CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 24, 2014

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- □ **CALL TO ORDER:**
- □ **PRAYER:**
- □ **PLEDGE OF ALLEGIANCE:**
- □ **ROLL CALL:**
- □ **HONORS AND AWARDS:**
- □ **INTRODUCTIONS/PRESENTATION:**
- □ **CITY MANAGER'S REPORT:**
- □ **CONSENT AGENDA:**

  A. **Approval of Minutes.** CITY CLERK

  B. **Extension of the Moratorium for Establishments of Medical Marijuana Facilities.** CITY CLERK

  C. **Wheel Loader.** PUBLIC WORKS

  D. **Mini Excavator.** PUBLIC WORKS

  E. **Selection of Vinyl Siding Supplier for Fiscal Year 2014-2015.** COMMUNITY & NEIGHBORHOOD SERVICES

  F. **"Rule of 1" Question on General Ballot.** CITY MANAGER

- □ **PUBLIC HEARINGS:**
- □ **COMMUNICATIONS:**
- □ **UNFINISHED BUSINESS:**
- □ **NEW BUSINESS:**

  A. **Heritage Square Development LLC – Construction Loan Agreement and Other Document Approval.** PLANNING & ECONOMIC DEVELOPMENT

  B. **Farmers' Market Rentals.** PLANNING & ECONOMIC DEVELOPMENT

  C. **Police Review Board Minority Coalition.** CITY CLERK

D. **<u>Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following:</u>** PUBLIC SAFETY

254 Monroe

1245 Fleming (garage only)

30 E. Clay

E. **<u>Resolution to Place Question to Increase Tax Levy on Ballot.</u>** CITY MANAGER

□ **ANY OTHER BUSINESS:**

□ **PUBLIC PARTICIPATION:**

► **Reminder: Individuals who would like to address the City Commission shall do the following:**
► Fill out a request to speak form attached to the agenda or located in the back of the room.
► Submit the form to the City Clerk.
► Be recognized by the Chair.
► Step forward to the microphone.
► State name and address.
► Limit of 3 minutes to address the Commission.
► (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

□ **CLOSED SESSION:**

A. **<u>Attorney-Client Privileged Communications.</u>**

B. **<u>City Manager's Evaluation.</u>**

□ **ADJOURNMENT:**

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

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: June 24, 2014

We have a number of items on the agenda, and I thought you could use a little background on them as you prepare for our meeting next week.

1. We are proposing an extension to the medical marijuana moratorium while we finalize a proposed ordinance amendment. We should be ready to implement the new ordinance next month.
2. The Department of Public Works is purchasing two pieces of equipment – a loader and a mini excavator.
3. We have received bids for the purchase of vinyl siding for our vinyl siding program and are asking for approval to select a vendor. We are still working on a plan for installation.
4. We are asking the Commission to place ballot language on the November Ballot to eliminate the "rule of 1" for promotions. This was recommended by the Civil service Commission.
5. The Heritage Square loan documents are ready for formal Commission action.
6. We have a plan for renting the farmers market for private events. The proposed fee schedule is attached. We would like to have it in place for this year while we evaluate our costs. We are also expecting to be able to waive the fee in certain circumstances – likely in exchange for other in-kind services.
7. The Police Review Board Minority Coalition has come to a mutual agreement on how certain appointments should be made going forward.
8. We are looking for concurrence with the housing board of appeals on three demolitions. I recommend approval. These parties have had opportunities to go before the HBA, and their next course of action should be the Muskegon County court system.
9. Staff is recommending the Commission consider a ballot measure asking the community to support raising the millage cap from 10 mills to 14 Mills. We had a number of meetings to discuss our needs in terms of street infrastructure, and have gathered community input from two separate CRC meetings. There appears to be both a recognizable need as well as support for millage dollars dedicated to street infrastructure. The additional 4 mills will raise approximately $2 Million annually. Over the next few weeks, City staff will work on a plan to identify how the new dollars should be spent – street lights, major roads, neighborhood streets, etc. We should also continue to spend time visiting neighborhood groups and other community meetings to talk about our street needs. Eventually, we will ask the Commission to commit be Resolution to a spending plan for the additional mills.

Date: June 24, 2014

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the June 9th Commission Worksession Meeting, and the June 10th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon
City Commission Worksession
June 9, 2014
City Commission Chambers
5:30 PM

MINUTES

2014-42
Present: Commissioners Hood, Rinsema-Sybenga, Gawron, Johnson, German, Turnquist, and Spataro.
Absent: None.

Farmers Market Permit to a Qualified Small Wine Maker.
A new state law now allows wine sampling at Farmers Markets. A maximum of three samples may be given. Samples can be no more than 2 ounces.

Motion by Vice Mayor Spataro, seconded by Commissioner Johnson to authorize staff to adopt regulations to allow Farmers Market vendors to have wine tasting in conformity with the new state law.

Roll Call Vote:

Ayes: Gawron, Hood, Spataro, German, Rinsema-Sybenga, Turnquist, and Johnson.
Nays: None.

MOTION PASSES

2014-15 Budget.
The third quarter budget re-forecast was given.

Proposed general fund expenditures are $24,733,617 and are up from the 2013-14 original budget of $23,775,700. Revenues for 2014-15 are estimated at $24,733,981 and are up from the 2013-14 original budget of $23,183,205. This essentially creates a break even budget for 2014-15.

The budget includes the elimination of two code compliance inspector positions and one customer service representative I position (environmental services) with the privatization of environmental and rental code compliance services. Three additional firefighter positions were added with the reduction in contractual services for part-time firefighters.

The budget does include a .5 mill increase for refuse and a .5 mill increase to the overall millage rate and represents a balanced budget.

The budget reflects the continued contractual relationship with SafeBuilt to provide trade inspection services and rental inspection services. We will continue to contract recreation services with outside agencies at the same funding level.

Due to relatively low ridership, staff is proposing the elimination of senior transit services.

Refuse collection costs are anticipated to increase by 1%, pursuant to the contract with Republic.

Over $499,000 has been budgeted for capital improvements that include playground equipment, radios for the fire department, GIS mapping of grave sites, replacement of windows at city hall, force continuum equipment for police department, ADA compliance at various locations, roof repair or replacement at fire station #4, and Veteran's Park upgrades.

A proposed millage increase was discussed. Staff was directed to finalize a proposal and take it to the June 24, 2014 Commission meeting for consideration of the November ballot.

Commissioners asked several questions regarding various line items within the proposed budget. The City Manager, Finance Director, and staff answered questions.

The public hearing on the budget will take place at the Commission meeting on Tuesday, June 10, 2014 Commission meeting.

Any Other Business.

After a discussion with city staff, the City Manager recommended the Commission consider placing a question on the November ballot to remove the "Rule of 1" from the Civil Service rules. The "Rule of 1" currently allows an employee with the highest score to promote into a position. Removing the rule would allow supervisors to select any employee with a passing score for promotion.

This item has been placed on the June 24, 2014 agenda for consideration by the City Commission.

Adjournment.

Motion by Commissioner Hood, seconded by Commissioner Johnson to adjourn at 7:23 p.m.

MOTION PASSES

Ann Marie Cummings, MMC
City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 10, 2014

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, June 10, 2014.

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

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Gawron, Vice Mayor Lawrence Spataro, Commissioners Willie German, Dan Rinsema-Sybenga, Byron Turnquist, Ken Johnson, and Eric Hood, City Manager Franklin Peterson, City Attorney John Schrier, and City Clerk Ann Marie Cummings.

2014-43 HONORS AND AWARDS:

A. Recognition of Spring 2014 Citizen's Academy Graduates. PUBLIC SAFETY

Public Safety Director Jeff Lewis read the resolution and thanked the 2014 Citizen's Police Academy for their faithful attendance, completion and graduation from the ten week academy.

2014-44 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

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

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Fireworks Display Permit for 5th of July Celebration at Heritage Landing. CITY CLERK

SUMMARY OF REQUEST: Commission previously approved Night Magic's request for a fireworks display on July 4th. Night Magic is also requesting approval of a fireworks display permit for July 5th at Heritage Landing. Fire Marshall Metcalf has reviewed the request and recommends approval contingent on inspection of the fireworks.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

C. City/County Human Resources Agreement. CITY MANAGER

SUMMARY OF REQUEST: The City currently contracts with Muskegon County for the provision of human resources services. This program is administered by the County Human Resources Department. The Agreement is set to expire June 30, 2014. City staff is requesting that the City Commission extend the agreement for one year to June 30, 2015. All terms of the Agreement would remain unchanged.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the one-year extension of the current Agreement.

COMMITTEE RECOMMENDATION: The Civil Service Commission has recommended approval of the one-year extension.

D. Bid Award: Cost Sharing with Norton Shores and Fruitport Township (West Michigan Water Authority). ENGINEERING

SUMMARY OF REQUEST: Participate in the cost to construct piping to connect the new high services pumps that Norton Shores and Fruitport are proposing to the City's system which would help the City eliminate the usage of the plant's high service pumps during low demand periods and thus saving the City a lot more than the requested participation amount of $21,500.

FINANCIAL IMPACT: Contribute 50% of the bid amount of $43,000. The funds will have to be added to the 2014-2015 budget.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Authorize staff to execute any necessary documents to participate in the cost of the piping at a rate of no more than 50% of actual cost.

E. Consideration of Bids: Contract Award Roof Replacement at McGraft Park Building. ENGINEERING

SUMMARY OF REQUEST: Authorize staff to enter into an agreement with Schmit

Roofing to replace the roof at McGraft Park building since they submitted the lowest quote of $15,274.

FINANCIAL IMPACT: The construction cost of $15,274.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Schmit Roofing to replace the roofing at the McGraft Park building.

F. **Amendment to the Fireworks Ordinance.** PUBLIC SAFETY

SUMMARY OF REQUEST: It is requested that the City Commission approve the ordinance amendment which adds restrictions to the locations where fireworks may be used as allowed by state law. A provision was also added regarding sales to minors and the penalties set by state law.

Fireworks may not be ignited, discharged, or used on public property, school property, church property, or the property of another person without permission.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the ordinance as presented.

G. **Appointment to the District Library Board.** CITY CLERK

SUMMARY OF REQUEST: To approve the appointment of Clayton Hardiman to the District Library Board.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the appointment.

COMMITTEE RECOMMENDATION: The Community Relations Committee recommended the appointment of Clayton Hardiman at their June 9th meeting.

Motion by Commissioner Turnquist, second by Commissioner Johnson to accept the Consent Agenda as presented.

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

Nays: None

MOTION PASSES

2014-45 PUBLIC HEARINGS:

A. **Transmittal of 2014 – 15 Proposed Budget.** CITY MANAGER

SUMMARY OF REQUEST: At this time staff is transmitting to the City Commission the proposed budget for fiscal year 2014-15 which starts July 1, 2014. 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, at the City Clerk's office, or Hackley Public Library.

The proposed budget will be reviewed in detail with staff at the June 9th Worksession. A public hearing on the budget will be held at the regular Commission meeting the following evening. 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.

The Public Hearing opened to hear and consider any comments from the public. No public comments were made.

Motion by Vice Mayor Spataro, second by Commissioner German to close the Public Hearing and adopt the 2014-2015 Proposed Budget as revised with the version dated June 10, 2014.

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

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:10 p.m.

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

Date: **June 24, 2014**

To: **Honorable Mayor and City Commissioners**

From: **City Clerk**

RE: **Extension of the Moratorium for Establishments of Medical Marijuana Facilities**

SUMMARY OF REQUEST: On March 11th the City Commission declared an emergency moratorium on the establishment of any medical marijuana facility for 120 days so staff and counsel may create an appropriate ordinance regulating medical marijuana facilities for consideration by the City Commission.

Staff is requesting a 60 day extension of the moratorium so a proposed ordinance may be presented to the City Commission at a meeting in August.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To adopt the attached resolution extending the moratorium.

MUSKEGON CITY COMMISSION
RESOLUTION TO EXTEND THE EMERGENCY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA FACILITIES

WHEREAS, the electorate has adopted the Michigan Medical Marijuana Act of 2008 to allow and regulate the medical use of marijuana;

WHEREAS, the courts have made several rulings since the act has been adopted making the City of Muskegon's current Medical Marijuana Ordinance outdated or no longer in compliance with court rulings;

WHEREAS, the City Commission did declare an emergency moratorium on the establishment of any medical marijuana facilities for 120 days on March 11, 2014 and directed staff not to process any requests concerning medical marijuana facilities and to prepare an appropriate ordinance regulating medical marijuana facilities for consideration by the City Commission;

WHEREAS, City staff is asking for a 60 day extension of the emergency moratorium so a proposed ordinance may be presented to the City Commission in August 2014;

NOW THEREFORE BE IT RESOLVED, the City Commission extends the emergency moratorium on thc cstablishment of any medical marijuana facilities for an additional 60 days and directs staff not to process any requests concerning medical marijuana facilities and to prepare an appropriate ordinance regulating medical marijuana facilities for consideration by the City Commission.

