots and on public streets near the building. However, Landlord will work to secure parking for Tenant's employees during hours of operations at convenient locations within walking distance of the building.
 - b. Short Term Customer Parking: Landlord will make effort to secure a minimum of 6 parking spaces by the city of Muskegon for use as designated short term spaces for Tenant directly in front of the store. Landlord will erect the parking signs and/or coordinate with the city for them to erect the signs.
 - c. Suppliers and Vendors vehicles. There will be full use of the back loading dock / ramp with the understanding that suppliers and vendors will also be using the apartment's back hallway door for deliveries to traverse from the loading dock into the store. Vehicles can park in the alley for a short amount of time (20 minutes) to load and unload. Vehicles are to not block alley or to move if needed.
4. **POSSESSION.**
 - a. **DUE DILIGENCE.**
 - i. Tenant and Landlord have 3 business days from signing of lease to terminate

US
or revise
DP

- lease in its entirety.
- ii. Should Tenant's loan financing become unavailable Tenant has thirty days from lease execution date to void this lease in its entirety.
 - iii. Before or on the 15th day:
 - 1. **Addendum A** is mutually agreed upon and signed off by both parties.
 - 2. **Exhibit C** A final version is mutually agreed upon and signed off by both parties. A basic, initial rough is supplied at the time of the agreement as a jumping off and discussion point.
- b. **OCCUPANCY PERMIT.** Addendum A and Exhibit C action items are complete on or before ninety working days from the date of lease execution; at which time an occupancy permit has been secured and the full ability of the Tenant, to legally and logistically, move into the premises based on the Layout diagram agreed upon in **Exhibit C** can occur.
- c. **TEMPORARY OCCUPANCY PERMIT**
- i. Every effort by Tenant will be made to obtain a Temporary Occupancy Permit in order to have Tenant's partial but operational business up and running prior to the full Occupancy Permit date.
 - ii. If Tenant is partially, but not fully open, rent to be 50% during this time for a maximum of 2 months. No expectation that the other 50% will be repaid. Upon issuance of the final Occupancy Permit within the 2 month period, rent will be the full monthly amount per the lease.

Tenant LP

5. **TERMS.** The Term of this Lease (the "Term") is for 5 years and 0 months, commencing upon ~~Landlord~~ obtaining a Temporary Occupancy Permit. Additionally, Tenant is hereby granted Two (2) - Five (5) Year Options to extend the terms of the Lease. Each option, if any, shall be exercised at least ninety (90) days prior to the expiration of the then current term. Rent for the first five-year option will be based on 105% of rent for the year prior with 5% annual increases. Rent for the second five-year option will be based on 102% of rent for the year prior with 2% annual increases

- a. **BASE RENT.** Tenant shall pay to Landlord \$221,025.25 ("Base Rent" total) as rent in monthly installments over the Term of this Lease. Tenant's liability for rent shall commence to accrue on the date when Tenant opens for business or 30 days after delivery of white box space to Tenant, whichever occurs first, subject to the terms of paragraph 4(c)ii above. In the event that the commencement date of such rent shall be on a day other than the first day of the month, the first rental payment shall be adjusted for the proportionate fraction of the whole month. The initial lease shall be incrementally charged with 5% annual increases from the previous year as indicated below. Each monthly installment is due and payable in advance without notice or demand at Landlord's above stated address, or at any other place Landlord designates in writing. The first monthly rent installment and all subsequent monthly rent installments shall be due as follows:

INITIAL LEASE	Base	Total
FIVE YEARS:	Monthly	Annual
Month 1-12	\$3,333.33	\$40,000.00
Month 13 to month 24	\$3,500.00	\$42,000.00
Month 25 to month 36	\$3,675.00	\$44,100.00
Month 37 to month 48	\$3,858.75	\$46,305.00
Month 49 to month 60	\$4,051.69	\$48,620.25

b. **1st and 2nd FIVE YEAR OPTION RENT:**

Month 61 to month 72	\$4,254.27	\$51,051.26
Month 73 to month 84	\$4,466.99	\$53,603.83
Month 85 to month 96	\$4,690.33	\$56,284.02
Month 97 to month 108	\$4,924.85	\$59,098.22
Month 109 to month 120	\$5,171.09	\$62,053.13

Month 121 to month 132	\$5,274.52	\$63,294.19
Month 133 to month 144	\$5,380.01	\$64,560.08
Month 145 to month 156	\$5,487.61	\$65,851.28
Month 157 to month 168	\$5,597.36	\$67,168.30
Month 169 to month 180	\$5,709.31	\$68,511.67

- c. **SECURITY DEPOSIT.** Concurrently with execution of this Lease, Tenant shall deliver to Landlord \$3,333.33 as security for the performance by Tenant of every covenant and condition of this Lease (the "Security Deposit"). Said Security Deposit may be co-mingled with other funds of Landlord and shall bear no interest. If Tenant shall default with respect to any covenant or condition of this Lease, including, but not limited to the payment of rent, Landlord may apply the whole or any part of such Security Deposit to the payment of any sum in default or any sum which Landlord may be required to spend by reason of Tenant's damage or default. If any portion of the

Security Deposit is so applied, Tenant, upon demand by Landlord, shall pay Landlord an amount sufficient to restore the Security Deposit to its original amount. Should Tenant comply with all of the covenants and conditions of this Lease, the Security Deposit or any balance thereof shall be returned to Tenant promptly within 60 days after expiration of the term thereof.

6. LANDLORD COMMON AREA MAINTENANCE (CAM)

- a. Tenant will pay a pro-rata share for the Landlord's Common Area Maintenance (aka CAM fee) which shall be a percentage of the Premises to the rentable floor space in the Building. It is agreed Tenant occupies 11.4% ("Proportionate Share") of the floor space in the Building (3,200 sq. ft./28,078 sq. ft. = 11.4%) per Exhibit A

CAM will be billed monthly at an annual rate of \$1.50 psf to be capped at \$3.00 psf

- a. Landlord shall, perform and provide (or cause to be performed and provided) certain maintenance and services pertaining to the entire building or area of which the Premises are a part including, but not limited to, landscaping, trash removal, lawn maintenance, common area lighting, watering, and snow removal. In such event, Tenant shall reimburse Landlord for its Proportionate Share of said maintenance services as part of the Operating Expenses.
- b. Within ninety (90) days following the end of each year during the Term, Landlord shall furnish Tenant a written statement covering the lease year just expired, showing in reasonable detail a general breakdown of the total Operating Expenses, the amount of Tenant's obligation relating thereto, and the payment made by Tenant in connection therewith. Landlord shall prepare annually a good faith estimate of Tenant's Proportionate Share of additional rent set forth in this Lease for the upcoming year. Tenant shall then pay, on the due date of, in addition to, and with monthly Base Rent installments, one-twelfth of estimated Tenant's Proportionate Share. Landlord shall refund any amount over actual costs of such estimated additional rent paid by Tenant in full to Tenant, or Tenant shall pay amount under actual costs of such estimated additional rent to Landlord, upon demand. Tenant shall have the right to audit Landlord's books and records relating to Landlord's calculation of such Operating Expenses for the prior year for a period of 180 days following Landlord's determination of the Operating Expenses for such year.
- b. Common Area Maintenance shall include all costs reasonably incurred by or to Landlord in connection with the operation and maintenance of the building within which the Premises are located and related improvements (collectively, the "Building") and related areas to include but not be limited to:
 - i. To cover aforementioned Property Insurance.
 - ii. General building maintenance and upkeep.
 - iii. Furnace and Air Conditioning unit maintenance.
 - iv. Waste Disposal i.e. Trash removal and specific bin provided for Tenant if deemed necessary.
 - v. Water and Sewage systems.
 - vi. Operating materials and supplies
 - vii. Service agreements and charges
 - viii. Common area lighting and Security systems with appropriate security

- measures, locks and limited access systems.
- ix. Common area care: snow removal, repairs, repaving, cleaning and custodial
 - x. Operating Expenses shall not be used for or include (i) any expense chargeable to a capital account or capital improvement or ground leases; (ii) principal or interest payments on any mortgage or deed of trust on the premises; (iii) any amount for which Landlord is reimbursed through insurance, by third persons, or directly by other tenants of the premises, (iv) repair costs occasioned by fire, windstorm or other casualty, (v) any construction, repair or maintenance expenses or obligations that are the sole responsibility of Landlord (not to be reimbursed by Tenant).
- c. Special Assessments. No special assessments to the Tenant can unilaterally be made by the Landlord without mutual parties' agreement to need and cost.
 - d. It is the intention of the parties and they hereby agree that this shall be a triple net Lease, and the Landlord shall have no obligation to provide any services, perform any acts or pay any expenses, charges, obligations or costs of any kind whatsoever with respect to the Premises.

7. TENANT OPERATING EXPENSES

- a. **UTILITIES AND SERVICES.** Tenant shall pay for all electricity, gas, fuel, telephone, internet, T-1 and any services or utilities used in or assessed against the Premises, unless otherwise provided.

8. TENANT CONDUCT. Tenant agrees to conduct its business in a manner that shall not be unlawful, illegal, or objectionable to other tenants in the Building, including but not limited to obnoxious noise, vibration, odor, trash or fumes beyond standard business operations.

- a. In the event Landlord receives complaints from other tenants in the Building or complex and determines, in its sole reasonable judgment, that Tenant is conducting its operations in a manner so as to be objectionable to other Tenants, Tenant shall, upon notice from Landlord, promptly modify its operations to eliminate such objections.
- b. Tenant agrees to provide 30 days notice in writing to Landlord for any special events or activities which may be over 45 people and/or late night activity till midnight. This may also be in the form of a submission of a year's calendar of planned special events.
- c. Outside speakers for music, played at a reasonable volume, is approved.

9. SIGNS AND ADVERTISEMENTS. Tenant shall not place upon or permit to be placed upon the exterior of the Premises, any signs, awning, billboards or advertisements whatsoever, without the prior written consent (which shall not be unreasonably withheld, conditioned or delayed) of Landlord. All permitted signage shall be at Tenant's sole expense. Signage shall be placed on the columns within the width of the leased space or the horizontal band above tenant's floor level, or in a location approved by Landlord in writing prior to installation. Signage to comply with all applicable codes and ordinances.

a. PRE-APPROVED SIGNAGE:

- i. Main Outdoor Sign – per mutually agreed upon specifications
- ii. Year 'round Elevator Display. Exclusive use of the promotional space above

the floor button. An 8x10 (or other mutually agreed upon size) frame will be installed so Boomtown can easily slide in and switch out monthly promotional placards.

- iii. Opening month side wall building banner to be displayed announcing the opening. The use of the side of the building facing 2nd Street for a very large vinyl mesh banner announcing Boom Town Market opening. Banner to not obstruct windows (there's a mesh you can see through and barely know its there). Banner to be up for one month. Banner to not interfere with upcoming construction of building next door.
- iv. Summer months – 1 sandwich board sign on the sidewalk in front of the store.

10. INSURANCE & LIABILITY

a. Landlord Property Insurance

- i. Landlord shall at its own cost and expense procure and maintain throughout the Term of this Lease: property insurance to cover fires, floods (water due to storm or breakage of water pipes), mold, and any structural damage caused by landlord and/or landlord associates, landlord's other lessees, etc other than said tenant and any force majeure.
- ii. Common Area Insurance. Tenant acknowledges that insuring the Common Areas of the Project and all permanent improvements is the responsibility of the Landlord. Landlord shall use commercially reasonable efforts to cause the Association to satisfy its obligations with respect to insurance. In no event shall Landlord have any liability to Tenant for any failure to maintain the insurance required by the applicable law.
- iii. If Tenant fails to supply agreed upon certificates of insurance in a timely manner, the Landlord has the right to secure it on the tenants behalf, plus interest, to be paid by tenant in addition to the base rent and operation expenses.

b. Tenant's Property Insurance.

