

CITY OF MUSKEGON

CITY COMMISSION MEETING

FEBRUARY 12, 2019 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Medicaid CHIP Community Development Lead Hazard Control Program – 2019** Community & Neighborhood Services
 - C. Water Main Repair** Department of Public Works
 - D. 2019 User Fee Addition – Commercial Launch Ramp Permit** Department of Public Works
 - E. Municipal Vehicle Purchase** DPW/Equipment
 - F. Water Service Line Replacements** Department of Public Works
 - G. Sanford/Peck Traffic Signal Design** Engineering
 - H. Muskegon Fire Department Equipment Request (Turnout Gear)** Public Safety
 - I. Short Term Vacation Rentals** Public Safety
 - J. Approval of Several Neighborhood Enterprise Zone Certificates** Planning & Economic Development
 - K. Rezoning of 1021 Jefferson Street** Planning & Economic Development
 - L. Restrictive Covenant for 350 Shoreline Drive** Planning Department
 - M. Sale of City Owned Property to Damfino Development, LLC** City

Manager

N. Approval of Contract for Critical Dune Enforcement Planning & Economic Development

O. Organizational Changes City Manager

P. Sale of City Owned Property Planning & Economic Development

☐ **PUBLIC HEARINGS:**

☐ **COMMUNICATIONS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. Sale of City Owned Lot at 1021 Jefferson Street Planning & Economic Development

B. PILOT-Gencap 1021 Jefferson Limited Dividend Housing Association, LLC Planning & Economic Development

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

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

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY-FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1-22 TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meetings

Date: February 7, 2019

Here is a quick outline of the items on our once again very full agenda(s):

WORK SESSION

1. We would like to discuss the proposed contract with Prism Science and Technology for enforcement of our Critical Dune Ordinance. Representatives from Prism will be in attendance to explain the process.
2. We would like to discuss the proposed development at 1021 Jefferson, our current employee parking lot. Gencap 1021 Jefferson Limited Dividend Housing Association, LLC will be presenting their plans for the mixed use development which focuses on affordable housing. Gencap is requesting a payment in lieu of taxes for the project.
3. We would like to provide an opportunity for the Lakeside neighborhood to discuss funding options for utility relocations along Lakeshore Drive. Our expectation is that a decision can be made on whether to move forward with a special assessment to cover the costs.
4. We would like to discuss the sale of a small land-locked parcel to Damfino Development, LLC for inclusion in their development, The Docks. A map showing the parcel size and location is included in your packet.
5. We would like to share with you our proposal for converting Peck and Sanford to 2 way streets. The limits of work are from Hackley in Muskegon Heights to Apple Avenue. We are coordinating with Muskegon Heights and have their agreement to move forward.
6. We would like to develop topics of discussion for our upcoming joint meeting with the Muskegon Public Schools Board. Your packet includes some items staff have been considering.
7. We would like to discuss our Short Term Vacation Rental Ordinance and propose that you adopt it at the regular meeting.
8. We would like to discuss recommendations to change staffing at the city. We are seeking to expand our focus on economic development efforts. This change warrants a separation of duties at the division level. In addition, we are proposing to on-board arena staff to city government rather than use a staffing agency.

Memorandum – City Commission Meetings
February 7, 2019

REGULAR MEETING

1. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. Authorization to hire contractors to monitor and abate lead within homes approved under our Lead Safe Muskegon Program funded by the Michigan Department of Health and Human Services.
 - c. Approval to enter into an agreement with Jackson-Merkey Contractors to repair the water main in Roberts Street in the Ryerson Creek gully. City staff are unable to complete the repair work due to the high water table in the area.
 - d. Approval to add user fees for commercial launch permits.
 - e. Approval to purchase a replacement trackless municipal vehicle due to fire damage to our current vehicle. We are grateful that Matt Beerman, who was driving the vehicle when it caught fire, was unharmed.
 - f. Approval to award a contract for the replacement of water service lines to the low bidder, Goyette Mechanical. Funding for this work is covered by a grant from the DEQ. We used an innovative bidding process for this project where we asked bidders to vary the amount of work completed within a fixed budget.
 - g. Approval to enter into an agreement with Wade Trim to design traffic signal upgrades for the conversion of Peck and Sanford to 2 way streets.
 - h. Approval to purchase turnout gear for the 13 new fire fighters.
 - i. Approve the Short Term Vacation Rental ordinance.
 - j. Approve Neighborhood Enterprise Zone certificates for several properties within the Terrace Point Landing development. All local and state requirements have been met by each applicant.
 - k. Approval to rezone the property at 1021 Jefferson Street (the city hall employee parking lot) to Form Based Code, Neighborhood Core. The rezoning sets the stage for the proposed mixed use development of affordable housing and supporting commercial space.

Memorandum – City Commission Meetings
February 7, 2019

- l. Authorization for the mayor and clerk to sign a restrictive covenant on 350 Shoreline Drive. The property currently serves as a parking lot for the Shoreline Inn and the adjacent marina and dock. Environmental remediation of the groundwater will continue.
 - m. Approval to sell a small landlocked parcel to Damfino Development LLC.
 - n. Approval of the contract with Prism Science and Technology and the associated fee schedule for enforcement of our Critical Dune ordinance.
 - o. Approval of the staff recommended organizational changes.
 - p. Approval to sell the bike path parcel adjacent to the Hartshorn Village development. The developer will relocate the bike path to the approximate alignment of the current roadway to the launch ramp within the charter park, and access to the launch ramp will be relocated to the west of Fricano's.
- 2. Under the New Business, we are asking the Commission to consider the following:
 - a. We are seeking authorization to sell the city hall employee parking lot at 1021 Jefferson Street.
 - b. We are seeking approval of a Payment in Lieu of Taxes for the proposed development at 1021 Jefferson Street. The Contract for Housing Exemption and Professional Services Agreement will need to be signed by the mayor and clerk.

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

Date: February 5, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the January 22, 2019 Regular Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 22, 2019 @ 5:30 P.M.

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

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, January 22, 2019. Pastor Tim Cross, Living Word Church, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Commissioners Ken Johnson (arrived at 5:35 p.m.), Byron Turnquist, Debra Warren, Willie German, Jr., and Dan Rinsema-Sybenga, City Manager Frank Peterson, City Attorney Brian Lieberman, and City Clerk Ann Meisch.

Absent: Vice Mayor Eric Hood

HONORS AND AWARDS:

Public Safety Director, Jeff Lewis, presented Pastor Time Cross with a plaque to show appreciation for the support that Pastor Cross and Living Word Church has shown to the Muskegon Police Department.

2019-05 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the January 7, 2019 Worksession and January 8, 2019 Regular Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Adopt a Resolution Approving the Liquor License Application for Rake Beer Project, LLC City Clerk

SUMMARY OF REQUEST: To adopt a resolution approving the request for a

Liquor License for Rake Beer Project, LLC to be issued a Micro Brewer's License and Small Wine Maker's License.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Adopt a resolution approving the request.

C. Citizen's Police Review Board By-laws Amendment City Clerk

SUMMARY OF REQUEST: To amend the Citizen Police Review Board bylaws and have the Minority Based organizations state:

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

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

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To amend the Citizen Police Review Board bylaws as stated.

D. 2019 Dozer Rental for Beach Leveling Department of Public Works

SUMMARY OF REQUEST: Staff is requesting permission to enter into a rental agreement with Contractors Rental Corporation out of Grand Rapids, Michigan for a John Deere 850K WLT Dozer for leveling sand at Pere Marquette Beach.

FINANCIAL IMPACT: Estimated cost of the 2019 Dozer rental is \$9,800 (which includes \$550 for delivery and pickup).

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

E. Administrative Vehicle Replacement Department of Public Works/Equipment

SUMMARY OF REQUEST: Authorize staff to purchase two (2) Chevy Impalas from Berger Chevrolet off of the Oakland County Contract. This will replace the two oldest administrative vehicles currently being used. Cost to the City will be \$23,078.00 per vehicle.

FINANCIAL IMPACT: \$23,078.00 x 2, for a total price of \$46,156.00.

BUDGET ACTION REQUIRED: None. This is the amount budgeted.

STAFF RECOMMENDATION: Authorize staff to purchase two (2) Chevy Impala's from Berger Chevrolet.

F. SP 91820 Pere Marquette Park Recreational Improvements Department of Public Works

SUMMARY OF REQUEST: To award contract (SP 91820) for park recreational improvements of the Pere Marquette Park bath house and playground area, along with alternates 1, 3, and 4.

Six contractors submitted bids for this as follows:

Tridonn Construction Co.	\$466,026.00
Patron Construction Inc	\$487,808.77
Muskegon Quality Builders, Inc	\$498,363.00
JKB Construction Inc	\$548,725.00
Griffith Builders Inc	\$558,337.00
TJM Services	\$640,073.20

FINANCIAL IMPACT: \$466,026.00

BUDGET ACTION REQUIRED: None. Initially budgeted for \$385,000.00 from the CIP but will be adjusted in the next budget reforecast.

STAFF RECOMMENDATION: Award the project to the low bidder, Tridonn Construction, Inc.

G. LC Walker Arena – HVAC Upgrades City Manager

SUMMARY OF REQUEST: City staff is requesting approval of the proposal to undertake significant upgrades to the HVAC system at the LC Walker Arena. The Arena's current steam boiler system is original to the building and is both inefficient and unreliable. The upgrade will result in significant utility savings annually. This improvement will be combined with recently approved improvements to the roof and dehumidification system and staff will be presenting Commissioners with financing options at the February Work Session. The DDA has indicated initial support of \$215,000 annually to assisting with the annual debt payment associated with these improvements.

FINANCIAL IMPACT: \$697,894

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize the City Manager to accept the proposal from Hurst Mechanical.

Motion by Commissioner Turnquist, second by Commissioner German, to

approve the consent agenda as presented, except item G.

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

Nays: None

MOTION PASSES

2019-06 ITEMS REMOVED FROM CONSENT:

H. Management Agreement Between City of Muskegon and Parkland Acquisition Two, LLC City Manager

SUMMARY OF REQUEST: City staff is requesting approval of the management agreement with Parkland Acquisitions Two. Parkland will be operating the convention center on behalf of the City of Muskegon.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None at this time.

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

Parkland Acquisition Two, LLC owner, Jon Rooks, addressed the City Commission regarding this item.

Motion by Commissioner Warren, second by Commissioner Rinsema-Sybenga, to approve the agreement and authorize the Mayor and Clerk to sign.

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

Nays: None

MOTION PASSES

2019-07 PUBLIC HEARINGS:

A. Request to Establish an Obsolete Property District – 285 West Western Avenue Planning & Economic Development

SUMMARY OF REQUEST: Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Parkland Muskegon, Inc, has requested the establishment of an Obsolete Property District for their property at 285 W Western Avenue. The establishment of the Obsolete Property District would allow them to apply for an Obsolete Property Rehabilitation Exemption Certificate.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the creation of the district.

PUBLIC HEARING COMMENCED:

John Rooks, 285 W. Western property owner explained the Obsolete Property District.

Michael Haueisen, 903 Turner, encouraged commissioners to approve the District and Certificate.

Motion by Commissioner Turnquist, second by Commissioner Rinsema-Sybenga, to close the public hearing and approve the creation of the district.

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

Nays: None

MOTION PASSES

B. Request to Issue an Obsolete Property Certificate – Parkland Muskegon, Inc – 285 West Western Avenue Planning & Economic Development

SUMMARY OF REQUEST: Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Parkland Muskegon, Inc. has requested the issuance of an Obsolete Property Certificate for their property located at 285 W Western Avenue. Total capital investment for this project is estimated to be \$508,450 and tenants will include a market and a credit union. The investment amount qualifies the applicant for a 12-year abatement.

FINANCIAL IMPACT: If an Obsolete Property Certificate were issued, the property taxes would be frozen at the pre-rehabilitated rate for the duration of the certificate.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the Obsolete Property Rehabilitation Exemption Certificate.

PUBLIC HEARING COMMENCED:

No public comments were received.

Motion by Commissioner Warren, second by Commissioner German, to close the public hearing and approve the Obsolete Property Rehabilitation Exemption Certificate for 285 W. Western.

Motion by Commissioner Johnson, second by Commissioner Warren, to amend the motion to have the certificate be for a duration of six years rather than twelve years.

ROLL VOTE: Ayes: Johnson

Nays: German, Rinsema-Sybenga, Turnquist, Gawron, and Warren

MOTION FAILS

ROLL VOTE ON ORIGINAL MOTION: Ayes: Warren, German, Rinsema-Sybenga, Turnquist, Gawron

Nays: Johnson

MOTION PASSES

2019-08 NEW BUSINESS:

A. Convention Center Construction Management Services – Preconstruction Agreement City Manager

SUMMARY OF REQUEST: City staff is requesting approval of the agreement with Clark Construction Company to assist in the preconstruction phase of the convention center development. It is important to bring the preferred construction manager onto the project during the final design phases to help ensure a quality project that can be completed on time and on budget. Staff anticipates returning to the Commission in the coming weeks with the contract to award the Construction Management Services contract to the same contractor.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

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

Jeff Salowitz, Clark Construction Company, explained the process and their role.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Warren, to approve the agreement and authorize the Mayor and Clerk to sign.

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

Nays: None

MOTION PASSES

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

157 Allen Avenue

1934 Hudson Street

1505 Sixth Street

1853 Sanford Street

2555 Morton Avenue

SUMMARY OF REQUEST: This is to request that the City Commission concur with

the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within thirty (30) days or infraction tickets may be issued. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the mayor and City Clerk be authorized and directed to execute contracts for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent or responsible party if they do not demolish the structure.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED: None

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

Motion by Commissioner Turnquist, second by Commissioner Johnson, to concur with the Housing Board of Appeals decision to demolish 157 Allen, 1934 Hudson, 2555 Morton, and 1853 Sanford.

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

Nays: None

MOTION PASSES

Motion by Commissioner German, second by Commissioner Warren, to concur with the Housing Board of Appeals decision to demolish 1505 6th Street.

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

Nays: Warren

MOTION PASSES

C. Amendment to the Medical Marihuana Facilities Licensing Overlay District Planning & Economic Development

SUMMARY OF REQUEST: The property owner at 185 W. Laketon Avenue is requesting to amend the Medical Marihuana Licensing Facilities Act (MMFLA) Overlay District to include their property within the district.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff does not recommend approval of the amendment.

COMMITTEE RECOMMENDATION: At the January 10 Planning Commission meeting, a motion was made to approve the amendment as presented. The Planning Commission voted 6-2 against the motion.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson,

to include the property at 185 W. Laketon Avenue into the Medical Marihuana overlay district.

ROLL VOTE: Ayes: Rinsema-Sybenga, Johnson, and Warren

Nays: Turnquist, Gawron, and German

MOTION FAILS (NO ACTION)

ANY OTHER BUSINESS:

PUBLIC PARTICIPATION: Public Comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 9:05 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

Commission Meeting Date: February 12, 2019

Date: February 5, 2019

To: Honorable Mayor and City Commission

From: Community and Neighborhood Services Department

RE: Medicaid CHIP Community Development Lead Hazard Control Program
-2019

SUMMARY OF REQUEST: Community and Neighborhood Services Department has budget provisions to hire Abatement Contractors and a Lead Abatement Contractor team to monitor the lead abatement projects for our Lead Safe Muskegon Program; funded by the Michigan Department of Health and Human Services (MDHHS). A list of Lead Abatement Contractors have expressed an interest in working with the city to serve an expected 25 households.

Below are the proposed Abatement Contractors enlisted for abatement work:

Tony Beattie	Beattie Bros.
Curtis Holden	Gray Space Construction
Viv Jaunais	Great Lakes Builders
Francena DePung	Nassau Construction
Chuck McCloud	TK Construction
Joe Fehler	Midwest Builders
Joe Ferrier	4 Star Builders
Vicki Luthy	External Consultant
Catherine Phelps	AAA Lead Inspections

FINANCIAL IMPACT: \$ 880,005.00

BUDGET ACTION REQUIRED: NONE

STAFF RECOMMENDATION: Support the hiring of the proposed Abatement Contractors for the Lead Safe Muskegon Program.

Date: 2/12/19
To: Honorable Mayor and City Commission
From: Department of Public Works
RE: Water Main Repair

SUMMARY OF REQUEST:

Authorize Staff to enter into an agreement with Jackson-Merkey Contractors, the lowest responsible bidder, to perform water main repairs in the Roberts Street ROW behind Steel School in the Ryerson Creek gully.

Due to the location and depth of the water main along with a high-water table, our in-house work force is unable to perform the repair.

Two (2) contractors submitted bids for this project as follows:

Jackson-Merkey Contractors.....	\$30,150
McCormick Sand.....	\$49,500

FINANCIAL IMPACT:

Total Cost \$30,150.00

BUDGET ACTION REQUIRED:

None at this time. Funds will come from the water fund.

STAFF RECOMMENDATION:

To authorize Staff to enter into an agreement for water main repairs with Jackson-Merkey Contractors.



5430 Russell Rd. · Twin Lake, MI 49457 · Ph. 231-766-0466 · Fax 231-766-5162

January 30, 2019

Attn: Leo Evans, P.E.
City of Muskegon
1350 E. Keating Ave
Muskegon, MI 49442

Roberts St Water Main Spot Repair

Scope of Work: Labor & Equipment to perform spot repair of 14" CI watermain along Roberts St ROW between Lawrence Ave and Amity Ave.

Includes:

- Ability to mobilize on 2/4/19
- Mobilization of equipment and personnel
- Removal of trees, brush and other surface obstructions within work area.
- Exploration to locate break with direct assistance by City of Muskegon DPW
- Preservation of existing utilities not in direct conflict with repair work.
- Ground and surface water management to facilitate spot repair
- Remove and replace broken water main.
- Backfill and Demobilization.

Amount: \$49,500

Clarifications: All necessary watermain materials furnished by City of Muskegon, Single-location repair not to exceed 20ft of pipe length,

Excludes: DEQ and SESC Permits, Culvert or sewer disturbance or replacement, Surface Restoration.

Sincerely,

McCormick Sand, Inc.

David P. Vander Molen, P.E.
Project Manager

Dave Baker

From: Brian DeLong <bdelong@jackson-merkey.com>
Sent: Monday, February 4, 2019 4:53 PM
To: Dave Baker; Wyatt Eggleton; Mike Hannan
Cc: Gary Merkey; Steve Jackson
Subject: RE: 14 Inch WM Break

Gentlemen,

Please excuse the delay I received my last HDD price over this weekend.

JMC is pleased to price the following work for the City of Muskegon DPW.

- HDD up to 900 feet of 12 inch HDPE DR 11 DIPS, including fittings to transition from 12 inch HDPE DIPS to 14 inch DI size Cast Iron Water Main. \$143,920 (includes pressure test and chlorination)
 - HDD subcontractor will need a location to dump drilling mud and access to water
- HDD up to 900 feet of 16 inch HDPE DR 11 IPS, including fittings to transition from 16 inch HDPE IPS to 14 inch DI size Cast Iron Water Main. \$205,000 (includes pressure test and chlorination)
 - HDD subcontractor will need a location to dump drilling mud and access to water
- **Repair existing 14 inch Cast Iron Water Main. \$30,150**
 - I have included dewatering with well points
 - I have not included materials not knowing what kind of break has occurred. Materials can be provided by City of Muskegon or by JMC at cost plus 10%
 - I presumed that the break is not within the influence of the CMP culvert, as it was not visible during the site visit. If the culvert becomes a factor then additional cost will need to be negotiated.

I have not included any restoration of the embankment or bike path / sidewalk, in the above pricing.

Please contact me with any questions or concerns and thank you for the opportunity to quote your needs.

Sincerely,

Brian DeLong
Jackson-Merkey Contractors, Inc.
3430 Lund Avenue
Muskegon, Michigan 49442
p. (231) 728-9344
f. (231) 726-2060
c. (231) 638-0813

From: Brian DeLong
Sent: Wednesday, January 30, 2019 5:29 PM
To: Dave Baker (dave.baker@shorelinecity.com) <dave.baker@shorelinecity.com>; Wyatt Eggleton (wyatt.eggleton@shorelinecity.com) <wyatt.eggleton@shorelinecity.com>; Mike Hannan (mike.hannan@shorelinecity.com) <mike.hannan@shorelinecity.com>
Cc: Gary Merkey <gmerkey@jackson-merkey.com>; Steve Jackson <sjackson@jackson-merkey.com>
Subject: 14 Inch WM Break

Gentlemen

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: February 12, 2019

SUBJECT: 2019 User Fee Addition-Commercial Launch Permit

SUMMARY OF REQUEST:

Staff is requesting permission to add to the User Fee Schedule a Commercial Launch Ramp Sticker and fee of \$250.00 per permit plus \$50.00 for each additional permit, per calendar year.