Signed this 24th day of June 2014.

Stephen J. Gawron
Mayor

Ann Marie Cummings, MMC
City Clerk

Date: 6/24/14

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Wheel Loader

SUMMARY OF REQUEST:

Authorize staff to Purchase one (1) Wheel Loader from Michigan CAT off of the Mi-Deal State Purchasing contract.

FINANCIAL IMPACT:

A net price $151,900; $187,900.00 price of the new loader minus $36,000 trade-in value of the loader we have.

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) wheel loader from Michigan CAT off of the Mi-Deal State purchasing contract.

Date: 6/24/14

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Mini Excavator

SUMMARY OF REQUEST:

Authorize staff to purchase one (1) Mini Excavator from Michigan CAT, the lowest qualified bidder.

FINANCIAL IMPACT:

$46,100.00

BUDGET ACTION REQUIRED:

None. This purchase was in the 2013/14 CIP for the Equipment Div.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) 4 1/2 ton Mini Excavator From Michigan CAT.

Commission Meeting Date: **June 24, 2014**

Date: **June 17, 2014**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

Re: **Selection of Vinyl Siding Supplier for Fiscal Year 2014 - 2015**

SUMMARY OF REQUEST: To approve the Community and Neighborhood Services department's selection of the Vinyl Siding Supplier for 2014-2015 fiscal year. After reviewing all bids, the department selected the bid from Keene Lumber Co., located at 346 W. Laketon Ave., Muskegon, MI, for the price of $46.95 (forty-six dollars and ninety-five cents) per building square for both white and color siding.

The Community and Neighborhood Services department received 2 additional bids from:

1. Sethco Lumber, Muskegon	White - $47.00/sq	Color - $49.00/sq
2. Home Acres, Muskegon	White - $50.00/sq.	Color- $51.00/sq

FINANCIAL IMPACT: Funding will be disbursed from the 2014-2015 Community Development Block Grant Vinyl Siding fund.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To approve request.

COMMITTEE RECOMMENDATION: None

2014-2015 CDBG - Vinyl Siding Suppliers

Bid Results

Item	Home Acres Bldg	Keene	Sethco	Average	Low	High
Per Square (White)	$50.00	$46.95	$47.00	$47.98	$46.95	$50.00
Per Square (Color)	$51.00	$46.95	$49.00	$48.98	$46.95	$51.00
J-Channel (White)	$3.70	$3.80	$3.10	$3.53	$3.10	$3.80
J-Channel (Color)	$3.70	$3.80	$3.10	$3.53	$3.10	$3.80
F-Channel (White)	$6.07	$5.95	$7.50	$6.51	$5.95	$7.50
F-Channel (Color)	$6.07	$5.95	$7.50	$6.51	$5.95	$7.50
Undersill (PC) (White)	$3.40	$4.10	$3.40	$3.63	$3.40	$4.10
Undersill (PC) (White)	$3.40	$4.10	$3.40	$3.63	$3.40	$4.10
O/S Corner (PC) White	$14.00	$14.25	$10.25	$12.83	$10.25	$14.25
O/S Corner (PC) White	$14.00	$14.25	$10.25	$12.83	$10.25	$14.25
J-Block (White)	$5.30	$5.95	$5.30	$5.52	$5.30	$5.95
J-Block (Color)	$5.30	$5.95	$5.30	$5.52	$5.30	$5.95
Recessed J-Block (White)	$6.00	$7.75	$5.80	$6.52	$5.80	$7.75
Recessed J-Block (Color)	$6.00	$7.75	$5.80	$6.52	$5.80	$7.75
J-Vent (White)	$10.25	$15.00	$9.00	$11.42	$9.00	$15.00
J-Vent (Color)	$10.25	$15.00	$9.00	$11.42	$9.00	$15.00
Intake Louver (White)	$16.75	$17.00	$12.50	$15.42	$12.50	$17.00
intake Louver (Color)	$16.75	$17.00	$12.50	$15.42	$12.50	$17.00
10' Starter Strip (Alum)	$3.25	$2.95	$3.00	$3.07	$2.95	$3.25
10' Starter Strip (Steel)	$3.25	$3.95	$3.61	$3.60	$3.25	$3.95
Soffit 0.19/Solid (White)	$13.00	$12.00	$12.80	$12.60	$12.00	$13.00
Soffit 0.19/Solid (Color)	$13.00	$12.00	$12.80	$12.60	$12.00	$13.00
Soffit 0.19/Vented (White)	$13.00	$12.00	$12.80	$12.60	$12.00	$13.00
Soffit 0.19/Vented (Color)	$13.00	$12.00	$12.80	$12.60	$12.00	$13.00
Fascia .024/4' (White)	$7.00	$6.99	$6.95	$6.98	$6.95	$7.00
Fascia .024/4' (Color)	$7.00	$6.99	$6.95	$6.98	$6.95	$7.00
Fascia .024/6' (White)	$8.70	$9.25	$8.95	$8.97	$8.70	$9.25
Fascia .024/6' (Color)	$8.70	$9.25	$8.95	$8.97	$8.70	$9.25
Fascia .024/8' (White)	$11.00	$11.95	$11.75	$11.57	$11.00	$11.95
Fascia .024/8' (Color)	$11.00	$11.95	$11.75	$11.57	$11.00	$11.95
Trim Coil .019 (White)	$73.50	$69.50	$65.00	$69.33	$65.00	$73.50
Trim Coil .019 (Color)	$73.50	$69.50	$65.00	$69.33	$65.00	$73.50
1 ½" #25 box	N/A	N/A	$25.00	$25.00	$25.00	$25.00
1 ½" #30 box	$33.00	$29.95	$20.00	$27.65	$20.00	$33.00
1 ¾" #25 box	N/A	N/A	$25.00	$25.00	$25.00	$25.00
1 ¾" #30 box	$34.00	$31.50	$30.00	$31.83	$30.00	$34.00
2" #25 box	N/A	N/A	$25.00	$25.00	$25.00	$25.00
2" #30 box	$35.00	$30.95	$30.00	$31.98	$30.00	$35.00
Trim Nails #1 box (White)	$7.25	$7.95	$7.00	$7.40	$7.00	$7.95
Trim Nails #1 box (Color)	$7.25	$7.95	$7.00	$7.40	$7.00	$7.95
Caulk (White)	$5.30	$2.95	$5.00	$4.42	$2.95	$5.30
Caulk (Clear)	$5.30	$3.25	$5.00	$4.52	$3.25	$5.30
Caulk (Color)	$5.30	$2.95	$5.00	$4.42	$2.95	$5.30
Backerboad (Fanfold)	$28.00	$30.00	$25.00			
Backerboad (Core board)	N/A	$30.00	N/A			
House Wrap 9'x100' *	$56.00	$58.00	$60.00			
Typar 9'x100'	N/A	$111.60	N/A			
Tyvek 9'x100'	N/A	$129.90	N/A			

* Premier noted size 9' X150'

Date: June 24, 2014

To: Honorable Mayor and City Commissioners

From: City Manager

RE: "Rule of 1" Question on General Ballot

SUMMARY OF REQUEST: Attached is a resolution to place the Civil Service procedure for filling positions of employment by way of promotion to eliminate the "Rule of 1" for adoption by the voters of the City of Muskegon.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To adopt the attached resolution to place the elimination of the "Rule of 1" question on the General ballot.

CITY OF MUSKEGON

RESOLUTION NO.______

A Resolution of the City of Muskegon City Commission to amend the Civil Service procedure for filling positions of employment by way of promotion to eliminate the "Rule of 1" for adoption by the voters of the City of Muskegon.

The City Commission of the City of Muskegon resolves the following amendment to the City Charter shall, upon approval of the Governor, be submitted to the Electors of the City in accordance with the Home Rule Cities Act of the State of Michigan

Proposed Charter Amendment

City of Muskegon

Amend Article XV, by amending Section 5 to read as follows:

ARTICLE XV. CIVIL SERVICE

Section 5 Filling positions, procedure.

The head of any department in which a position is to be filled shall notify the Commission of that fact and in the event the position is to be filled by promotion from one grade of service to another, then the Commission shall certify to the appointing officer the names and addresses of all employees seeking the promotion who meet the minimum qualification, but in the event that the position to be filled is one for which a vacancy exists and no employee may promote to the position then the commission shall certify to the appointing officer the names and addresses of the three persons standing highest on the eligible list. At or before the expiration of the period of probation the head of the department or office in which a candidate is employed may, with the consent of said Commission, based upon the written reasons submitted to it, discharge him, or the Commission may transfer him to another department with the consent of the head of such department, but if not discharged prior to the expiration of the period of probation, as hereinafter fixed, his appointment shall be deemed complete.

BE IT FURTHER RESOLVED that the following language be placed upon the ballot at the next election in accordance with the Home Rule Cities Act:

CHARTER AMENDMENT

This proposal is limited to situations where City employees are seeking a promotion. With promotions, the present City Charter provides that the Civil Service Commission shall give the appointing authority the name and address of the employee standing highest on the eligibility list. This proposal provides that the Civil Service Commission shall give the appointing authority the names and addresses of all qualified employees on the eligibility list. Shall Section 5 of Article XV of the City Charter be amended to authorize the appointing authority to promote an employee from the list of all qualified employees seeking the promotion?

BE IT FURTHER RESOLVED that the proposed charter amendment, as adopted by the City Commission on _____________, be published in the Muskegon Chronicle, and a reasonable number of copies made available to the public before the said election.

This resolution adopted:

AYES: Commissioners

NAYES:

ABSENT:

CITY OF MUSKEGON

By___________________________
Ann Marie Cummings, 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 city commission members of the City of Muskegon, Michigan, held on the ____ day of _____________, 2014 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.

____
Ann Marie Cummings, City Clerk

Commission Meeting Date: June 24, 2014

Date: June 17, 2014

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department

RE: Heritage Square Development LLC- Construction Loan Agreement and Other Document Approval

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SUMMARY OF REQUEST: At the March 25, 2014 meeting, the Commission authorized staff and the City Attorney to proceed with the necessary documents to complete the loan transaction with Mr. Post for the construction of two townhouses at Heritage Square, on Clay Avenue (as well as explore the option of using HOME funds for an additional unit, which remains a possibility). An agreement has been reached to loan Mr. Post $500,000 from the City's "economic development fund" for the construction of the two townhouses (just to the West of the existing four units). The Construction Loan Agreement (attached), as well as the Construction Loan Note, Commercial Construction Mortgage, Commercial Guaranty (which is Mr. Post's personal Guaranty), Security Agreement, Assignment of Rents and Leases, and Assignment of Plans and Specifications have been prepared and are ready for Commission approval.

FINANCIAL IMPACT: The City will loan $500,000 to Mr. Post to complete two townhouses. The funds must be substantially expended by December 2014 (with the project fully completed by February 28, 2015). Both townhouses are to be sold within 24 months of the date of the Agreement (if not, "interest shall begin accruing on the Construction Note retroactively from the Effective Date of this Agreement at the rate of 5% per annum").

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Construction Loan Agreement (attached), as well as the Commercial Construction Mortgage, Commercial Guaranty (which is Mr. Post's personal Guaranty), Security Agreement, Assignment of Rents and Leases, and Assignment of Plans and Specifications and authorize the Mayor and Clerk's signiture's on the documents, as well as authorize staff to sign any and all other documents necessary for the loan closing (e.g., closing statement, escrow agreement, Transnation documents).

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (the "Agreement") is effective as of _____________ 2014 (“Effective Date”), between the City of Muskegon, c/o City Manager, a Michigan municipal corporation, with offices located at 933 Terrace Street, Muskegon, Michigan 49443 ("City"), and Heritage Square Development, LLC, a Michigan limited liability company whose registered office is located at 272 W Clay Avenue, Muskegon, MI 49440 (the "Borrower").

The Borrower desires to construct two townhouses on Clay Avenue (the "Project"), on the real estate described on Exhibit A attached (the "Land"). The Borrower has requested a loan of Five Hundred Thousand Dollars ($500,000.00) to finance the cost of constructing the Project (the "Construction Loan"). The City desires to make the Construction Loan on the terms and conditions set forth in this Agreement.