- i. Tenant shall, at its own cost and expense, procure and maintain, throughout the Term of this Lease:
 - 1. Property insurance as may be reasonably necessary to insure all personal property belonging to Tenant, as well as any other property belonging to any person or entity other than Landlord or other tenants of the building, on or about the Leased Premises against loss by fire or other casualties;
 - 2. Property insurance covering any responsibility of the owner of the Unit for damage to the Unit allocated to the Unit under the damage and insurance provisions of not less than ONE MILLION DOLLARS (\$1,000,000).
 - 3. Public liability insurance covering the Leased Premises, insuring against all damages and claims arising from Tenant's maintenance, use, or occupancy of the Leased Premises, with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for personal injuries to

or deaths of persons and not less than ONE MILLION DOLLARS (\$1,000,000) for damage to property resulting from any one occurrence, which liability policy shall name Landlord and any mortgagee of Landlord as additional insureds, and shall provide that it shall not be cancelled or the coverage decreased without thirty (30) days prior notice to Landlord;

- ii Evidence of Insurance. Prior to taking possession of the Leased Premises and annually thereafter, Tenant shall deliver to Landlord a certificate of insurance or other evidence satisfactory to Landlord that Tenant has obtained the required insurance.

c. Waiver of Subrogation.

- i. Landlord and Tenant hereby waive any and all rights of recovery against the other or against their respective officers, agents, employees, and representatives of loss or damage occasioned to Tenant or its property or the property of others under its control, to the extent that such loss or damage is covered under any insurance policies carried by the Landlord or Tenant, as the case may be, and in force at the time of such loss or damage. Tenant shall cause each insurance policy obtained by it hereunder to provide that the insurance company waives all right of recovery by way of subrogation against Landlord in connection with any loss or damage covered by such insurance policy, all without impairment or invalidation of such insurance.
- ii. No Landlord Liability. In no event shall Landlord have any liability to Tenant for any damage to or loss of any personal property of Tenant or for any damages or losses incurred by Tenant due to an interruption of Tenant's business in the Leased Premises, except to the extent such damages or losses are caused by the willful misconduct of Landlord.

11. ASSIGNMENT AND SUBLETTING. Tenant shall not assign, transfer or encumber this Lease and shall not sublease the Premises or any part thereof or allow any other person to be in possession thereof without the prior written consent of Landlord, in each and every instance. Said consent shall not be unreasonably withheld, conditioned or delayed by Landlord. All terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Landlord shall notify Tenant of any assignment, transfer, or encumbrance of the building's ownership. Landlord further agrees to make any assignment or transfer subject to this Lease.

12. CONDITION OF PREMISES. Prior to taking possession of the Premises, Tenant, shall have the opportunity to inspect the Premises and approve their condition, including the improvements set forth in **Addendum A**. Upon inspection of the Premises, Tenant shall promptly notify Landlord in writing of any deficiencies, in which case, Landlord shall resolve all deficiencies as soon as practical. At the end of the Term, except for damage caused by fire or other perils, Tenant, at its expense, shall (a) surrender the Premises in the same or similar condition as existed at the time the Premises, including all improvements and buildout approved by Landlord over the term of the Lease or extension thereof, were accepted and possession taken by Tenant, subject to reasonable wear resulting from uses permitted hereunder, and further subject to Tenant's obligations; (b) have removed all of Tenant's

property from the Premises; (c) have repaired any damage to the Premises caused by the removal of Tenant's Property; and (d) leave the Premises free of trash and debris and in "broom clean" condition.

13. GENERAL INDEMNIFICATION. To the extent caused by Tenant's activities on or about the Leased Premises and except to the extent caused by Landlord's activities on or about and use of the Project, Tenant agrees to indemnify, defend, and save harmless Landlord and Landlord's officers, agents, employees, and representatives from and against any and all claims, demands, liabilities, suits, actions, proceedings, costs (including court costs), fines, fees (including attorneys' fees), orders, decrees, judgments, and losses of any kind or nature resulting from or related to the death or injury of any person or damage to any property arising, directly or indirectly, out of, from, or on account of any occurrence in, upon, at, or from the Leased Premises, or occasioned wholly or partially through the maintenance, use, or occupancy by Tenant of the Leased Premises or any improvements thereon or appurtenances thereto, or any act, omission, or negligence of Tenant or any subtenant, concessionaire, licensee, or invitee of Tenant (or their respective officers, employees, agents or representatives) in, upon, at, or from the Leased Premises. Tenant and all those claiming by, through, or under Tenant shall use and occupy the Leased Premises and all improvements therein and appurtenances thereto solely at their own risk.

14. NO LIENS. Except for liens, restrictions and encumbrances arising by, through or under Landlord, and real estate taxes not yet due and payable, Tenant shall keep the Leased Premises free from any liens, claims and encumbrances arising out of work performed, materials furnished, or obligations incurred by Tenant in connection with the Permitted Use, and Tenant shall indemnify, defend, and save harmless Landlord from all liens, claims, encumbrances, and liabilities arising out of any work performed or materials furnished by or at the direction of Tenant or those claiming by, through, or under Tenant.

15. LANDLORD'S RIGHT OF ENTRY. Landlord or Landlord's agent may enter at reasonable hours (following Tenant's written receipt of two (2) business days notice) to inspect or show the Premises to prospective lenders and purchasers, and to do anything Landlord may be required to do hereunder or which Landlord may deem necessary for the good of the Premises or any building of which they are a part. During the last ninety (90) days of this Lease, Landlord may market, but not display a "For Rent" sign on, the Premises.

16. DAMAGE BY CASUALTY or FORCE MAJEURE. If, during the Term or previous thereto, the Premises shall be destroyed or so damaged by fire or other casualty as to become untenable, then in such event, at the option of either party, this Lease shall terminate from the date of such damage or destruction. Either party hereto may exercise this option to so terminate this Lease by notice in writing delivered to the other party within thirty (30) days after such damage or destruction. Upon such notice, Tenant shall immediately surrender said Premises and all interest therein to Landlord and Tenant shall pay rent only to the time of such damage or destruction. If neither party elects to terminate this Lease, this Lease shall continue in full force and effect, and Landlord shall expeditiously repair the Premises, placing the same in as good a condition as they were at the time of the damage or destruction, and for that purpose, may enter said Premises. In that event rent shall abate in proportion to the

extent and duration of untenability. In either event, Tenant shall remove all merchandise, furniture, equipment and its other personal property within ten days after the request by Landlord and as required for repairs. Except for rent abatement as herein provided, no compensation or claim shall be made by or allowed to Tenant by reason of any inconvenience or loss of business arising from the necessity of repairing any portion of the Building or the Premises. The Tenant will receive a full deposit return and retain any and all of their business property and assets.

17. PERSONAL PROPERTY. In the absence of Landlord's negligence or willful misconduct, Landlord shall not be liable for any loss or damage to any merchandise inventory, goods, fixtures, improvements or personal property of Tenant in or about the Premises.

18. ALTERATIONS. After taking possession of the Premises and except for Tenant's initial buildout, Tenant shall not make any further structural alterations or additions in or to the Premises without the prior written consent of Landlord.

19. LEGAL REQUIREMENTS. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Premises or the use thereof, and Tenant shall indemnify, defend and hold Landlord harmless from expense or damage resulting from failure to do so.

20. FIXTURES. Except for Tenant's personal property and trade fixtures, all building repairs, alterations, additions, improvements, installations and other non-trade fixtures permanently installed or erected on the Premises, whether by or at the expense of Landlord or Tenant, shall belong to Landlord and shall remain on and be surrendered with the Premises at the expiration or termination of this Lease.

21. TAXES ON LEASEHOLD. Tenant shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind owned by or placed in, upon, or about the Premises by Tenant.

22. TENANT'S DEFAULT AND REMEDIES. If: (a) Tenant fails to comply with any material term, provision, condition or covenant of this Lease following thirty (30) days of Tenant's receipt of a written default notice; (b) any petition is filed by or against Tenant under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof and is not dismissed within forty-five (45) days; (c) Tenant becomes insolvent or makes a transfer in fraud of creditors; (d) Tenant makes an assignment for benefit of creditors; or (e) a receiver is appointed for Tenant or any of the assets of Tenant, then in any of such events, Tenant shall be in default and Landlord shall have the option to do any one or more of the following: upon ten (10) days prior written notice, excepting the payment of rent or additional rent for which no demand or notice shall be necessary, in addition to and not in limitation of any other remedy permitted by law, to enter upon the Premises either with or without process of law, and to expel, remove and put out Tenant or any other persons thereon, together with all personal property; and, Landlord may terminate this Lease or it may from time to time, without terminating this Lease, rent said

Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and change said Premises. At the option of Landlord, rents received by Landlord from such reletting shall be applied first to the payment of any indebtedness from Tenant to Landlord other than rent and additional rent due hereunder; second, to payment of any costs and expenses of such reletting, including, but not limited to, attorney's fees, advertising fees and brokerage fees, and to the payment of any repairs, renovation, remodeling, redecorations, alterations and changes in the Premises; third, to the payment of rent and additional rent due and payable hereunder and interest thereon; and, if after applying said rentals there is any deficiency in the rent and additional rent and interest to be paid by Tenant under this Lease, Tenant shall pay any such deficiency to Landlord and such deficiency shall be calculated and collected by Landlord monthly. No such re-entry or taking possession of said Premises shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant.

Notwithstanding any such reletting without termination, Landlord may at any time terminate this Lease by reason of any Default, in addition to any other remedy it may have, it may recover from Tenant the worth at the time of such termination of the excess of the amount of rent and additional rent reserved in this Lease for the balance of the Term (but in no event for more than 2 years) over the then reasonable rental value of the Premises for the same period. Landlord shall have the right and remedy to seek redress in the courts at any time to correct or remedy any default of Tenant by injunction or otherwise, without such resulting or being deemed a termination of this Lease, and Landlord, whether this Lease has been or is terminated or not, shall have the absolute right by court action or otherwise to collect any and all amounts of unpaid rent or unpaid additional rent or any other sums due from Tenant to Landlord under this Lease which were or are unpaid at the date of termination. If it is necessary for Landlord to bring any action under this Lease, then Tenant agrees in each and any such case to pay to Landlord, Landlord's reasonable attorney's fees. In addition to the remedies set forth herein, Tenant shall pay a late charge in the amount of 3% of any payment due hereunder which remains unpaid on the tenth day after same is otherwise due hereunder. Said late charge shall be deemed additional rent, and the assessment or collection of same shall not limit or delay Landlord's pursuit of any remedy arising hereunder upon Tenant's default. Landlord has a duty to mitigate its damages upon Tenant's default.

23. LANDLORD'S DEFAULT. Landlord hereby acknowledges that Tenant is relying upon such covenants, representations and warranties in executing this Lease and that matters so represented and warranted are material ones. Landlord, accordingly, agrees that any breach of warranty or misrepresentation shall be grounds for Tenant to elect, at its option, to terminate this lease or cure Landlord's default(s) and deduct its costs to cure such defaults from rent thereafter accruing. These remedies are in addition to all other remedies Tenant may have in law or equity. The following events shall constitute a default of Landlord: Failure to perform or observe any condition or obligation of this Lease to be performed by Landlord within thirty (30) days following written notice to Landlord of such failure, provided that if the nature of such default reasonably requires more than thirty (30)

days, Landlord shall not be in default hereunder if Landlord has promptly commenced such cure and is diligently pursuing the same, and; if the nature of such default poses an imminent danger to persons or property, then such period of time shall be a reasonable period of time in light of the circumstances. In the event of Landlord's default, Tenant has the following remedies: Use any remedies available to it at law; Cure the default on behalf of Landlord, and the reasonable costs of such cure shall be paid to Tenant by Landlord upon written demand. Alternatively, Tenant may deduct the cost of curing the Landlord's default from Tenant's rent payment. Tenant shall have the right and remedy to seek redress in the courts at any time to correct or remedy any default of Landlord by injunction or otherwise, without such resulting or being deemed a termination of this Lease.