FINANCIAL IMPACT:

Revenue generated from fee.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Approve request.

COMMITTEE RECOMMENDATION:

Date: 2/12/2019

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Municipal Vehicle Purchase

SUMMARY OF REQUEST:

The Equipment Division is requesting permission to purchase one (1) Trackless Municipal Vehicle from Bell Equipment Co. from the Mi-Deal State Contract. Cost for this item is \$125,782.85 coming from the Equipment Division fund.

FINANCIAL IMPACT:

\$125,782.85

BUDGET ACTION REQUIRED:

This purchase will be added into the Equipment Budget and reflected in the third quarter re-forecast.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Trackless Municipal Vehicle from Bell Equipment Co.

Trackless
VEHICLES

NEW



Date: February 12th, 2019
To: Honorable Mayor and City Commissioners
From: Department of Public Works
RE: W-91838.1 Water Service Line Replacements

SUMMARY OF REQUEST:

To award contract (W-91838.1) for replacement of water service lines at various locations within the city of Muskegon

Two (2) contractors submitted bids for this project as follows:

Goyette Mechanical.....	21 Each
McCormick Sand	15 Each

Bids were selected based on a fixed budget and variable scope. Bidders were instructed to bid based on how much work they could complete within a fixed budget with the winning bid going to the company that could complete the most work.

FINANCIAL IMPACT:

\$100,000.00

BUDGET ACTION REQUIRED:

None. Funded through grant revenue from MDEQ.

STAFF RECOMMENDATION:

Award the project to the low bidder, Goyette Mechanical.

Date: February 12th, 2019
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Sanford / Peck Traffic Signal Design

SUMMARY OF REQUEST:

Authorize staff to enter into an engineering services agreement with Wade Trim, Inc. to complete engineering for traffic signal upgrades along Peck and Sanford Streets. The upgrades would include modifications to the existing signals that would allow for the eventual conversion of Peck and Sanford Street to 2-way traffic.

Requests for Proposals were solicited for this contract with three firms submitting proposals. Proposals were reviewed by staff and the Wade Trim proposal is recommended.

Wade Trim.....	\$21,000.00
Progressive AE	\$22,000.00
Prein & Newhof	\$104,000.00

FINANCIAL IMPACT:

\$21,000.00

BUDGET ACTION REQUIRED:

None, this will be addressed during a future reforecasting.

STAFF RECOMMENDATION:

Authorize staff to enter into an engineering services agreement with Wade Trim.



Wade Trim, Inc.

2851 Charlevoix Drive SE, Suite 108 • Grand Rapids, MI 49546

616.956.3304 • www.wadetrim.com

December 13, 2018

City of Muskegon
1350 East Keating Avenue
Muskegon, MI 49442

Attention: Mr. Leo Evans, City Engineer

Re: Proposal for Traffic Signal Design Services for the Sanford Street and Peck Street
Two-Way Conversion Project, City of Muskegon

Dear Leo:

Thank you for the opportunity to propose on the traffic signal design services for the Sanford Street and Peck Street Two-Way Conversion Project. Wade Trim has a well-established Michigan Department of Transportation (MDOT)-prequalified traffic signal design team with experience preparing traffic signal plans for two-way street conversion projects, as well as experience previously designing signals at four of the six project locations. Following is a brief description of our proposed Scope of Services, Schedule, and Fee.

Scope of Services

The design for this project entails the preparation of traffic signal modification plans at the six intersections listed below to accommodate two-way traffic on Sanford Street and Peck Street.

1. Sanford Street at Apple Avenue (M-46)
2. Peck Street at Apple Avenue (M-46)
3. Sanford Street at Laketon Avenue
4. Peck Street at Laketon Avenue
5. Sanford Street at Hackley Avenue
6. Peck Street at Hackley Avenue

The traffic signals will be modified to accommodate two-way traffic along Sanford Street and Peck Street, including adding and adjusting signal heads and adding vehicle detection as needed, but will not include new poles or controllers. The signal design scope includes traffic signal modifications only and does not include full traffic signal modernization. The signal modifications will meet City of Muskegon and MDOT design standards. If full signal modernization becomes required at any of the project locations based on MDOT or City of Muskegon review, we will prepare a separate scope and fee for this additional effort.

Since the work scope assumes that all existing poles will be reused, our Scope of Services does not include any geotechnical services for soil borings for steel strain pole foundations. Sidewalk ramp design is also not included in the work scope.

The traffic signal modification plans will be developed using existing CAD files and base drawings. Wade Trim has previously designed the signals at the first four project locations and have these CAD files readily available. Collecting topographic survey is not included in our Scope of Services. Per our email discussion, if survey is required at any of the project locations, the City of Muskegon will collect the survey and provide it to the designer.

The traffic signal modification plans for each intersection will include a removal plan, removal cabling diagram, installation plan, installation cabling diagram, materials list, and updated span and wattage calculations. The plan set will also include a legend sheet, notes sheet, and traffic signal detail sheets, as well as special provisions for construction and an Engineer's Estimate.

A set of preliminary plans will be provided to the City of Muskegon for review. The two traffic signals along Apple Avenue (M-46) will require coordination with and review by MDOT. Per the Request for Pricing (RFP), the City of Muskegon will lead the coordination effort with MDOT on obtaining the Signal Layout Request and all permitting. All comments from the City of Muskegon and MDOT will be incorporated into the final plan set.

Our Scope of Services does not include any traffic capacity analysis or the development of updated timing plans. Based on our email discussion, the City of Muskegon will handle these work items internally. If requested, these services may be provided by Wade Trim for an additional fee.

During construction, we will review shop drawings, answer questions, and revise drawings as needed. The City of Muskegon will complete the construction engineering and site inspection.

Schedule

Per the RFP, the preliminary signal modification plans are due by March 1, 2019 with final plans due by May 1, 2019. We will work with the City to perform the design work and provide project deliverables to meet these deadlines.

Fee

We estimate the cost to provide the traffic signal design services, as outlined in this proposal, will be billed on an Hourly Basis for a Not to Exceed Fee of **\$21,000**. Any requested additional services not included in our work scope will be billed on an Hourly Basis in addition to our stated Not to Exceed Fee.

We have enclosed our Short Form Professional Services Agreement. If this proposal meets your approval, please return a signed and dated copy to our office. Our receipt of the executed Agreement will serve as our Notice to Proceed.

If you have any questions or wish to make changes to the Scope of Services, please feel free to contact us any time. We look forward to hearing from you.

Sincerely,

Wade Trim, Inc.



Jill N. Bossard
Traffic Engineer / Project Manager



Aimée L. Giacherio, PE
Vice-President

JNB:ALG:jlb
AAA 8180.18N
20181213_EVANS-LTR.DOCX
Enclosure



Professional Services Agreement (Short Form)

Agreement

To engage the Services of Wade Trim, Inc. as a Design, Planning, Testing and/or Land Survey Professional.

This Agreement, entitled Traffic Signal Design Services for the Sanford Street and Peck Street Two-Way Conversion Project, Muskegon, Michigan between the City of Muskegon of 1350 East Keating Avenue, Muskegon, Michigan 49442, hereinafter called "Owner," and Wade Trim, Inc., 2851 Charlevoix Drive SE, Suite 108, Grand Rapids, Michigan 49546, hereinafter called "Professional," is as follows:

The Owner and Professional, for mutual consideration hereinafter set forth, agree as follows:

A. Professional agrees to perform certain professional services for Owner as follows:

As outlined in our proposal letter dated December 13, 2018.

B. Owner agrees to pay Professional as compensation for his services as follows:

On an Hourly Basis for a Not to Exceed Fee of **\$21,000**.

C. Owner agrees to establish an allowance of **\$N/A** for additional services on this Project (not less than 10% of the compensation amount specified in Item B.)

D. The Owner and Professional agree to conditions as set forth in the General Provisions of this Agreement.

E. The Owner and Professional agree to the following schedule:

As outlined in our proposal letter dated December 13, 2018.

F. Professional has the option to render this Agreement null and void, if it is not executed within 60 days.

Owner: _____

By: _____

(Print Name)

Title: _____

Date Signed: _____

Witness: _____

Professional: _____

By: _____

Aimée L. Giacherio, PE

(Print Name)

Title: _____

Vice President

Date Signed: _____

Witness: _____

1.01 Basic Agreement

A. Professional shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Professional for such Services as set forth herein.

2.01 Payment Procedures

A. *Preparation of Invoices.* Professional will prepare a monthly invoice in accordance with Professional's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Professional for services and expenses within 30 days after receipt of Professional's invoice, the amounts due Professional will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Professional may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Professional has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above.

B. Owner shall pay Professional for such additional services as follows: For additional services of Professional's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Professional's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Professional's consultants' charges with a 15% mark-up, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Professional:

1) upon seven days written notice if Professional believes that Professional is being requested by Owner to furnish or perform services which are outside of the agreed upon scope of services without compensation, which are contrary to Professional's responsibilities as a licensed professional; or

2) upon seven days written notice if the Professional's services for the Project are delayed or suspended for more than 90 days for reasons beyond Professional's control.

3) Professional shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Professional.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Professional to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Professional each is hereby bound and the partners, successors, executors, administrators, employees and legal representatives of Owner and Professional (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Professional) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with Professional's services. Professional and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Professional shall not at any time supervise, direct, or have control over any contractor's work, nor shall Professional have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Professional neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Professional shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Professional's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Professional.

E. The provisions in this Agreement supersede and render null and void any contrary provisions in the contract documents between Owner and Contractor.

F. All design documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Professional (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Professional's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Professional, whichever is less.

H. The parties acknowledge that Professional's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Professional or any other party encounters a Hazardous Environmental Condition, Professional may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Dispute Resolution

Except for debt collection cases for less than \$25,000, and except as otherwise provided herein, all claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction.

Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the expiration of one year from the date the cause of action accrued. The cause of action whether based in tort, contract, indemnity, contribution, or any other form of action, legal or equitable, shall be deemed to have accrued at the time the party asserting the claim either knew or, by the exercise of reasonable diligence, should have known of the existence of the facts underlying such claim, dispute or other matter in question regardless of when damages occur. After the expiration of said one year, any claim between the parties hereto shall be barred.

No arbitration arising out of, or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

The award rendered by the arbitrators will be final, not subject to appeal and judgment may be entered upon it in any court having jurisdiction thereof.

9.01 Total Agreement

A. This Agreement (together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Professional and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

COMMISSION MEETING DATE February 12, 2019

Date: February 1, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: MUFD Equipment Request (turnout gear)

SUMMARY OF REQUEST:

The Director of Public Safety requests that the Commission authorize the amount of \$34,051.42 for thirteen (13) sets of turnout gear for full-time firefighters in which have been in-service since January 2019. The safety equipment is personalized to each firefighter and will be issued when received. The cost of the turnout gear per set is \$2,012.95 through Phoenix Safety Outfitters.

FINANCIAL IMPACT:

n/a

BUDGET ACTION REQUIRED:

Equipment to impact the Fire General Fund

STAFF RECOMMENDATION:

Staff recommends approval of this purchase request.

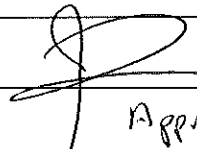
MUSKEGON FIRE DEPARTMENT
CITY OF MUSKEGON
TELEPHONE BID TABULATION FORM

Date: 2/1/19

Employee: Jay Paulson/Carrie Kotchka

	Bidder #1	Bidder #2	Bidder #3
Vendor	Phoenix Safety Outfitters	Public Safety Center	The Fire Store
Address	PO Box 20445, Upper Arlington, OH 46220	1500 Valley River Drive, Suite 240, Eugene, OR 97401	104 Independence Way, Coatesville, PA 19320
Telephone Number	616-299-0217	866-646-4434	
Fax Number			
Accept Mastercard			
Quoted By	Matt Dumond		

Description & Quantity	Unit Price	Total	Unit Price	Total	Unit Price	Total
13 Black Innotex Energy turnout jacket & pants with 12 included options	\$2,012.95	\$26,168.35	\$2,024.98 Note: Radio pocket included, 11 other options are extra	\$26,324.74	\$2,068.00 Note: Firedex model with radio pocket, no other options	\$26,884.00
13 Innotex particulate blocking firefighting hood	\$105.00	\$1,365.00	\$150.99	\$1,962.87	\$111.39	\$1,448.07
8 Fire Craft short cuff firefighting gloves	\$79.00	\$632.00	\$119.99	\$959.92	\$120.23	\$961.84
1 Short cuff firefighting glove, size small	\$68.57	\$68.57	\$119.99	\$119.99	\$120.23	\$120.23
13 Class II harness integrated rescue attachment system	\$297.50	\$3,867.50	N/A	N/A	\$377.50	\$4,907.50
13 Thorogood Hellfire structural boots (Nautilus)	\$150.00	\$1,950.00	\$150.00	\$1,950.00	\$150.00	\$1,950.00
	Total	\$34,051.42	Total	\$31,317.52	Total	\$36,271.64

Bidder #1 approved by  Approved by CTM 1/15

**Office of the Deputy
Director**

Memo

To: Director Lewis
From: Jay Paulson
cc:
Date: January 22, 2019
Re: Firefighting Turnout Equipment

Please see attached quotations and "telephone bid tabulation" sheet.

Phoenix Safety Outfitters included 3 different quotes for three styles of turnout gear.

Quote 1 is the Innotex Energy gear in which we prefer. The added options at no additional cost include:

- Zippered Combo pockets with built in hand warmers
- Radio Pocket
- Vented & padded back protection airflow and shoulder vented airflow
- Mic Loop, flashlight holder with Velcro straps
- American Flag
- Name Patch, Velcro with MFD sewn on upper back
- Knee Pads and belt loops
- The Gentor Class II harness will be integrated into the gear for fast deployment. This for both the pants and coat.

Quote 2 is the "V Force" gear. This is similar gear but the cost does not include the options as the Innotex gear.

Quote 3 is the Honeywell Tails gear. This gear will include the same options as the Innotex. As you will see, the cost slightly more but the Tails gear does not have the vented and padded back panels the Innotex gear offers.

COMMISSION MEETING DATE February 12, 2019

Date: February 5, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: Short Term Vacation Rentals

SUMMARY OF REQUEST:

The Director of Public Safety requests that the Commission consider approving a stand-alone ordinance “Short Term Vacation Rentals” regulation. The city has experienced an increase in short term vacation rentals over the past couple of years. These specialty rental offerings are not regulated in our current “Housing Rental” ordinance. The ordinance will address applying and receiving a short term rental certificate and a safety inspection of the unit(s). Certificate holders will be responsible for insuring tenants are aware and complies with relevant city ordinances, with a focus on number of occupants, recreational fires, parking, fireworks, noise, and trash to name a few noted problem areas that staff has experienced in an attempt to regulate short term rentals. The requested ordinance will improve neighborhood relations where short term rentals are now located, create a safer and peaceful environment for short term tenants and residents.

FINANCIAL IMPACT:

Revenue generated will be put into a separate account to be used for expenses and purchasing amenities for parks.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the short term vacation rentals ordinance.

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 10, Article VI of the Code of Ordinances of the City of Muskegon, Michigan, Section 353 is adopted to read as follows:

Sec. 10-353. Short Term Vacation Rentals.

(a) Purpose. This section, concerning the registration of short term vacation rentals in the city, is enacted to protect the health, safety and welfare of persons in the city by providing the city with the information necessary to ensure compliance with safety, structure and fire laws, identify business activities and establishments which affect or involve matters related to traffic, congestion, occupancy and density of occupancy, the physical condition of places where persons are renting as short term vacation rentals, and the enforcement of the law, including local, state and federal laws, rules and regulations, applying to short term vacation rentals located in the city.

(b) Definitions. In addition to the definitions provided for in Section 10-281, the following terms shall mean:

Business Activity shall mean the advertising for lease or rental of any structure for a short term vacation rental.

Family shall mean

(1) An individual or group of two (2) or more persons related by blood, marriage, or adoption, together with foster children and attendants of the principal occupants who are domiciled together as a single housekeeping unit in a dwelling unit; or

(2) A collective number of individuals domiciled together in one (1) dwelling unit whose relationship is of a continuing, non-transient domestic character and who are cooking and living as a single nonprofit housekeeping unit. This definition shall not include any society, club, fraternity, sorority, association, half-way house, lodge, coterie, organization, group of students, or other individuals whose domestic relationship is of a transitory or seasonal nature, or is otherwise

not intended to be of a permanent nature. Said definition shall not apply in instances of group care centers or state licensed residential facilities as established under P.A. 395 of 1976.

(3) Living arrangements which would otherwise comply with the description of a family shall not constitute a family if the said arrangements have occurred as a result of commercial or other advertising, or the offering of rooms for rent. Any financial arrangement, except a true sharing of the expenses of all the facilities in the single household unit shall be presumed to constitute renting a room or rooms and to have resulted from the offering of rooms for rent or commercial or other advertising. Where rooms have been rented, or persons live in the house in response to commercial advertising or the offering of rooms for rent, the living arrangement shall be presumed to constitute a rooming house and not a family. A person claiming the status of family shall have the burden of proof of each of the elements set forth in the relevant definitions of this ordinance.

Remuneration shall mean the act of paying or compensating a person for use of a short term vacation rental.

Short term vacation rental means a commercial use which is subordinate to the residential use of a dwelling unit, in which a tenant is allowed to lease the dwelling unit or a portion of the dwelling unit for periods of less than one calendar month but more than 24 hours in return for remuneration. The rental of transitional houses operated by a charitable organization, group homes such as nursing homes, and adult foster care homes, substance abuse rehabilitation clinics, mental health facilities and other similar health care related facilities shall not be considered short term vacation rentals.

Short term vacation rental unit means a dwelling unit used for at least one short term rental within a calendar year.

- (c) Requirements. No person shall operate or conduct, maintain or manage or advertise for lease a short term vacation rental establishment without first obtaining a certificate of short term vacation rental registration in the manner provided in this chapter and if the owner has more than three short term vacation rental establishments a business registration.
- (d) Application procedure. An applicant for a certificate of short term vacation rental registration shall make application to the Director of Public Safety or his designee on a form prescribed by the Director of Public Safety or his designee, which shall contain at least the following information:

- (1) The full names, business addresses and residence addresses of the owners, proprietors, officers and local addresses of all owners, proprietors and officers and managers of the applicant's business; the names and addresses of each officer, if

the applicant is a corporation; the names and addresses of all partners, if a partnership; and the names and addresses of all members, if a limited liability corporation.

(2) A list of all assumed, trade or firm names under which the registered applicant intends to do business.

(3) The location of the short term vacation rental.

(4) The name, telephone number, address, e-mail address and cell phone number for text messages of the person to notify in the event of an emergency.

(e) Terms. Each certificate of short term vacation rental registration issued pursuant to this chapter shall be for a duration not to exceed one year and shall terminate on April 30, following issuance thereof.

(f) Renewal. Any certificate of short term vacation rental registration issued under this section must be renewed in the manner set forth in this article on or before April 30 of each year of existence of the short term vacation rental. Applications for renewal of a certificate of short term vacation rental registration shall be filed, considered and issued in the same manner as an original application.

(g) Fees. The fee for a certificate of short term vacation rental registration and the fees for annual renewals thereof shall be set from time to time by resolution of the city commission. Registration fees not paid within 30 days of the due date will be subject to a late fee of \$15.00 per month for each month up to a maximum of six months, at which time all fees and late fees are due. Municipal civil infraction violation may be issued each day after May 31 until the registration is submitted and fees are paid.

The City may use the fee only for expenses relating to issuance of the certificate short term vacation rental registration and the purchasing of amenities located in the City's parks likely to be used by tenants of short term vacation rentals. Any fees not expended within the fiscal year from collection shall be held in a separate City account which may only be used for amenities or located in the City's parks likely to be used by tenants of short term vacation rentals.