THE CITY AND THE BORROWER AGREE AS FOLLOWS:

SECTION 1
THE LOANS

Section 1.1. Construction Loan. Subject to the terms and conditions of this Agreement, the Borrower may from time to time until the earlier of the Completion Date of Construction (as hereafter defined) or February 28, 2015, draw against the Loan provided that the maximum amount outstanding shall not exceed $500,000.00.

Section 1.2. Construction Loan Note. Simultaneously with the execution of this Agreement, the Borrower shall execute and deliver to the City a Promissory Note of even date and in the form and substance satisfactory to the City (the "Construction Note"). The Construction Note will, among other provisions, contain the following:

(a) Term: 24 months;
(b) Interest Rate:
  (1) no interest will be charged if the following conditions are met:
    (i) Permits shall be requested within 30 days of the date of this Agreement
    (ii) the Construction commences within 90 days of the date of this Agreement;
    (iii) the Project is substantially completed by December 31, 2014 and fully completed by February 28, 2015. “Substantially completed” means when the building envelope is complete, all rough-in inspections have been completed, insulation has been installed, drywall hung and work is progressing on the interior finishes; and
    (iv) both townhouses are sold within 24 months of the date of this Agreement.

(2) in the event any of the above four conditions are not met, interest shall begin accruing on the Construction Note retroactively from the Effective Date of this Agreement at the rate of 5% per annum.

(c) Payment: No monthly payments. Full payment is due upon the earlier of the expiration of the term, or the sale of both townhouses. In the event Borrower elects to rent or lease either of the two townhouses in the Project, it shall assign all rental income to City.

Section 1.3. Use of Construction Loan Proceeds. The Borrower shall use the proceeds of the Loan solely for the purpose of payment of Approved Costs. "Approved Costs" means:

(a) Amounts actually made or accrued for services, labor and materials utilized to construct the Project (the "Construction Costs") as set forth on the Construction Budget, which will be provided to City's Counsel and as approved by the City;
(b) Fees and charges of the City relating to the Loan (the "City Fees").

Section 1.4. Conditions to Fund the Construction Loan. The City shall be obligated to make advances under the Construction Loan only if the conditions precedent to funding set forth on Schedule 2 are met.

SECTION 2
SECURITY

Section 2.1. Documents. To secure payment and performance of the Loan, and all of the indebtedness owed now or hereinafter owing from the Borrower to the City, the Borrower agrees to execute and deliver to the City in form and substance acceptable to the City, the following:

(a) A valid and binding first mortgage (the "Mortgage") on the Project and Land.
(b) An irrevocable assignment of (i) the Borrower's interest in all Loan funds held by the City or Transnation Title whether or not disbursed; (ii) all governmental permits obtained by or on behalf of Borrower for the construction of the Project; and (iii) all reserves, deferred payments, deposits, refunds, costs savings and payments of any kind relating to the construction of the Project.
(c) A valid and binding, enforceable assignment of rents and leases (the "Assignment of Rents and Leases") with respect to the Project and the Land.
(d) A valid and binding security agreement or agreements (the "Security Instruments") giving the City a security interest in any and all of the following assets of the Borrower, including any proceeds thereof, whether now owned or hereafter acquired:
i. All machinery, equipment, furniture and fixtures.
ii. Accounts and accounts receivable.
iii. All other tangible or intangible assets of the Borrower.
(e) The valid and binding guarantees (the "Guarantees") of Gary Post and all other members of Borrower (the "Guarantors"). The Guarantees will be unlimited as to the Construction Loan and be a continuing guarantee of the indebtedness and obligations of the Borrower.

(f) An assignment of all plans and drawings and specifications for the Project that is acceptable to the City (the "Assignment of Plans and Specifications "), but which may only be exercised if Borrower is in default.
(g) An assignment of all contracts for the construction of the Project (the “Assignment of Construction Contract"), but which may only be exercised if Borrower is in default.

Section 2.2. Definition of Loan Documents. The Commercial Construction Mortgage, Assignment of Rents and Leases, Security Instruments, Commercial Guaranty, Assignment of Plans and Specifications, Construction Contract Assignment, Commercial Construction Note the various assignments and subordination agreements are collectively referred to as the "Loan Documents".

SECTION 3
INSURANCE

Until the Loan is paid in full and all other obligations of the Borrower under this Agreement are satisfied, the Borrower shall abide by the insurance requirements contained in Schedule 1, incorporated herein by reference.

SECTION 4
ENVIRONMENTAL MATTERS

The Borrower represents, covenants, and warrants to the City as follows:

Section 4.1. No Violations or Hazardous Wastes. City and Borrower acknowledge that the Project is located within an area designated as a Brownfield. At all times since the vesting of interest to the Project in the Borrower and, to the best of the Borrower’s knowledge after due inquiry, at all times prior to the vesting of title to the Project in the Borrower there are no and have been no violations of the relevant environmental laws at the Project and no consent orders have been entered with respect thereto. There are no and have been no hazardous wastes either at, upon, under or within, or discharged or emitted at or from, the Project, and no Hazardous Wastes or Asbestos have flowed, blown, or otherwise become present at the Project from neighboring land, and no Hazardous Wastes or Asbestos have been removed from the Project. Soil conditions that were disclosed to governmental authorities prior to the execution of this Agreement are excluded from the above representation.

Section 4.2. No Claims. The Borrower is not aware of any claims or litigation, and has not received any communication from any person (including any governmental authority) concerning the presence or possible presence of hazardous wastes or asbestos at the Project or concerning any violation or alleged violation of any relevant environmental laws respecting the Project. The Borrower shall promptly notify the City of any such claims and shall furnish the City with a copy of any such communications received after the date of this Loan.

Section 4.3. Notification. The Borrower shall notify the City promptly and in reasonable detail in the event that the Borrower becomes aware of the presence of hazardous wastes or asbestos or a violation of any relevant environmental laws at the Project.

Section 4.4. Compliance with Environmental Law. The Borrower shall ensure that the Project complies and continues to comply in all respects with all relevant environmental laws.

Section 4.5. Remediation. Should the Borrower use or permit the Project to be used or maintained so as to subject the Borrower or the City or any tenant or user of the Project to a claim of violation of any relevant environmental laws (unless contested in good faith) the Borrower shall immediately cease or cause a cessation of such use of operations and shall remedy and fully cure any conditions arising therefrom, at its own cost and expense.

SECTION 5
INDEMNITY

Section 5.1. Indemnity. The Borrower shall indemnify and hold harmless the City with respect to any and all claims, demands, causes of action, liabilities, damages, losses, judgments, and expenses (including attorney fees) incurred in connection with the enforcement of these indemnities or otherwise that shall be asserted against or incurred by the City by reason of:

(a) Any representation or warranty by the Borrower in this Loan being inaccurate in any respect.
(b) Any failure of the Borrower to perform any of its obligations under this Loan.
(c) The construction or operation of the Project and its operations unless and until such time as the City takes title to the Project through foreclosure or a deed in lieu of foreclosure.
(d) Any past, present, or future condition or use of all or any portion of the Project (whether known or unknown), other than an "excluded condition or use", including, without limitation, liabilities arising under any relevant environmental law. An "excluded condition or use" of any portion of the Project is one that:
(i) does not exist or occur, to any extent, at any time before the Borrower has permanently given up possession and control of that portion by reason of a foreclosure of any mortgage or security interest held by the City or a conveyance or transfer of that portion to the City in lieu of foreclosure and
(ii) was not caused, or permitted to exist, in whole or part, by any act or omission of the Borrower.

Section 5.2. Indemnity not limiting other Remedies. Indemnification of the City by the Borrower under this paragraph shall not limit any other right or remedy (including the City’s right to accelerate payment of the indebtedness) that is available to the City by reason of the circumstance in respect of which indemnity is made.

Section 5.3. Survival of Indemnity. The Borrower's obligations under this paragraph shall survive the payment in full of the Loan, foreclosure of the Mortgage or any security interest, and any conveyance or transfer in lieu of foreclosure, with respect to all or any portion of the Project.

SECTION 6
DISBURSEMENT OF LOAN PROCEEDS

Section 6.1. Cost Information/Budget. All disbursements will be based upon the Budget. If the Borrower becomes aware of any changes that would increase the total cost of the Project, the Borrower shall notify the City in writing and promptly submit a Revised Budget to the City's Counsel for its approval. No further disbursements need be made by the City unless and until the Borrower shows that it has adequate funds to pay for any increase in the total cost of the Project shown in the revised Budget.

Section 6.2. Disbursement Requests. Upon execution of this Agreement, City shall deposit One Hundred Thousand Dollars ($100,000) with Transnation Title to be held in an interest bearing account. All requests for disbursement of Loan amounts shall be made (the "Disbursement Request") in the form and substance acceptable to Transnation Title and the City not more often than once each calendar month and at least fifteen (15) days prior to the requested date for the disbursement. The Disbursement Request shall be accompanied by any invoices, architect's certificates, sworn statements, waivers of lien, sales receipts, surveys, and other supporting information requested by Transnation Title and the City. When the balance in the escrow fund becomes less than $25,000, City will deposit an additional $100,000, to a maximum amount of $500,000. Any monies left in the escrow account upon completion of the Project or as of March 1, 2015, whichever is sooner, shall be returned to City and credited towards the amount owed by Borrower.

Section 6.3. Title Insurance. No disbursement shall be made until the City receives a current endorsement from Transnation Title Company (the "Title Company") insuring the mortgage lien of the City, without standard exceptions: (a) against construction liens to the extent of all prior advances plus the full amount of the requested advance; and (b) as the first and paramount lien on the Land.

Section 6.4. Direct Payment to Contractors. The Borrower irrevocably authorizes Transnation Title to make payments directly to the contractor, and/or any subcontractor and/or supplier, at Transnation's discretion

Section 6.5. Disbursement Without Request. The provisions of this Section shall not in any way limit the City's ability to advance Loan funds without the Borrower submitting a Disbursement Request whether upon the occurrence of an Event of Default as hereafter defined, or otherwise, or to apply any of the Loan proceeds that the City may in its judgment deem prudent to protect the collateral for the Loan or the priority of the City's security.

Section 6.6. No Waiver. The City's advance of Loan funds without one or more condition(s) being met shall neither preclude the City from declaring that the failure to satisfy one or more of the condition(s) as an Event of Default, nor constitute a waiver of such condition(s) with respect to future advances.

Section 6.7. Conditions. The City and Transnation shall be under no obligation to honor any Disbursement Request or otherwise make disbursements of the Loan proceeds unless all conditions to the advance have been fulfilled in accordance with the terms of this Agreement and unless the Borrower is otherwise not in default hereunder.

Section 6.8. Adjustment of Loan Amount. If the actual cost for any line item is less than the amount shown in the Budget, the City shall permit the Borrower to reallocate the reduction to another Budget category.

Section 6.9. Insufficiency of Loan Proceeds. If the City at any time determines that the amount of funds available to the Borrower from all sources, including the Loan, is not sufficient to pay all remaining costs of completing the Project on or before the Completion Date of Construction, then the City shall not be obligated to make any further advance of Loan funds until such time as the Borrower has delivered to the City additional funds sufficient to make the remaining Loan proceeds adequate to complete the Project.

Section 6.10. Casualty Loss. If the Project shall have been damaged by fire or other casualties and either:

(a) the City shall not have received insurance proceeds sufficient in the City's judgment to restore the improvements in accordance with the plans; or
(b) such restoration in the City's judgment cannot be performed within a period of time sufficient for completion of the Project on or before Completion Date of Construction, then the City shall have no obligation to make any further advance of Loan proceeds hereunder.

Section 6.11. City Fees, Charges, Interest, Etc. The City may elect, without notice to or further authorization from the Borrower, to use Loan funds to pay as and when due the City Fees, release charges under any prior encumbrances on the Project, legal fees and disbursements to the City's attorneys, or outside counsel, for which the Borrower is obligated, appraisal costs, environmental fees, searches, recording fees for UCC filing and other security interests, audit fees, any other expenses in reference to structuring, documenting, closing, monitoring or enforcing the Loan, and other sums with respect to the Loan ·which may be owing from time to time by the Borrower to the City.

Section 6.12. Representations and Warranties Remain True. All representations and warranties from the Borrower to the City contained in this Agreement must remain true at the time of each advance.

Section 6.13 . No Request for Retainage. No Disbursement Request, except for the request for the final disbursement, shall apply for any retainage until such time as all contractual requirements entitling that contractor to retainage have been met in accordance with the contracts approved by the City.