24. WAIVER. The rights and remedies of Landlord under this Lease, as well as those provided by law, shall be cumulative, and none shall be exclusive of any other rights or remedies. A waiver by Landlord of any breach or default of Tenant shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default. It is agreed that the acceptance by Landlord of any installment of rent subsequent to the date the same should have been paid shall not alter the covenant and obligation of Tenant to pay subsequent installments of rent promptly upon the due date. Receipt by Landlord of partial payment after Tenant's default shall not be construed to be or constitute a cure of any such default. No receipt of money by Landlord before or after the termination of this Lease shall in any way reinstate, continue or extend the term above demised.

25. TOXIC OR HAZARDOUS MATERIALS. Tenant shall not store, use or dispose of any toxic or hazardous materials in, on or about the Premises without the prior written consent of Landlord. Tenant, at its sole cost, shall comply with all laws relating to Tenant's storage, use and disposal of hazardous or toxic materials. Tenant shall be solely responsible for and shall defend, indemnify and hold Landlord, its agents and employees, harmless from and against all claims, costs and liabilities, including attorney's fees and costs, arising out of or in connection with Tenant's storage, use or disposal of any toxic or hazardous material in, on or about the Premises including, but not limited to, removal, clean-up and restoration work and materials necessary to return the Premises, and any other property of whatever nature located on the Premises, to their condition existing prior to the appearance of toxic or hazardous materials on the Premises. Tenant's obligations under this section shall survive the termination of this Lease. Landlord represents and warrants with and to Tenant that no hazardous or toxic materials have been introduced or released upon any portion of the land upon which the Building is located.

26. REAL ESTATE COMMISSION. Upon execution of this Lease by both Landlord and Tenant, Landlord shall pay a real estate commission to Great Lakes Development Group ("Landlord's Broker"), in the amount of Nine (9%) percent. The parties hereto acknowledge that this provision is intended for the benefit of said named real estate Brokers, and may be enforced by them as third party beneficiaries hereto. This provision shall bind successors and assigns of the parties hereto and may not be amended without written consent of said Broker.

27. NOTICES. Any notice hereunder shall be sufficient if sent by certified mail, addressed to

Tenant at the address above, and to Landlord where rent is payable. In the event the rent is payable to a post office box or paid via electronic payment (ACH), then Landlord notice address shall be 370 Mid Oak Dr., North Muskegon, MI, 49445

28. SUBORDINATION OF LEASE TO MORTGAGES. This Lease shall be subject and subordinate at all times to the lien of existing mortgages and of mortgages which hereafter may be made a lien on the Premises; provided, however, that with regard to any pledge or mortgage executed by Landlord, Landlord shall provide to Tenant a nondisturbance agreement from any mortgagee or other lien holder of Landlord's interest in the Premises. Such nondisturbance agreement shall be in form and content reasonably acceptable to Tenant and Landlord's mortgagee or other lien holder, together with a representation that the Landlord is not in default of any of the terms of any such mortgage or security agreement as of the date thereof. Although no instrument or act on the part of the Tenant shall be necessary to effectuate such subordination, the Tenant will nevertheless execute and deliver such further instruments subordinating this Lease to the lien of any such mortgages as may be reasonably desired by the mortgagee. Provided, however, and notwithstanding the foregoing provisions hereof, upon foreclosure of the mortgage with the mortgagee succeeding to the rights of the Landlord, the Tenant shall, at the option of said mortgagee, be bound to the mortgagee under all of the terms of the Lease for the balance of the term hereof remaining with the same force and effect as if the mortgagee were the Landlord under the Lease, and the Tenant hereby attorns to the mortgagee as its Landlord, such attornment to be effective and self-operative if the mortgagee so elects. In no event, however, shall the mortgagee be liable for any act or omission of any prior Landlord, be subject to any offsets or defenses which Tenant might have against any prior Landlord, or be bound by any rent or additional rent which the Tenant might have paid to any prior Landlord for more than the current month.

29. SUCCESSORS. The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, heirs, successors and assigns of each of the parties hereto, except that no assignment or subletting by Tenant without the written consent of Landlord shall vest any rights in the assignee or subtenant of Tenant.

30. COVENANT OF TITLE AND QUIET POSSESSION. Landlord warrants that it has good title to the Building and leased Premises. Landlord warrants and will defend the title thereto, and will indemnify Tenant against any damage and expense which Tenant may suffer by reason of any lien, encumbrance, restriction or defect in the title or description herein of the premises. If, at any time, Landlord's title or right to receive rent hereunder is disputed, or there is a change of ownership of Landlord's estate by act of the parties or operation of law, Tenant may withhold rent thereafter accruing until Tenant is furnished proof satisfactory to it as to the party entitled thereto. Landlord agrees, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term aforesaid, it being expressly understood and agreed that the aforesaid covenant of quiet enjoyment shall be binding upon Landlord, its heirs, successors or assigns, but only during such party's ownership of the Premises. Landlord and Tenant further covenant and

represent that each has full right, title, power and authority to make, execute and deliver this Lease.

- 31. PLANS.** Landlord shall provide to the Tenant mechanical (electrical, HVAC, plumbing) and architectural plans and specifications, together with any other plans originally submitted to governmental agencies for the permits required to complete the Building of which the Premises forms a part, including the final site plan and survey.
- 32. STRUCTURAL REPAIRS.** Landlord shall maintain and keep in good order and repair the foundation, slab, exterior walls, steel frames, roof structural portion and underground utility lines of the Premises, except for damage caused by fire or other casualty or the intentional or negligent acts of the Tenant.
- 33. BANKRUPTCY.** Neither this Lease nor any interest therein nor any estate hereby created shall pass to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors by operation of law or otherwise during the Term or any renewal thereof.
- 34. ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties, and no modification of this Lease shall be binding upon the parties unless evidenced by an agreement in writing signed by Landlord and Tenant after the date hereof. If there be more than one Tenant named herein, the provisions of this Lease shall be applicable to and binding upon such Tenants, jointly and severally.
- 35. ESTOPPEL CERTIFICATES.** Tenant shall at any time upon not less than ten (10) days prior written notice from Landlord execute, acknowledge and deliver to Landlord or to any lender of or purchaser from Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification) and the date to which the rent and other charges are paid in advance, if any, and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises or of the business of Landlord.
- 36. ADDENDA AND EXHIBITS:**
- | | |
|------------------------------------|--|
| Exhibit A: Description of Premises | <i>architect's blueprint graphic.</i> |
| Exhibit B: Landlords work | <i>needs measurements filled in within 5 days.</i> |
| Exhibit C: Layout Plan Diagram | <i>rough, initial diagram.</i> |
| | <i>a final diagram is to be mutually agreed upon and completed by end of the 15th day period.</i> |
| Addendum A: | Contractor's Punch List & Cost Responsibilities List |
| | <i>a final version is to be mutually agreed upon and completed by end of the 15th day period.</i> |

IN WITNESS WHEREOF, said parties hereunto subscribed their names. Executed in originals.

LANDLORD

By: 
Christopher S. Benedict

Title: Managing Member 6-12-19 Date

TENANT

By: 