(h) Display. Any certificate of short term vacation rental registration issued pursuant to this Section shall be prominently displayed in the business establishment on the back of the front door or the back of the door at the main entrance.

(i) General conditions for issuance and continuing in effect.

(1) Compliance with other governmental requirements; preemption. No certificate of short term vacation rental registration shall be issued or continued in effect for any person who has failed to pay the Excise Tax on Business of Providing Accommodations pursuant to MCL Section 141.861. The fact that a person has

received a license or permit from the United States, the state, the county, or other governmental entity for the short term vacation rental shall not exempt such person from the requirements of this chapter.

(2) Compliance with all other laws. A holder of a certificate of short term vacation rental registration must be in continuing compliance with all local, county, state and federal laws relating to rental properties as a condition of issuance or continued effect of a certificate of registration under this chapter.

(3) Conditions and activities on the premises. The holder of a certificate of short term vacation rental registration shall maintain a clean, neat and orderly establishment, take reasonable steps to provide security on the premises, and prevent unlawful conduct thereon. The holder of the certificate of short term vacation rental registration shall be responsible for insuring that everyone staying at the short term rental unit is aware of and complies with all relevant city ordinance, especially relating to recreational fires, parking, fireworks, noise and trash.

(4) Payment of amounts owed city. All personal property taxes and outstanding debts to the city, including, without limitation, fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment installments, but not including real property or income taxes, due at the time of issuance or renewal of a certificate related to the business activity or establishment must be paid in full.

(5) Standards in chapter. Each holder of a certificate of short term vacation rental registration shall comply with the requirements found in additional applicable Sections of this Chapter.

(j) Additional conditions for issuance.

(1) Compliance with applicable codes and regulations. Any person applying for or holding a certificate of short term vacation rental registration under this Section shall demonstrate to authorized city personnel that the business establishment registered under this chapter complies with all construction and fire and safety codes of the city, all applicable health and safety laws, zoning laws and environmental laws and regulations of the city, the county, the state, or the United States, and including all provisions of this chapter. Further, affiant shall comply with special conditions promulgated pursuant to Section 10-353(j)(2).

(2) Special conditions. In connection with the registrations pursuant to this Section, regulations which are particularly adapted and appropriate to the business activity or establishment so registered shall be promulgated by the city, approved by the city commission, and attached to or printed upon the registration issued. Such attachments and adoptions shall not be required for codes, ordinances and other regulations of general applicability which are in effect from time to time in

the city and which affect the registered business. These regulations shall be uniform for all short term vacation rentals.

Campers, recreational vehicles, tents or any other temporary housing shall be prohibited at a short term vacation rental, except the structure inspected and permitted by the City. Non-compliance with this sub-section may result in a civil infraction for the renter, owner and/or revocation of the certificate of short term vacation rental registration.

(k) Inspections. Every business establishment registered shall afford authorized personnel from the city full access to the premises for the purpose of inspection to determine compliance with the registration which has been issued, for determination in connection with the application for the issuance of the registration, and to determine continuing compliance with all ordinances, codes and statutes applicable to the premises, the business establishment or the business activity. In the case of a proposed revocation or suspension, the holder of the registration shall afford reasonable opportunity for inspection by the city.

(l) Denial, revocation, suspension and procedure for revocation or suspension. Holders of a certificate of short term vacation rental registration may be denied, suspended, or revoked by the Director of Public Safety and the business registration by the city clerk, both of whom shall follow the procedures provided for in City Code Section 50-43.

2. This Ordinance is to become effective ten (10) days after adoption.

This ordinance adopted: February 12, 2019

Ayes:

Nays:

First Reading:

Second Reading:

CITY OF MUSKEGON

By: _____
Ann Marie Meisch, MMC
City Clerk

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 12th day of February, 2019, at which meeting a quorum was present and remained throughout, and that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Date: _____, 2019

Ann Marie Meisch, MMC
City Clerk

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2019, the City Commission of the City of Muskegon amended Chapter 10, Article VI, by adopting Section 10-353 of the Muskegon City Code, summarized as follows:

INSERT SUMMARY

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

This ordinance amendment is effective ten (10) days from the date of this publication.

Published: _____, 2019

CITY OF MUSKEGON

By _____
Ann Marie Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Commission Meeting Date: February 5, 2019

Date: February 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Approval of Several Neighborhood Enterprise Zone Certificates

SUMMARY OF REQUEST:

Applications for Neighborhood Enterprise Zone (NEZ) certificates have been received for homes at the Terrace Point Landing development. The applications are for the following addresses: 302, 304, 306, 308, 310, 312, 320, 330, 332, 338, 340, 351, 353, 654, 672, 674, 679, 681, 688, and 690 Terrace Point. All applicants have met local and state requirements for the issuance of the NEZ certificates.

FINANCIAL IMPACT:

Taxation will be applied as one-half of the previous year's state average principal residence millage rate to the value of the facility.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the NEZ certificates.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 302 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 304 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 306 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 308 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 310 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 312 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Jerel and Pamela Vanderwalle to construct a new home at 320 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Jerel and Pamela Vanderwalle be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 330 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 332 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 338 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 340 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 351 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Raymond and Belinda Stacey to construct a new home at 353 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Raymond and Belinda Stacey be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Scott Penhorwood to construct a new home at 654 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Scott Penhorwood be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____

Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 672 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 674 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 679 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 681 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 688 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

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By: _____
Ann Meisch
City Clerk

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Terrace Point Landing, LLC to construct a new home at 690 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Terrace Point Landing, LLC be approved.

Adopted this 12th day of February, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on February 12, 2019.

By: _____
Ann Meisch
City Clerk

Commission Meeting Date: February 12, 2019

Date: February 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Rezoning of 1021 Jefferson Street

SUMMARY OF REQUEST:

Staff-initiated request to rezone the property at 1021 Jefferson St from Form Based Code, Urban Residential to Form Based Code, Neighborhood Core.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff does recommends approval of the rezoning

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously (6-0) recommended approval of the rezoning, with three members absent.

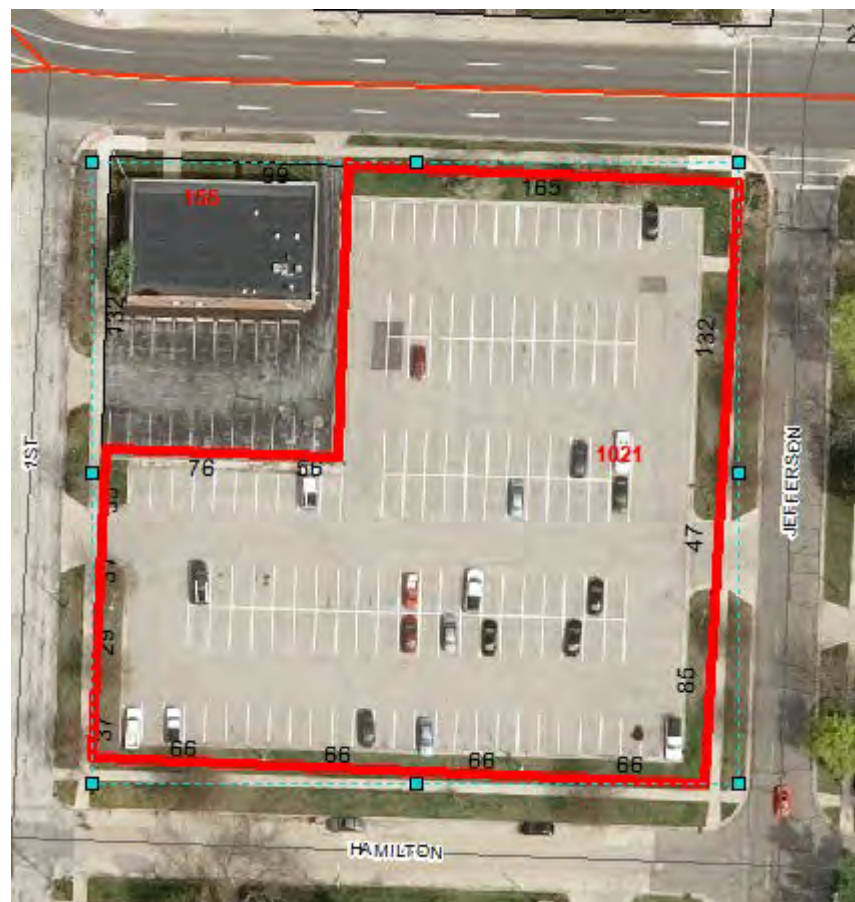
Note: Notice was mailed to properties within 300 feet of this property 15 days before the public hearing. Two phone calls were received from property owners on Jefferson St that wanted more information, but had no opinion on the request. D. Gregerson (241 W Muskegon Ave) attended the public hearing, he lives in the area and was concerned about the effect on the neighborhood. He stated that other low-income developments in the area had struggled with their tenants.

December 13, 2018 Planning Commission Packet Excerpt:

SUMMARY

1. The property is owned by the City and is currently being used as the employee parking lot.
2. The property is currently zoned Form Based Code, Neighborhood Residential. This zoning designation allows for single-family homes, duplexes, rowhomes and small multi-plexes (3-6 units).
3. The City is in negotiations with a developer that would like to construct 73 units of affordable apartments along with 5,000 sf of commercial space on the first floor. It would also include 59 spaces of underground parking. This would require a rezoning to Form Based Code, Neighborhood Core.
4. Please see the zoning ordinance excerpt for Form Based Code, Neighborhood Core.

1021 Jefferson St

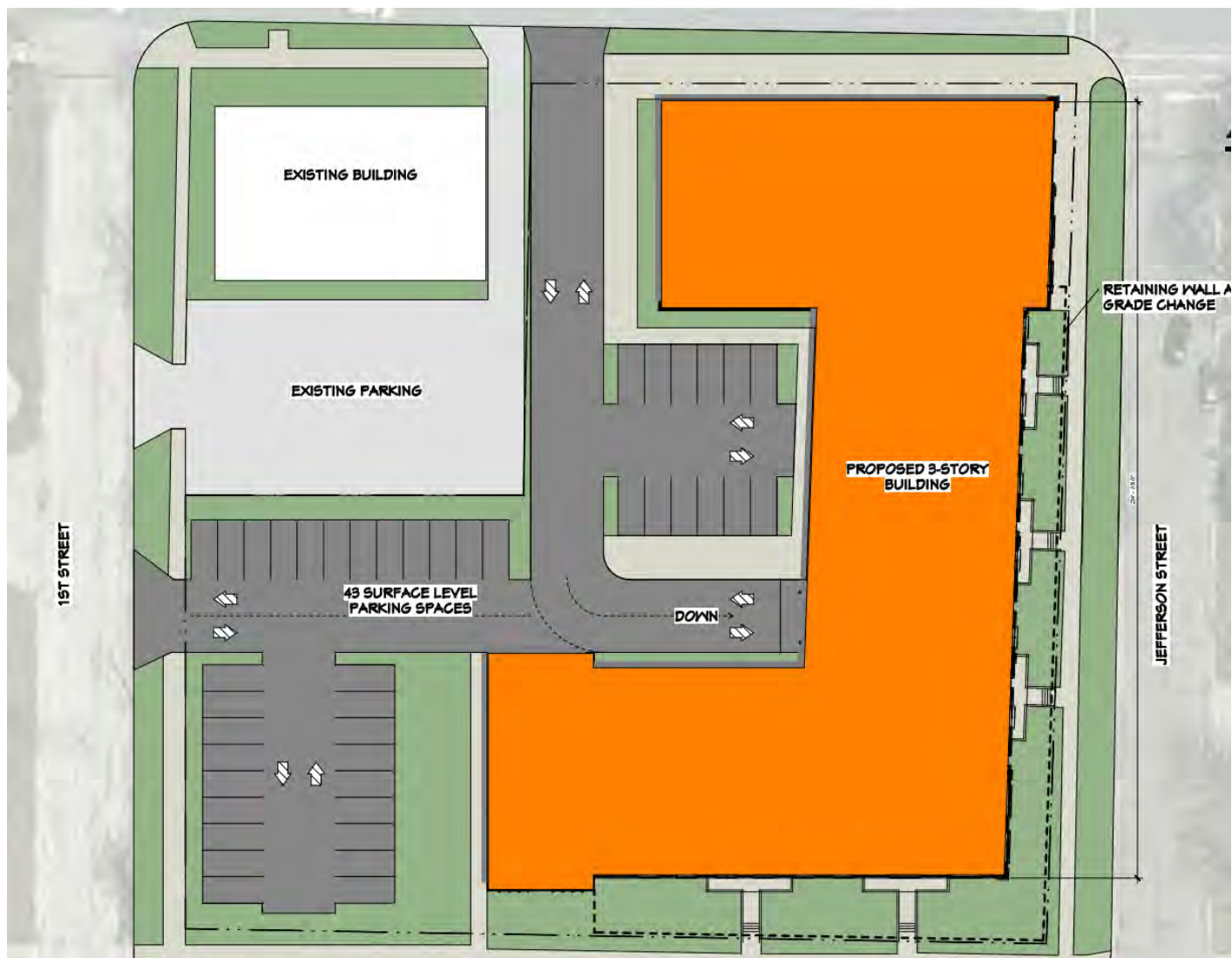


Current Zoning of Area



Proposed Development Renderings





CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

**An ordinance to amend the zoning map of the City to provide for a zone change for 1021
Jefferson St from FBC, Urban Residential to FBC, Neighborhood Core.**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for 1021
Jefferson St from FBC, Urban Residential to FBC, Neighborhood Core.

CITY OF MUSKEGON REVISED PLAT OF 1903 ALL OF BLOCK 355 EXC LOT 4 AND THE W 1/2 OF
LOT 3

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC
City Clerk

CERTIFICATE (Rezoning 1021 Jefferson St from FBC, UR to FBC, NC)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 12th day of February, 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2019

Ann Meisch, MMC
Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on February 12, 2019, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for 1021 Jefferson St from FBC, UR to FBC, NC:

CITY OF MUSKEGON REVISED PLAT OF 1903 ALL OF BLOCK 355 EXC LOT 4 AND THE W
1/2 OF LOT 3

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

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

Published _____, 2019

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

2005.08 NEIGHBORHOOD CORE (NC) CONTEXT AREA**1.0 CONTEXT AREA INTENT AND DESCRIPTION****INTENT**

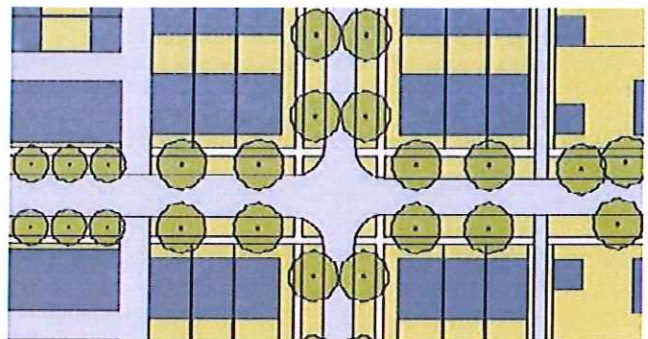
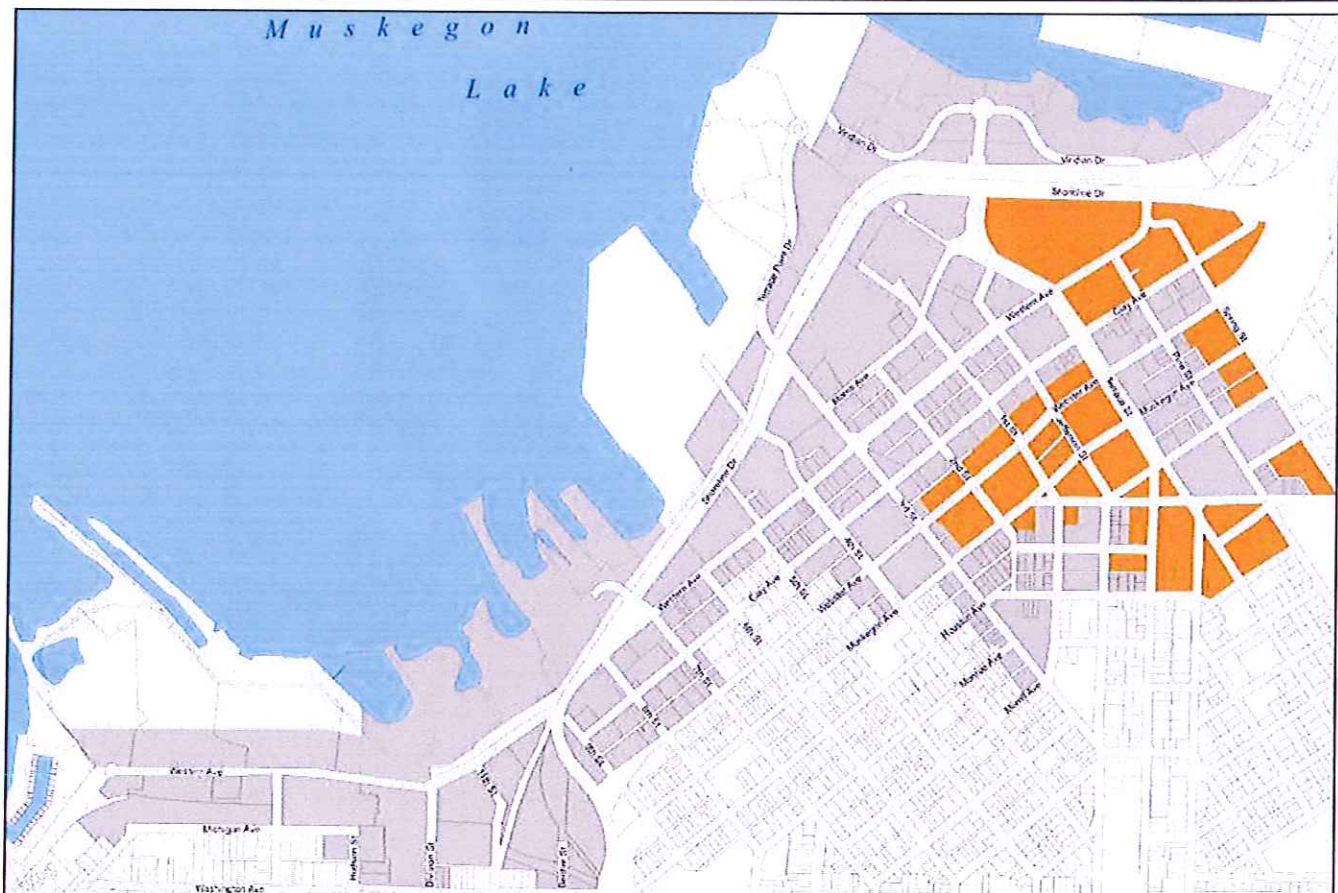
To provide a variety of urban housing, retail, and commercial choices, in medium footprint, medium-density Building Types, which reinforce the neighborhood's walkable nature and support neighborhood retail and service at key intersections.

DESCRIPTION

This Context Area is characterized by a wide variety of building types that can accommodate retail, service, office, and residential uses. Buildings are typically close to the street and form nodes of activity at key intersections. This Context Area forms a transitional area between the more intense Context Areas of the Form Based Code area and the existing residential neighborhoods that are adjacent to downtown Muskegon.