SECTION 7
CONDITIONS PRECEDENT TO DISBURSEMENTS

Section 7.1. First Advance. The City shall not be obligated to fund the escrow account and Transnation shall not be obligated to disburse any Loan proceeds unless all the conditions set forth in Schedule 2 to this Agreement have been satisfied by the date hereof.

Section 7.2. Subsequent Advances. The City shall not be obligated to fund the escrow account and Transnation shall not be obligated to disburse any Loan proceeds after the First Advance unless and until all of the conditions set forth on Schedule 3 of this Agreement have been satisfied on or before the date requested for the disbursement.

Section 7.3. Final Advance. The City shall not be obligated to fund the escrow account and Transnation shall not be obligated to disburse the final disbursement of Loan proceeds unless and until all of the conditions set forth in Schedule 4 of this Agreement have been satisfied on the date requested for the final disbursement.

SECTION 8
REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and warranties to the City contained in Schedule 5 of this Agreement, each of which is incorporated herein by reference.

SECTION 9
AFFIRMATIVE COVENANTS

Until the Loan is paid in full and all obligations of the Borrower under this Agreement are satisfied, other than the indemnity provisions that survive payment of the Loan, the Borrower shall abide by the affirmative covenants contained in Schedule 6, which Affirmative Covenants are incorporated herein by reference.

SECTION 10
NEGATIVE COVENANTS

Until the Loan is paid in full and all obligations of the Borrower under this Agreement are satisfied, other than the indemnity provisions that survive payment of the Loan, the Borrower shall abide by the negative covenants contained in Schedule 7, which Negative Covenants are incorporated herein by reference.

SECTION 11
EVENTS OF DEFAULT

The following are Events of Default under this Agreement:

Section 11.1. Payment Under Note. If the Borrower shall fail to make any payment under the Construction Note.

Section 11.2. Loan Document Provisions. If any provision of any of the Loan Documents at any time ceases to be valid and binding or is declared to be void, or the validity or enforceability shall be contested, or if any party against whom enforcement could be or is being sought denies that it has further liability or obligation under the documents.

Section 11.3. Failure to Perform. If the Borrower shall fail to pay and to perform any obligation of the Borrower under this Agreement or any of the Loan Documents for a period often ten (10) days after receipt of written notice from the City.

Section 11.4. Guaranty. If any Guarantor shall breach or fail to perform any requirement of his/her Guarantee or shall withdraw such Guarantee and the Borrower shall not have provided a substitute Guarantor satisfactory to the City within fifteen (15) days after such event.

Section 11.5. Liens. If any liens for materials or taxes (except for ad valorem taxes not yet due and payable) or other liens filed against the Project remain unsatisfied or unbonded for a period of thirty (30) days after the date of the filing.

Section 11.6. Lawsuits. If, after the date hereof, any suit is filed, judgment entered, or settlement made by or against the Borrower or any Guarantor requesting or granting relief with an economic value exceeding fifty (50%) percent of the Borrower's net worth or twenty-five (25%) percent of any Guarantor's net worth, which is not covered by insurance and with respect to which there is a reasonable likelihood that an adverse determination or the judgment or settlement could be expected to materially impair the ability of the Borrower or Guarantor(s) to perform their respective obligations under this Agreement, the Guarantees, and the other Loan Documents; and, with respect to any Guarantor, the Borrower shall not have provided a substitute Guarantor satisfactory to the City within fifteen days after such event.

Section 11.7 Bankruptcy. If a levy is made under any process or either the Borrower or any Guarantor shall file a voluntary petition in Bankruptcy under the United States Code as amended from time to time, or an Order for Relief shall be issued against the Borrower or any Guarantor under the Code or either the Borrower or Guarantor shall file a petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for the Borrower or Guarantor under present or future Federal, State or other statute, law or regulation relating to Bankruptcy, insolvency, or other relief for debtors; if a receiver or trustee for the Project or any other property of the Borrower or Guarantor is appointed and not discharged within thirty (30) days; or if either the Borrower or any Guarantor makes an assignment for benefit of creditors or admits in writing its inability to pay debts; or if either the Borrower or any Guarantor arc adjudged insolvent by any Federal, State or other Court of competent jurisdiction; or if any attachment or execution is levied against a substantial portion of the property of either the Borrower or Guarantor if not discharged within thirty (30) days.

Section 11.8. Completion. If the Borrower has failed to satisfy all of the conditions to the City's obligation to make the Final Disbursement under the Agreement on or prior to the Completion Date of Construction.

Section 11.9. Damage or Destruction. If the Project is partially or totally damaged by fire or other cause to such an extent that the Project cannot in the City's reasonable judgment be expected to be completed on or before the Completion Date of Construction.

Section 11.10. Representations and Warranties Untrue. If at any time any representation, warranty or statement made by the Borrower or any Guarantor contained in this Agreement or any other Loan Documents shall be incorrect or misleading in any material respect when made or shall fail to continue to be true at any time until the Loan is repaid in full.

Section 11.11. Construction Contract. If the Borrower is in default under any contract for construction and such default is not cured within twenty (20) days after the date of the default.

SECTION 12
REMEDIES

Section 12.1. City's Remedies. If an Event of Default occurs, the City, at its option, in addition to all other remedies which may be available, whether at law, in equity or otherwise, may immediately exercise anyone or more of the following remedies until the Default is cured:

(a) Declare all or any part of the outstanding principal and interest under the Loan to be immediately due and payable, along with all or any part of the other amounts owing to the City hereunder or under any or all of the other Loan Documents, which shall be due and payable, without presentment, demand or protest.

(b) Withhold advances under the Loan.

(c) Terminate its obligation to make any further advances under the Loan except such as the City may elect to make in its sole discretion.

(d) Take all or any action necessary or appropriate to preserve and protect the Project and any other security for the Loan, including employment of watchmen and the erection of fences and barricades, all at the cost of the Borrower.

(e) Exercise any one or any combination of the rights and remedies provided herein or in any other Loan Document or as provided at law or in equity, including the appointment of a receiver.

(f) Whether or not the Loan is due and payable or the City has instituted any foreclosure or other action for the enforcement of any of the Loan Documents, the City may:

(i) enter upon the Project and complete the improvements in accordance with the Plans and Specifications therefor with such changes therein as the City may deem appropriate;

(ii) at any time discontinue any work commenced in respect to the Project or change any course of action undertaken by it and not be bound by any limitations or requirements of time, whether set forth herein or otherwise;

(iii) assume or in the name of the Borrower continue any contract made by the Borrower in any way relating to the Project and use all or any part of the labor, materials, supplies or equipment contracted for by the Borrower, whether or not previously incorporated into the Project; and

(iv) in connection with any construction of the Project and undertaken by the City pursuant to the provisions of this subparagraph, engage or continue contract with builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment and services pay, settle or compromise all bills or claims which may become liens against the Project, or which have been or may be incurred in any manner in connection with completing the Project or for the discharge of liens, encumbrances or defects in the title of the Project, and take or refrain from taking such action hereunder as the City may from time to time determine in its sole discretion,

(g) Take all or any action necessary or appropriate to obtain a deed to Borrower for the Land. The Borrower shall be liable to the City for all costs paid or incurred hereunder or paid or incurred to construct and equip the Project, whether the same are paid or incurred pursuant to the provisions of this subparagraph or otherwise, and all payments made or liabilities incurred by the City hereunder of any kind whatever shall be paid by the Borrower to the City upon demand with interest at the default rate as provided in the Note from the date of payment by the City to the date of payment to the City and shall be secured by the Loan Documents. The powers granted herein are for security and are irrevocable, and the Borrower irrevocably constitutes and appoints the City its attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Borrower in connection herewith.

Section 12.2. Waiver: Remedies Cumulative. No failure or delay on the part of the City in exercising any right, power or remedy hereunder or provided for by any of the Loan Documents or instruments evidencing, securing or otherwise relating to the Loan shall operate as a waiver thereof. No single or partial exercise by the City of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; all rights and remedies shall be deemed cumulative.

SECTION 13
GENERAL PROVISIONS

Section 13.1 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed and interpreted in accordance with the laws of the State of Michigan that are applied to contracts made and to be performed in that state.

Section 13.2. Relationship of Parties. The City and the Borrower acknowledge that the relationship between them created hereby and by the other Loan Documents is that of creditor and debtor and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture, or principal and agent; and they further acknowledge that any control of or supervision over the construction or operation of the Project by the City or the disbursement of any Loan proceeds to anyone other than the Borrower shall not be deemed to make the City a partner, a joint venturer, a principal, or an agent of the Borrower, but rather shall be deemed to be solely for the purpose of protecting the City's security for the indebtedness of the Borrower to the City. The City has no fiduciary responsibility to the Borrower. The City does not undertake any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations. The Borrower shall rely entirely upon its own judgment with respect to its business, and any review, inspection, supervision, or information supplied to the Borrower by the City is for the protection of the City and neither the Borrower nor any third party is entitled to rely thereon.

Further, Borrower expressly agrees and acknowledges that approval by City of disbursements does not constitute approval of any governmental function or entity, including but not limited to approval of building permits, code compliance, occupancy, or any other approval that Borrower is obligated to obtain.

Section 13.3. No Third Party Beneficiaries. The parties hereto have entered into this Agreement only for their respective benefits and this Agreement is not intended to, nor shall it create rights in anyone not a party hereto.

Section 13.4. Captions. The titles to the various sections of this Agreement are inserted only for the convenience of the parties and are in no way to be construed as limiting or expanding the content of the paragraphs to which they refer.

Section 13.5. Parties Bound. This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the City and their respective heirs, successors and assigns.

Section 13.6. Assignment by City. The City may assign its rights and interest or any part thereof in this Agreement and all documents and instruments executed pursuant hereto at any time following the completion of construction of the Project without the consent of the Borrower. The City shall provide the Borrower with thirty (30) days notice of any such assignment.

Section 13.7. Notices. Any and all notices required under this Agreement shall be in writing, and shall be served either personally or by certified mail, return receipt requested, with postage thereon fully prepaid, addressed to the parties at their addresses set forth above or such other place or places as either party shall designate by written notice served upon the other party.

Section 13.8. City's Conditions. All conditions of the obligation of the City to make disbursements hereunder are imposed solely and exclusively for the benefit of the City and its assigns and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the City will refuse to make disbursements in the absence of strict or substantial compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions or of this Agreement, any or all of which may be freely waived in whole or in part by the City at any time if the City, in its sole discretion, deems it advisable to do so.

Section 13.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.

Section 13.10. Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person, entity, or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 13.11. Amendments. Neither this Agreement nor any provisions hereof or in any of the Loan Documents may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by both parties.

Section 13.12. Time of the Essence. Time is of the essence under this Agreement.

Section 13.13. Relation to Loan Commitment. The terms of this Agreement and the Note supersede any inconsistent terms of the City's Construction Loan commitment to the Borrower; provided, that all obligations of the Borrower under the commitment to pay any fees to the City or any costs and expenses relating to the Loan or the commitment shall survive the execution and delivery of this Agreement and the Note, and any failure of the Borrower to perform any of those obligations shall constitute a default under this Agreement. The meaning of the terms used in any schedule or exhibit are the same as set forth in this Agreement.

Section 13.14. Execution and Delivery of Term Note/Term Loan Documents. This Agreement shall survive the execution and delivery of, and shall govern the Note and the Loan Documents.

BORROWER:
Heritage Square Development LLC

____
By: Gary Post
Its: Manager
Date:____________

CITY:
City of Muskegon

____
By: Stephen Gawron
Its: Mayor
Date:____________

____
By: Ann Marie Cummings
Its: City Clerk
Date:____________

SCHEDULE 1
INSURANCE REQUIREMENTS

Section 1. Insurance. Unless waived in writing by the City, the Borrower shall maintain the following insurance policies issued on forms and by companies satisfactory to City:

(a) All risk builders risk insurance during the construction of the Project in an amount equal to 100% of the replacement cost of the Project providing all risk coverage on the Project and materials stored on the Property and elsewhere, and including the perils of collapse, damage resulting from error in design or faulty workmanship or materials, and water damage;
(b) All risk insurance after the completion of the Project, as determined by City, in the amount of at least 80% of the replacement cost of the Project or in such additional amounts as are necessary to keep the Borrower from being a co-insurer or City may otherwise require, providing all risk coverage on the Project, and, if requested by City, to include the perils of flood, earthquake, business interruption and other risks;
(c) Comprehensive General Liability Insurance for owners and contractors, including blanket contractual liability, products and completed operations, personal injury (including employees), independent contractors, explosion, collapse and underground hazards for not less than $3,000,000.00 arising out of any one occurrence or in any increased amount required by City.;
(d) Comprehensive Automobile Liability Insurance for contractors in amounts not less than carried by the industry generally for bodily injury and for property damage;
(e) Workers' Compensation Insurance for contractors for statutory limits; and
(f) Such other insurance as City may reasonably require.