Title: BOONTOWN, owner Date: 6/12/19

3,200 SF on Floor 1 of 351 W. Western Ave. Phase 1, Muskegon, MI 49440

3,200 SF on Floor 1 of 351 W. Western Ave. Phase 1, Muskegon, MI 49440

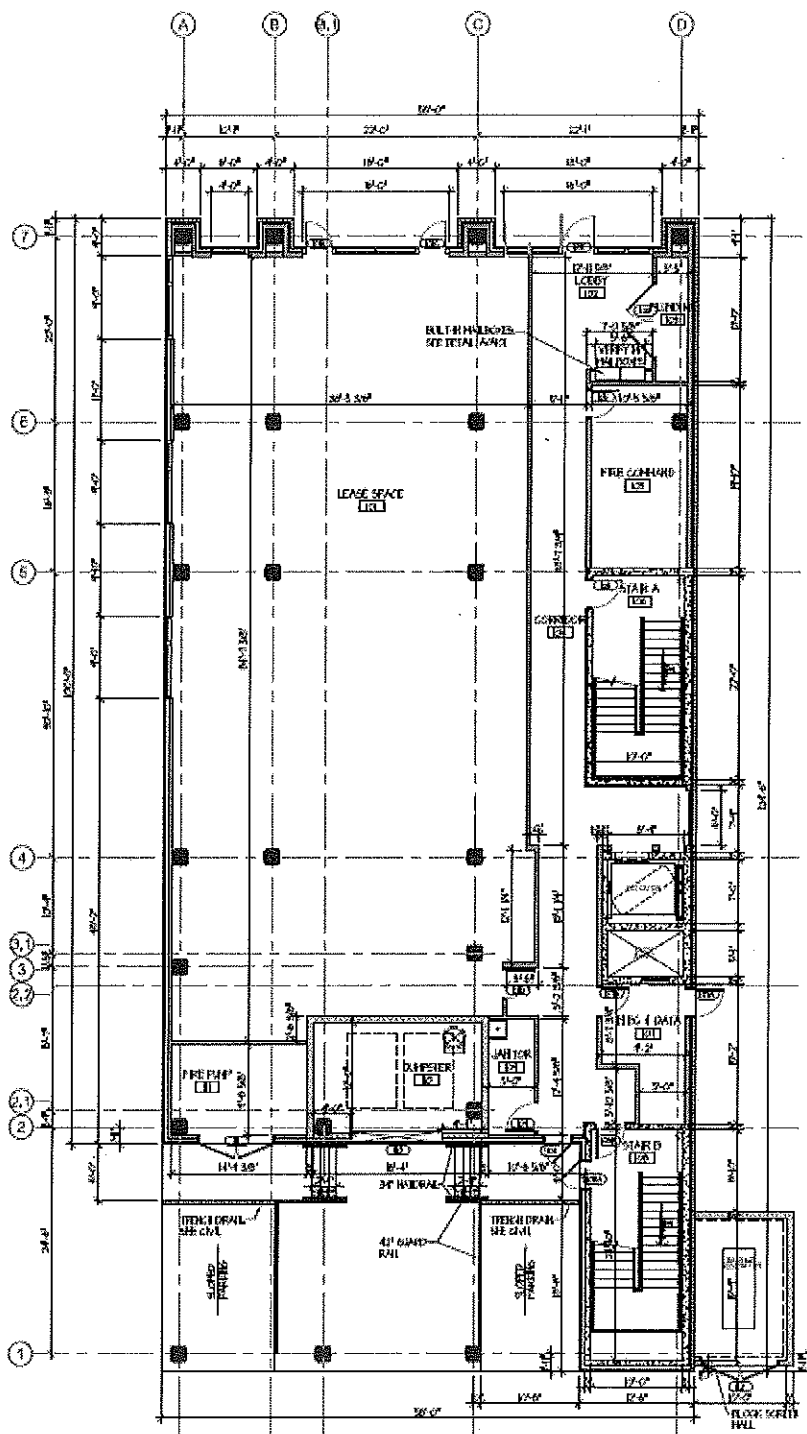


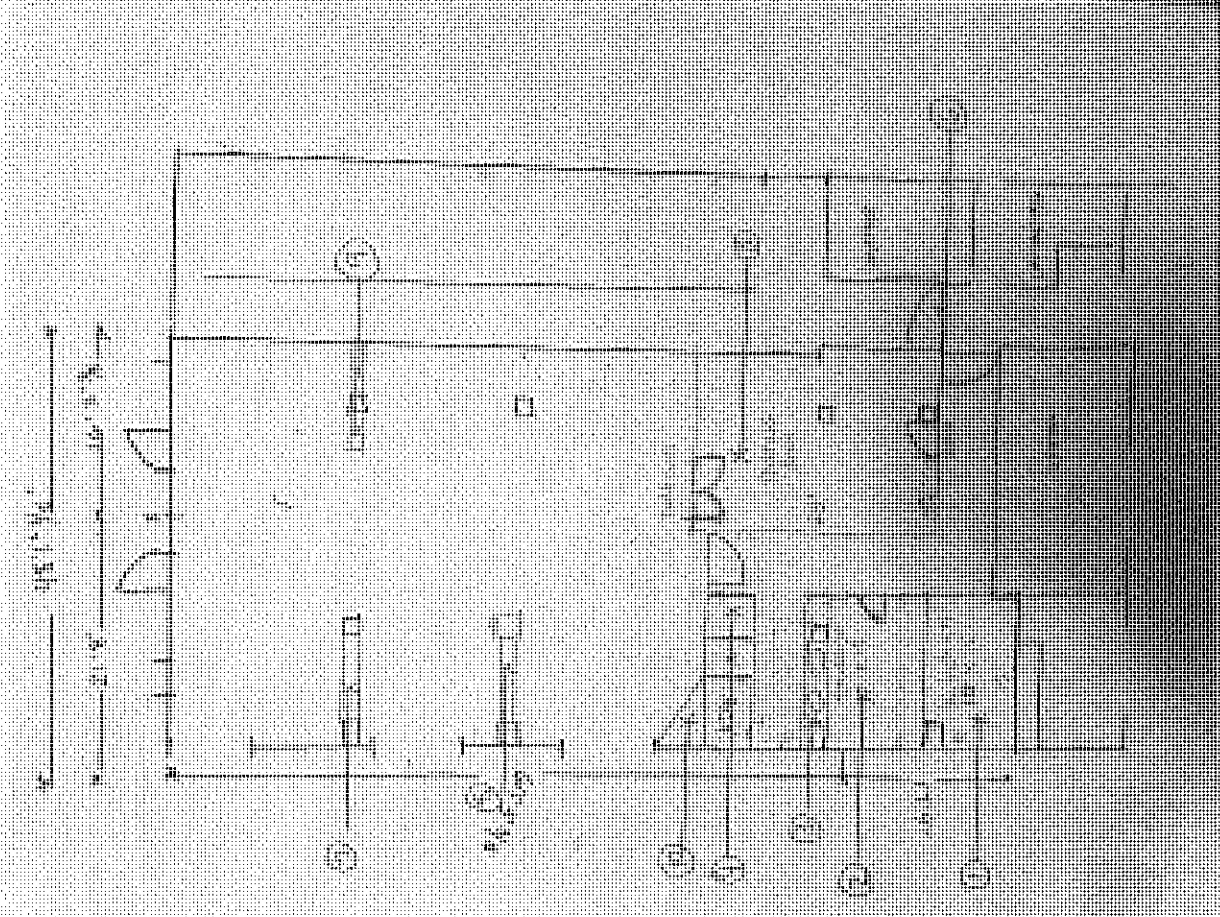
Exhibit B

a. Landlord's Work

Landlord shall provide the following scope of work:

- 1) Shell building to be structurally sound and weatherproof including all structural elements with exterior walls of brick or decorative masonry veneer at Landlord's option.
 - 2) Reinforced concrete floor slab of standard construction. Coordinate under slab plumbing, electrical, and other embedded items with Tenant's plans where possible.
 - 3) Demising walls separating Tenant's leased premises from other leased space or common area shall extend to the structural roof or floor deck, be one-hour rated, and, at minimum, be constructed of metal studs insulated with sound batt insulation and with 5/8" fire rated drywall taped and sanded ready for paint finish.
 - 4) Plenum space between finished ceiling and structural deck shall be minimum 3 feet clear where applicable.
 - 5) Second means of egress shall be 3'-0" x 7'-0" insulated hollow metal door in hollow metal frame, ADA compliant, with tamper resistant hinges,
 - 6) Storefront framing and glazing at front.
 - 7) **ELECTRICAL**
 - a) 400 Amp three-phase electrical service to and including a main distribution panel located within the leased premises at a place determined by Tenant's floor plan requirements.
 - b) Emergency and exit lighting at front and rear entrances.
 - c) Site lighting from dusk to dawn to illuminate ingress and egress.
 - 8) **PLUMBING**
 - a) ¾" minimum branch water main to a location designated by Tenant and within the leased premises.
 - b) 6" kitchen drain and 4" sanitary drain, roughed in and plugged to four (4) locations in the Tenant space as specified on floor plan. Sanitary rough-ins required for two toilet rooms, one kitchen sink, and one mop sink.
 - 9) **HVAC**
 - a) Energy efficient, electric heat pump, roof mounted heating, ventilation, and air conditioning system unit sized to deliver one ton of heating and cooling per 300 sq. ft. of lease space area. System unit shall be manufactured by Lennox, Trane, or other approved equal. Landlord shall provide unit installed and roughed in to plenum space to allow for Tenant connection and distribution.
 - b) Unit startup by Landlord.
 - c) Three (3) roof penetrations required for three (3) exhaust fans, one each in two bathrooms and one in janitor's closet.
- *NOTE: duct distribution will be completed by Tenant.
- 10) **SITE**
 - a) ADA compliant.

Exhibit C:



ADDENDUM A**CONTRACTOR / TENANT PUNCH LIST****COST/RESPONSIBILITIES**

Landlord agrees to provide Tenant the rental space in 'white box' condition; meaning electrical, HVAC, plumbing are installed per Exhibit B.

Landlord will pay for materials and construction, permits and provide all items outlined on Exhibit B

Tenant will pay for materials, permits and installation of any electrical, HVAC and / or plumbing specific to Tenant's needs.

Items are further specified below:

RESPONSIBLE PARTY

	<u>LVL</u>	<u>BTM</u>
ADA or CODE ITEMS per original building drawings	<u> X </u>	<u> </u>
ADA/CODE BOOMTOWN CUSTOM ITEMS	<u> </u>	<u> X </u>
SHORT TERM PARKING FRONT OF LOCATION	<u> </u>	<u> </u>
OCCUPANCY DETERMINATION	<u> </u>	<u> </u>
BATHROOMS: Two, (2) ADA compliant. Functional.	<u> X </u>	<u> </u>
BATHROOMS: Additional ADA fully permitted bathroom if needed. Functional.	<u> </u>	<u> X </u>
All bathrooms to include: toilets, sinks, hardware, doors, Mirrors, plumbing, exhaust fans, construction, installation.		
DRYWALL / FRAMING		
Linear and height footage of drywall(s)		
Materials, construction , , paint		
as shown on Exhibit B but re-configured to BTM needs.	<u> X </u>	<u> </u>
Structural drywall, materials, construction, permits, paint that exceeds linear / height footage		
Of Exhibit B	<u> </u>	<u> X </u>
Kitchen		
Drywall per description above	<u> X </u>	<u> </u>
Locking ADA door & install	<u> </u>	<u> </u>
Kitchen code specific plumbing	<u> </u>	<u> X </u>
Kitchen code exhaust vent / system	<u> </u>	<u> X </u>
Kitchen anti bacterial wall / floor covering	<u> </u>	<u> X </u>
Storage: Drywall per description above	<u> X </u>	<u> </u>
Locking ADA door & install	<u> </u>	<u> </u>
Tasting room:		

	Drywall per description above	<u> X </u>	<u> </u>
	1 ADA door	<u> </u>	<u> </u>
	Custom double doors & install	<u> </u>	<u> X </u>
	Custom double door locks & install	<u> </u>	<u> X </u>
HEATING/AIR	providing, installing per exhibit B	<u> X </u>	<u> </u>
LIGHTING	Fixtures, additional electric outlets beyond required		
	By code, installation	<u> </u>	<u> X </u>
ALARMS	Hard wired Smoke / Fire alarms		
	(sound & visual lights) per Exhibit B	<u> X </u>	<u> </u>
EXITS	Exit Signs (usually tied in with smoke & visual lights)		
	per exhibit B	<u> X </u>	<u> </u>
EXITS	Additional Exit Signs needed based on		
	BTM space configuration	<u> </u>	<u> X </u>
DOOR PANIC BARS			
	On two main front doors and new door		
	That leads to common back hallway	<u> X </u>	<u> </u>
	On new door within the BTM space		
	(separating tasting room, etc. from main		
	retail)	<u> </u>	<u> X </u>
TRASH BIN	Bought and Installed	TBD	<u> </u>

COMMISSION MEETING DATE June 25, 2019

Date: June 18, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: Ordinance: Operation of Electric Scooters &
Electric Bikes

SUMMARY OF REQUEST:

The Director of Public Safety requests the City Commission approve the proposed Ordinance as it pertains to the use of Electric Scooters and Electric Bikes within the City. This ordinance defines operator age requirements, allowed locations for operation and operation restrictions in reference to State and City motor vehicle requirements.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STATE EQUALIZED VALUE:

None

STAFF RECOMMENDATION:

To approve the proposed ordinance for use of Electric Scooters & Electric Bikes in the City.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

THE CITY OF MUSKEGON ORDAINS:

Chapter _____, Article _____ of the Code of Ordinances of the City of Muskegon, Michigan, Sections ____-____ through ____-____ are enacted as follows:

1. Section _____ “Purpose” is enacted to read as follows:

The purpose of this ordinance shall be to establish an Ordinance within the City to promote the health, safety and welfare of persons operating Electric Scooters and Electric Bikes within the City, and to protect the safety of other users of roads and bike trails.

2. Section _____ “Definitions” is enacted to read as follows:

For the purpose of this section, the following words and phrases shall have the following meanings:

1. Electric Scooter: A light two-wheeled electric vehicle on which the driver stands on the floorboard or deck. Electric Scooter does not include a Vespa or Moped-like vehicles, motorcycles, dirt bikes, ORVs, gas Scooters, or any similar vehicle.
2. Electric Bike: A bicycle with an integrated electric motor which can be used for propulsion. Electric Bike does not include a Vespa or Moped-like vehicles, motorcycles, dirt bikes, ORVs, gas Scooters, or any similar vehicle.
3. Operator: Only persons over 14 years of age or those under 14 years of age but over 12 years of age and under Direct Visual Supervision of an adult who is in control of the operator.
4. Bike Path: The sections of the Muskegon Lakeshore Trail, which follows the shore of Muskegon Lake and parallels Lakeshore Drive and Shoreline Drive, that lie within the City.
5. Direct Visual Supervision: Direct visual observation, by an adult who is in control of the operator, with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.

3. Section _____ “Rules and Regulations” is enacted to read as follows:

This ordinance is to establish guidance in the interest of public safety.

1. Electric Scooters and Electric Bikes may be operated on local roads, public parks, and the Bike Path.

2. Electric Shooters and Electric Bikes shall not be operated on or alongside any sidewalk. Electric Scooters are prohibited on all State trunk roads.
3. Only persons over 14 years of age or those under 14 years of age but over 12 years of age and under Direct Visual Supervision may operate an Electric Scooter or Electric Bike.
4. Any person who operates an Electric Scooter or Electric Bike on a public road must adhere to all applicable State and local laws, regulations and ordinances, including but not limited to those banning the possession and use of alcoholic beverages, and all other illegal drugs. In addition, no Electric Scooter or Electric Bike containing any open container of alcohol shall be operated on public roads.
5. The Operator of an Electric Scooter or Electric Bike shall comply with all traffic rules and regulations adopted by the State of Michigan and the City which governs the operation of motor vehicles.
6. An Operator may not allow the number of people in or on an Electric Scooter or Electric Bike at any one time to exceed the maximum capacity specified by the manufacturer. The Operator shall not allow passengers to ride on any part of an Electric Scooter or Electric Bike not designed to carry passengers.
7. In no instances shall an Electric Scooter be operated at a speed greater than 10 miles per hour on the Bike Path.
8. No Electric Scooter or Electric Bike may be operated at a speed greater than reasonable and prudent for the existing conditions.
9. Electric Scooters and Electric Bikes must be operated at the right edge of the roadway and must yield to all vehicular and pedestrian traffic.
10. Electric Scooters and Electric Bikes are prohibited from parking on any sidewalk or any other location that impedes vehicular or foot traffic. All other parking rules and limits apply.
11. Electric Scooters and Electric Bikes must have basic equipment supplied by the manufacturer.