The following are generally appropriate form elements in this Context Area:

- A. Attached and detached buildings
- B. Medium building footprints
- C. Varied front setbacks
- D. Medium to small side setbacks
- E. Varied frontages

**2.0 CONTEXT AREA LOCATION**

2005.08 NEIGHBORHOOD CORE (NC) CONTEXT AREA**3.0 PERMITTED BUILDING TYPES, BUILDING TYPE HEIGHTS, AND BUILDING TYPE LOT SIZES**

BUILDING TYPE WITH FRONTAGE OPTION		NEIGHBORHOOD CORE (NC) CONTEXT AREA		
		PERMITTED IN CONTEXT AREA	BUILDING HEIGHT	BUILDING LOT SIZE
MIXED-USE BUILDING TYPE	with STOREFRONT	By Right	5 story max. / 2 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
	with BALCONY	By Right	5 story max. / 2 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
	with TERRACE	Conditional *	5 story max. / 2 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
	with FORECOURT	By Right	5 story max. / 2 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
	with DRIVE-THROUGH	By Right	5 story max. / 2 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
RETAIL BUILDING TYPE	with STOREFRONT	By Right	1 story building limit	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
	with TERRACE	Conditional*	1 story building limit	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
	with DRIVE-THROUGH	By Right	1 story building limit	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.
FLEX BUILDING TYPE	with STOREFRONT	By Right	5 story max. / 2 story min.	Lot Width: 50' min. / 250' max. Lot Depth: 100' min.
	with TERRACE	Conditional*	5 story max. / 2 story min.	Lot Width: 50' min. / 250' max. Lot Depth: 100' min.
	with FORECOURT	By Right	5 story max. / 2 story min.	Lot Width: 50' min. / 250' max. Lot Depth: 100' min.
	with DOORYARD	By Right	5 story max. / 2 story min.	Lot Width: 50' min. / 250' max. Lot Depth: 100' min.
COTTAGE RETAIL BUILDING TYPE	with STOREFRONT	By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 80' max. Lot Depth: 80' min.
	with DOORYARD	By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 80' max. Lot Depth: 80' min.
	with STOOP	By Right	2 story max. / 1 story min.	Lot Width: 25' min. / 80' max. Lot Depth: 80' min.
LIVE / WORK BUILDING TYPE	with STOREFRONT	By Right	2 story building required	Lot Width: 18' min. / 35' max. Lot Depth: 80' min.
	with DOORYARD	By Right	2 story building required	Lot Width: 18' min. / 35' max. Lot Depth: 80' min.
	with LIGHTWELL	By Right	2 story building required	Lot Width: 18' min. / 35' max. Lot Depth: 80' min.
	with STOOP	By Right	2 story building required	Lot Width: 18' min. / 35' max. Lot Depth: 80' min.
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT	By Right	5 story max. / 2 story min.	Lot Width: 75' min. / 150' max. Lot Depth: 100' min.
	with DOORYARD	By Right	5 story max. / 2 story min.	Lot Width: 75' min. / 150' max. Lot Depth: 100' min.
	with STOOP	By Right	5 story max. / 2 story min.	Lot Width: 75' min. / 150' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	5 story max. / 2 story min.	Lot Width: 75' min. / 150' max. Lot Depth: 100' min.
SMALL MULTI-PLEX BUILDING TYPE	with STOOP	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
	with ENGAGED PORCH	By Right	3 story max. / 2 story min.	Lot Width: 50' min. / 80' max. Lot Depth: 100' min.
ROWHOUSE BUILDING TYPE	with LIGHTWELL	By Right	2 story building required	Lot Width: 18' min. / 30' max. Lot Depth: 100' min.
	with STOOP	By Right	2 story building required	Lot Width: 18' min. / 30' max. Lot Depth: 100' min.
	with PROJECTING PORCH	By Right	2 story building required	Lot Width: 18' min. / 30' max. Lot Depth: 100' min.
DUPLEX BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
DETACHED HOUSE BUILDING TYPE	with STOOP			
	with PROJECTING PORCH			
	with ENGAGED PORCH			
CARRIAGE HOUSE BUILDING TYPE				
CIVIC BUILDING TYPE		By Right	3 story max. / 2 story min.	Lot Width: 25' min. / 150' max. Lot Depth: 100' min.

Shaded areas represent Building Types and / or frontages that are not permitted in specified Context Area.

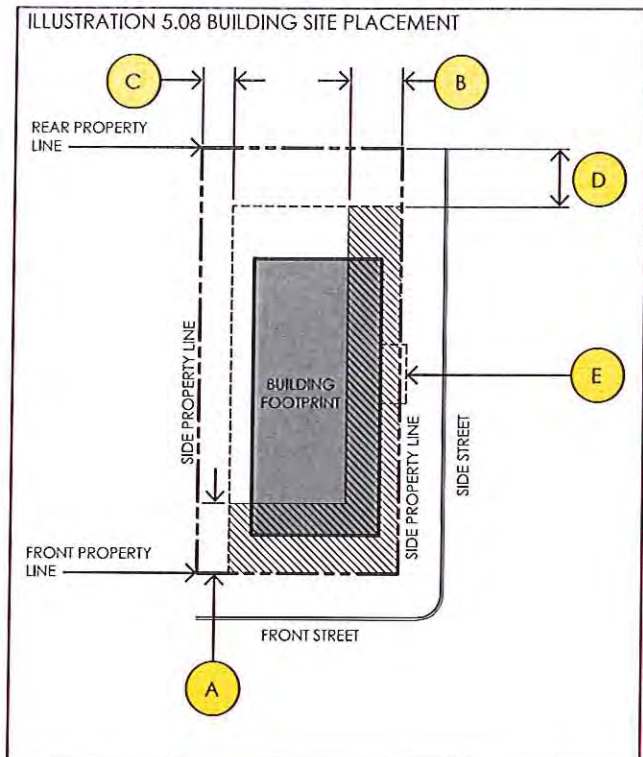
* Refer to the Building Type with specific frontage option in Section 2006 for buildings and frontages labeled as Conditional.

2005.08 NEIGHBORHOOD CORE (NC) CONTEXT AREA

4.0 BUILDING SITE PLACEMENT

Refer to Illustration 5.08 for building site placement.

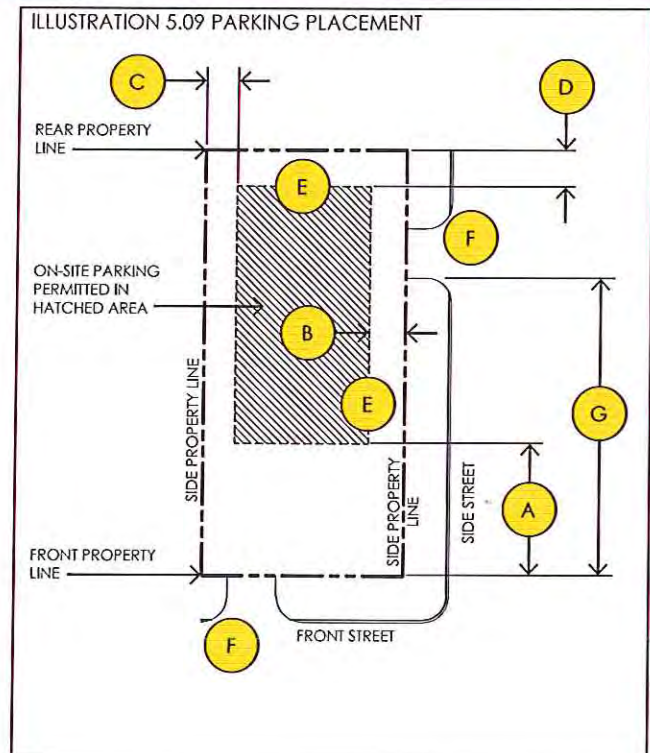
- A. Front Build-to-Zone (at front street):
 - Required build-to-zone from 0 to 20 feet from front property line.
 - Mixed-Use and Retail Building Types in this Context Area shall have facade placed at front property line (required build-to-line at front property line).
- B. Side Build-to-Zone (at side street):
 - Required build-to-zone from 0 to 20 feet from side property line.
 - Mixed-Use and Retail Building Types in this Context Area shall have facade placed at side property line (required build-to-line at side property line).
- C. Side Setback (at non-street locations):
 - 3 feet from side property line.
- D. Rear Setback:
 - 10 feet from rear property line.
- E. Encroachments: Balconies, awnings, canopies, eaves, cornices, and bay windows, may project into required setbacks, beyond required build-to-zones, or into the public right-of-way as indicated in Section 2003.02.



5.0 PARKING PLACEMENT

Refer to Illustration 5.09 for on-site parking placement.

- A. Front Setback:
 - 40 feet minimum from front property line.
- B. Side Setback (from side street):
 - 5 feet minimum from side property line.
- C. Side Setback (from non-street locations):
 - 5 feet from side property line.
- D. Rear Setback:
 - 5 feet from rear property line at non-street locations.
 - 5 feet from rear property line at street locations.
- E. Parking located at side or rear street locations shall be screened from the street as required by Section 2008.14.
- F. Parking / service areas shall not be accessed from front streets, unless an alley or side street is not available for driveway placement. Maximum width of driveway is 20 feet.
- G. Driveway access location:
 - Corner lot: 40 feet minimum from street corner.
 - Interior lot: within 5 feet of side property line, when alley is not available.



2005.08 NEIGHBORHOOD CORE (NC) CONTEXT AREA

6.0 PERMITTED USES

NEIGHBORHOOD CORE (NC) CONTEXT AREA PERMITTED USES

Specific Use	MIXED USE BUILDING TYPE	RETAIL BUILDING TYPE	FLEX BUILDING TYPE	COTTAGE RETAIL BUILDING TYPE	LIVE / WORK BUILDING TYPE	LARGE MULTI-PLEX BUILDING TYPE	SMALL MULTI-PLEX BUILDING TYPE	ROWHOUSE BUILDING TYPE	DUPLEX BUILDING TYPE	DETACHED HOUSE BUILDING TYPE	CARRIAGE HOUSE BUILDING TYPE	CIVIC BUILDING TYPE
Accessory buildings and uses	P	P	P	P	P	P	P	P				
Amusement and recreation facility	P	P	P									
Auto service station	S	S	S	S								
Bank	P	P	P									
Business school/private or public school/higher ed.			P									
Church												P
Club, lodge, hall			P									
Gallery/museum	P		P									P
Hotel/motel	P											
Indoor theater/live music concert hall	P		P									
Light manufacturing	S		P		P							
Machine shop	S		P		P							
Micro brewery, distillery, winery under 2500 barrels	P	P	P	P								
Micro brewery, distillery, winery over 2500 barrels	P	P	P									
Multi-family	P						P					
Office	P	P	P	P	P							
Outdoor recreation			P									
Outdoor theater												
Parking structure	S											
Personal service	P	P	P	P	P							
Railway terminal												P
Research and development	P		P									
Restaurant, cocktail lounge, brewpub	P	P	P	P								
Retail	P	P	P	P	P							
Shipping, port related activity			P									

P = Permitted Use

P* = Permitted Use on floors two and above

P# = Permitted Use on first floor only

S = Special Land Use (refer to Section 2002.02)

Active uses per the Context Area Map (2005.02) include retail, restaurant/cocktail lounge/brewpub, personal service, and micro brewery/distillery/winery.

Blank cell = Use not permitted in this Context Area

Shaded areas represent Building Types that are not permitted in this Context Area.

6.0 PERMITTED USES (continued)

[illegible]

Shaded areas represent Building Types that are not permitted in this Context Area.

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Date: 2/12/2019

To: Honorable Mayor and City Commissioners

From: Planning Department

RE: Restrictive Covenant for 350 Shoreline Drive

SUMMARY OF REQUEST:

Authorize the mayor and clerk to sign the restrictive covenant for nonresidential remedial action for the city owned property located at 350 Shoreline Drive. Various contaminants remain within the soil and groundwater on site, and this restrictive covenant is necessary to document those hazardous substances and direct any future land owners with regard to preventing unacceptable exposure. DTE will continue to operate a groundwater extraction system to treat groundwater on site.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize the mayor and clerk to sign the restrictive covenant.

DECLARATION OF RESTRICTIVE COVENANT FOR A RESTRICTED NONRESIDENTIAL REMEDIAL ACTION

MDEQ Reference No.: RC-RRD-201-040-18

This Declaration of Restrictive Covenant (“Restrictive Covenant”) has been recorded with the Muskegon County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the Property that is located on a portion of 350 Shoreline Drive, Muskegon, Michigan, portion of Property Tax ID Number 61-24-205-563-0010-00, owned by the City of Muskegon and legally described in Exhibit 1 attached hereto (“Property”). Exhibit 1 also includes a survey of the Property.

The Property is associated with MichCon/Lakey Foundry Facility (Site ID 61000027) for which response activities were conducted pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* The Property described contains hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA.

Michigan Consolidated Gas Company (MichCon) (now DTE Gas Company (DTE Gas)) has submitted a No Further Action (NFA) Report to the Michigan Department of Environmental Quality (MDEQ) that includes nonresidential land use-based cleanup criteria as defined and set forth in Section 20120a, of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq.*, for the environmental remediation associated with the Property.

The restrictions contained in this Restrictive Covenant, recorded pursuant to Section 20121(2) of the NREPA, are based upon information available at the time the response activities were implemented. Failure of the response activities to achieve and maintain the criteria, exposure controls, and any requirements specified by the response activities; future changes in the environmental condition of the Property or changes in the cleanup criteria as defined in the NREPA; the discovery of environmental conditions at the Property that were not accounted for during implementation of the response activities; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

Summary of Response Activities and Environmental Contamination

Soil and/or groundwater at the Property are contaminated primarily with benzene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene (TMB), 1,3,5-TMB, acenaphthene, benzo(a)pyrene, bis-2-ethylhexylphthalate, dibenzofuran, fluoranthene, fluorene, 2-methylnaphthalene, naphthalene, phenanthrene and pyrene along with a few metals and cyanide from historical industrial operations. Prior to the recording of this Restrictive Covenant, response

activities have been undertaken to install a one foot or thicker soil cover over the Property to remove the direct contact pathway for soil to the elevations shown in Exhibit 2. In addition, a groundwater extraction system and slurry wall were installed and will continue to be operated to hydraulically control affected groundwater. Some hazardous substances remain present on the Property that require controls in the form of groundwater use restrictions and soil management restrictions to prevent unacceptable exposure.

Residual Dense Non-aqueous Phase Liquid (DNAPL), related to historic foundry operations were properly characterized and assessed, and will remain in place at the Property. The DNAPL exists below the ground surface at a depth of approximately 20 to 30 feet below ground surface and is located within the southwest central portion of the Property approximately where shown on Exhibit 3. The restrictions provided for in this Restrictive Covenant serve to prevent unacceptable exposure to hazardous substances for the entire Property as a result of the conditions created by the presence of the DNAPL, soil and/or groundwater contaminant concentrations that exceed the unrestricted nonresidential criteria under Section 20120a(1)(a) of the NREPA.

Definitions

As used herein, the term “Owner” shall mean at any given time the then current title holder of the Property.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules, Michigan Administrative Code, 2013 AACRS R 299.1 – R 299.50, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules, as of the date of filing of this Restrictive Covenant.

NOW, THEREFORE, the City of Muskegon, of 933 Terrace Street, Muskegon, Michigan 49440, pursuant to Section 20120a of NREPA, hereby imposes the following restrictions on the Property:

1. The uses of the Property are restricted to any of the following: (1) use that is consistent with the assumptions and basis of the nonresidential cleanup criteria established pursuant to Section 20120a; (2) uses consistent with other criteria subsequently established pursuant to Section 20120a; (3) uses determined to be acceptable according to paragraphs 3(A)(i) and 3(A)(ii) of this restrictive covenant; or, (4) other use as approved by the MDEQ.

Specifically, the prohibited residential land uses include, but are not limited to, homes and surrounding yards, condominiums, and apartments where people live and sleep for significant periods of time. Cleanup criteria and associated land use descriptions are located in the Government Documents section of the State of Michigan Library.

2. Activities at the Property that may interfere with the remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial action described in the NFA Report are prohibited. The Soil Cover, required by the NFA Report and previously placed on the Property, comprises a one foot or thicker exposure barrier to prevent direct contact with affected subsurface soils, as defined in the NFA Report, and is to be inspected and maintained by DTE Gas as provided in the NFA Report. DTE Gas has a June 27, 1994 agreement with the City of Muskegon to inspect and maintain the Soil Cover through at least 2024. A figure that depicts the elevation of the top of the one foot or thicker Soil Cover to be maintained at the Property is provided in Exhibit 2.

3. Activities at the Property that may result in unacceptable exposures or that could result in the release of a hazardous substance which was contained as part of the remedial action are prohibited.

3(A). The subsurface soils and groundwater beneath the Soil Cover on the Property contain hazardous substances, including volatile, semi-volatile, and heavy metal compounds, at concentrations that present a potential threat to public health if exposure occurs.

3(A)(i). With respect to the future use(s) of the Property, the owner shall conduct an appropriate evaluation of the potential risks from exposure to contaminants identified within this Restrictive Covenant as present in the subsurface soils and groundwater, if those uses would result in exposure, in order to assure that unacceptable exposure to contaminants does not occur. The evaluation shall be consistent with Section 20120a of Part 201 of NREPA. Appropriate control measures that are identified to be necessary to prevent unacceptable exposure shall be incorporated into the construction plans and implemented.

3(A)(ii). Construction of buildings in areas that are above the as built elevations of the Soil Cover are allowed. Structures on the Property that are intended for occupancy do require vapor intrusion evaluation prior to construction, even if they are entirely above the elevation of the Soil Cover. Construction of foundations, utilities, and related structural components of buildings on the Property, and subsequent maintenance thereof, may penetrate the approved Soil Cover into areas of existing contaminated soil so long as such activity does not interfere with the implementation of hydraulic control as defined within the NFA Report and repair to the Soil Cover is completed in a timely fashion consistent with its current construction, and so long as any utility manhole or sump used in connection with such structural component is located outside of any building structure. The elevations to be used as reference points for construction, to be completed in compliance with this section, are those established by the as-built drawings for the Soil Cover that are on file with MDEQ and the City of Muskegon Engineering Department and provided in Exhibit 2. A health and safety plan shall be developed for persons involved in subsurface construction and maintenance activities to assure protection of workers pursuant to all applicable worker safety laws.

3(B). All contaminated surface and subsurface soils found on the Property must be managed in accordance with the requirements of Section 20120c of NREPA and other applicable state and federal laws.

3(C). Any use of groundwater beneath the Property is prohibited, except for the purposes of environmental assessment, monitoring and remediation. Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.

4. Conveyance of Property Interest - Owner shall notify MDEQ and DTE Gas of the Owner's intent to convey any interest in the Property, no less than fourteen (14) days prior to consummating the conveyance. Notice to the MDEQ will not be required for leasing of space unless breaching of the Soil Cover or construction of an occupiable space may occur by the tenant. A conveyance of title, an easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant.

5. Access - The Owner hereby grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the NFA Report, including the right to take samples, inspect the operation of the remedial action measures and inspect records.

DTE Gas and its designated representatives reserve the right to enter the Property at reasonable times and on reasonable notice to maintain the Soil Cover and conduct monitoring pursuant to the NFA Report.

DTE Gas retains, for itself and its designated representatives, the right to enter the Property at reasonable times and on reasonable notice to implement response activities pursuant to the NFA Report.

6. Enforcement - The State of Michigan, through the MDEQ and DTE Gas may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of appropriate jurisdiction.

The restrictions shall run with the Property and shall be binding upon all owners, successors, lessees or assigns and their authorized agents, employees, or persons acting upon their direction and control, and shall continue until the MDEQ or its successor approves modifications or rescission of this Restrictive Covenant.

7. Severability - If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.

The undersigned persons executing this Restrictive Covenant on behalf of the City of Muskegon represent and certify that they are duly authorized and have been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, the City of Muskegon has caused this Restrictive Covenant to be executed on this _____ day of _____, 2019.

Signed in the presence of:

CITY OF MUSKEGON

By _____

By _____

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me on _____, 2019, by _____ and _____ of the City of Muskegon, pursuant to the authority of the Muskegon City Commission.