Section 2. Loss Payable to City. All risk Insurance Policies shall have loss made payable to City as mortgagee together with the standard mortgagee clause endorsement.

Section 3. Notice of Cancellation. All insurance policies shall have a provision giving City a ten (10) day prior written notice of cancellation or material change of the coverage.

SCHEDULE 2
CONDITIONS PRECEDENT TO FIRST ADVANCE

The following are the requirements of Section 7.1 of the Agreement:

Section 1. Compliance with Agreement. The Borrower shall present evidence to the City that the Borrower is in compliance with the Agreement, including but not limited to, disbursement procedures contained in Section 6.

Section 2. Receipt of Documents. Unless waived in writing by the City, the following documents shall be duly executed by authorized persons and delivered to the City in form and substance acceptable to the City:

(a) Executed Counterparts of the Construction Loan Agreement
(b) The Note
(c) The Mortgage shall have been recorded
(d) The Security Agreement shall have been perfected
(e) Pledge of the Disbursement account
(f) The Guarantees
(g) Articles of Organization certified by the Department of Licensing and Consumer Affairs, State of Michigan
(h) Good Standing Certificate issued by the Department of Licensing and Consumer Affairs, State of Michigan
(i) Operating Agreement of the Borrower certified by a Member of the Borrower certifying that the same is true, correct and complete
(j) Borrower authorization of individual(s) executing documents
(k) Budget acceptable to the City
(l) Intentionally deleted
(m) Intentionally deleted
(n) Construction Contract, original executed counterpart as shown in the Budget, and Assignment
(o) Intentionally deleted
(p) Site Plan approval
(q) Verification of zoning compliance
(r) Building permit
(s) Evidence of Compliance with the Construction Lien Law including a Notice of Commencement and Designee Affidavit.
(t) Intentionally deleted
(u) Evidence of receipt of all applicable licenses
(v) Satisfactory pre-construction review by Safebuilt
(w) Certificate(s) of Insurance indicating the Project is covered as required
(y) Such other documents, certificates, and instruments that may be reasonably requested by the City.

Section 3. Tax and Insurance Escrow Account. An account has been established for the purpose of escrowing tax and insurance payments for the Project, if required.

SCHEDULE 3
CONDITIONS PRECEDENT TO SUBSEQUENT ADVANCES

The following are the requirements of Section 7.2 of the Agreement:

Section 1. Satisfaction of Conditions. All conditions precedent to the First Advance shall have been satisfied.

Section 2. Confirmation of Budget. The Borrower shall confirm that the Budget as approved by the City continues to fairly represent the total costs of the Project or submit a Revised Budget to the City for approval.

Section 3. City Fees. The City's Fees shall be current.

Section 4. Representations and Warranties Remain True. The Borrower shall confirm that the representations and warranties contained in Schedule 5 remain true on the date of the request.

Section 5. No Default. No Event of Default shall then exist.

Section 6. Disbursement Request Submission. The Borrower shall submit a Disbursement Request and required supporting information.

SCHEDULE 4
<u>CONDITIONS PRECEDENT TO FINAL ADVANCE</u>

The following are the requirements of Section 7.3 of the Agreement:

<u>Section 1. Conditions Satisfied</u>. All conditions precedent to previous advances shall have been satisfied.

<u>Section 2. Certificate of Occupancy Issued</u>. The Borrower shall have received and provided the City with evidence of the issuance of a final and unconditional Certificate of Occupancy for the Project, including both townhouses individually.

<u>Section 3. Evidence of Project Approval</u>. The Borrower shall have received and provided the City such other evidence of approval of the Project by such Governmental authorities as applicable.

<u>Section 4. Evidence of Completion of Project</u>. The Borrower shall provide the City with evidence of the completion of Project substantially in accordance with Plans, which evidence shall include, but without limitation, the following:

(a) General Contractor's Affidavit and Indemnity certifying that: (i) the Project has been completed in accordance with the Plans and the Construction Contract, specifically including the installation of sidewalks on all of Borrower’s property on Clay Avenue, (ii) upon receipt of the amount requested in the Final Disbursement for the General Contractor, the Contractor will have received in full, all payments under the Construction Contract, and all other requirements under that Contract will have been satisfied, (iii) it waives and releases all claims which the Contractor may have against the Borrower, (iv) it indemnifies the Borrower against all damages, costs, liens or losses relating to any claim for compensation by any party for work that was done for or material supplied to the Contractor, and (v) it has fully paid for all labor, materials and equipment provided to it in connection with its work on the Project.
(b) Copies of all permits that were necessary for the development of Project and the subsequent use of the Project.
(c) Proof that (i) the Project has been connected with all utilities necessary for its use and operation, including without limitations, sanitary and storm drainage, sewer, gas, electricity, telephone and water, (ii) all connection fees payable with respect to the utilities have been paid in full, and (iii) all such utilities enter the Project from public streets or easements or from duly recorded private perpetual easements that are for the benefit of and run with the Land.
(d) A complete set of as-built Plans.
(e) Lien waivers from the Contractors and any sub-contractor that furnished materials or labor for the Project and such other documentation sufficient to ensure that there are no mechanic's-material liens with respect to the Project.
(h) Certificate of insurance confirming coverage with hazard insurance, including business interruption or rental loss, as applicable, and Fire insurance with extended coverage on the completed Project.

(f) Borrower's Affidavit certifying that all requirements of the Agreement for this Final Advance have been met.

Section 5. Evidence of Costs. Interest. and Fees. The Borrower shall have provided the City with invoices, receipts and other evidence satisfactory to the City that all indirect costs of the Project that are approved, Costs of Construction or City Fees have been paid.

SCHEDULE 5
REPRESENTATIONS AND WARRANTIES

The Borrower hereby makes the following Representations and Warranties to the City, as required by Section 8 of the Agreement.

Section 1. Borrower's Authority. The Borrower is a limited liability company organized and validly existing in good standing in the State of Michigan, has the power and authority to own its assets and to carry out its business as now being conducted, and has the power and authority to execute and deliver, the Note and the other Loan Documents and to do any and all other things required of it under this Agreement.

Section 2. Authorization of Loan Documents. The execution, delivery, and performance of this Agreement, the Note and the other Loan Documents have been duly authorized by requisite corporate action, are not in conflict with the Borrower’s Operating Agreement, or of any undertaking to which the Borrower is a party or by which the Borrower is bound or any restriction, law, order, regulation, judgment, decrees, agreement, or instrument to which the Borrower is a party or by which the Borrower is bound and will not result in the creation or imposition of any liens or encumbrances upon the Borrower's property or assets other than as contemplated by this Agreement.

Section 3. Enforceability of Loan Documents. Each of the Loan Documents is the legal valid and binding obligation of the Borrower enforceable against the Borrower in accordance with therein respective terms, except as may be limited by Bankruptcy, insolvency, reorganization, moratorium or other similar laws and equitable principles of general application. The Guarantee(s) is/are the legal valid and binding obligation(s) of the Guarantor(s) enforceable against the Guarantor in accordance with the terms of the Guarantee(s).

Section 4. Enforceability of Construction Documents. The Construction Contract is in full force and effect and has not been amended, modified or terminated. The Borrower is not in default in the performance of its obligations under either the Architect's Agreement or the Construction Contract.

Section 5. Title to Real Estate. Borrower owns good and marketable fee simple title to the Land as evidenced by the insurance issued by the Title Company free and clear of all liens and encumbrances whatsoever other than the Lien and security of the Loan Documents.

Section 6. No Litigation Pending. To the knowledge of the Borrower, there is no action suit, proceeding or investigation at law or in equity before any court or administrative agency or public body pending, threatened against or affecting the Borrower or any Guarantor, nor is there any basis therefor, except as listed on the attachment; provided however, that any such litigation will (i) not materially adversely affect the financial condition of the Borrower or any Guarantor or the ability or power of the Borrower to perform the Borrower's obligations under this Agreement or any Guarantor's obligations under a Guarantee or (ii) affect the validity or enforceability of this Agreement, the Note, or the other Loan Documents.

Section 7. Financial Condition. All financial statements, loan applications, and other documents which have been submitted to the City in connection with the Loan, including without limitation the financial statements of the Borrower, its General Partner, the Guarantors and tenants under any lease, are true, complete, and correct, and, since the dates of such statements, applications, and documents, there have been no changes in the business, prospects, profits, properties, or condition (financial or otherwise) of the Borrower or the Guarantors which individually or in the aggregate have been or are likely to be materially adverse to the financial condition of the Borrower, any Guarantor, or such tenants or the ability of the Borrower to perform obligations under this Loan Agreement. Such financial statements, applications, and documents do not contain any untrue statement of material fact or omit any material fact necessary to make the statements contained therein not misleading.

Section 8. Compliance with Construction Agreements. The Project has been or will be constructed in a manner that conforms with all applicable zoning, planning. building, and other laws and ordinances and regulations of governmental authorities having jurisdiction over the Project; the Project abuts or has access or permanent easements to public roads; all utilities necessary to the construction and operation of the Project are available; the Borrower has obtained all requisite regulatory zoning, planning, building and environmental and other permits necessary for the construction of and the use contemplated for the Project.

Section 9. Taxes. The Borrower has no unpaid taxes which have become delinquent on or before the date of this Agreement.

Section 10. Default. No Event of Default exists under this Agreement and no event has occurred and is continuing that with notice or lapse of time or both would constitute an Event of Default under this Agreement the Note or the Loan Documents.

Section 11. Construction Costs and Funds. The estimated costs of completing the Project set forth in the Budget are in all respects accurate and complete.

Section 12. Ownership of Borrower. The Borrower has provided the City with evidence which accurately describes the ownership of the Borrower and outstanding options and warrants to purchase interests in the Borrower.

Section 13. Contingent Liabilities. The Borrower has not guaranteed, endorsed, assumed, or otherwise become liable for the obligations of any other person, firm or corporation.

SCHEDULE 6
AFFIRMATIVE COVENANTS OF BORROWER

The Borrower shall abide by the following covenants, as required in Section 9 of the Agreement.

Section 1. Maintain Existence in Good Standing. The Borrower shall maintain its existence in the State of Michigan and its qualification and good standing in every other jurisdiction wherein the failure to do so would affect the validity or enforceability of this Agreement, the Note, Mortgage and Security Agreements required to be given by the Borrower hereunder, or would have a material adverse impact on the financial condition, business or operations of the Borrower; continue to conduct and operate its business substantially as presently conducted and operated; and comply with all governmental laws, rules, regulations and orders applicable to it the failure to comply with which would have a material adverse effect on the financial condition, business, or operations of the Borrower or would affect the validity or enforceability of this Agreement, the Note, Security Agreements, Mortgage or other documents required to be given by the Borrower hereunder.

Section 2. Construction. The Borrower will apply for all permits within thirty (30) days of the date of execution of this Agreement and break ground on construction not later than ninety (90) days after the date of this Agreement and thereafter diligently pursue construction to completion. All construction shall be in compliance with the Plans and Specifications approved by the City, specifically including the installation of sidewalks on all of Borrower's property on Clay Avenue. The construction shall be entirely on the Land and will not impermissibly encroach upon or overhang any easement, right-of-way or land of others. Borrower shall construct sidewalks on all appropriate frontage of the Project. The City encourages Borrower to seek bids from minority and women contractors for all facets of the Project.

Section 3. Use of Proceeds. The Borrower shall use the Loan proceeds provided by City solely for the purpose of paying the Approved Costs set forth in the Budget.

Section 4. Additional Funds. If at any time during the term of the Construction Loan, the City deems the amount available for construction will not be sufficient to complete the Project in accordance with the Plans, to pay interest on the Loan and other sums due under the Loan Documents, or if the City determines the Borrower has or will experience a cost over-run in any category on the Budget, that is not offset by reductions in other categories, then the Borrower shall within (l0) ten days after notice from City deposit in the Disbursement Account such sums as City may require to remedy the condition.

Section 5. Soil Tests. The City shall be entitled, but not be obligated to conduct from time to time such soil tests, at the sole cost to the City, on the Land as it may determine is necessary or appropriate.