4. Section 62.248 “Registration” is enacted to read as follows:

1. All Electric Scooters and Electric Bikes are subject to City registration requirements imposed upon bicycles.

5. Section 62.249 “Enforcement” is enacted to read as follows:

Violation of the provisions of this Ordinance shall constitute a civil infraction and carry a penalty of not less than a \$100 fine for a first violation, not less than a \$250 fine for a first repeated violation, and not less than a \$500 fine for a second repeated offense or any subsequent repeat offense.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

Publish: _____

CITY OF MUSKEGON

By _____

Ann Marie Meisch, MMC

City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the _____ day of _____, 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2019

Ann Marie Meisch, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2019, the City Commission of the City of Muskegon adopted an amendment to Chapter _____ “_____,” Article _____ “_____,” Sections ____ - ____ “_____” of the Code of Ordinances of the City of Muskegon, whereby the following change was made:

1. DRAFT AFTER CONSIDERATION.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

CITY OF MUSKEGON

Published: _____, 2019 By: _____
Ann Marie Meisch, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners
FROM: Frank Peterson, City Manager
DATE: June 18, 2019
RE: Convention Center Resolution and Agreements

SUMMARY OF REQUEST:

Staff is seeking approval of the attached Bonding Resolution and two agreements with Muskegon County. Approval of these three items simultaneously is important, as all three require approval to move the project forward. The amendment to the development agreement will better clarify the responsibilities and commitments of all three parties following our decision to adjust the size of the facility and remove prevailing wage requirements. The Accommodation Tax Allocation Agreement outlines the County's commitment to use Accommodation Tax receipts to reimburse the city its costs associated with the convention center debt. The Bonding Resolution is required 45 days prior to the issuance of capital improvement bonds.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To approve the Amendment to the Development Agreement, the Accommodation Tax Allocation Agreement, and the Bonding Resolution authorizing Issuance of 2019 Capital Improvement Bonds.

COMMITTEE RECOMMENDATION:

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This **SECOND AMENDMENT TO DEVELOPMENT AGREEMENT** relating to the development of a Convention Center is made this _____ day of June, 2019 (the "**Second Amendment**"), by and between the **County of Muskegon** ("County"), **City of Muskegon**, ("City"), and **Parkland Acquisition Two, LLC** ("Parkland") and jointly referred to as "Parties".

RECITALS

WHEREAS, County, City and Parkland are Parties to a Development relating to the construction, management, financing, and operation of a Convention Center to be located in the City dated June 12, 2018 ("Development Agreement"); and

WHEREAS, the Parties entered into a First Amendment to the Development Agreement by way of separate documents specifically being a letter from Mark Eisenbarth (Muskegon County Administrator) to Frank Peterson (Muskegon City Manager) dated May 10, 2019, with attached copy of Minutes from the Muskegon County Board of Commissioners, undated letter from Jon Rooks (Parkland Acquisition Two, LLC Manager) to Frank Peterson, and Minutes of Muskegon City Commission Meeting on May 28, 2019; and

WHEREAS, County, City and Parkland wish to further amend the Development Agreement on the terms and conditions set forth in this Second Amendment ("Second Amendment").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. 1. **INCORPORATION OF RECITALS AND DEFINED TERMS.** The above recitals are hereby incorporated into this Second Amendment as if fully set forth herein. Except as modified by the First and Second Amendment, the Development Agreement shall remain in full force and effect.

2. The parties acknowledge that as of June 4, 2019 the Holiday Inn Muskegon-Harbor, located at 939 Third Street, Muskegon Michigan has been rebranded to a Delta by Marriot.

3. Since June 12, 2018, the Parties have been working on the design and size of the Convention Center, which impacts the financial commitments associated with the Convention Center. As such, certain paragraphs of the First Amended Development Agreement need to be changed.

4. Paragraph 1.1 shall be revised to read as follows:

1.1 Property. Parkland agrees to undertake and fund a PIP (product improvement plan) and renovate the Property currently known as the Delta by Marriott to meet current brand standards associated with a Qualifying Brand hotel, and re-open as such at or before the scheduled opening of the Convention Center. Parkland's PIP shall include remodeling of the Hotel's banquet rooms and hallway adjacent to the Convention Center, in accordance with the standards for a Quality Brand Franchise. Parkland will attempt to match the design of these areas with the know design of the Convention Center,

in order to achieve consistency and uniformity between these areas and the Convention Center. In the event Parkland commences renovations of these areas prior to the receipt of a final design from the City, Parkland and City shall work together to incorporate Parkland's renovations into the final design of the Convention Center. City and Parkland shall grant to each other an irrevocable access agreement through The Delta by Marriott to the Convention Center and through the Convention Center to the Delta by Marriott, which shall be more fully described in a separate agreement. To the extent that it controls majority ownership of the Property, Parkland, or any successor owner of Delta by Marriott shall maintain a Qualifying Brand franchise at the Property until December 31, 2050. Should Parkland or any successor owner of Delta by Marriott dispose of majority ownership control of the Property or should it cease operations as a productive hotel asset without having the new owner(s) of a majority ownership control of the Property reaffirm, or in the case of transfer of the Property assume, Parkland's obligation hereunder, at the time of such event, the County would have the option to collect from Parkland or its successor owner of Delta by Marriott, if required, any calculated remaining shortfall in downtown PA 59 funding required to ameliorate the remaining debt service obligations associated with the construction of the Project. Commencing October 1, 2019 and within 90 days of the end of the City's fiscal year thereafter, the City shall report to the Parties the amount owed the City for the immediately preceding calendar year as well as all increases and reductions in the debt from the prior reporting period.

5. Paragraph 1.2 shall be revised to read as follows:

1.2 Special Assessment. Until December 31, 2050, which may be extended by the City for up to four additional years if City has not been fully compensated for expenses relating to the Convention Center, the specifically-enacted additional 4.0% PA 59 lodging tax assessment from the PA 59 Authority in downtown Muskegon will not be reduced or removed without the consent of the County. Parkland shall place a restrictive covenant that runs with the land on both properties (the Delta by Marriott and the Shoreline Inn) requiring both to support and vote in favor of the 4% PA 59 assessment so long as the matching PA 263 funds are paid by the County, until the Convention Center debt is paid in full but no longer than four years from the original deadline.

6. Paragraph 3.1 shall be amended to read as follows:

3.1 Construction. Attached to the Delta by Marriott hotel structure on the Property, and possibly the Walker Arena (but not any other structure) the City shall construct, at its own cost, a Convention Center integrating a carpeted, sub-dividable Multipurpose Hall of a minimum of 17,500 contiguous square feet and additional pre-function space. Including circulation, support and back-of-house space, the total square footage of the Convention Center will not be lower than 35,000 square feet. County may provide input to City as to the final design for the Convention Center, but recognizing that the Convention Center needs to be required size and limited expense it is City's sole obligation to approve the final design of the Convention Center. Final Convention Center construction cost figures

will be determined upon the subsequent design stage, but will not represent less than \$12.0 million in land acquisition and construction expenditures by the City and no more than \$20 million in land acquisition, construction costs, furniture, fixtures and equipment. To the extent that the total cost exceeds \$20 million, City is solely obligated to make such payment unless the County, in its sole discretion, agrees to the expense and then the payment shall be made from PA 263 funds. The County and City will pursue additional funding sources to complement the commitment, which could include State grant funding, excess PA 59 and PA 263 funds, and other sources.

City shall insure the employment of local businesses and local workers in the construction of the Convention Center "Local" shall mean located in or residence in Muskegon County.

7. Paragraph 3.2 shall be amended to read as follows:

3.2 Ownership. The Convention Center will be publicly-owned by the City. The City reserves the right to effectuate a transfer of full or partial ownership of the Convention Center to another governmental or quasi-governmental entity or authority, which includes the City and/or County, at a future time if deemed to be in the best interests of the City and residents.

In the event the City decides to transfer full or partial ownership of the Convention Center to a private for profit entity prior to December 31, 2050, Parkland would receive the first purchase bid opportunity and would be afforded the right to match any competitive purchase bid from those parties, as consolidated operations of the Convention Center and Property is ultimately desired and considered to be in the best interests of the Project and the investment of the City. The net proceeds, including the payment of all closing costs and payment of all loans related to the Convention Center, including from the City or County, of such a sale, shall be split equally between the City and County.

Parkland's option under this paragraph shall terminate with respect to such purchaser; provided, however, that if the City does not close under the same or more favorable terms to the City, as presented to Parkland, then the Parkland's option shall continue as to any subsequent proposed sales or transfers of ownership of the Convention Center and Parkland shall have the right to specifically enforce the terms of this option against the purchaser and anyone claiming through the purchaser. The options herein granted shall also survive any transfer of ownership and bind any future owner of the Convention Center in favor of such new owner so long as Parkland is the owner of the attached hotel and no later than December 31, 2050.

In the event the City receives a bona-fide offer from a purchaser who wants to buy City owned land as of the effective date of this Development Agreement within one mile of the Convention Center prior to December 31, 2028 to build a hotel, then Parkland shall have a right of first refusal to buy the property on the same terms, for a period of two months.

8. Paragraph 7.7 shall be amended to read as follows:

7.7 Cancellation Fee. In the event the City does not complete a convention center per Section 3.1 by March 31, 2021, or if the City or County terminate this Agreement, Parkland shall be entitled to recover a cancellation fee equal to the room tax collected at the increased nine (9) percent rates for the Shoreline Inn and during the four (4) years following the termination from the County and the PA 59 Authority, respectively with respect to the taxes they each collect, for the purpose of compensating Parkland for the cost of improving the hotel and other improvements situated upon the Property and for making a long term commitment to a Qualifying Brand Franchise, all of which it would never have done in the absence of this Agreement. The parties acknowledge that Parkland's loss from a termination of this Agreement is difficult to estimate and the cancellation fee is a reasonable calculation. Payment of the cancellation fee shall bar Parkland from recovering any other monetary remedy associated with the Agreement's termination. The PA 59 Authority shall remain in existence for as long as it is necessary to fulfil the obligations of this paragraph. All payments by the PA 59 Authority to the City or County shall be paid to Parkland until Parkland is fully paid the cancellation fee. The City's and County's obligations under Section 3.3 to make other new lodging enterprises subject to the tax levied by the PA 59 Authority shall survive the termination of this Agreement until the obligations of this paragraph are fully performed. The parties agree that Paragraph 7.7 shall survive any termination of this Agreement.

10. Paragraph 8.4 shall be amended to read as follows:

8.4 Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by the County Administrator for the County of Muskegon, the City Manager for the City of Muskegon, and a Manager for Parkland Acquisition Two, LLC.

THIS SECOND AMENDMENT IS HEREBY EFFECTIVE ON THE DATE IDENTIFIED ABOVE.

MUSKEGON COUNTY

BOARD OF COMMISSIONERS

Dated: _____, 2019

By: _____

Susie Hughes, its Chair

Dated: _____, 2019

By: _____

Nancy Waters, Muskegon County Clerk

CITY OF MUSKEGON

Dated: _____, 2019

By: _____

Stephen Gawron, its Mayor

Dated: _____, 2019

By: _____

Ann Marie Meisch, its Clerk

PARKLAND ACQUISITION TWO, LLC

a Michigan Limited Liability Company

Dated: _____, 2019

By: _____

Jon Rooks, Its Manager

ALLOCATION OF ACCOMMODATION TAX COLLECTION AGREEMENT

This Allocation of Accommodation Tax Collections Agreement (“Agreement”) is made this _____ day of _____, 2019 (“Effective Date”) by and between the County of Muskegon (“County”) and the City of Muskegon (“City”), pursuant to the following terms.