Drafted by and when
recorded return to:
Vincent E. Buening
TRC Environmental Corporation
1540 Eisenhower Place
Ann Arbor, MI 48108

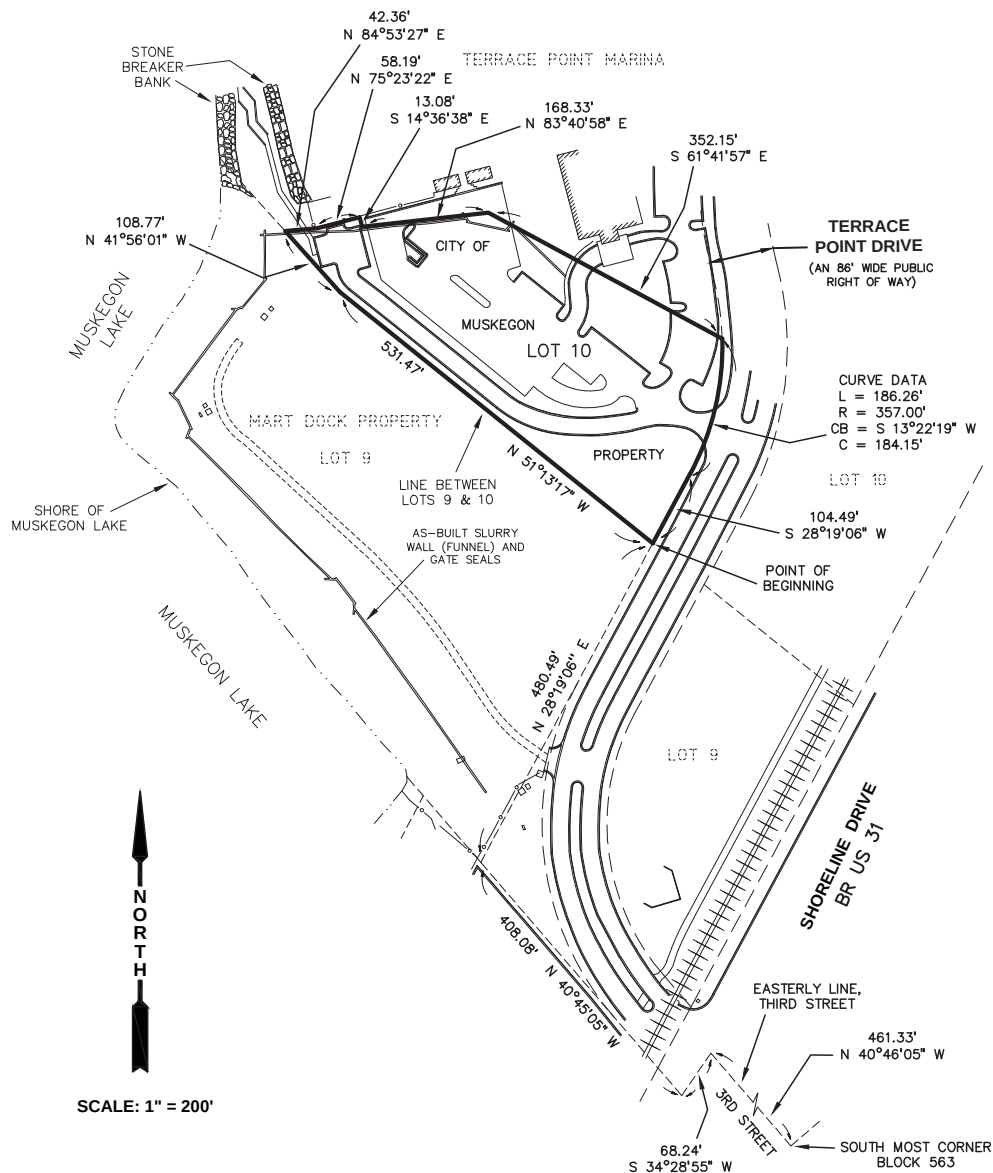
EXHIBIT 1

Legal Description of the Property

**PROPERTY DESCRIPTION
NFA Lot 10**

That part of Lot 10, Block 563 of the Revised Plat of 1903, Section 19, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, Michigan, described as: **COMMENCING** at the Southernmost corner of said Block 563; thence North $40^{\circ}46'05''$ West 461.33 feet along the Easterly line of Third Street to the Southeasterly line of Lot 9, said plat; thence South $34^{\circ}28'55''$ West 68.24 feet to the Southwesterly line of said Lot 9; thence North $40^{\circ}45'05''$ West 408.08 feet along the Southwesterly line of said Lot 9; thence North $28^{\circ}19'06''$ East 480.49 feet to the **PLACE OF BEGINNING**; thence North $51^{\circ}13'17''$ West 531.47 feet along the line between said Lots 9 and 10; thence North $41^{\circ}56'01''$ West 108.77 feet along the line between said Lot 9 and 10; thence North $84^{\circ}53'27''$ East 42.36 feet; thence North $75^{\circ}23'22''$ East 58.19 feet; thence South $14^{\circ}36'38''$ East 13.08 feet; thence North $83^{\circ}40'58''$ East 168.33 feet; thence South $61^{\circ}41'57''$ East 352.15 feet; thence Southwesterly 186.26 feet on a 357.00 foot radius curve to the right, the chord of which bears South $13^{\circ}22'19''$ West 184.15 feet; thence South $28^{\circ}19'06''$ West 104.49 feet to the place of beginning.

2.7548 acres

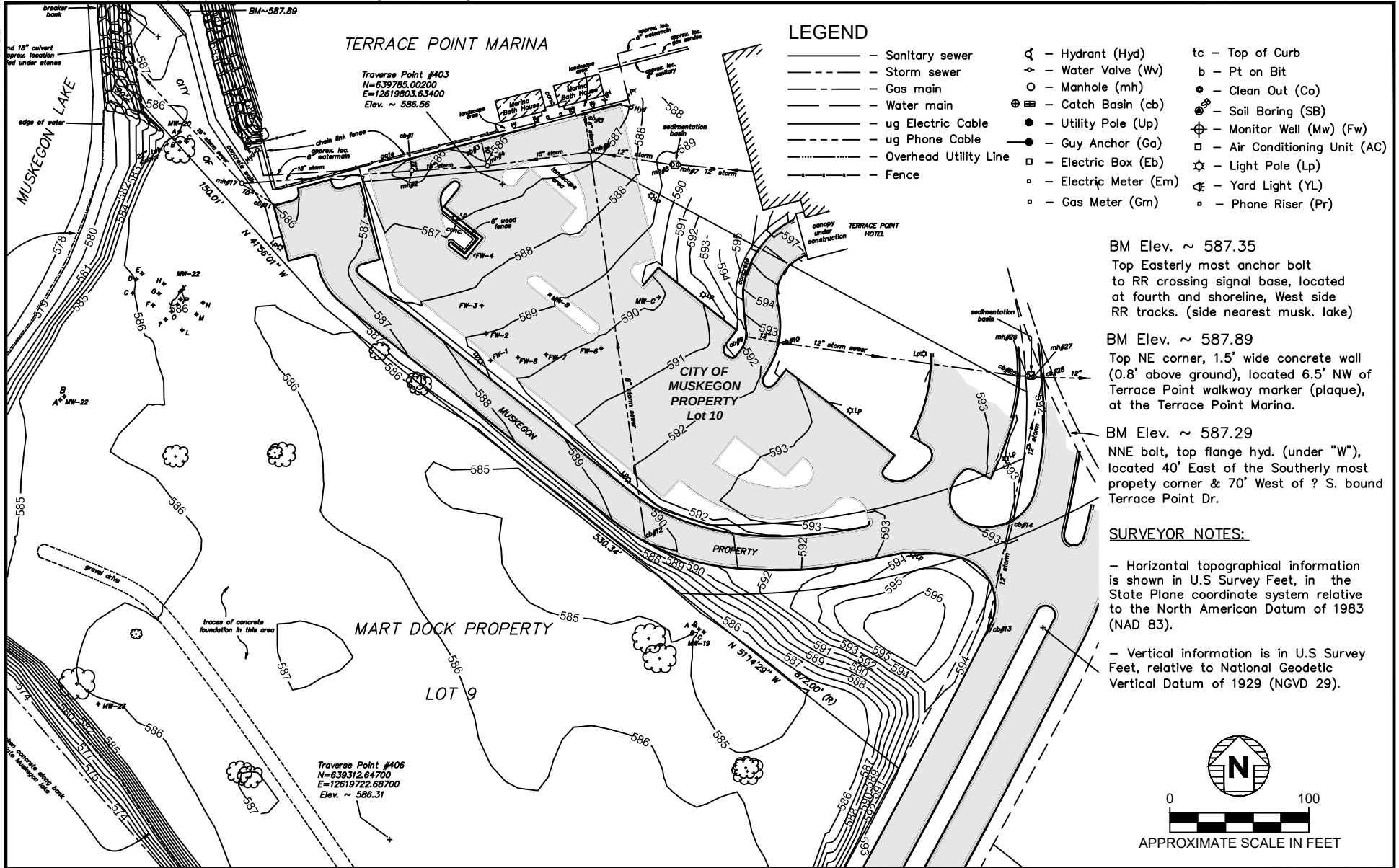


FIELD SURVEY BY: M&B OFFICE	SUPERVISION BY: SJG	Prepared By: MOORE & BRUGGINK, INC. Consulting Engineers 2020 Monroe Avenue N.W. Grand Rapids, Michigan 49505-6298 Phone: (616) 363-9801 Web: www.mbce.com
DRAWN BY: MDJ	CHECKED BY: SJG	
DATE: JULY 25, 2017	PROJECT NO.: 023038.4	

M:\023038 Mart Dock Muskegon\DWG\023038 NFA Lot 10 (2017).dwg, SURVEY MAP, 7/25/2017 10:52:49 AM, MDJ, CIVIL 3D 2017

EXHIBIT 2

Elevation of Top of The One Foot or Thicker Soil Cover to be Maintained on Lot 10



1540 Eisenhower Place
Ann Arbor, MI 48108
Phone: 734.971.7080
www.trcsolutions.com

PROJECT:

**DTE GAS COMPANY
FORMER LAKEY FOUNDRY PART 201 FACILITY
MUSKEGON, MICHIGAN**

TITLE:

**ELEVATION OF TOP OF THE ONE FOOT OR THICKER SOIL COVER
TO BE MAINTAINED ON LOT 10**

DRAWN BY: D.STEHLE

CHECKED BY: V.BUENING

APPROVED BY: -

DATE: SEPTEMBER 2018

PROJ. NO.: 305066.0000

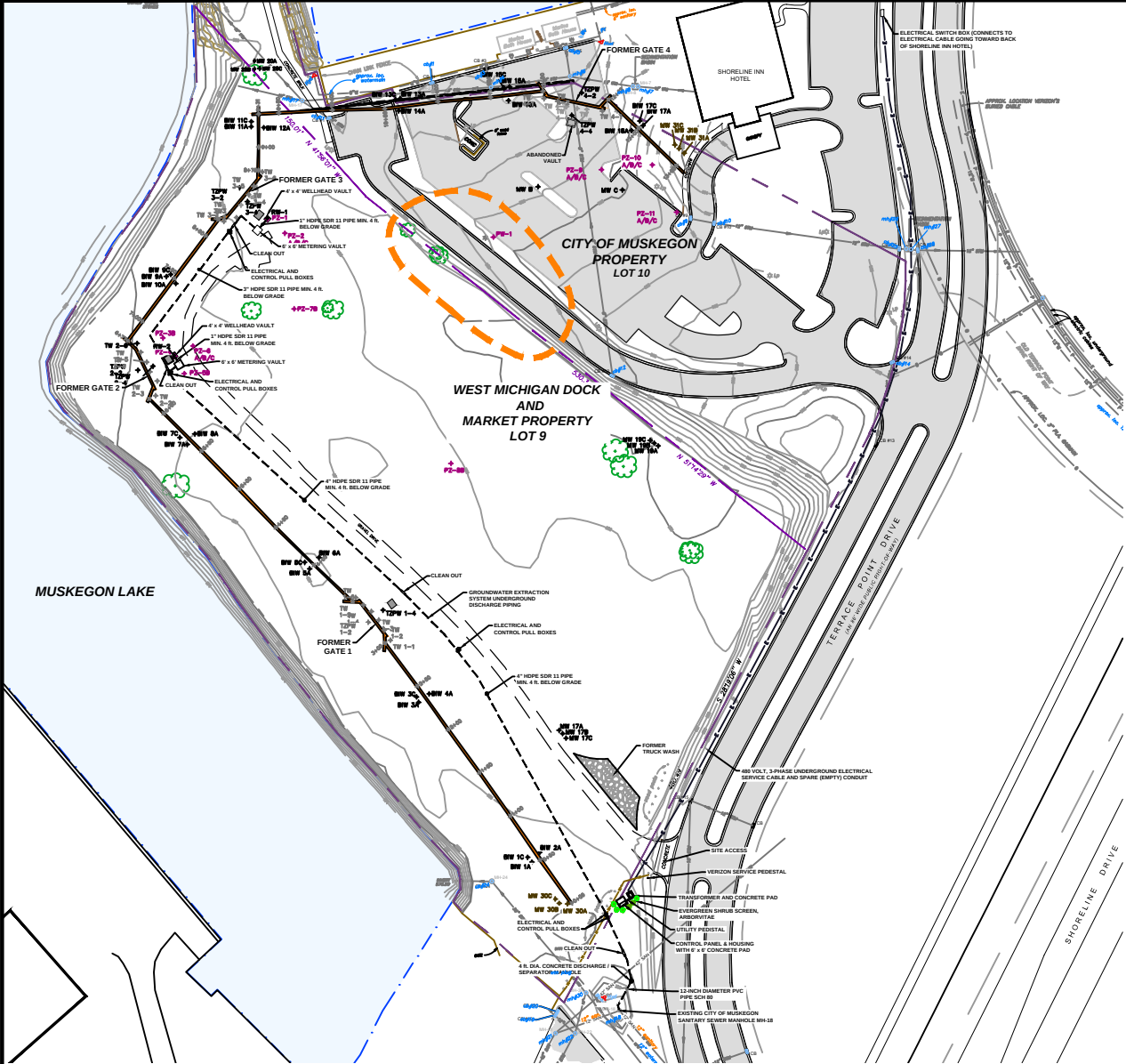
FILE: 305066.0000.EXH02.dwg

EXHIBIT 2

EXHIBIT 3

Extent of Dense Non-Aqueous Phase Liquid

Version: 2017-10-21



LEGEND

- PROPERTY LINES
- R.O.W.
- SAN- SANITARY SEWER
- STM- STORM SEWER
- G- GAS MAIN
- W- WATER MAIN
- E- ELECTRIC CABLE (UNDERGROUND)
- P- PHONE CABLE (UNDERGROUND)
- X- X- FENCE
- SHEET PILE WALL
- HYDRANT (HYD)
- WATER VALVE (WV)
- CATCH BASIN (CB)
- LIGHT POLE (LP)
- YARD LIGHT (YL)
- PHONE RISER (PR)
- MH-17 SANITARY OR STORM SEWER MANHOLE LOCATION AND NUMBER
- AS-BUILT SLURRY WALL (FUNNEL) AND GATE SEALS
- BIW 1A PZ-1 HYDRAULIC CONTROL PIEZOMETER / MONITORING WELLS
- TW 4-3 FORMER FULL SCREENED OXYGEN TRANSFER TREATMENT WELL LOCATION
- TW 1-1 ABANDONED FULL SCREENED OXYGEN TRANSFER TREATMENT WELL LOCATION
- TZPW 1-2 ABANDONED HYDRAULIC CONTROL PIEZOMETER LOCATION AND NUMBER
- TZPW 4-4 HYDRAULIC CONTROL PIEZOMETER LOCATION AND NUMBER
- MW 31A FUNNEL CAPTURE WELLS
- ABANDONED IN PLACE FORMER ISOC SYSTEM VAULT
- GROUNDWATER EXTRACTION SYSTEM H-20 RATED VAULT
- GROUNDWATER EXTRACTION SYSTEM DISCHARGE PIPING (UNDERGROUND)
- 8" RECOVERY WELL
- MANHOLE
- PULL BOXES
- CLEANOUT
- APPROXIMATE EXTENT OF DENSE NON-AQUEOUS PHASE LIQUID (DNAPL) BELOW THE WATER TABLE ABOUT 20 TO 30 FEET BELOW GROUND SURFACE.
- AREAS OF RESIDUAL DNAPL MAY EXIST ON THE SITE.

SURVEY NOTES

- BASE MAP DEVELOPED FROM SITE PLAN PREPARED BY MOORE & BRUGGINK, INC., PROJECT NO.: 023038.
- DRAWING NO. 023038.DWG, DATED 05-30-2001.1.HORIZONATAL TOPOGRAPHICAL INFORMATION IS SHOWN IN U.S SURVEY FEET, IN THE STATE PLANE COORDINATE SYSTEM RELATIVE TO THE NORTH AMERICAN DATUM OF 1983 (NAD 83).
- VERTICAL INFORMATION IS IN U.S SURVEY FEET, RELATIVE TO NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 29).
- GROUNDWATER EXTRACTION SYSTEM UNDERGROUND PIPING, UNDERGROUND ELECTRICAL, DISCHARGE MANHOLE, EXISTING MH-18, AND ANCILLARY STRUCTURES WERE SURVEYED BY DRISENGA & ASSOCIATES, INC. AS AN AS-BUILT SURVEY DATED 06-25-1008, PROJECT NO. 0810105.5A.



TRC
1540 Eisenhower Place
Ann Arbor, MI 48108
Phone: 734.971.7080
www.trcsolutions.com

PROJECT:	DTE GAS COMPANY FORMER LAKEY FOUNDRY PART 201 FACILITY MUSKEGON, MICHIGAN		DRAWN BY:	D.STEHLE
	TITLE:		CHECKED BY:	V.BUENING
			APPROVED BY:	-
			DATE:	SEPTEMBER 2018
			PROJ. NO.:	305066.0000
			FILE:	305066.0000.EXH02-03.dwg
			EXHIBIT 3	

EXHIBIT 4

CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

Parkland Acquisition, LLC
940 Monroe NW, Suite 155
Grand Rapids, MI 49503

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF *[enter the state where the document is signed]*
COUNTY OF *[enter the county where the document is signed]*

Notary Public Signature

Date: 2/12/2019

To: Honorable Mayor and City Commissioners

From: City Manager

RE: Sale of City Owned Property to Damfino Development, LLC

SUMMARY OF REQUEST:

Sell a city owned parcel, 1490 Edgewater Street, to Damfino Development, LLC for a purchase price of \$15,000. Closing to be scheduled at the earliest convenience for both parties, and closing costs to be paid by Damfino Development, LLC. The parcel is landlocked between the Harbour Towne Marina and vacant land currently owned by Damfino Development, LLC. The parcel became isolated when land was conveyed for the Harbour Towne Marina.

FINANCIAL IMPACT:

\$15,000 in revenue

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Sell the landlocked parcel to Damfino Development, LLC for \$15,000.



January 13, 2019

Mr. Frank Peterson
City Manager
City of Muskegon
933 Terrace Street
Muskegon, Michigan 49443

Dear Frank:

I am writing to offer to purchase a parcel of land owned by the City of Muskegon adjacent to our proposed development, "The Docks". It would appear the land is land-locked as a result of the manner in which the City conveyed property to C.A.R Development for The Harbour Towne Marina. Further background is explained below and supported by 7 exhibits attached hereto.

We would like to purchase the property in the name of Damfino Development, LLC for the price of \$15,000 and Damfino will pay for any costs associated with the transaction.

Background:

In connection with title work being performed on property owned by Damfino Development, LLC it was determined that the parcel of land shown in red on both the attached EXHIBIT A and EXHIBIT G (hereafter referred to as the "Triangle Parcel") is owned by the City of Muskegon. Damfino Development would like to acquire this land-locked Triangle Parcel from the City of Muskegon.

The Triangle Parcel was part of a larger parcel ("Master Parcel") deeded from Central Land Company to the City of Muskegon on November 26, 1935 through the Deed attached as EXHIBIT B.

Almost fifty (50) years later, on February 13, 1984, The City of Muskegon deeded a portion of the Master Parcel to C.A.R. Development, Inc. through the Deed attached as EXHIBIT C as shown on EXHIBIT D. It was this transaction that left the Triangle Parcel isolated on the south side of the Harbour Towne Channel.

On May 10, 1984, C.A.R. Development, Inc. deeded the parcel transferred to it through the EXHIBIT C Deed to Harbour Towne Limited Partnership A through the Deed attached as EXHIBIT E. That parcel is now commonly known as the Harbour Towne Marina.

I am also providing you with a copy of the Transnation Title Summary File No. 252579WMS dated September 12, 2018 at 8:00 AM which reflects that the Triangle Parcel is owned by the City of Muskegon. It is attached as EXHIBIT F.

The attached EXHIBIT G shows the following: The Triangle Parcel in red, the proposed north line of the Damfino Development property in yellow, the nearby border of the Harbour Towne Marina property in pink and the nearby border of the City Charter Park in green.

Please let me now if anything further is needed for the City to make a decision regarding our offer. We are prepared to close promptly upon your acceptance of this offer.