Section 6. Additional Documents. The Borrower agrees upon the request of City to execute any additional documents including but not limited to Security Agreements on any personal property owned by the Borrower included or to be included in the Project as may be required by City to confirm the lien of the Mortgage or other agreement securing the Loan.

Section 7. Changes in Plans. Work. Contracts. The Borrower will obtain the City's prior written approval, which may be withheld in the City's discretion, of (i) any change in the Plans that might adversely affect the value of the Project or result in a change in work and/or materials that causes the Budget to be increased; (ii) changes in the terms and conditions of the Contractor's Agreement; (iii) changes in any contract or other agreement relating to the Project that adversely affect the economic value of the Project. The City will have a reasonable time to evaluate requests for approval of any changes. The City may approve or disapprove changes in its discretion. In addition to giving its approval, the City may require the Borrower to deposit additional funds in the Disbursement Account to cover anticipated increased costs resulting from the change.

Section 8. Inspections. The Borrower will allow the City and its agents at all times to inspect the Project during the course of construction and the right to examine, copy and audit books, records, accounting data and any other documents of the Borrower and its contractors relating to the property or construction of the Project. If the City determines in good faith that any work or materials do not conform to the Plans or are not in accordance with the requirements of this Agreement, the Borrower shall cause the work to be stopped at the City's request and the City may withhold funding the escrow account until the matter is corrected. The Borrower shall promptly correct the work to the City's satisfaction. The City is under no duty to supervise or inspect the construction or to examine any books or records but may do so solely for the purpose of protecting its security and preserving its rights under this Agreement. No default of the Borrower will be waived by any inspection by the City, nor shall any such inspection impose upon the City any obligation that the work has been or will be in compliance with the Plans and this Agreement or that the construction is free from defective materials or workmanship.

Section 9. Permits. The Borrower will comply, or caused to be complied with, and keep in effect all permits and approvals necessary for construction of the Project and with all existing and future laws, regulations, orders and requirements of governmental or other authorities having jurisdiction over the Project.

Section 10. Payment for Labor and Materials. The Borrower will promptly pay and discharge all claims and liens for labor, materials and services furnished in connection with the construction of the Project. The Borrower will have the right to contest, in good faith, any claim or lien provided that the Borrower does so diligently without prejudice to the City's position. Upon the City's request, the Borrower will provide a bond, cash deposit or other security reasonably satisfactory to the City to protect the City's interest and security in the Project should a contest be unsuccessful.

Section 11. Insurance. The Borrower will maintain in force, until the Loan is paid in full, all insurance required by law and the City, including public liability and builder's risk insurance, under policies approved by the City as to amounts, form, risk, coverage, deductibles, insurer, loss payable and cancellation provisions.

Section 12. Payment of City's Expenses and Fees. The Borrower will pay all of Transnation Title’s and the City's costs and expenses incurred in connection with the making of disbursements under the Loan or any exercise of any of the City's rights or remedies under this Agreement and the Loan Documents, including but not limited to, fees for audits and inspections, escrow charges, recording charges, legal fees in connection with the making and administering the Loan, and reasonable fees and costs for services not customarily performed by City's employees.

Section 13. Accounting for Project Costs. The Borrower will keep true and correct books and records on a cash basis for the construction of the Project and will maintain adequate reserves for contingencies. The Borrower will submit to the City at the time of each draw request a statement that accurately shows the application of all funds expended to date for the construction of the Project, the source of those funds and the Borrower's best estimate of funds needed to complete the Project.

Section 14. Annual Financial Reports. Until the Loan is repaid, within thirty (30) days after filing, the Borrower shall deliver to the City annual IRS tax returns of the Borrower and the Guarantors. The Borrower shall deliver affidavits in a form satisfactory to the City that the financial condition of the Borrower and its Member(s) has not deteriorated from the condition as of the date of this Agreement. Such information shall be exempt from disclosure pursuant to MCL 15.243, and City promises to keep such information confidential.

Section 15. Examination of Records. In order to facilitate the determination of costs incurred in connection with the Project and the Borrower's compliance with the Loan Documents, the Borrower shall maintain accounting records for the construction of the Project and the subsequent operation of the property separate from the general accounting records the Borrower will maintain in connection with its general business activities or other investments. The Borrower agrees the City may have access to and the right to examine all records of the Borrower which relate directly or indirectly to the Project.

Section 16. Notice of Event of Default. The Borrower will promptly notify the City of any occurrence which constitutes an Event of Default as defined in the Agreement, or which with notice or the passage of time or both would constitute an Event of Default, and of any other occurrence which materially affects the Project or the Borrower's financial condition adversely or the Borrower's ability to comply with its obligations under this Agreement.

Section 17. Taxes. etc. The Borrower shall promptly pay and discharge all taxes, assessments and other govemmenta1 charges or levies lawfully imposed upon the premises or any goods, chattels or other personal property owned by the Borrower and located on the premises or with respect to the Project.

Section 18. Notice of Furnishings. The Borrower will provide a Notice of Commencement and all Notices of Furnishing to Transnation Title Company.

SCHEDULE 7
NEGATIVE COVENANTS OF BORROWER

As required in Section 10 of the Agreement, the Borrower agrees that it will not, without prior written consent of City:

Section 1. Liens. Create or permit to exist any lien, mortgage, pledge or other encumbrance on any of its machinery, furniture, fixtures or equipment now owned or hereafter acquired by Borrower, and located on the Properly or buildings now owned or hereafter acquired and located on the Property, except liens for taxes not delinquent or being contested.

Section 2. Sale of Assets. Sell, lease or otherwise dispose of any of its assets except in the ordinary course of business.

Section 3. Loans. Make loans or advances to any person or corporation other than in the normal course of business.

Section 4. Guarantees. Guarantee, endorse, assume or otherwise become liable for the obligations of any other person, firm or corporation except by the endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

Section 5. Acquire Stock or Membership Interest. Purchase or otherwise acquire the obligations or the capital stock or membership interest of any other interest in any person, firm or corporation.

Section 6. Borrow Money. Borrow money from any source other than City.

Section 7. Merger. Consolidation. etc. Enter into any merger, consolidation, reorganization, recapitalization, or acquire control of all or substantially all of the assets of any other persons, firm or corporation.

Section 8. Subordinate Debt. Subordinate any indebtedness owing to Borrower by any person, firm or corporation to indebtedness of such person, firm or corporation owing to any other person, firm or corporation.

Section 9. Redeem Membership Interests. Purchase, redeem or otherwise retire or make any other distribution of its assets, by reduction of capital or otherwise, in respect of any of its capital Membership Interests, other than to provide funds to enable the Members to pay any income tax due on the net income of the Borrower.

Section 10. Distributions. Make distributions to Members at any time that Borrower is in default.

Section 11. Change in Management. Change the Manager of the Borrower.

Section 12. Single Asset Borrower. Acquire any real or personal property other than the Project and Land, and personal property related to the operation and maintenance of the Project and Land; operate any business other than the management and operation of the Project and Land; and maintain its assets in a way difficult to segregate and identify.

Exhibit A
Legal Description

Exhibit B
<u>Construction Budget</u>

To Be Provided to City's Counsel and Maintained as a Confidential Document

CITY COMMISSION MEETING DATE
June 24, 2014

Date: **June 16, 2014**

To: **Honorable Mayor and City Commissioners**

From: **Cathy Brubaker-Clarke, Director of Community & Economic Development**

Re: **Farmer's Market Rentals**

SUMMARY OF REQUEST: City staff would like to allow public rental of certain areas of the new Farmer's Market facility. The proposed rental rates are shown on the attached *2014 Farmer's Market Rental Rate Sheet*. There would be 5 separate areas of the Farmer's Market available for rent as shown on the Farmer's Market site map.

Staff is requesting approval of the rental rates listed.

FINANCIAL IMPACT: Facility rental would generate additional income for the market.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the rental rates, and incorporation of the rates into the City's fee schedule. Staff also recommends that the Commission authorize staff to negotiate in-kind services in lieu of a portion or all of the rental fee, when appropriate.

COMMITTEE RECOMMENDATION: N/A

CITY OF MUSKEGON
2014 FARMERS MARKET RENTAL
RATE SHEET

Facility Descriptions:	Rental Rate (per session):
Facility A (*all-season vending area*) –	**$250.00**
• Indoor facility with large garage doors opening to the outside • Capacity of indoor area is 150 people. More can be accommodated when the facility overhead doors are open. • Outdoor Market stalls numbered 68 – 101 (33 market stalls) • West restrooms (2 women's units, 2 men's units) • Optional: Stage (add $50.00)	
Facility B (*large L*) –	**$250.00**
• Outdoor Market stalls numbered 27 – 89 (62 market stalls) • North restrooms (2 women's units, 2 men's units) • Optional: Stage (add $50.00)	
Facility C (*small L*) –	**$250.00**
• Outdoor Market stalls numbered 117 – 164 (47 market stalls) • West restrooms (2 women's units, 2 men's units) • Optional: Stage (add $50.00)	
Facility D (*Morris Street pad*) –	**$100.00**
• Outdoor Market stalls numbered 1 – 26	
Stage – Outdoor covered stage area near Facility C	**$ 50.00**

Rental Session Times:

	Session I	Session II
Facilities A – D:	9:00 a.m. - 3:00 p.m.	4:00 p.m. – 10:00 p.m.

Stage (4 hour blocks):
9:00 a.m. – 1:00 p.m.
1:30 p.m. – 5:30 p.m.
6:00 p.m. – 10:00 p.m.

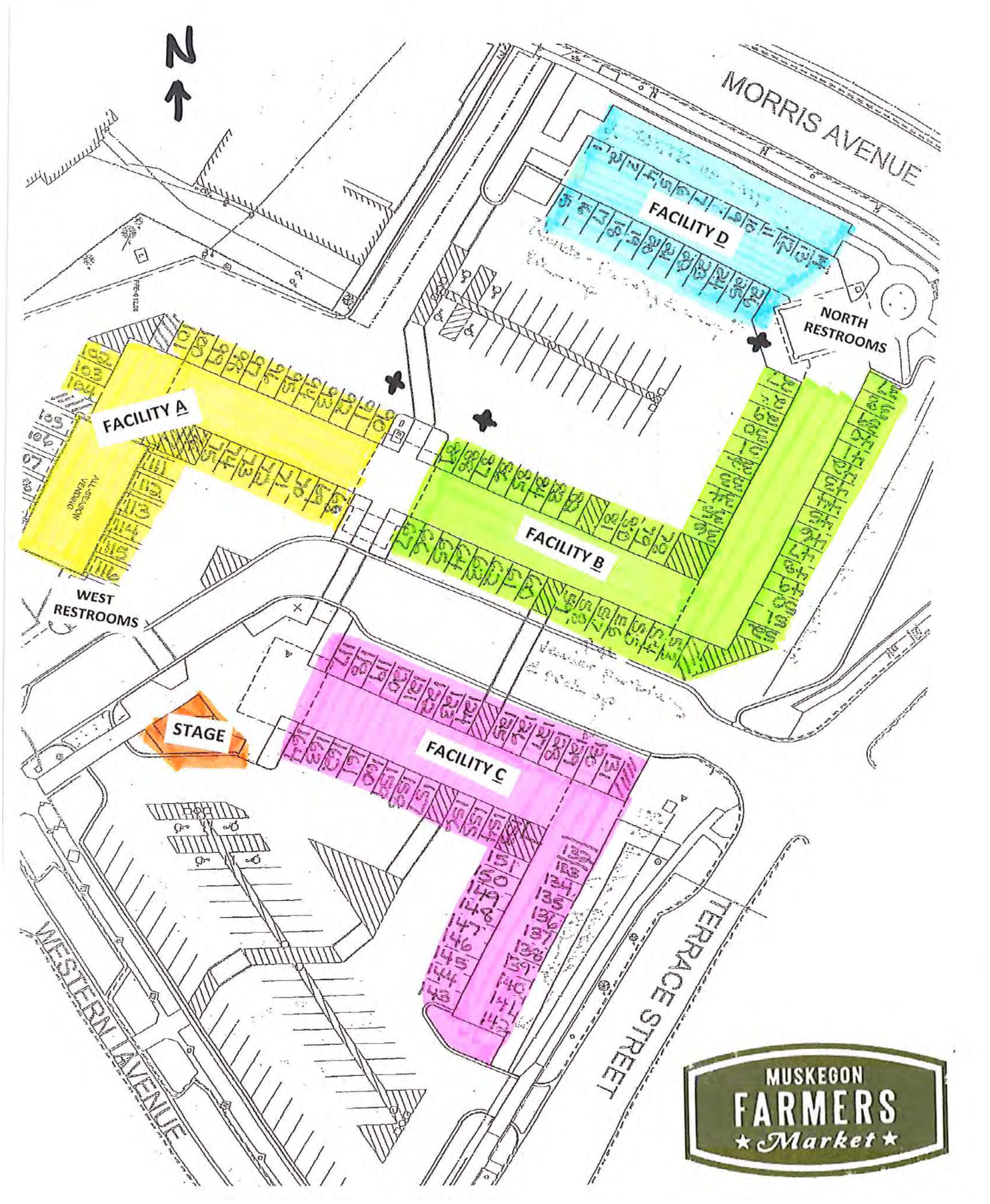
Damage Deposit Required*:

With facility restroom access	$500.00
Without facility restroom access	$250.00

**see Farmers Market Rental Inspection Checklist for items to be completed for return of deposit*

NOTE: If you rent an area without access to Farmers Market facility restrooms, you must provide portable toilet facilities. Contact Kerkstra/Fresh Start at (231) 788-4215 and request the City of Muskegon Farmer's Market rate. Fresh Start is the only approved portable toilet vendor for the Market. Other vendors may not be used.