RECITALS

- 1) County levies an Accommodation tax upon all businesses in Muskegon County providing accommodations pursuant to Public Act 263 of 1974 being MCL 141.861, et. seq. (“PA 263”).
- 2) Parkland Acquisitions Two, LLC or related entities (“Parkland”) owns and operates the only hotels located in the City, those being the Holiday Inn Muskegon Harbor (to be branded as Delta by Marriott) located at 933 Third Street and the Shoreline Inn Hotel located at 750 Terrace Point Boulevard. Parkland in November of 2017 began collecting a 4% per room assessment pursuant to Act 59 of 1984, being MCL 141.871 (“PA 59”). Parkland is the PA 59 Board. The PA 59 Board has and will continue to transfer the PA 59 Funds to the County for tourism marketing of a proposed convention center.
- 3) The City, County and Parkland have entered into a “Development Agreement” for the design, construction, operation and ownership of a proposed convention center. City has agreed to develop, construct, and own a convention center located between the Holiday Inn Muskegon Harbor on the east, the L.C. Walker Arena on the west, Shoreline Drive on the north and Western Avenue on the south. Conceptually, the convention center shall be a carpeted, sub-dividable Multipurpose Hall of a minimum of 20,000 contiguous square feet and additional carpeted breakout meeting rooms totaling a minimum of 5,000 square feet, with circulation, support and back-of-house space, the total square footage of the Convention Center is anticipated to be not less than 35,000 square feet.
- 4) The City and County have previously entered into a “Letter of Understanding Between the County of Muskegon, the City of Muskegon and Parkland Acquisitions Two, LLC” (“Letter of Understanding”) relating to the payment by City to Progressive AE for architecture and engineering (“Progressive”). Pursuant to the Letter of Understanding, Progressive performs services relating to the design and input during construction of a convention center and bills the City and the County reimburses the City from the County’s Accommodation tax.

- 5) County has agreed to transfer PA 263 Funds to City for the design, construction, major repairs of the Convention Center and for City incurred expenses relating to the Convention Center as more fully described below.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.0 COUNTY OBLIGATIONS

- 1.1 County shall levy not less than 5% of the amount charged transient guests for lodging in any motel/hotel as provided for and defined in PA 263. County shall receive the transferred PA 59 Funds from Parkland.
- 1.2 From the PA 263 Funds held by the County, the County shall remit to the City such amounts as are necessary to pay for the design and construction, including the acquisition of furniture, fixtures and equipment and the hiring of outside advisors, related to the Convention Center, which will be more specifically described in other documents. The County consents to using no less than one hundred sixty percent (160%) of the County Room Tax from PA 263 in the City of Muskegon tax collection to pay bond payments on the City's debt.
- 1.3 County's obligations to transfer to the City the County Accommodation Tax collected shall cease on rooms rented after December 31, 2050, except that City may extend the term for up to four additional years if City has not been fully compensated for expenses relating to the Convention Center.
- 1.4 Within sixty days after the execution of this Agreement by both City and County, County shall transfer to City any monies owed pursuant to paragraph 1.2 since Parkland commenced collecting PA assessments on its hotels, less any monies transferred pursuant to the "Letter of Understanding Between the County of Muskegon, the City of Muskegon and Parkland Acquisitions Two, LLC". All other monies owed pursuant to Paragraph 1.2 shall be made to City no later than 30 days after the County collects such monies.

2.0 CITY OBLIGATIONS

- 2.1 City shall design and construct, at its own cost, a Convention Center integrating a carpeted, sub-dividable Multipurpose Hall of a minimum of

17,500 contiguous square feet and additional pre-function space, with the total square footage of the Convention Center will not be lower than 35,000 square feet.

- 2.2 To the extent that the City is obligated or agrees to pay any expense related to the Convention Center, City may use the monies transferred to the City pursuant to Paragraph 1.2. However, to the extent that the total cost to open the proposed convention center exceeds \$20 million, City is solely obligated to make such payment, unless the County, in its sole discretion, agrees to the expense in excess of \$20 million and then the payment shall be made from PA 263 funds. City may not use the monies paid pursuant to paragraph 1.2 for any purpose other than the convention center.
- 2.3 To the extent that the City makes payments relating to the Convention Center in excess of the monies collected pursuant to paragraph 1.2, City may make such expense and reimburse itself as PA 263 funds are provided.
- 2.4 Commencing October 1, 2019 and within 90 days of the end of the City's fiscal year thereafter, the City shall report to County the amount owed to the City for bonded indebtedness and Paragraph 2.3 for the immediately preceding calendar year as well as all increases and reductions in the debt from the prior reporting period.
- 2.5 After notice to County and subject to input from the County, City may undertake capital improvements, meaning any and all building additions, alterations, renovations, repairs and improvements to the Convention Center, excluding "routine maintenance" and "minor repairs". "Routine Maintenance" means any preventative or cyclical maintenance that is an essential part of the ongoing care and upkeep of the land, building, and equipment contained within the building. Routine Maintenance shall also include any on-going maintenance necessary to prevent the failure of critical and non-critical building systems and equipment. Examples of Routine Maintenance include filter changes, painting, caulking, sealing, pest control, faulty hardware, replacement, carpet cleaning, tile and grout cleaning, plumbing repairs replacement of faulty lights/fixtures/wiring, and upkeep of alarms, detectors, surveillance systems, and energy management systems. Minor repairs shall be defined as land, building and equipment repairs of non-routine nature costing less than \$5,000, which is

to be increased by the consumer price index on the first of each year, per repair. The County shall only be responsible for providing funding from the future growth in the PA 263 and PA 59 to support the cost of capital improvements.

3.0 GENERAL PROVISIONS

- 3.1 This is the entire agreement, including attachments, between the parties as to its subject. It shall not be amended or modified except in writing signed by County Administrator for the County and City Manager for the City. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. This Agreement shall be interpreted and construed in accordance with Michigan law, and the parties agree to jurisdiction and venue within the courts for the County of Muskegon.
- 3.2 Effective upon execution of this Agreement and the payment of any monies owed pursuant to paragraph 1.2 of this Agreement the “Letter of Understanding Between the County of Muskegon, the City of Muskegon and Parkland Acquisitions Two, LLC” shall be terminated.
- 3.3 Any and all notices and other communications required or permitted to be given hereunder shall be in writing, addressed to the parties at the addresses specified below or such other addresses as either party may direct by notice given in accordance with this section, and shall be delivered in one of the following manners: (i) by personal delivery, in which case notice shall be deemed to have been duly given when delivered; (ii) by certified mail, return receipt requested, with postage prepaid, in which case notice shall be deemed to have been duly given on the date indicated on the return receipt; (iii) by reputable delivery service (including by way of example and not limitation, Federal Express, UPS and DHL) which makes a record of the date and time of delivery, in which case notice shall be deemed to have been duly given on the date indicated on the delivery service’s record of delivery; or by email, with receipt of the communication being acknowledged by the recipient.

If to the County:

County of Muskegon
Administration, 4th Floor
990 Terrace St.
Muskegon, Michigan 49442
Attention: Mark Eisenbarth

With a Copy To: Williams Hughes, PLLC
County of Muskegon Corporate Counsel
120 W. Apple Avenue, PO Box 599
Muskegon, Michigan 49443-0599
Attention: Douglas M. Hughes

If to the City: City of Muskegon
933 Terrace Street
Muskegon, Michigan 49440
Attention: Frank Peterson, City Manager

With a Copy To: Parmenter Law
City of Muskegon Corporate Counsel
601 Terrace Street
Muskegon, Michigan 49440
Attention: John C. Schrier

- 3.4 If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Agreement.
- 3.5 This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. An executed copy of this Agreement may be delivered by either party by electronic transmission and such execution and delivery shall be considered valid, binding and effective for all purposes.
- 3.6 The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.
- 3.7 The parties agree to execute such further agreements or instruments as may be reasonably necessary to implement the terms of this Agreement, so long as such agreements or instruments do not amend or modify the terms of this Agreement or either party's obligations hereunder. The parties further covenant to work in good faith to implement the terms of this Agreement, to permit the development of the Project in accordance with the terms hereof, and to meet as and when reasonably required in order to address issues of concern to either party in connection with the

development of the Project and the matters contemplated under this Agreement.

- 3.8 Both 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 either party hereto.

WHEREFORE, this Agreement has been executed as of the Effective Date.

MUSKEGON COUNTY
BOARD OF COMMISSIONERS

Dated: _____, 2019

By: _____
Susie Hughes, its Chair

Dated: _____, 2019

By: _____
Nancy Waters, Muskegon County Clerk

CITY OF MUSKEGON

Dated: _____, 2019

By: _____
Stephen Gawron, its Mayor

Dated: _____, 2019

By: _____
Ann Marie Meisch, its Clerk

**RESOLUTION AUTHORIZING ISSUANCE OF
2019 CAPITAL IMPROVEMENT BONDS
(LIMITED TAX GENERAL OBLIGATION) (TAXABLE)**

**City of Muskegon
County of Muskegon, State of Michigan**

Minutes of a regular meeting of the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, held on June 11, 2019, at 5:30 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), has previously determined that it is necessary to pay to pay all or part of the cost to acquire, construct, furnish and equip a new convention center, including site acquisition, demolition and related site improvements (the "Project"); and

WHEREAS, the City, the County of Muskegon (the "County") and Parkland Acquisition Two, LLC (the "Developer"), have entered into a Development Agreement (as amended, the "Development Agreement"), pursuant to which the Project will be constructed and financed; and

WHEREAS, pursuant to the Development Agreement, the County has agreed to pay to the City certain excise taxes on hotel rooms levied by the County pursuant to Act 263, Public Acts of Michigan, 1974, as amended ("Act 263") to be used for the Project (the "Act 263 Revenues"); and

WHEREAS, the City deems it necessary to borrow the principal amount of not to exceed Twenty Million Dollars (\$20,000,000) and issue capital improvement bonds (the "Bonds" as further defined below) pursuant to Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), to pay part of the cost of the Project; and

WHEREAS, the City has previously published a notice of intent to issue the Bonds in accordance with Act 34, which provides that the Bonds may be issued without a vote of the electors of the City unless a proper petition for an election on the question of the issuance of the Bonds is filed with the City Clerk within a period of forty-five (45) days from the date of publication and no petition has been filed as of this date; and

WHEREAS, the City desires to negotiate the sale of the Bonds to Robert W. Baird & Co. (the "Underwriter") within the parameters established by this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Bonds; Bond Terms. Bonds of the City designated 2019 Capital Improvement Bonds (Limited Tax General Obligation) (Taxable) (the “Bonds”) are authorized to be issued in the aggregate principal sum of not to exceed Twenty Million Dollars (\$20,000,000) for the purpose of paying all or part of the costs of the Project and the costs incidental to the issuance, sale and delivery of the Bonds. The issue shall consist of bonds in fully-registered form of the denomination of \$5,000, or multiples thereof not exceeding for each maturity the maximum principal amount of that maturity, numbered consecutively in order of registration. The Bonds will be dated as of the date of delivery (or such other date as determined at the time of sale thereof), be payable on April 1 in the years 2020 to 2049, inclusive (or such other date and in such years as determined at the time of sale thereof), in the annual amounts determined at the time of sale and be subject to redemption in the manner and at the times and prices to be determined at the time of sale by the City Manager, Finance Director or City Clerk (each, an “Authorized Officer” and collectively, the “Authorized Officers”).

The Bonds shall bear interest at a rate or rates to be determined at the time of sale thereof, but in any event not to exceed six percent (6.00%) per annum, first payable on October 1, 2019 and semiannually thereafter each April 1 and October 1, by check or draft mailed by the Transfer Agent (as hereinafter defined) to the registered owner of record as of the 15th day of the month prior to the payment date for each interest payment. The record date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future. The principal of the Bonds shall be payable at The Huntington National Bank, Grand Rapids, Michigan, which is hereby selected to act as the transfer agent for the Bonds (the “Transfer Agent”).