Sincerely,



Scott A. Musselman

List of Exhibits

EXHIBIT A - Location of Triangle Parcel

EXHIBIT B – Deed from Central Land Company to City of Muskegon

EXHIBIT C – Deed from City of Muskego to C.A.R. Development

EXHIBIT D - Muskego to C.A.R. Development shown on survey

EXHIBIT E – Deed from C.A.R. Development to Harbour Towne Limited Partnership A

EXHIBIT F – Title Search

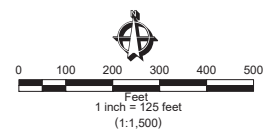
EXHIBIT G – Survey depicting all relevant borders.



CITY OF MUSKEGON
**PARCEL TAX MAPPING W/
 2014 AERIAL PHOTOGRAPHY**
SAND PRODUCTS CORPORATION PARCELS

Map Features

- PARCELS OF INTEREST
- PARCELS
- CRITICAL DUNE AREAS
- PLAT BOUNDARY
- ROAD ROW
- PARCEL DIMENSIONS



This map is intended for use as a taxation parcel map only. Features contained on this map are for reference and no claim to accuracy is intended. For exact feature location and identification, parties should consult a licensed professional surveyor.

MUSKEGON COUNTY
GIS
 Muskegon County Equalization
 Mapping & GIS
 173 E. Apple Avenue, Suite 201
 Muskegon, MI 49442
 Phone: (231) 724-6386
 Fax: (231) 724-1129
<http://www.muskegoncountygis.com>
 Page Printed Date: 8/26/2016

RECEIVED FOR RECORD *Dec-11*

A.D. 1935 AT *11:30* P.M.

EXHIBIT B

INDEX 360 PAGE 118

Edward Hanson.

REGISTER OF DEEDS

THIS INDENTURE made the *26* day of *November*
in the year of our Lord one thousand nine hundred and thirty-five (1935)
Between CENTRAL LAND COMPANY, a corporation organized and existing under and
by virtue of the laws of the State of Michigan, party of the first part, and
CITY OF MUSKEGON, a municipal corporation of the State of Michigan, party of
the second part,

W I T N E S S E T H:-

That the said party of the first part, for and in consideration
of the sum of One Dollar (\$1.00) and other valuable considerations, to it in
hand paid by the said party of the second part, the receipt whereof is hereby
confessed and acknowledged, does by these presents, grant, bargain, sell,
renew, release and forever QUIT CLAIM unto the said party of the second part,
and to its assigns, forever, all those certain pieces or parcels of land
situated in the City of Muskegon, County of Muskegon, and State of Michigan,
known and described as follows, to-wit:

FIRST, all the following described pieces or parcels
of land situate and being in NELSON & COMPANY'S ENLARGED
AND CORRECTED PLAT OF THE VILLAGE OF LAKE TON, viz.;

Lots one (1) and two (2) of Block one (1),
except the Southerly one hundred and fifty (150) feet
thereof. Also known and described as Lot two (2) of
Block seven hundred and forty-five (745) of the Revised
Plat of the City of Muskegon, adopted April 9, 1903.

Lots four (4), five (5), six (6), ten (10),
and eleven (11), of Block one (1), Also known and
described as Lots four (4), five (5), six (6), ten (10),
and eleven (11), of Block seven hundred and forty-five
(745) of the Revised Plat of the City of Muskegon, adopted
April 9, 1903.

Lot one (1), two (2), three (3), seven
(7), eight (8) and nine (9), of Block two (2). Also
known and described as Lot One (1), of Block seven hundred
and forty-eight (748) of the Revised Plat of the City of
Muskegon, adopted April 9, 1903.

Lots two (2) and five (5) of Block three (3).
Also known and described as Lots two (2) and five (5), of
Block seven hundred and forty-seven (747) of the Revised
Plat of the City of Muskegon, adopted April 9, 1903.

Lots one (1) to five (5), both inclusive, of
Block four (4). Also known and described as Lot one (1) of
Block seven hundred and forty-six (746) of the Revised Plat
of the City of Muskegon, adopted April 9, 1903.

All of Block five (5). Also known and
described as all of Block seven hundred and forty-nine
(749) of the Revised Plat of the City of Muskegon, adopted
April 9, 1903.

Lots one (1) to Seven (7), both inclusive, of Block six (6). Also known and described as Lots one (1) to Seven (7), both inclusive, of Block seven hundred and fifty-one (751) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

All of Block seven (7). Also described as that part of Block seven hundred and thirty-nine (739) of the Revised Plat of the City of Muskegon, adopted April 9, 1903, bounded Northerly and Easterly by the Muskegon Lake Channel, Southerly by the North line of Water Street, Westerly by the Westerly line of Beach Avenue, extended to Muskegon Lake Channel.

Lots three (3), four (4), five (5) and Lots eight (8) to Fourteen (14), both inclusive, of Block Eight (8). Also known and described as Lots three (3), four (4), five (5) and Lots Eight (8) to Fourteen (14), both inclusive, of Block 752 of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

Lots one (1), nine (9), and ten (10), of Block ten (10). Also known and described as Lots one (1), nine (9), and ten (10), of Block seven hundred and fifty-four (754) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

All of Block eleven (11). Also known and described as all of Block seven hundred and fifty-five (755) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

Lots one (1) to seven (7), both inclusive, of Block twelve (12). Also known and described as Lots one (1) to seven (7), both inclusive, of Block seven hundred fifty-six (756) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

Lot one (1) of Block thirteen (13). Also known and described as Lot one (1) of Block seven hundred fifty-seven (757) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

Lots one (1) to five (5), both inclusive, of Block fourteen (14). Also known and described as Lot one (1) of Block seven hundred and forty-four (744) of the revised Plat of the City of Muskegon, adopted April 9, 1903.

SECOND, all the following described pieces or parcels of land situate and being in CENTRAL LAND COMPANY'S SUBDIVISION, City of Muskegon, Muskegon County, Michigan, being a sub-division of Parts of Blocks 737 and 740 of the Revised Plat of the City of Muskegon, said Blocks being also known as Lots Four (4) and Seven (7) of Section Twenty-eight (28), Township Ten (10) North, Range Seventeen (17) West; recorded in Liber three (3) of Plats, on Page 84, Muskegon County, Michigan records, viz.;

Lots eight (8) to fourteen (14), both inclusive, of Block seven hundred fifty-six (756). Lot ten (10) of Block seven hundred fifty-seven (757); Lots thirteen to sixteen (13 to 16), both inclusive, of Block seven hundred fifty-eight (758); Lot nine (9) of Block seven hundred fifty-nine (759); Lots eleven (11), twelve (12) and thirteen (13), of Block seven hundred and sixty (760).

THIRD, all the following described pieces or parcels of land situate and being in CENTRAL LAND COMPANY'S SUBDIVISION NUMBER ONE, City of Muskegon, Muskegon County, Michigan, being a subdivision of parts of Blocks 737 and 740, of the Revised Plat of the City of Muskegon. Said blocks being also known as Lots four (4) and seven (7) of Section twenty-eight (28), Township Ten (10), North, Range seventeen West. Recorded in Liber six (6) of Plats, on Page 28, Muskegon County, Michigan records, viz.;

Lots four (4), eight (8), and nine (9) and Lots fifteen (15) to twenty-one (21), both inclusive of Block seven hundred and sixty-one (761); Lots four (4) and six (6) and Lots eight (8), nine (9), ten (10), and eleven (11), of block seven hundred sixty-two (762); Lots two (2) to eleven (11), both inclusive, of Block seven hundred and sixty-three (763).

FOURTH, all the following described unplatted lands, viz.;

All that part of the North half of Lot seven (7) of Section twenty-eight (28), Township Ten (10) North, Range Seventeen (17) West, lying Easterly of Central Land Company's Subdivision No. 1. Also known and described as all of the unplatted portion of Block Seven hundred and thirty-seven (737) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

All that part of Lot four (4) of Section twenty-eight (28), Township ten (10) North, Range seventeen (17) West, lying East of Central Land Company's Subdivision No. 1, Central Land Company's Subdivision and Nelson & Company's Enlarged and Corrected Plat of the Village of Laketon. Also known and described as all of the unplatted portion of Block seven hundred and forty (740) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

REMEDIAL ACTION OF THE CITY OF MUSKEGON
OF THE CITY OF MUSKEGON
SECOND: ALL THE FOLLOWING DESCRIBED BY THE CITY OF MUSKEGON

LIBER 380 PAGE 101

* All that part of Lot eight (8) of Section twenty-eight (28), Township Ten (10) North, Range Seventeen (17) West, now known and described as Block seven hundred and forty-two (742) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

All that part of Lot eight (8) of Section twenty-eight (28), Township Ten (10) North, Range Seventeen (17) West, bounded Northerly and Easterly by First Street and Bluff Street of Nelson & Company's Enlarged and Corrected Plat of the Village of Laketon; Southerly by the East and West quarter line of Section twenty-eight (28), Township Ten (10) North, Range Seventeen (17) West and by the Northerly line of Block seven hundred and forty-two (742) of the Revised Plat of the City of Muskegon, adopted April 9, 1903, Westerly by Block seven hundred and fifty-one (751) of said Revised Plat of the City of Muskegon. Also known and described as Block seven hundred and fifty (750) of the Revised Plat of the City of Muskegon, adopted April 9, 1903.

FIFTH, all of the rights, title and interest reserved by the party of the first part to itself, its successors and assigns, and to the Pere Marquette Railway Company, its successors and assigns, in and to the Easterly fifty feet of Blocks 738 and 739 of the Revised Plat of the City of Muskegon, adopted April 9, 1903, lying parallel with, adjacent to and being measured Westerly at right angles from the westerly line of Beach Ave.; as contained in Quit Claim Deed from the party of the first part herein to the party of the second part herein, dated February 20, 1924.

* TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; To Have and To Hold the said premises as above described to the said party of the second part and to its assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, and its assigns, forever; subject, however, to a certain lease agreement given by the party of the first part herein, to the West Michigan Core Sand Company, a Michigan corporation, under date of March 15, 1927, to expire by limitation on December 31, 1936, and assigned January 3rd, 1930, to Sand Products Corporation, a Michigan corporation, of Detroit, Michigan, said lease agreement covering approximately four and six-tenths (4.6) acres of land in the Southeast corner of Block seven hundred and forty-two (742) of the Revised Plat of the City of Muskegon, to be used solely as a location for an outlet to Lake Michigan via Muskegon Lake, for loading sand to be taken from the lessee's premises and loaded on lake boats, but not including the right of the lessee to remove any sand or other earth from the Central Land Company's premises.

LIBER 390 PAGE 101

IN WITNESS WHEREOF the said Central Land Company, party of the first part, has caused these presents to be signed in its name, by its Vice President, attested by its Assistant Secretary and sealed with its corporate seal, the day and year first above written.

Signed, sealed and delivered
in the presence of:

[Signature]
[Signature]

CENTRAL LAND COMPANY

By [Signature]
Its Vice President
Attest [Signature]
Its Assistant Secretary

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

On this 26 day of March, in the year of our Lord one thousand nine hundred and thirty five (1935), before me, a Notary Public, in and for said County appeared R. J. Bowman and C. H. Reiser, to me personally known, who being by me duly sworn did each for himself say that they are respectively Vice President and Assistant Secretary of Central Land Company, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and the said R. J. Bowman and C. H. Reiser acknowledged said instrument to be the free act and deed of said corporation.

[Signature]
Notary Public, Wayne County, Michigan

My Commission expires Sept 9 - 1936

20315
NOTARY
W. J. M.

LIBR: 1285 PAGE 894

~~QUIT CLAIM DEED~~

Statutory Form

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MUSKEGON, a municipal corporation, City Hall, Muskegon 49400

QUIT CLAIMS TO C.A.R. DEVELOPMENT, INC., a Michigan corporation of 2450 Ruddisan, North Muskegon, Michigan 49445

the following described premises situated i. the City of Muskegon, County of Muskegon, State of Michigan, to-wit: See legal description attached hereto

for the sum of: One Dollar (\$1.00)

This transfer is exempt from taxation pursuant to MCLA 207.505(h)

Dated this 13th day of February, 1984.

Signed in the presence of:

Thomas U. Olson
Thomas U. Olson
Rick Chapla

CITY OF MUSKEGON, a municipal corporation

By Elmer J. Walcott
Elmer J. Walcott, Its Mayor

and Marva Vasquez
Marva Vasquez, Its Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this 13th day of February, 1984, Elmer J. Walcott, Mayor and Marva Vasquez, Clerk, of CITY OF MUSKEGON, a municipal corporation, on behalf of the corporation.

Thomas U. Olson
Thomas U. Olson
Notary Public
Muskegon County, Michigan
My commission expires: 09-23-85

When Recorded Return To:
Grantee

Send Subsequent tax Bills To:
Grantee

Drafted by:
O'TOOLE, STEVENS, JOHNSON,
KNIGHTON, FORTER & ROLF
BY: Thomas J. O'Toole

Business Address:
175 W. Apple Avenue
Muskegon, Michigan 49443

LIBR: 1285 PAGE 894
STATE OF MICHIGAN
COUNTY OF MUSKEGON
RECEIVED
1984 MAY 23 P 12:59
City of Muskegon
Office of the Clerk

EXHIBIT 4

(14440)

Transmitted
Date: Jan

7.42

Beginning at the Northwest corner of Plat of Edgewater Subdivision, City of Muskegon, Muskegon County, Michigan, recorded in Liber 3, Page 82 of Plat, Muskegon County Records, also known as the Northeast corner of Block 740 of the revised Plat of the City of Muskegon, Thence South 89 degrees 37 minutes 27 seconds West, parallel with North line of said Plat of Edgewater, 105.00 feet;

Thence South 01 degree 52 minutes 29 seconds West, parallel with the West line of said Plat of Edgewater (also being the East line of Block 740, Revised Plat of the City of Muskegon); 120.00 feet,

Thence North 88 degrees 07 minutes 31 seconds West, 574.00 feet;

Thence North 57 degrees 52 minutes 07 seconds West, 191.39 feet;

Thence South 89 degrees 37 minutes 27 seconds West, parallel with North line of said Plat of Edgewater, 210.00 feet;

Thence North 00 degrees 22 minutes 33 seconds West 215.00 feet;

Thence North 30 degrees 04 minutes 06 seconds West, along extended East line of said Block 747, 55.00 feet;

Thence North 53 degrees 52 minutes 59 seconds East, along the extended South line of Block 746, Revised Plat of the City of Muskegon, 97.15 feet, to the Southwest corner of Lot 1 said Block 746;

Thence North 29 degrees 46 minutes 05 seconds West, along West line of said Lot 1, Block 746, 126.46 feet, to the Northwest corner of said Lot 1, Block 746;

Thence North 60 degrees 22 minutes 50 seconds East along the North line of said Block 746, 241.42 feet to the Northeast corner of said Block 746;

Thence South 30 degrees 04 minutes 54 seconds East, along East line of said Block 746, 0.50 feet;

Thence North 60 degrees 22 minutes 50 seconds East, parallel with the North line of Block 746, 339.71 feet. The following calls lying within Block 742 of the Revised Plat of the City of Muskegon:

Thence South 29 degrees 37 minutes 10 seconds East 45.57 feet;

Thence South 88 degrees 07 minutes 31 seconds East 757.98 feet;

Thence South 01 degree 52 minutes 29 seconds West, parallel with the West line of Plat of Edgewater Subdivision, 469.50 feet;

Thence North 89 degrees 37 minutes 27 seconds East, parallel with the North line of Plat of Edgewater Subdivision 317.30 feet;

Thence North 42 degrees 55 minutes 40 seconds East 72.44 feet to Point "A";

Thence North 42 degrees 55 minutes 40 seconds East 80 feet more or less to the shoreline of Muskegon Lake;

Recommencing at Point "A", thence South 47 degrees 04 minutes 20 seconds East on a meander line along shore of Muskegon Lake 140.00 feet, to Point "B";

Thence North 42 degrees 55 minutes 40 seconds East 60 feet, more or less, to shoreline of Muskegon Lake;

Recommencing at Point "B", thence South 42 degrees 55 minutes 40 seconds West 174.10 feet;

F24

LIBER 1285 PAGE 895

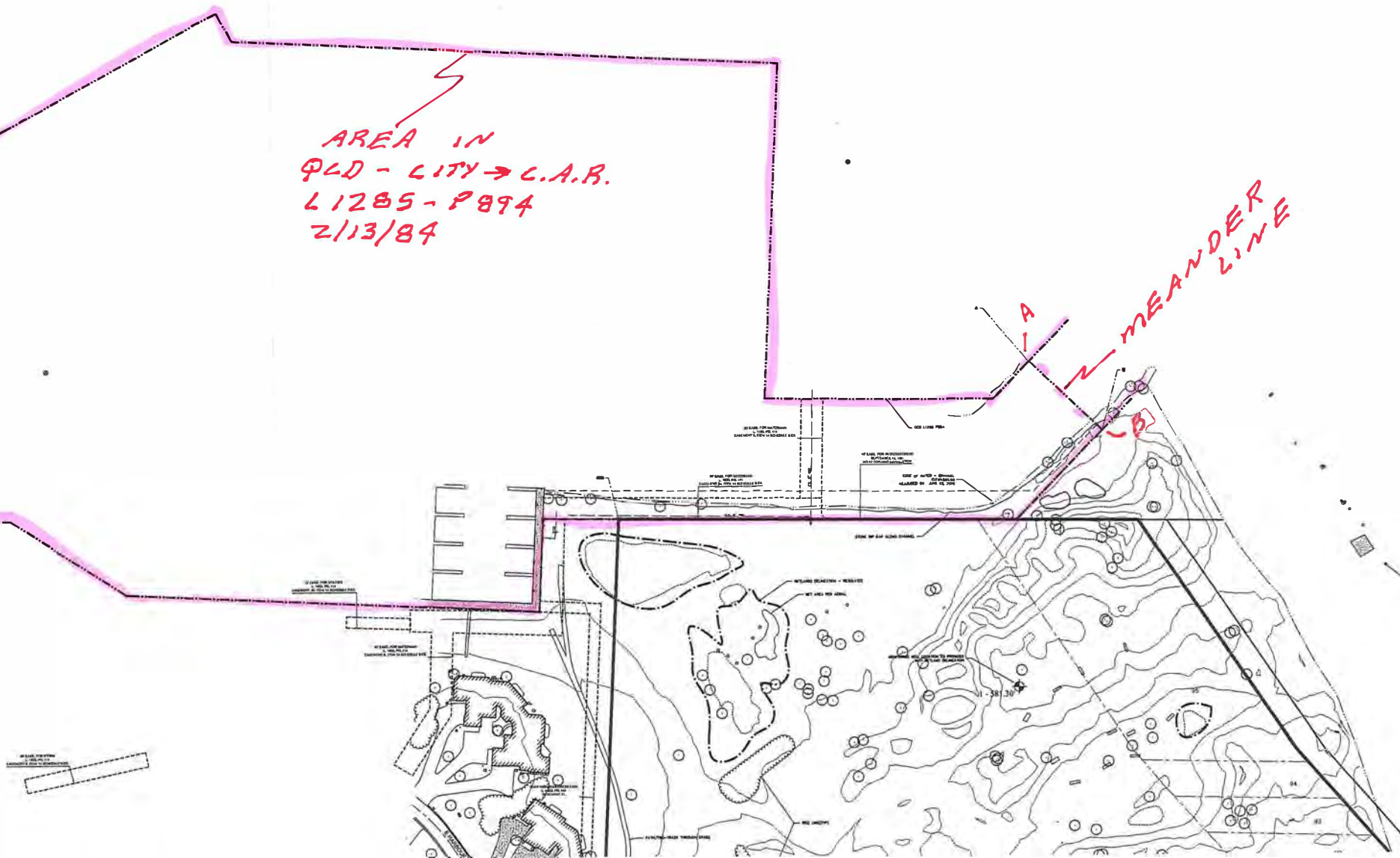
Thence South 89 degrees 37 minutes 27 seconds West, along North line of said Plat of Edgewater Subdivision, also being the South line of Block 742, Revised Plat of the City of Muskegon, 552.46 feet, to the Point of Beginning.

Said parcel contains 21.66 acres and is subject to Riparian Rights. Bearings based from Transverse Mercator Projection, Central Zone.

Said description being part of Block 742, Block 743, Block 740, Revised Plat of City of Muskegon, and also including Lot 1, Block 746, Revised Plat of City of Muskegon.