FARMERS MARKET SITE MAP / FACILITY LOCATIONS



Date: **June 24, 2014**

To: **Honorable Mayor and City Commissioners**

From: **City Clerk's Office**

RE: **Police Review Board Minority Coalition**

SUMMARY OF REQUEST: A letter of understanding between the Muskegon Minority Coalition and the City of Muskegon was adopted on November 10, 1998. Some items in the original letter are now obsolete. Commissioner Rinsema-Sybenga, Commissioner Hood, staff, and members of the Minority Based Organizations met to discuss needed changes.

The proposed changes are attached. The two most significant changes the organizations agreed to are as follows:

Place the remark "inactive/no longer exists" next to Muskegon Urban League and Ad Hoc Committee for Equality and Justice who know longer exist.

Remove term limits.

Organizations have been asked to obtain approval from their respective boards and obtain signatures from an authorized individual(s).

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To authorize the Mayor and Clerk to sign the First Amendment to the Letter of Understanding between the Muskegon Minority Coalition and the City of Muskegon dated November 10, 1998.

APPENDIX C

Citizen's Police Review Board

I. Purposes:

A. To provide policies and procedures for processing and investigating citizen complaints regarding alleged police misconduct.

B. To provide civilian review of the investigations of alleged police misconduct undertaken by the City of Muskegon including investigations conducted by the "Internal Investigation Unit" of the Muskegon Police Department

C. To ensure the integrity of investigations of police misconduct and to thereby enhance community confidence in the Muskegon Police Department

D. To encourage compliance with rules and regulations concerning police officers' conduct during interactions with citizens.

E. To encourage people who believe they have been mistreated by police officers to use the Internal Affairs system to have that officer's conduct reviewed.

F. To create a process that fairly and evenhandedly evaluates and judges the conduct of everyone involved to determine whether or not a breach of departmental rules and regulations has occurred.

G. To afford the community a sense of confidence that the community itself is involved as necessary in reviewing the activities of its police officers; and to maintain high morale and good disciplinary practices within the police department.

II. Organization and Membership:

A. There will be nine members appointed to the CPRB by the City Commission for two-year terms, except as otherwise provided in this section. The composition of the CPRB shall be as follows:

1. Three members representing Minority Based Organizations* (a list will be attached of organizations that will qualify as MBO's that will be authorized to submit nominations for membership on the CPRB).

2. Three members representing Neighborhood Associations of Muskegon (a list will be attached of the Neighborhood Associations of Muskegon that will be authorized to submit nomination for the membership on the CPRB.).

3. One law enforcement professional.

4. Two Citizens at Large. (These individuals shall be appointed from a list of eligible city resident nominees submitted by any interested person and organizations including, without limitation, organizations eligible to submit nominees in other categories. In making such appointments, the City Commission shall consider the demographic diversity of the City of Muskegon.

~~B. Initial appointment to the CPRB shall be as follows:~~

~~1. Five members shall be appointed to serve two (2) year terms.~~

~~Four members shall be appointed to serve three (3) year terms.~~

~~No member shall serve on the CPRB for more than two consecutive full or partial terms~~

~~C.~~B. Residency Requirement- Qualifications of candidates to the CPRB will be considered in the following manner as they pertain to residency:

1. Full-time residents of City of Muskegon have the first priority for all appointments. In the event a position to be filled requires certain licensure, business connection with the City, or particular expertise, then the City Commission may, if not otherwise prevented by law, appoint non-residents.

2. Second priority shall be given to non-residents having identifiable business interests located in the City. As above, if no such persons exist to fill positions needing or requiring certain expertise or licensure, then non-residents who have no such interest may be considered.

~~D.~~C. Membership Eligibility-Appointment to the CPRB shall be conditioned upon voluntary submission to and completion of a thorough background check.

~~E.~~D. Officers- There shall be a Chairperson of the CPRB appointed by its membership. The chairperson shall preside over all meetings, have a vote in the proceedings and be authorized to call special meetings.

~~F.~~E. Removal from Office- Any member of the CPRB may be removed or suspended by the City Commission for malfeasance, failure to attend meetings (missing three unexcused and/or consecutive meetings in twelve month period or criteria established by the city Commission for appointees to all city committees/commissions), upon conviction of a criminal offense after appointment to the CPRB, or for the inability/failure to otherwise adequately perform the duties of membership.

~~G.~~F. Conflict of Interest- should a member of the CPRB become the focus of any criminal proceeding or otherwise have a conflict of interest in any matter before the PRB such that his or her ability to impartially participate in the deliberations of the CPRB may be compromised, the CPRB member shall notify the Chairperson of a potential conflict of interest and shall be excused from such deliberations or another participation. Any potential conflict of interest coming to the attention of the CPRB shall be resolved by majority vote as required.

~~H.~~G. Meetings and Working Sessions- the CPRB membership shall initially meet to adopt procedures for the conduct of meetings and the operational activities of the CPRB. Following the initial meeting, the CPRB shall meet at least once every month to conduct business at a regular meeting. Such additional regular or special meetings as may be required may be scheduled by the Chairperson or the City Manager. All regular and special meetings of the CPRB shall initially be opened to the public. An opportunity for public comment will be provided during the public portion of the meeting. All meetings will go into Executive Session when there is review and consideration of specific complaints presented to the CPRB. In addition, the CPRB may at regular or special meetings can go into an Executive Session by a majority vote of the members appointed to discuss any matter, provided that no vote is taken in the Executive Session. All business of the CPRB requiring a vote shall be transacted in a public meeting.

~~I.~~H. Quorum- A quorum for CPRB meetings shall be five of the members appointed. A majority vote of those appointed to the CPRB shall be required to transact the substantive business of the CPRB including the adoption of reports and recommendations to the City Commission/City Manager, and the initiation of any investigation, within the scope of the CPRB review authority.

The CPRB or any committee composed of a lesser number of board members may conduct such working sessions as are required to prepare for the transaction of business at regular or special meetings. No business of the CPRB requiring a vote shall be transacted in a working session.

The chairperson shall preside over all meetings of the Board and shall have the right to vote on all questions. The chairperson shall ensure that the activities of the CPRB are conducted in compliance with all applicable City laws.

III. Jurisdiction and Duties:

A. The CPRB is authorized to review all investigation of alleged police misconduct performed by the City of Muskegon including those performed by the Internal Affairs Unit of the Muskegon Police Department. Review will include evaluation of the thoroughness, accuracy, credibility and unbiased nature of each investigation.

B. The CPRB shall receive a copy of all complaints of alleged police misconduct made to the Internal Affairs Unit of the Muskegon Police Department.

C. The CPRB may also accept complaints of misconduct directly. These complaints will be referred immediately to the City Manager for investigation.

D. The ~~CPRB~~City shall maintain a central file~~registry~~ of all complaints received~~ or referred~~.

E. The CPRB may request that supplemental investigations be conducted by the City of appropriate agencies. Such requests shall be submitted to the City Manager for consideration.

F. The Chief of Police and the City Manager shall provide timely access to all relevant city records, documents, and employees, including employee personnel records and departmental investigation files and reports. (Criminal intelligence information shall not be provided unless a particularized need is demonstrated and the written approval of the City Manager or designee is obtained.

G. The CPRB, through the City Manager, may request the appearance of any member of the Muskegon Police Department to other city employees and may question such employees for the purpose of aiding in the evaluation and investigations of allegations of police misconduct.

H. All information obtained by the CPRB shall be kept confidential unless a matter of public record under state law. Such confidentiality shall be strictly maintained in any matter involving pending or potential criminal violations.

I. If parallel criminal and administrative investigations are necessary; the CPRB shall consult with the City Manager and the Chief of Police for the purpose of coordinating board injuries with the criminal and and administrative investigation. CPRB shall not request the production of parallel criminal or administrative investigation in any manner that would potentially threaten the effectiveness of criminal or administrative subpoena powers and cannot compel testimony or the production of documents.

IV. Complaint Procedure:

A. Registration of Complaints- Citizen complaints may be registered through either the Muskegon Police Department of the CPRB through the office of the City Manager. The recipient of a complaint will immediately (within one business day) forward a copy of the complaint to the other party (MPD or CPRB)

1. Complaints may be lodged in writing, in person or by telephone.

2. A complaint may be lodged on behalf of oneself or on behalf of another person by any interested person or group; however should the Complaint reach the point of being appealed before the CPRB, the CPRB will only hear from direct witnesses to the incident in question~~.~~

3. No complaint will be deemed to have been filled with the CPRB unless and until it has been reduced to writing and signed by the complainant in accordance with the following procedure:

a. If the complaint is lodged in person, the person will be provided a complaint form. The complainant shall be asked to fill out the form and to sign the form in a space provided. A copy of the completed form shall be given to the complainant to serve as a record of the filing of the complaint. Assistance in filling out the complaint form will be provided as necessary.

b. If the complaint is lodged by mail, the complaint form shall be completed by the city of police department staff on the basis of the information contained within the correspondence. A copy of the completed complaint shall be mailed to the complainant with a request that the complainant review the complaint form for accuracy. If accurate, the complainant shall be requested to sign the complaint form and return it to the city. (if necessary, the complainant will be instructed to correct the complaint form for accuracy before it is returned).

c. If the complaint is lodged by telephone, the receiving staff shall mail a complaint form to the complainant to fill out, sign and return.

B. ~~Within ten (10) working days~~Upon receipt ~~of receipt~~ of a signed written complaint, ~~correspondence will be mailed to the~~ the complainant will be provided with an acknowledgment of ~~ing~~ receipt which will contain~~of the complaint and explaining~~ the process in which the complaint will be handled.

C. Time Limitations for Filing Complaints- All complaints shall be received within six (6) months after the date of the incident giving rise to the complaint, except complaints with allege criminal misconduct may be filed at any time.

D. Internal Affairs unit of the Muskegon Police Department- The Internal Affairs Unit of the Muskegon Police Department will be responsible for the initial investigation of all complaints alleging police misconduct by Muskegon Police Officers. The Internal Affairs unit will investigate and will prepare a "complaint Investigation Report" which will include recommendation(s) for disposition. When an investigation is completed and a finding is made, a "Complaint Disposition Report" will be sent to the Chief of Police or his designee, to the complainant(s), to the officer(s) involved, to the City Manager, and to the CPRB. The IAU will endeavor to complete the investigation within 30 calendar days.

E. Appeal of IAU/MPD Disposition- within ten (10) business days of the receipt of the Complaint Disposition Report delivered by certified mail or messenger to the complainant(s) last known address and the police officer(s), the complainant or the respective police officer(s) may request in writing a review of this IAU investigation and finding through the CPRB.

The CPRB shall meet as necessary to consider the matters referred to it in a timely fashion. The CPRB shall provide for recordation of a summary of its proceedings. The board shall provide a written rationale for its findings.

F. Requests for Further Investigations by CPRB- the CPRB may request that the City conduct of arrange to have conducted, supplemental investigations. Such requests shall be submitted to the City Manager for consideration (for further information see IIIE)

G. Final Appeal Board Decision- The Board shall provide a written final decision with respect to the allegations made by the complainant. The final decision of the Board shall be sent to the Mayor (City Commission), Chief of Police, the complainant(s), the officer(s), and the City Manager. ~~and the Civil Service Director.~~ The final disposition should be provided within 30 calendar days after the IAU determination is appealed.