2. Execution of Bonds; Book-Entry-Only Form. The Bonds of this issue shall be executed in the name of the City with the manual or facsimile signatures of the Mayor and City Clerk and shall have the seal of the City, or a facsimile thereof, printed or impressed on the Bonds. No Bond executed by facsimile signatures shall be valid until authenticated by an authorized officer or representative of the Transfer Agent.

The Bonds may be issued in book-entry-only form through the Depository Trust Company in New York, New York (“DTC”) and any Authorized Officer is authorized to execute such custodial or other agreement with DTC as may be necessary to accomplish the issuance of the Bonds in book-entry-only form and to make such changes in the Bond form within the parameters of this resolution as may be required to accomplish the foregoing.

3. Transfer of Bonds. The Transfer Agent shall keep the books of registration for this issue on behalf of the City. Any Bond may be transferred upon such registration books by the registered owner of record, in person or by the registered owner’s duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Transfer Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer.

4. Security for the Bonds; Limited Tax Pledge; Defeasance of Bonds. The City hereby

pledges its limited tax full faith and credit for the prompt payment of the principal and interest on the Bonds. The City shall, each year budget the amount of the debt service coming due in the next fiscal year on the principal of and interest on the Bonds and shall advance as a first budget obligation from its general funds available therefor, or, if necessary levy taxes upon all taxable property in the City subject to applicable constitutional, statutory and charter tax rate limitations, such sums as may be necessary to pay such debt service in said fiscal year.

The City Treasurer is authorized and directed to open a separate fund to be known as the 2019 CAPITAL IMPROVEMENT BONDS DEBT RETIREMENT FUND (the "Debt Retirement Fund"), the moneys to be deposited into the Debt Retirement Fund to be specifically earmarked and used solely for the purpose of paying principal of and interest on the Bonds as they mature. There shall be paid into the Debt Retirement Fund any Act 263 Revenues or other moneys intended for the payment of the Bonds.

In the event cash or direct obligations of the United States or obligations the principal of and interest on which are guaranteed by the United States, or a combination thereof, the principal of and interest on which, without reinvestment, come due at times and in amounts sufficient to pay at maturity or irrevocable call for earlier optional redemption, the principal of, premium, if any, and interest on the Bonds, shall be deposited in trust, this resolution shall be defeased and the owners of the Bonds shall have no further rights under this resolution except to receive payment of the principal of, premium, if any, and interest on the Bonds from the cash or securities deposited in trust and the interest and gains thereon and to transfer and exchange Bonds as provided herein.

5. Construction Fund; Proceeds of Bond Sale. The City Treasurer is authorized and directed to open a separate account to be known as the 2019 CAPITAL IMPROVEMENT BONDS CONSTRUCTION FUND (the "Construction Fund"). The Treasurer shall deposit the proceeds of the Bonds less accrued interest and capitalized interest, if any, which shall be deposited into the Debt Retirement Fund. The moneys in the Construction Fund shall be used solely to pay the costs of the Project and the costs of issuance of the Bonds.

6. Bond Form. The Bonds shall be in substantially the following form with such changes as may be required to conform the Bond to the final terms of the Bonds established by the Sale Order:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MUSKEGON

CITY OF MUSKEGON
2019 CAPITAL IMPROVEMENT BOND
(LIMITED TAX GENERAL OBLIGATION)(TAXABLE)

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
Registered Owner:	April 1, 20__	_____, 2019	
Principal Amount:		Dollars	

The City of Muskegon, County of Muskegon, State of Michigan (the "City"), acknowledges itself to owe and for value received hereby promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above, in lawful money of the United States of America, on the Maturity Date specified above, unless prepaid prior thereto as hereinafter provided, with interest thereon (computed on the basis of a 360-day year consisting of twelve 30-day months) from the Date of Original Issue specified above or such later date to which interest has been paid, until paid, at the Interest Rate per annum specified above, first payable on October 1, 2019 and semiannually thereafter. Principal of this bond is payable at the corporate trust office of The Huntington National Bank, Grand Rapids, Michigan, or such other transfer agent as the City may hereafter designate by notice mailed to the registered owner not less than sixty (60) days prior to any interest payment date (the "Transfer Agent"). Interest on this bond is payable to the registered owner of record as of the 15th day of the month preceding the interest payment date as shown on the registration books of the City kept by the Transfer Agent by check or draft mailed by the Transfer Agent to the registered owner of record at the registered address.

This bond is one of a series of bonds of even Date of Original Issue aggregating the principal sum of \$_____, issued pursuant to the provisions of Act 34, Public Acts of Michigan, 2001, as amended and pursuant to a resolution of the City Commission of the City adopted on _____, 2019 for the purpose of paying the cost of various capital improvements for the City.

This bond, including the interest thereon, is payable as a first budget obligation from the general funds of the City, and the City is required, if necessary, to levy ad valorem taxes on all taxable property in the City for the payment thereof, subject to applicable constitutional, statutory and charter tax rate limitations.

Bonds of this issue maturing in the years 20__ to 20__, inclusive, shall not be subject to redemption prior to maturity. Bonds or portions of bonds of this issue in multiples of \$5,000 maturing in the year 20__ and thereafter shall be subject to redemption prior to maturity, at the option of the City, in any order of maturity and by lot within any maturity, on any date on or after ____ 1, 20__, at par and accrued interest to the date fixed for redemption.

[Insert Term Bond Provisions, if applicable.]

In case less than the full amount of an outstanding bond is called for redemption, the Transfer Agent, upon presentation of the bond called in part for redemption, shall register, authenticate and deliver to the registered owner of record a new bond in the principal amount of the portion of the original bond not called for redemption.

Notice of redemption shall be given to the registered owner of any bond or portion thereof called for redemption by mailing of such notice not less than thirty (30) days prior to the date fixed for redemption to the registered address of the registered owner of record. A bond or portion thereof so called for redemption shall not bear interest after the date fixed for redemption, whether presented for redemption or not, provided funds are on hand with the Transfer Agent to redeem said bond or portion thereof.

This bond is transferable only upon the registration books of the City kept by the Transfer Agent by the registered owner of record in person, or by the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the resolution authorizing this bond and upon the payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this bond and the series of bonds of which this is one, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the City, including this bond and the series of bonds of which this is one, does not exceed any constitutional, statutory or charter debt limitation.

This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.

IN WITNESS WHEREOF, the City, by its City Commission, has caused this bond to be signed in the name of the City by the facsimile signatures of its Mayor and City Clerk and a facsimile of its corporate seal to be printed hereon, all as of the Date of Original Issue.

CITY OF MUSKEGON
County of Muskegon
State of Michigan

By: _____
Its: Mayor

(SEAL)

By: _____
Its: City Clerk

(Form of Transfer Agent's Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned resolution.

THE HUNTINGTON NATIONAL BANK
Grand Rapids, Michigan
Transfer Agent

Transfer Agent

By: _____

Authorized: _____

DATE OF REGISTRATION:

[Bond printer to insert form of assignment]

7. Useful Life of Project. The estimated period of usefulness of the Project is hereby declared to be not less than thirty (30) years.

8. Negotiated Sale. The City Commission has considered the option of selling the Bonds through a competitive sale and a negotiated sale and, pursuant to the requirements of Act 34, based on the advice of its financial advisor, determines that a negotiated sale of the Bonds will allow more flexibility in accessing the municipal bond market, and to price and sell the Bonds at the time that is expected to best achieve the most advantageous interest rates and costs to the City, and will provide the City with greater flexibility in structuring bond maturities and adjusting terms for the Bonds.

9. Bond Purchase Agreement; Delegation to Authorized Officer; Sale Order. The Authorized Officers are each individually authorized to negotiate the sale of the Bonds to the Underwriter, negotiate and execute a bond purchase agreement with the Underwriter, execute a Sale Order specifying the final terms of the Bonds and take all other necessary actions required to effectuate the sale, issuance and delivery of the Bonds within the parameters authorized in this resolution.

10. Adjustment of Bond Terms. The Authorized Officers are each individually authorized to adjust the final bond details as set forth herein to the extent necessary or convenient to complete the sale of the Bonds and in pursuance of the foregoing are each authorized to exercise the authority and make the determinations pursuant to Sections 315(1)(d) of Act 34, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, date of issuance, interest payment dates, redemption rights, and other matters within the parameters established by this resolution; provided that the principal amount of Bonds issued shall not exceed the principal amount authorized in this resolution, the interest rate per annum on the Bonds shall not exceed 6.00% per annum and the underwriter's discount shall not exceed 0.75% of the par amount of the Bonds.

11. Continuing Disclosure Undertaking. The City covenants to enter into a continuing disclosure undertaking for the benefit of the holders and beneficial owners of the Bonds in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission, and each of the Authorized Officers are authorized to execute such undertaking prior to delivery of the Bonds.

12. Bond Counsel. Miller, Canfield, Paddock and Stone, P.L.C. is hereby approved as bond counsel for the Bonds, notwithstanding periodic representation in unrelated matters of the Underwriter and other parties or potential parties to the transaction contemplated by this resolution.

13. Authorization of other Actions. The Authorized Officers are each authorized and directed to (a) approve the circulation of a preliminary official statement describing the Bonds and to deem the preliminary official statement "final" for purposes of Rule 15c2-12 of the SEC; (b) approve the circulation of a final official statement describing the Bonds and to execute the same on behalf of the City; (c) solicit bids for and approve the purchase of a municipal bond insurance policy for the Bonds, if deemed economically advantageous to the City; and (d) do all other acts and take all other necessary procedures required to effectuate the sale, issuance and

delivery of the Bonds.

14. Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

Ann Marie Meisch
City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on June 11, 2019, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Ann Marie Meisch
City Clerk

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Commission Meeting Date: June 25, 2019

Date: June 20, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
**RE: Request for Final Planned Unit Development (PUD) Approval
including Street Vacations – The Docks**

SUMMARY OF REQUEST:

Request for final PUD approval for The Docks development at 3400, 3460, 3474 Wilcox Ave, 1875 Waterworks Rd and 1490 Edgewater St. This request also includes the request to vacate Edgewater St, north of Lot 80 and the following unimproved streets within the Edgewater Plat, those being Arlington Ave, west of lot 24; Windward Dr, west of Lot 46; Brighton Ave, west of Lot 66; Manhattan Ave, west of the existing cul-de-sac portion of Edgewater St; and Edgewater St north of the existing cul-de-sac.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the PUD with the condition to add more street trees and to work with the staff arborist on marking trees to remain.

COMMITTEE RECOMMENDATION:

The Planning Commission approved a motion to recommend approval of the PUD with conditions by an 8-1 vote.

Hearing, Case 2019-17: Request for Final Planned Unit Development approval at 3400, 3460, 3474 Wilcox Ave, 1875 Waterworks Rd and 1490 Edgewater St by MiCOAST Properties, LLC.

SUMMARY

1. Staff has worked with the developer closely on the plan, so all of the pertinent information regarding the proposed development can be found in “The Docks” binder.
2. The preliminary plan was approved with conditions at the October 11, 2018 Planning Commission meeting. Those conditions are as follows:
 - a. All access points shall be eliminated with the exception of the proposed road over the dunes at Waterworks Rd.
 - b. Additional road connections as noted in the staff recommendation are eliminated.
 - c. The parking lot north of the condo building should be more separated from the existing homes; The setback should be increased and it should be fully screened with trees to create a buffer.
 - d. The alleys or rear lanes are eliminated along properties on Edgewater St., Wilcox Ave. and Harbour Towne.
3. The ordinary high water mark of the lake is 580.4 feet and all buildings must be constructed above this mark. This plan meets that requirement.
4. Although there is only one road leading into the development, a second “emergency access” route will be located near Sand Dock Ct in Harbour Towne. This road will be constructed with “grasscrete,” which is a type of pavement that is rated for heavy fire equipment, but will have grass growing on top of it. Please see the example picture below.
5. This plan relies on the vacation of several non-improved street Right-of-Ways and the relocation of the existing cul-de-sac on Edgewater St 90 feet to the south. These are discussed in the following cases.
6. Please see enclosed “Condo Parking Layout” that was not included in the binder. There will be 34 parking spaces located on the first floor of the condo building.
7. Staff would like to see more trees in the Right-of-Way along the main street that runs north-south. The developer has also suggested that they would like to work with City staff on marking certain existing trees to remain.
8. Notice was sent to property owners within 300 feet of the project boundaries. Please see the enclosed email comments from the public.