AREA IN
QCD - CITY → C.A.R.
L1285 - P894
2/13/84

MEANDER
LINE



Lw. 38.50

KNOW ALL MEN BY THESE PRESENTS: That, Grantor, C.A.R. Development, Inc., a Michigan Corporation, whose address 2450 Ruddiman Dr., Muskegon, Michigan 49445,

Quit Claims to, Grantee, Harbour Towne Limited Partnership A, a Michigan Limited Partnership, whose address is 2450 Ruddiman Dr., North Muskegon, Michigan 49445, the following described premises situated in the City of Muskegon, County of Muskegon, and State Of Michigan, to-wit:

Beginning at the Northwest corner of Plat of Edgewater Subdivision, City of Muskegon, Muskegon County, Michigan, recorded in Liber 3, Page 82 of Plats, MCR, also known as the Northeast corner of Block 740 of the Revised Plat of the City of Muskegon.

Thence South 89 degrees 37 minutes 27 seconds West, parallel with North line of said Plat of Edgewater, 105.00 feet;

Thence South 01 degree 52 minutes 29 seconds West, parallel with the West line of said Plat of Edgewater (also being the East line of Block 740, revised Plat of the City of Muskegon, 130.00 feet;

Thence North 88 degrees 07 minutes 31 seconds West, 574.00 feet;

Thence North 57 degrees 52 minutes 07 seconds West, 191.39 feet;

Thence South 89 degrees 37 minutes 27 seconds West, parallel with North line of said Plat of Edgewater, 210.00 feet;

Thence North 00 degrees 22 minutes 33 seconds West 215.00 feet;

Thence North 30 degrees 04 minutes 06 seconds West, along extended East line of said Block 747, 55.00 feet;

Thence North 53 degrees 52 minutes 59 seconds East, along the extended South line of Block 746, Revised Plat of the City of Muskegon, 97.15 feet, to the Southwest corner of Lot 1 said Block 746;

Thence North 29 degrees 46 minutes 05 seconds West, along West line of said Lot 1, Block 746, 126.46 feet, to the Northwest corner of said Lot 1, Block 746;

Thence North 60 degrees 22 minutes 50 seconds East along the North line of said Block 746, 241.42 feet to the Northeast corner of said Block 746;

Thence South 30 degrees 04 minutes 54 seconds East, along East line of said Block 746, 0.50 feet;

Thence North 60 degrees 22 minutes 50 seconds East, parallel with the North line of Block 746, 158.86 feet the following calls lying within Block 742 and 743 of the Revised Plat of the City of Muskegon.

Thence South 01 degree 52 minutes 29 seconds West, parallel with the West line of Plat of Edgewater, 162.88 feet;

John J. Abalo
REGISTER OF DEEDS

1989 MAY 21 P 4: 34

STATE OF MICHIGAN
COUNTY OF MUSKEGON
RECEIVED FOR RECORD

LIBER 1285 PAGE 833



Thence South 88 degrees 07 minutes 31 seconds East, 280.00 feet;

Thence North 01 degree 52 minutes 29 seconds East, parallel with the West line of Plat of Edgewater, 60.00 feet;

Thence South 88 degrees 07 minutes 31 seconds East 42.00 feet;

Thence North 01 degree 52 minutes 29 seconds East parallel with the West line of Plat of Edgewater, 158.50 feet;

Thence South 88 degrees 07 minutes 31 seconds East, 614.00 feet;

Thence South 01 degree 52 minutes 29 seconds West, parallel with the West line of Plat of Edgewater Subdivision, 469.50 feet;

Thence North 89 degrees 37 minutes 27 seconds East, parallel with the North line of Plat of Edgewater Subdivision 317.30 feet;

Thence North 42 degrees 55 minutes 40 seconds East 72.44 feet to Point "A";

Thence North 42 degrees 55 minutes 40 seconds East 80.00 feet, more or less, to the shoreline of Muskegon Lake;

Recommencing at Point "A", thence South 47 degrees 04 minutes 20 seconds East on a meanderline along shore of Muskegon Lake 140.00 feet to Point "B";

Thence North 42 degrees 55 minutes 40 seconds East 60 feet, more or less, to shoreline of Muskegon Lake;

Recommencing at Point "B", thence South 42 degrees 55 minutes 40 seconds West 174.10 feet;

Thence South 89 degrees 37 minutes 27 seconds West, along North line of said Plat of Edgewater Subdivision, also being the South line of Block 742, Revised Plat of the City of Muskegon, 552.46 feet, to the Point of Beginning.

Said parcel contains 20.12 acres and is subject to Riparian Rights. Bearings based from Transverse Mercator Projection Central Zone.

Said description being part of Block 742, Block 743, Block 740, Revised Plat of the City of Muskegon, and also including Lot 1, Block 746, Revised Plat of City of Muskegon.

for the consideration of the sum of \$35,000.00 Dollars

Subject to the following easements and burdens which shall run with the land described herein:

A. Easements Retained by Grantor

Grantor retains unto itself and its assigns, the following easements:

1. Utility Easements.

Grantor retains an easement to, through, over, under and across the premises described herein for the purpose of installation and continuing maintenance and repair of utility lines and pipes including but not necessarily limited to those necessary for light, power, water and communications, which it deems necessary to provide utilities to any projects or properties contiguous to the property described herein.

2. Easement Through Channel and Marina Basin of Harbour Towne Marina Condominium.

This property is being conveyed to Grantee for the purpose of developing a condominium project to be known as Harbour Towne Marina Condominium. Grantor, retains an easement, for itself and its assigns, both prior and future, over and through all waterways of the Harbour Towne Marina Condominium which may be constructed on the property conveyed herein.

3. Easement for Purpose of Obtaining Access to Channel for Property Contiguous to Project Property.

Grantor, retains an easement, for itself and its assigns, in that portion of the property described above which is described as follows:

Lying within Section 28, T10N, R17W, of the City of Muskegon, Muskegon County, Michigan, hereby described as:

Beginning at the Northwest corner of Plat of Edgewater Subdivision, City of Muskegon, recorded in Liber 3, Page 82, of Plats, Muskegon County Records;

Thence South 89 degrees 37 minutes 27 seconds West, 105.00 feet,
Thence North 01 degree 52 minutes 29 seconds East, 40.00 feet,
Thence North 89 degrees 37 minutes 27 seconds East, 679.82 feet,
Thence North 42 degrees 55 minutes 40 seconds East, 128.60 feet,
Thence South 47 degrees 04 minutes 20 seconds East, on a meander line along shore of Muskegon Lake, 10.00 feet,
Thence South 42 degrees 55 minutes 40 seconds West, 174.10 feet,
Thence South 89 degrees 37 minutes 27 seconds West, along North line of Plat of Edgewater, 552.46 feet, to Point of Beginning.

Said easement may be used by Grantor, or its assigns for any purpose including one of ingress and egress into lakes, channels and other marinas which may be constructed upon property which is contiguous to the property conveyed herein. This easement shall permit Grantor or its assigns to excavate the property covered by this easement, at its own expense, to provide a waterway into such lakes, channels or marinas.

4. Extent of Easement and Assessments in Connection with the Same.

The easements set forth in paragraphs 1, 2 and 3 above may be used by Grantor, or its assigns for developments which may take place on one or more parcels contiguous to the property conveyed herein and which individually or when combined may account for extensive use of the easement.

B. BURDENS RUNNING WITH PROPERTY

The property conveyed herein shall have the following burdens running with the land thereof:

(1) Maintenance of Parking Lot B and Boat Launch.

Under the terms of the Purchase Agreement dated May 10, 1983, entered into between Grantor and the City of Muskegon, Michigan, for the purchase of property, a portion of which is that which is conveyed herein, the former is required to construct a Parking Lot and Boat Launch, which is depicted on the Exhibit 2 to the said purchase agreement, as Parking Lot B and as Boat Launch. Along with the construction of said Parking Lot and Boat Launch runs the burden of maintaining the same and making it operational and open to public use at reasonable times and on reasonable terms.

In addition, in the event the said Parking Lot and Boat Launch are not maintained and made available to the public at reasonable times and on reasonable terms the City of Muskegon shall be granted an easement of ingress and egress to and from said Parking Lot B and the Boat Launch and they shall have the right to operate and maintain the Parking Lot B and Boat Launch and retain all of the rents and charges obtained thereby.

The burden of these duties, obligations and conditions shall pass with the land conveyed herein, to Grantee and its assigns and successors in interest.

(2) Maintenance of Parking Lot A and City Owned Parking Lot Contiguous to Parking Lot A.

Under the terms of the Purchase Agreement, dated May 10, 1983, entered into between Grantor, and the City of Muskegon, Michigan, for the purchase of property, a portion of which is that which is conveyed herein, the former is required to construct a Parking Lot A, a portion of which is located on City owned property and the whole of which is depicted on the Exhibit 2 to the said purchase agreement as Parking Lot A with the portion located on City owned property being delineated. Along with the construction of said Parking Lot A runs the burden of preserving, repairing and maintaining the same, both that portion located on property conveyed herein and on City Property.

In the event the City shall sell any of the property retained by the same, which property is being developed by Grantor or its assigns, as part of its Urban Planned Unit Development as approved by the City of

Muskegon, this obligation to maintain the City owned portion of Parking Lot A shall terminate.

The burden of these duties, obligations and conditions as imposed by the referenced Purchase Agreement to maintain Parking Lot A, both that portion located on property conveyed herein and that portion located on City Property shall pass with the land conveyed herein, to Grantee and its assigns and successors in interest.

Paragraphs 7(b), 7(c) and 7(d) of the Real Estate Purchase Agreement dated May 10, 1983, entered into between Grantor, C.A.R. Development, Inc., and the City of Muskegon for the purchase of property, which agreement is on file with the Clerk for the City of Muskegon, Muskegon City Hall, a portion of which is conveyed herein, are hereby incorporated by reference herein for the purpose of further description and clarification of the burdens imposed on the Grantee and its assigns and successors in interest.

Dated this 18th day of May, 1984.

Witnessed:

Pamela J. Morano
PAMELA J. MORANO

James A. Morse, Jr.
JAMES A. MORSE, JR.

Signed and Sealed:

C.A.R. Development, Inc.

By Richard B. Anderson
Richard B. Anderson, Its President

By William R. Sininger
William R. Sininger, Its Secretary

STATE OF MICHIGAN)
) ss.
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this 18th day of MAY, 1984, by Richard B. Anderson and William R. Sininger, President and Secretary, respectively, of C.A.R. Development, Inc., a Michigan Corporation, on behalf of the said corporation.

Pamela J. Morano
PAMELA J. MORANO

Notary Public

Muskegon County, Michigan

My Comm. Expires: JANUARY 25, 1988

When Recorded
Return To:
Grantee

Send Subsequent
Tax Bills To:
Grantor

Drafted by:
Johnson Law Offices
P.O. Box 1146
Muskegon, MI 49443

Tax Parcel # _____ Recording Fee _____ Revenue Stamps _____

TITLE SEARCH SUMMARY
ISSUED BY
Transnation Title Agency of Michigan Lakeshore Division

IDENTIFICATION DATA
(FOR REFERENCE ONLY)

FILE NO.: 252579WMS

PROPERTY ADDRESS: 1490 EDGEWATER STREET, MUSKEGON, MI 49441
"TRIANGLE" DESCRIPTION, MUSKEGON, MI
"CHANNEL EASEMENT", MUSKEGON, MI

TRANSNATION TITLE AGENCY OF MICHIGAN LAKESHORE DIVISION (THE "COMPANY") HAS ISSUED THE ATTACHED TITLE SEARCH SUMMARY FOR MCSHANE & BOWIE, P.L.C. (THE "APPLICANT"). THE ATTACHED TITLE SEARCH SUMMARY MAY NOT BE RELIED UPON BY ANY OTHER PARTY NOR MAY IT BE RELIED UPON FOR ANY OTHER PURPOSE.

THIS TITLE SEARCH SUMMARY IS LIMITED IN SCOPE AND IS NOT A GUARANTEE OF TITLE OR OWNERSHIP, AN ABSTRACT OF TITLE, TITLE OPINION, PRELIMINARY TITLE REPORT, TITLE REPORT, COMMITMENT TO ISSUE TITLE INSURANCE, OR A TITLE POLICY, AND SHOULD NOT BE RELIED UPON AS SUCH. THIS TITLE SEARCH SUMMARY DOES NOT PROVIDE OR OFFER ANY TITLE INSURANCE, LIABILITY COVERAGE OR ERRORS AND OMISSIONS COVERAGE. THIS TITLE SEARCH SUMMARY IS NOT TO BE RELIED UPON AS A REPRESENTATION OF THE STATUS OF TITLE TO THE PROPERTY.

AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THIS TITLE SEARCH SUMMARY, APPLICANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE COMPANY, FOR ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, LOSSES, COSTS, DAMAGES AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES, HOWEVER ALLEGED OR ARISING INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, THE COMMON LAW, STATUTE, OR ANY OTHER THEORY OF RECOVERY, OR FROM ANY PERSON'S USE, MISUSE, OR INABILITY TO USE THIS TITLE SEARCH SUMMARY OR ANY OF THE MATERIALS CONTAINED THEREIN OR PRODUCED, SO THAT IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF THE COMPANY EXCEED THE COMPANY'S TOTAL FEE FOR THIS TITLE SEARCH SUMMARY.

TITLE SEARCH SUMMARY

SCHEDULE A

IDENTIFICATION DATA: (For Reference Only)

File No.: 252579WMS

Applicant: McShane & Bowie, P.L.C.

Property Address: 1490 Edgewater Street, Muskegon, MI 49441
"Triangle" description, Muskegon, MI
"Channel Easement", Muskegon, MI

1. Effective Date: September 12, 2018 at 08:00 am
2. Title to the estate or interest in the land is at the Effective Date vested in:
City of Muskegon, a municipal corporation of the State of Michigan
3. The land referred to in this Title Search Summary is described as follows:
Located in the City of Muskegon, County of Muskegon, State of Michigan,

SEE ATTACHED EXHIBIT "A"

Exhibit "A"

Part of Section 28, Town 10 North, Range 17 West, City of Muskegon, Muskegon County, Michigan, more particular described as: Commencing at the Northwest corner of the Plat of Edgewater Subdivision, Muskegon County, recorded in Liber 3, Page 82 of Plats; thence South 89 degrees 29 minutes 03 seconds East 522.46 feet along the North line of said plat to the point of beginning; thence North 43 degrees 49 minutes 09 seconds East 253.30 feet along the Southeasterly line of and area described in Quit Claim Deed, Liber 1285, Page 894; thence South 28 degrees 34 minutes 30 seconds East 210.94 feet along an intermediate traverse line to a point on the extension of the North line of said subdivision; thence North 89 degrees 29 minutes 03 seconds West 276.29 feet along said North line and its extension to the point of beginning, including all land between the intermediate traverse line and Muskegon Lake bounded by the extension of the described Northerly and Southerly lines.

SCHEDULE B – SECTION I

This Title Search Summary and items listed herein are issued for informational purposes only and are not to be relied upon as a representation of the status of title or an offer of any title insurance, coverage or policy. Should evidence of title and/or encumbrances be desired, an application for title insurance should be placed with the Company.

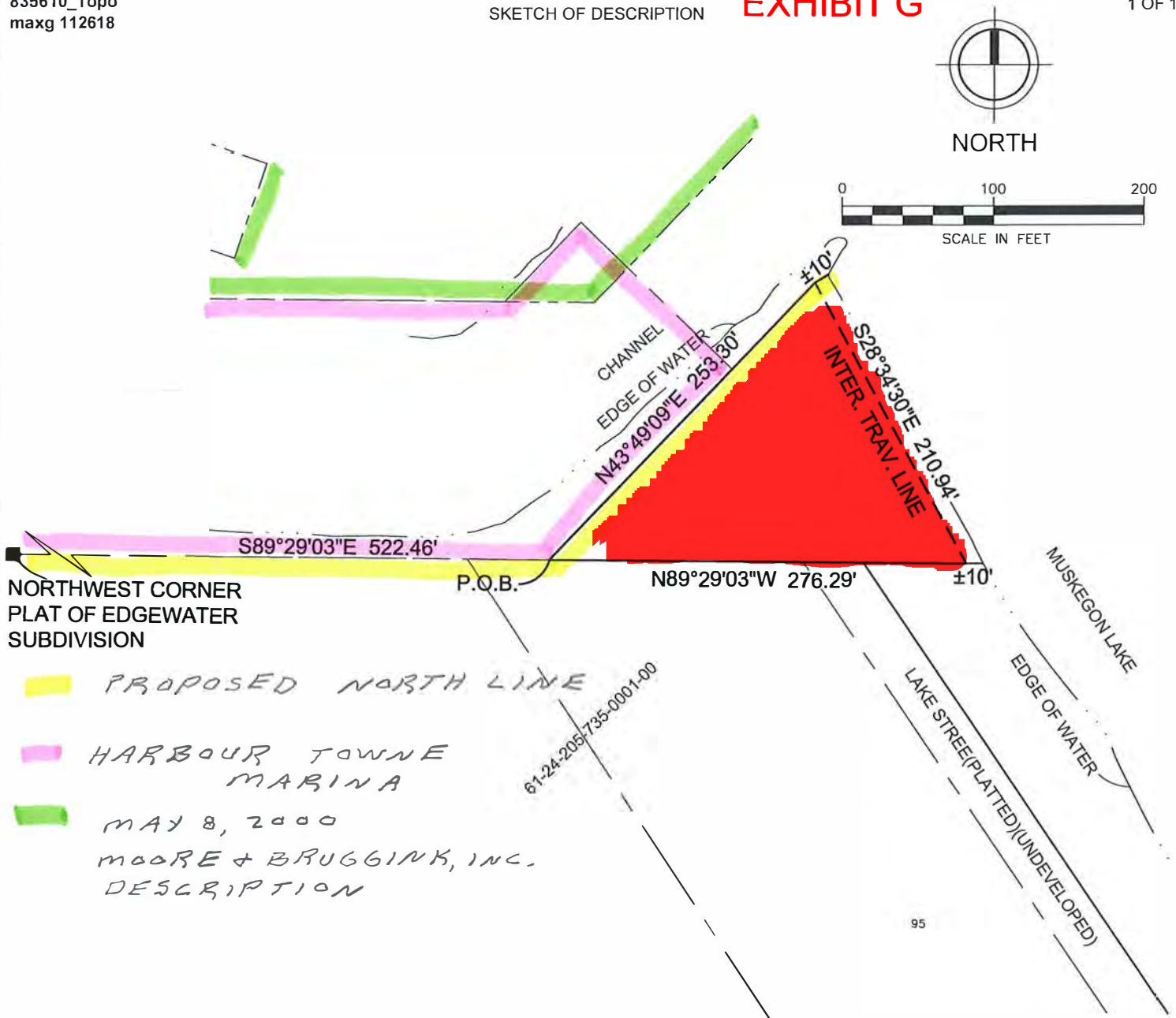
SCHEDULE B – SECTION II

MATTERS CONCERNING THE PROPERTY

NOTE: Any covenant, condition, restriction or limitation contained in any document referred to herein based on race, color, religion, age, sex, handicap, familial status, or national origin, is omitted unless and only to the extent that the covenant, condition, restriction or limitation is not in violation of state or federal law.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete survey of the Land.
4. Easements or claims of easements not shown by the Public Records and existing water, mineral, oil and exploration rights.
5. Any lien, or right to a lien, for services, labor, or material, heretofore or hereafter furnished, imposed by law and not shown by Public Records.
6. Any and all oil, gas, mineral, mining rights and/or reservations thereof.
7. Taxes or special assessments which are not shown as existing liens by the Public Records.
8. Taxes and assessments which become due and payable or which become a lien against the property subsequent to the interest insured and deferred and/or installment payments of said taxes and assessments. The Company assumes no liability for tax increases occasioned by uncapping and adjustment of the taxable value, retroactive revaluation, changes in the land usage or loss of any principal residence exemption status for the insured premises.
9. Any provisions contained in any instruments of record which provisions pertain to the transfer of divisions under Section 109(3) of the Subdivision Control Act of 1967, as amended.
10. Rights of the public and of any governmental unit in any part of the land taken, used or deeded for street, road or highway purposes.
11. Rights, if any, of the United States government, the State of Michigan, any other governmental entity, riparian owners, the public or private persons existing in or with respect to the present and past bed, banks, bottomland and waters of Muskegon Lake.
12. Terms, conditions and provisions which are recited in Quit Claim Deed recorded in Liber 360, Page 98.
13. Loss or damage sustained as a result of subject property or a portion thereof, not being assessed for taxes.