H. Reports- The CPRB is authorized to issue reports to the Mayor (City Commission), City Manager and Chief of Police containing findings, conclusions and recommendations.

The CPRB shall also issue an annual report summarizing its activities for the previous calendar year. The annual report will review significant cases and recommendations. The annual report shall be issued to the City Commission, the City Manager and the Police Chief.

Attachment

Minority Based Organizations

The following organizations shall qualify as Minority Based Organizations pursuant to Section II A (1) of the Citizens Police Review Board Policy:

1. Muskegon Urban League (inactive/no longer exists)
2. NAACP – Muskegon Chapter
3. Latinos Working for the Future
4. Nation of Islam
5. Ad Hoc Committee for Equality and Justice (inactive/no longer exists)

FIRST AMENDMENT TO THE LETTER OF UNDERSTANDING BETWEEN THE MUSKEGON MINORITY COALITION AND THE CITY OF MUSKEGON DATED NOVEMBER 10, 1998

This Amendment is made, effective _______________, 2014 by and between the City of Muskegon, NAACP – Muskegon Chapter, Latinos Working for the Future and Nation of Islam.

Recitals

A. The City of Muskegon, NAACP – Muskegon Chapter, Latinos Working for the Future, Nation of Islam, Muskegon Urban League and Ad Hoc Committee for Equality entered into a Letter of Understanding Between the Muskegon Minority Coalition and the City of Muskegon dated November 10, 1998.

B. The Muskegon Urban League and the Ad Hoc Committee for Equality have become "inactive/no longer exists".

C. The City of Muskegon, NAACP – Muskegon Chapter, Latinos Working for the Future, Nation of Islam need to make changes to the structure of the Citizen's Review Board policy, which is Appendix C to the Letter of Understanding Between the Muskegon Minority Coalition and the City of Muskegon dated November 10, 1998.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Appendix C shall be revised to read as provided in the attached "Citizen's Police Review Board" policy.

2. In all other respects, the Letter of Understanding Between the Muskegon Minority Coalition and the City of Muskegon dated November 10, 1998, with Appendixes A and B, shall remain in full force and effect.

______________________________	______________________________
Mayor City of Muskegon	NAACP – Muskegon Chapter
______________________________	______________________________
Clerk City of Muskegon	Nation of Islam
______________________________	
Latinos Working for the Future	

COMMISSION DATE: 06/24/2014

DATE: 06/17/2014

TO: Honorable Mayor and Commissioners

FROM: Jeffrey Lewis, Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN130264

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 **254 MONROE 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.

Case# & Project Address: # EN130264 - 254 MONROE AVE

Location and ownership: This structure is located on Monroe Ave. between 4th and 3rd Streets and is owned by WILLIAMS TROY E.

Staff Correspondence: A dangerous building inspection was conducted on 10/22/2013 & 4/3/2014. The Notice and Order to Repair was issued on 3/19/2014. On 5/01/2014 the HBA declared the structure substandard and dangerous.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: $ 16,900

Estimated cost to repair: $ 35,000

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

Additional Information (History):

Owner Contact:
Prior owner (Chez-Moi Bridge Center):
- ✓ N&O Mailing = Signed by Suleyman Cotal
- ✓ HBA Notice = Signed by Suleyman Cotal

Current owner (Troy Williams):
- ✓ New Owner letter & HBA meeting letter were mailed together = Signed by Troy Williams.

Permits obtained:
- ✓ None having to do with the necessary repairs from the Dangerous Building List.




The interior pictures were provided by Kirk while performing an interior inspection on 4/3/2014 (defect list is on the next page).

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

CITY OF MUSKEGON
CODE COMPLIANCE DEPARTMENT
933 TERRACE ST STE 202
MUSKEGON, MI 49440
(231) 724-6702 (Office)
(231) 724-6790 (Fax)

DANGEROUS BUILDING REPORT

254 MONROE AVE
10/22/2013

Inspection noted:

Exterior items only:

1) Whole Dwelling has peeling paint
2) Broken/boarded windows
3) Windows have deteriorated glazing
4) Foundation has Peeling Paint
5) Roof is Deteriorated
6) Chimney is deteriorated
7) West side door in need of repair
8) Threshold is rotted
9) Basement windows are missing/boarded
10) Rear eaves are missing
11) Rear windows is missing/boarded
12) Bottom Trim is rotted
13) Open sewer clean out
14) Tree limbs are impeding the house.

BASED UPON A RECENT INSPECTION OF THE ABOVE PROPERTY, IT HAS BEEN DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

SAFEbuilt performed an interior inspection of the trades on 4/3/2014 and found:

1. Roof in the back is rotted away along with the joists
2. The floor is rotted away in areas
2. The walls are kicked in
4. Windows are broken
5. The foundation is bad
6. The building has had the electrical and pipes removed for scrap

COMMISSION DATE: 06/24/2014

DATE: 06/16/2014

TO: Honorable Mayor and Commissioners

FROM: Jeffrey Lewis, Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN140070

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 **1245 FLEMING AVE (garage)** 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.

Case# & Project Address: # EN140070 - 1245 FLEMING AVE (Garage)

Location and ownership: This structure is located on Fleming Ave. between Roberts and Burton and is owned by the COUNTY OF MUSKEGON (due to tax foreclosure 3/31/2014).

Staff Correspondence: A dangerous building inspection was conducted on 10/15/07. The Notice and Order to Repair was issued on 10/17/08. On 12/06/07 the HBA declared the structure substandard and dangerous.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: $ 20,100

Estimated cost to repair: $ 5,000

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

Additional Information (History):

Owner Contact:

1) Harbour Portfolio VI LP
   - ✓ 3/19/2014 – Notice & Order – Card was signed (can't read signature).
   - ✓ 4/10/2014 – Harbour Portfolio sent in a letter asking how to fight this as they are not house flippers, but buy to sell to home owners on land contract.
   - ✓ 4/18/2014 – HBA Meeting notification – Signed but unreadable
   - ✓ 5/9/2014 – HBA Concurred notification – Signed by Julie M.
2) Muskegon County Treasurer:
   - ✓ 3/19/2014 – Notice & Order – Card was signed by Colleen M.
   - ✓ 4/18/2014 – HBA Meeting notification – Card signed by Colleen M.
   - ✓ 5/9/2014 – HBA Concurred notification – Card signed by Tony M.

Permits obtained: None

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

CITY OF MUSKEGON
CODE COMPLIANCE DEPARTMENT
933 TERRACE ST STE 202
MUSKEGON, MI 49440
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DANGEROUS BUILDING REPORT

1245 FLEMING AVE

Inspection noted:

Garage only:
1) Roof is completely caved in.
2) Walls are bowing out.
3) Windows missing
4) Hole in side.

BASED UPON A RECENT INSPECTION OF THE ABOVE PROPERTY, IT HAS BEEN DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

COMMISSION DATE: 06/24/2014

DATE: 06/17/2014

TO: Honorable Mayor and Commissioners

FROM: Jeffrey Lewis, Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN140056

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 **30 E CLAY 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.

Case# & Project Address: # EN140056 - 30 E CLAY AVE

Location and ownership: This structure is located on Clay Ave. between Spring St. and Shoreline Dr. and is owned by HOLST DAVID B.

Staff Correspondence: A dangerous building inspection was conducted on 2/4/2014 & 3/31/2014. The Notice and Order to Repair was issued on 2/18/2014. On 5/1/2014 the HBA declared the structure substandard and dangerous.

Financial Impact: General Funds

Budget action required: None

State Equalized value: $ 82,500

Estimated cost to repair: $ 280,000

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

Additional Information (History):

Owner Contact:
- ✓ Notice & Order = Card signed (can't read signature)
- ✓ HBA Meeting = Card signed by Shari Soules

Permits obtained: None since the structure was declared a dangerous building.

All interior photos were taken by Kirk of SAFEbuilt during his interior inspection.

Foundation missing-picture showing from the inside.

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

CITY OF MUSKEGON
CODE COMPLIANCE DEPARTMENT
933 TERRACE ST STE 202
MUSKEGON, MI 49440
(231) 724-6702 (Office)
(231) 724-6790 (Fax)

DANGEROUS BUILDING REPORT

30 E CLAY AVE
02/04/2014

Inspection noted:

1. Peeling Paint.
2. Boarded windows – The windows have been boarded for more than 180 consecutive days.
3. Many broken windows
4. Walls have many cracks in the brick work outside.

DANGEROUS BUILDING INSPECTION REPORT
04/08/2014

Owner HOLST DAVID B
PO BOX 151
GRANDVILLE, MI 49468-0151
Enforcement # EN140056
Property Address: 30 E CLAY AVE
Parcel # 24-205-173-0002-00

Date completed: 3/31/14

DEFICENCIES:

- This building is in very bad dis-repair. The roof was bad and the building is badly water damaged with rotten wood.
- Drywall work was done without permits.
- Wood trusses and rafters are old.
- Some of the floor joists are sagging.
- The foundation on the north side is not to the frost line and animals are tunneling under it.
- There is only 1 roof drain and this will not handle the amount of water that it needs to in a downpour.
- The masonry is in very bad shape with cracks and in areas the walls are caving in.
- The east wall is bowing out and could cause a sudden failure allowing the rafters to cave in.
- The field stone foundation is crumbling on the west side.
- The fire sprinkler is not working and has been removed from most of the building and there is a large fire load in the building. Also there is a lot of construction equipment stored on the 2nd and 3rd floors that will cause a hazard in a fire.
- The drywall is missing under the stairs.
- Lots of areas on the north side have roof leaks.
- This will need all new wiring and plumbing and heating.
- There are barrels stored outside on the west side.
- There is a pile of tires stored outside on the west side.
- Use of extension cords throughout not permitted.
- All wiring to be in good repair and code compliant
- Inspect and certify all HVAC.
- Inspect and certify all plumbing
- Gas and water are on.
- Insure fire suppression works.
- Building in disarray.
- Test backflow device on water service.

_____________________________ _______________
Kirk Briggs, Building Official Date

Date: **June 24, 2014**

To: **Honorable Mayor and City Commissioners**

From: **City Manager**

RE: **Resolution to Place Question to Increase Tax Levy on Ballot**

SUMMARY OF REQUEST: Attached is a resolution for a proposed Charter Amendment to allow the City Commission to levy up to 14 mills for municipal purposes. If adopted, this question will be placed on the General Ballot for consideration by the voters.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To adopt the resolution to place a question on the ballot to levy up to 14 mills for municipal purposes.

CITY OF MUSKEGON

RESOLUTION NO.______

A Resolution of the City of Muskegon City Commission to propose for adoption by the voters of the City of Muskegon an Amendment to the City Charter establishing the City's ad valorem tax rate not to exceed 14 mills.

The City Commission of the City of Muskegon resolves the following amendment to the City Charter shall, upon approval of the Governor, be submitted to the Electors of the City in accordance with the Home Rule Cities Act of the State of Michigan

Proposed Charter Amendment

City of Muskegon

Amend Article XI, by adding Section 7 to read as follows:

ARTICLE XI. TAXATION

Section 7 Taxation; General Powers.

The City shall have the power to assess taxes and levy and collect rents, tolls and excises. The annual ad valorem tax levy for municipal purposes shall not exceed fourteen (14) mills of the assessed valuation of all real and personal property subject to taxation in the City as equalized by the State, exclusive of any levy required for the payment of principal and interest on City indebtedness or on outstanding bonds of the City and exclusive of any levy authorized by statute to be made beyond the Charter tax rate limitation.

BE IT FURTHER RESOLVED that the following language be placed upon the ballot at the next election in accordance with the Home Rule Cities Act:

CHARTER AMENDMENT

State law permits the electorate to establish a charter limitation of 20 mills on the City's annual levy for municipal purposes. Currently, the City's annual levy is limited to 10 mills. This proposal would increase the maximum levy allowed to 14 mills to be used for municipal purposes, including but not limited to road maintenance and repair. Shall Section 7 of Article XI of the City Charter be adopted to authorize the levy of up to 14 mills on real and personal property in the City commencing December 1, 2014?

BE IT FURTHER RESOLVED that the proposed charter amendment, as adopted by the City Commission on _____________, be published in the Muskegon Chronicle, and a reasonable number of copies made available to the public before the said election.

This resolution adopted:

AYES: Commissioners

NAYES:

ABSENT:

CITY OF MUSKEGON

By___________________________
Ann Marie Cummings, 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 city commission members of the City of Muskegon, Michigan, held on the ____ day of _____________, 2014 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.

____
Ann Marie Cummings, City Clerk