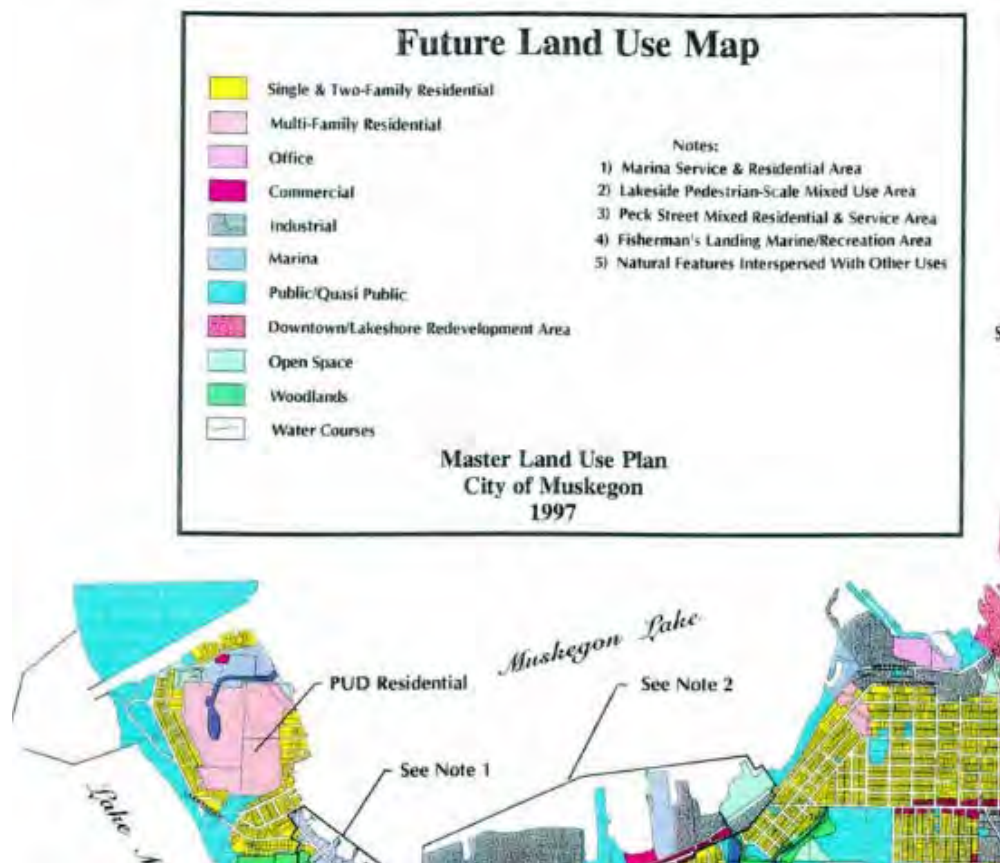
MASTER PLAN

Both the 1997 Master Land Use Plan and the recently approved Imagine Muskegon Lake Plan advocate for this type of development. The 1997 Master Land Use Plan calls for residential units with different types of housing options and even recommends a Planned Unit Development. The Imagine Muskegon Lake plan calls for residential and mixed uses.

Imagine Muskegon Lake Plan



Master Land Use Plan



Example of “grasscrete”



**CITY OF MUSKEGON
RESOLUTION #2019-**

RESOLUTION TO APPROVE THE FINAL PLANNED UNIT DEVELOPMENT FOR
3400, 3460, 3474 WILCOX AVE, 1875 WATERWORKS RD, 1490 EDGEWATER ST

WHEREAS, a petition for a Planned Unit Development was received for a mixed-use development at 3400, 3460, 3474 Wilcox Ave, 1875 Waterworks Rd and 1490 Edgewater St; and,

WHEREAS, proper notice was given by mail and publication and public hearings were held by the City Planning Commission and by the City Commission to consider said petition, during which all interested persons were given an opportunity to be heard in accordance with provisions of the Zoning Ordinance and State Law; and

WHEREAS, the Planning Commission and staff have recommended approval of the Final Planned Unit Development and associated site plan, with the following conditions:

- o The developer work with the staff arborist on landscaping modifications, including marking trees to remain.

NOW, THEREFORE, BE IT RESOLVED that the recommendation by staff and the Planning Commission be accepted and the final Planned Unit Development is hereby approved, contingent upon the conditions listed above being incorporated into a revised site plan, to be approved by staff.

Adopted this 25th day of June, 2019

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron
Mayor

Attest: _____
Ann Meisch
Clerk, City of Muskegon

CERTIFICATE

(Final PUD 3400, 3460, 3474 Wilcox Ave, 1875 Waterworks Rd and 1490 Edgewater St)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 25th day of June, 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2019.

Ann Meisch
Clerk, City of Muskegon

Hearing, Case 2019-18: Request to vacate the existing cul-de-sac portion of Edgewater St (north of Lot 80).

PLANNING COMMISSION EXCERPT

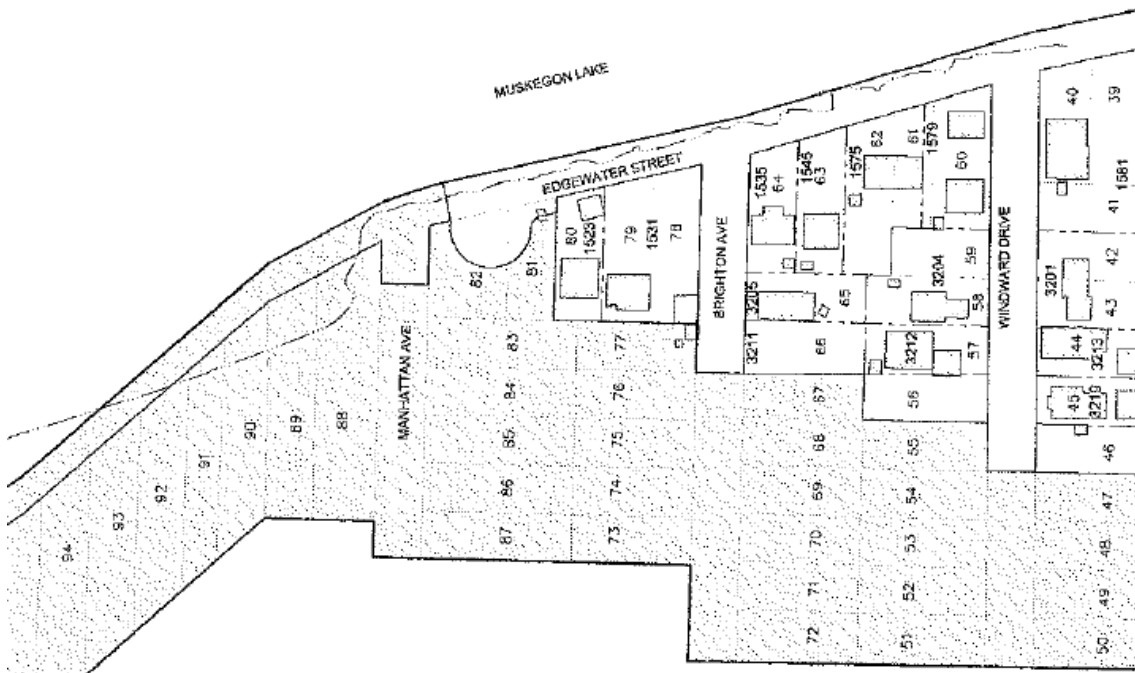
SUMMARY

1. This request is to allow for the development of lots 115 and 116 of the Docks development. The street would be vacated north of Lot 80. A new cul-de-sac would be installed just to the south of the one that currently exists.
2. Notice was sent to all affected property owners and staff did not receive any comments from the public.

Existing Cul-de-sac



Depiction of relocated cul-de-sac



TY OF MUSKEGON

CI

RESOLUTION No. _____

RESOLUTION TO VACATE A PORTION OF A PUBLIC STREET

WHEREAS, a petition has been received to vacate Edgewater St, north of Lot 80; and

WHEREAS, the Planning Commission held a public hearing on June 13, 2019 to consider the petition and subsequently recommended the vacation; and

WHEREAS, due notice had been given of said hearing as well as the June 25, 2019 City Commission meeting to consider the recommendation of the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Commission deems it advisable for the public interest to vacate and discontinue Edgewater St, north of Lot 80; and

BE IT FURTHER RESOLVED that the City Commission does hereby declare the said portion of street vacated and discontinued provided, however, that this action on the part of the City Commission shall not operate so as to conflict with any fire access or the utility rights heretofore acquired by the City or by any public service utility in the City of Muskegon, operating in, over and upon said portion of street hereby vacated, and it is hereby expressly declared that any such rights shall remain in full force and effect;

BE IT FURTHER RESOLVED that after any maintenance and repair by the City, the city shall restore the disturbed area to the grade and paving in existence at the time of vacation. The City shall not be responsible to replace special planting, landscaping, fences or any structure. No structure shall be placed in the vacated street which, in the sole judgment of the City, will interfere with the repair or maintenance of utilities in the easement, public or private.

Adopted this 25th day of June 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE (Vacation of Edgewater St, north of Lot 80)

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan, at a regular meeting held on June 25, 2019.

Ann Meisch, MMC
Clerk, City of Muskegon

Hearing, Case 2019-19: Request to vacate the unimproved streets within the Edgewater Plat, those being (a) Arlington Ave, west of lot 24; (b) Windward Dr, west of Lot 46; (c) Brighton Ave, west of Lot 66; (d) Manhattan Ave, west of the existing cul-de-sac portion of Edgewater St; and (e) Edgewater St north of the existing cul-de-sac.

SUMMARY

1. This request to vacate these unimproved streets is necessary in order to replat the map to allow for the Docks development.

2. Notice was sent to all affected property owners and staff did not receive any comments from the public.
3. Please see the map on the last page of the binder under Tab 8 that depicts the lots by number.

Unimproved Streets Map



CITY OF MUSKEGON

RESOLUTION No. _____

RESOLUTION TO VACATE PUBLIC STREETS

WHEREAS, a petition has been received to several unimproved streets in the Edgewater Plat; and

WHEREAS, those streets being Arlington Ave, west of lot 24; Windward Dr, west of Lot 46; Brighton Ave, west of Lot 66; Manhattan Ave, west of the existing cul-de-sac portion of

Edgewater St; and Edgewater St north of the existing cul-de-sac.

WHEREAS, the Planning Commission held a public hearing on June 13, 2019 to consider the petition and subsequently recommended the vacations; and

WHEREAS, due notice had been given of said hearing as well as the June 25, 2019 City Commission meeting to consider the recommendation of the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Commission deems it advisable for the public interest to vacate and discontinue Edgewater St, north of Lot 80; and

BE IT FURTHER RESOLVED that the City Commission does hereby declare the said portion of street vacated and discontinued provided, however, that this action on the part of the City Commission shall not operate so as to conflict with any fire access or the utility rights heretofore acquired by the City or by any public service utility in the City of Muskegon, operating in, over and upon said portion of street hereby vacated, and it is hereby expressly declared that any such rights shall remain in full force and effect;

BE IT FURTHER RESOLVED that after any maintenance and repair by the City, the city shall restore the disturbed area to the grade and paving in existence at the time of vacation. The City shall not be responsible to replace special planting, landscaping, fences or any structure. No structure shall be placed in the vacated street which, in the sole judgment of the City, will interfere with the repair or maintenance of utilities in the easement, public or private.

Adopted this 25th day of June 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE (Vacation of Edgewater St, north of Lot 80)

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan, at a regular meeting held on June 25, 2019.

Ann Meisch, MMC
Clerk, City of Muskegon