JT



PART OF SECTION 28, TOWN 10 NORTH, RANGE 17 WEST, CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN MORE PARTICULAR DESCRIBED AS:
COMMENCING AT THE NORTHWEST CORNER OF THE PLAT OF EDGEWATER SUBDIVISION, MUSKEGON COUNTY, RECORDED IN LIBER 3, PAGE 82 OF PLATS, MUSKEGON COUNTY RECORDS; THENCE SOUTH $89^{\circ}29'03''$ EAST 522.46 FEET ALONG THE NORTH LINE OF SAID PLAT TO THE POINT OF BEGINNING; THENCE NORTH $43^{\circ}49'09''$ EAST 253.30 FEET ALONG THE SOUTHEASTERLY LINE OF AND AREA DESCRIBED IN QUIT CLAIM DEED, LIBER 1285, PAGE 894; THENCE SOUTH $28^{\circ}34'30''$ EAST 210.94 FEET ALONG AN INTERMEDIATE TRAVERSE LINE TO A POINT ON THE EXTENSION OF THE NORTH LINE OF SAID SUBDIVISION; THENCE NORTH $89^{\circ}29'03''$ WEST 276.29 FEET ALONG SAID NORTH LINE AND ITS EXTENSION TO THE POINT OF BEGINNING, INCLUDING ALL LAND BETWEEN THE INTERMEDIATE TRAVERSE LINE AND MUSKEGON LAKE BOUNDED BY THE EXTENSION OF THE DESCRIBED NORTHERLY AND SOUTHERLY LINES.
SAID PARCEL CONTAINS 25,464 SQ.FT WHICH IS 0.584 ACRES OF LAND MORE OR LESS.

F&V PROJECT NO.
835610

FLEIS & VANDENBRINK
DESIGN. BUILD. OPERATE.

316 Morris Avenue, Suite 230
Muskegon, MI 49440
P: 231.726.1000
F: 231.726.2200

SKETCH OF DESCRIPTION
CITY OF MUSKEGON
MUSKEGON CO, MICHIGAN

Commission Meeting Date: February 12, 2019

Date: February 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Approval of Contract for Critical Dune Enforcement

SUMMARY OF REQUEST:

The City approved its local Critical Dune ordinance on December 12, 2017. Staff released a Request for Qualifications to enforce the ordinance in 2018 and Prism was the only applicant. Staff is requesting approval of the contract and fee schedule to allow Prism to enforce the ordinance.

FINANCIAL IMPACT:

Staff anticipates a cost savings for the City's annual permits and also for private home owners who apply for permits.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the contract and fee schedule

COMMITTEE RECOMMENDATION:

None

PRISM SCIENCE & TECHNOLOGY, LLC STANDARD FEE SCHEDULE

Professional Staff

Principal/Executive	\$140.00/hour
Project Director	\$130.00/hour
Chief Engineer/Geologist/Biologist	\$120.00/hour
Project Engineer/Geologist/Biologist	\$115.00/hour
Project Manager II	\$105.00/hour
Project Manager I	\$95.00/hour
Staff Engineer/Geologist/Biologist II	\$90.00/hour
Staff Engineer/Geologist/Biologist I	\$85.00/hour
Technician II	\$80.00/hour
Technician I	\$75.00/hour
Administrative	\$65.00/hour
Expert Witness/Depositions/Testimony	Hourly Rate x 2

Expenses and Equipment

Mileage	\$0.75/mile
Equipment Vehicle	\$25.00/day plus mileage
Photoionization Detector	\$80.00/day
Low-Flow Groundwater Sampling Equipment	\$185.00/day
Electronic Water Level Indicator	\$25.00/day
Oil/Water Interface Probe	\$45.00/day
Centrifugal Pump	\$100.00/day
Silicone Tubing	\$3.00/foot
Polyethylene Tubing	\$0.35/foot
Water Sampling Bailers	\$15.00/each
Brass Pad Locks	\$16.00/each
Generator	\$75.00/day
Concrete Hammer Drill	\$115.00/day
Concrete Coring Machine	\$160.00/day
Stainless Steel Hand Augers	\$40.00/day
Soil Preservation Kits (methanol)	\$7.00/sample
Sample Containers	Cost
Sample Shipment	Cost
Level "C" PPE	\$75.00/person/day
Level "A" or "B" PPE	Varies
55-Gallon Drum	\$65.00/each
Special Equipment/Rental	Cost/Rental Charge
Survey Elevation Equipment	\$75.00/day
Manual Inclinator	\$10.00/site/day
Electronic Inclinator	\$40.00/site/day
Surface Water Swing Sampler	\$10.00/site/day
Monitor/Recovery Well Materials	Estimated by project
Subcontracted Services	20%
Per Diem	\$140.00/day (overnight)
Miscellaneous Expenses	Cost
Additional Report Copies	\$50.00 to \$100.00/each
Magnetic Utility Locator	\$20.00/day
Sub-slab Soil Gas Equipment	\$200.00/day
Vapor Points	\$70.00/each
Critical Slope Instruments	\$25.00/use

CITY OF MUSKEGON, MICHIGAN

PROFESSIONAL SERVICES AGREEMENT

This Agreement for Professional Services ("Agreement") is entered into by and between the City of Muskegon, a Michigan municipal corporation, 933 Terrace Street, Muskegon Michigan 49440, ("City") and Prism, ("Prism"), licensed to do business in the State of Michigan, whose address is 3133 Lakeshore Drive, St. Joseph, Michigan 49085. City and Prism are individually referred to as a "Party" and may be collectively referenced as the "Parties".

RECITALS AND REPRESENTATIONS

WHEREAS, the City has the ability under State laws and City Ordinance to adopt and enforce certain codes and other ordinances relating to Critical Dunes.

WHEREAS, Prism represents that Prism has the skill, ability, and expertise to perform the services described in this Agreement; and

WHEREAS, the City desires to engage Prism to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 AGREEMENT

- 1.1 References to "Prism" shall include any employees of Prism, its contractors, subcontractors, and independent contractors.

2.0 SERVICES

- 2.1 Services. As directed by and under the supervision of the Planning Director, or his/her designee, Prism shall provide the City with the services described in **Exhibit A** ("Scope of Services").
- 2.2 Changes to Services. The City may request a change or changes in the Services. Any changes to Services that are mutually agreed upon between the City and Prism shall be made in writing which shall specifically designate any changes in compensation for the Services and be made an amendment to the Agreement after approval by City Commission. To be effective, any changes must be approved by City Commission, and signed by Prism and the Mayor and City Clerk.

3.0 COMPENSATION

- 3.1 Commencement of Services. Following execution of this Agreement by both Parties and on the Effective Date of _____, Prism shall be authorized to commence performance of the Services subject to the requirements and limitations on compensation as provided by this Section 3.0 and its subsections.
- 3.2 Fees. Unless otherwise provided, Prism shall receive those fees as provided for and calculated as provided for in **Exhibit A**.

- 3.3 Hourly Fees. Where a permit fee is not collected for the service performed or if Prism is required by the City to perform any service not included as part of its Scope of Services outlined in **Exhibit A**. That hourly rate includes pay rate, overhead, profit, travel necessary to perform the task and all other costs to Prism. This hourly rate would also apply to any services for which a fee has been collected but the City has requested that services be performed by Prism, when Prism is required to perform any service not included as part of its Scope of Services outlined in **Exhibit A**.
- 3.4 Collection of Fees. The City, through Prism, shall collect fees on behalf of the City.
- 3.4.1 Increases in Compensation or Addition of Reimbursable Expenses. Any increases or modification of compensation or the addition of a reimbursable expense(s) shall be subject to written amendment of this Agreement approved by City Commission and executed by both Parties.
- 3.5 Payment Processing. Prism shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall be submitted by the 15th of each month unless otherwise approved by this Agreement or in writing by the City. All invoices shall contain sufficient information to account for all Prism time (or other appropriate measure(s)) of work effort for the Services during the stated period of the invoice. Invoices shall be given to the Planning Director. The City shall have thirty (30) days from receipt of the invoice to issue payment to Prism's corporate offices, unless there is a dispute as to the amount due and owing. If there is a dispute, the parties shall use the procedures set out in paragraph 3.6.
- 3.6 City's Dispute of Amount of Payment. The City may request additional information from Prism substantiating any and all compensation sought by Prism before accepting the invoice. When additional information is requested by the City, the City shall advise Prism in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay Prism within thirty (30) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to Prism or designee of Prism or upon deposit of such payment in the U.S. Mail, postage pre-paid, addressed to Prism.

4.0 Prism's General Responsibilities

- 4.1 Reference to "Prism" under this Section shall include Prism employees, contractors, subcontractors, independent contractors, or anyone performing services under this Agreement for Prism.
- 4.2 The City shall supply Prism with individual identification badges ("ID badges") for each Prism employee. The City shall have the discretion to determine the type, size, and design for those ID badges. Prism shall require that all employees have their ID badges visible to the public at all times while performing services under this Agreement. Lost ID badges shall be immediately reported to the Planning Department.

- 4.3 Prism shall provide to the City the work telephone numbers of all employees, including any mobile telephones that will be used while performing services under this Agreement.
- 4.4 The City shall provide copies and amendments to the City Code of Ordinances, and other relevant code books or materials to Prism. These materials shall remain the property of the City and shall be turned into the City at the termination of this Agreement. Prism is obligated to affirmatively request from the City such information that Prism, based on Prism's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.
- 4.5 Prism shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to Prism's performance that are not addressed by the Agreement.
- 4.6 Prism shall employ a sufficient number of employees sufficiently experienced and knowledgeable to perform the Services in a timely and prompt manner and such employees shall at all times act in a professional, polite, and courteous manner to all persons regardless of the circumstances.
- 4.7 Prism shall promptly comply with any written City request for the City or any of its duly authorized representatives to reasonably access and review any books, documents, and papers, other than Prism's financial records, that are pertinent to Prism's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.
- 4.8 Prism shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.
- 4.9 Prism shall be responsible at Prism's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement. Prism shall supply copies to the City of appropriate licenses and permits for any individual performing services under this agreement.
- 4.10 If requested by the City, Prism shall make the appropriate employees, contractors, subcontractors, agents and independent contractors available for court proceeding, as witnesses, expert witnesses or otherwise, instituted by or involving the City in either criminal or civil matters which involve services performed under this Agreement, including but not limited to , appearances at pre-trials, hearings, bench trials, jury trial and at all other times requested by the City.
- 4.11 Prism shall make the appropriate employee, contractor, subcontractor, and independent contractor available for consultation with the Planning Director and the City Attorney, or their designees, to discuss issues regarding litigation and/or matters of interest to City Commission or the public.

5.0 Performance Standards

- 5.1 In performing the Services, Prism shall use the degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services in the State of Michigan. Prism represents to the City that Prism is, and its

employees performing such Services are, properly licensed and/or registered within the State of Michigan for the performance of the Services (if licensure and/or registration is required by applicable law) and that Prism and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

5.2 In a timely manner, Prism shall inform the Planning Director of all oral complaints and submit a copy of all written complaints it receives from third parties against any employee, contractor, subcontractor or independent contractor of Prism to the Planning Director.

5.3 The Parties mutually agree that Prism's actions reflect on the reputation of the City. It is imperative to the City that Prism treats the City and the public with the utmost fairness and respect. Prism shall strictly comply with all the terms and conditions set out in this Agreement.

6.0 Term and Termination

6.1 Term. This Agreement shall be effective on the _____, (the "Effective Date") and shall terminate on _____. At the end of this period, and upon mutual agreement of the parties as approved by City Commission, this Agreement may be renewed for up to a ___ year period. This Agreement may also be terminated as provided in paragraphs 6.2 through 6.7.

6.2 Continuing Services Required. Prism shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. Prism shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Commission, City Manager, or a person expressly authorized in writing to direct Prism's services.

6.3 City Unilateral Termination. Notwithstanding paragraph 6.1 this Agreement may be terminated by the City for any or no reason upon written notice delivered to Prism at least 30 days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

6.3.1 Unless directed to continue performing work during the 30 day period prior to termination or unless otherwise provided in any notice of termination, Prism shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

6.3.2 All finished or unfinished documents, data, studies and reports prepared by Prism pursuant to this Agreement shall be delivered by Prism to the City and shall become the property of the City; and

6.3.3 Prism shall retain any fees collected, regardless of service performed, through last day worked based on termination notice. Prism will provide a final accounting within 30 days of the date of termination unless directed otherwise.

6.4 Termination for Non-Performance. Should a Party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party if the performing Party

first provides written notice to the non-performing Party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for nonperformance, Prism shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to Prism shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this Section, nothing in this Section shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a party.

6.5 Unilateral Suspension of Services. The City may suspend Prism's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to Prism which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, Prism shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

6.6 Reinstatement of Services Following City's Unilateral Suspension. The City may at its discretion direct Prism to continue performance of the Services following suspension. If such direction by the City is made within (30) days of the date of suspension, Prism shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, Prism may elect to : (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to Section 6.0 ; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to Section 6.0. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period.

6.7 Delivery of Notice of Termination. Any notice of termination permitted by this Section and its subsections shall be deemed given as set out in Section 12.3 of this Agreement titled "Notices".

7.0 Insurance

7.1 Insurance Generally. Prism shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the amounts specified in Prism's Insurance Certificate, as a minimum, as follows:

- ⊗ The Contractor shall secure and maintain the following ("Required Insurance"):
 - ⊗ Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one hundred thousand dollars (\$100,000) each accident, five hundred thousand dollar (\$500,000) disease – policy limit, and one hundred thousand dollars (\$100,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.
 - ⊗ Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, and independent Corporations. The policy shall contain a severability of interest provision, and shall be endorsed to include the Municipality including Architects and Engineers, all elected and appointed officials, all employees and volunteers, boards, commissions and/or authorities and their board members, employees, and volunteers as additional insured. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
 - ⊗ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than on One Million Dollars (\$1,000,000) each occurrence with respect to each of Prism's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interest's provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
 - ⊗ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement.

Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Prism.

7.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section and its subsections, insurance shall Conform to all of the following:

7.2.1 Prism shall be solely responsible for any deductible losses for Required Insurance.

Every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

7.3 Failure to Obtain or Maintain Insurance. Prism's failure to obtain and continuously maintain policies of insurance in accordance with this section 7 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of Prism arising from performance or non-performance of this Agreement. Failure on the part of Prism to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the city may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Prism to the City immediately upon demand by the City, or at the City's sole discretion, the City may offset the cost of the premiums against any monies due to Prism from the City pursuant to this Agreement.

7.4 Insurance Certificates. Prior to commencement of the Services, Prism shall submit to the City certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference Prism / Building Inspection Services. The City may request and Prism shall provide within ten (10) business days of such request a current certified copy of any policy or Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

8 Ownership of Documents

8.1 Any work product, materials, and documents produced by Prism pursuant to this Agreement shall be and remains property of the City and shall not be made subject to any copyright unless authorized by the City. Prism hereby assigns to the City the

copyright to all works prepared, developed, or created pursuant to the Services outlined in this Agreement, including the rights to: (1) reproduce the work; (2) prepare derivative works; (3) distribute copies to the public by sale, rental, lease, or lending; (4) perform the works publicly; and (5) to display the work publicly. Prism waives its rights to claim authorship of the works, to prevent its name from being used in connection with the works, and to prevent distortion of the works.

Other materials, methodology and proprietary work used or provided by Prism to the City not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by Prism and Prism reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Michigan Freedom of Information Act, MCL 15.231 et. Seq., or any Federal open records act, to the extent that such statutes apply; or (3) pursuant to law, regulation, or court order. Prism waives any right to prevent its name from being used in connection with the Services.

8.2 Prism will be provided with a copy of the City's Freedom of Information Act ("FOIA") policy. The City is responsible for responses to FOIA requests and Prism shall not directly respond to any third parties regarding any received FOIA requests. Upon receipt of a FOIA request, Prism shall immediately give that request to the City Clerk. Prism shall provide specific information requested by the City for response to the FOIA request by the date and time requested by the City Clerk and in a specific format if so requested by the City Clerk, excluding those documents prepared by or on behalf of the City.

8.3 If Prism receives a claim for damages, a Summons or Complaint, a subpoena or other document concerning a request for money damages, a threat of a law suit, or any court action proceeding, Prism shall immediately hand deliver these documents to the City Clerk.

9 Independent Contractor

9.1 Prism shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for Prism or Prism's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

10 Conflict of Interest

10.1 Prism shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for Prism with regard to providing the Services pursuant to this Agreement. Prism shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided under the City Charter, City Code of Ordinance, state or federal statute, case law or ethical principles.

11 Remedies

11.1 In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if Prism substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions of Prism. The remedial actions include:

11.1.1 Suspend Prism's performance pending necessary corrective action as specified by the City without Prism's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

11.1.2 Withhold payment to Prism until the necessary services or corrections in performance are satisfactorily completed; and/or

11.1.3 Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by Prism, cannot be performed, or if performed would be of no value to the City; and/or

11.1.4 Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

12 Miscellaneous Provisions

12.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or continued breach by either Party or continued breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Commission or by a person expressly authorized to sign such waiver by resolution of the City Commission of the City and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

12.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may

be available by law to the City, its officials, employees, contractors, or agents, volunteers or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Michigan Governmental Immunity Act, MCL 691. 1401, et. Seq.

- 12.3 Affirmative Action. Prism will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Prism will take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 12.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns.
- 12.5 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, Sub-consultant or subcontractor or Prism. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 12.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Michigan. Venue for any action arising under this Agreement shall be in the County of Muskegon. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.
- 12.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 12.8 No Assignment. Neither Party shall assign all or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement to another party or entity.
- 12.9 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 12.10 Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and Prism and supersedes all prior negotiations, representations, or agreements, either written or oral, unless specified herein. Any amendments to this must be in writing and be signed by both the City and Prism.
- 12.11 Severability. Invalidity of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any

given circumstance shall not affect the validity of any other provision of this Agreement.

12.12 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

12.13 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage, and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the City:	If to Prism:
City Manager City of Muskegon PO Box 536 / 933 Terrace Street Muskegon, MI 49440	
With Copy to:	With Copy to:
John C. Schrier Parmenter Law 601 Terrace Street Muskegon, MI 49440	

13 Special Provisions

13.1 Indemnification and Hold Harmless. To the fullest extent permitted by law, Prism agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use

thereof which arises out of or is in any way connected or associated with this Agreement. At no time does the City waive its right to governmental immunity.

13.2 Force Majeure. Neither Prism nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargos, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

13.3 Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City and Prism and bind their respective entities.

THIS AGREEMENT is executed and made effective as provided above.

City of Muskegon

Prism

Signature

Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: ____ / ____ / ____

Date: ____ / ____ / ____

ATTEST Signature

Name / Title

Date: ____ / ____ / ____

Date: 2/12/2019
To: Honorable Mayor and City Commissioners
From: City Manager
RE: Organizational Changes

SUMMARY OF REQUEST:

Approve changes to the city's organization, specifically in the workload for the division heads and operations at the LC Walker Arena. Modify the Municipal Services Division to include Planning, Economic Development and Community and Neighborhood Services. Establish positions for an Economic Development Director, a Strategic Initiatives Director and a Business Development Manager.

Re-establish the Public Works Director overseeing the Engineering Department, Water Filtration Plant, Utility Department and Department of Public Works and appoint Leo Evans as the division head.

Establish positions for operations at the LC Walker Arena including an Arena Maintenance Worker, an Arena Finance Manager, and an Arena Box Office Manager.

FINANCIAL IMPACT:

To be determined based on salary and benefit packages

BUDGET ACTION REQUIRED:

Include salary and benefits in the next budget reforecast.

STAFF RECOMMENDATION:

Approve changes to the city's organization.

Organizational Changes

February 11, 2019

Staff are recommending changes to the city's organization, specifically in the workload for the division heads and operations at the LC Walker Arena.

Municipal Services Division

With the need for increased emphasis on economic development, Municipal Services will now include Planning, Economic Development and Community and Neighborhood Services. All of the Public Works departments will be removed from this division. LeighAnn Mikesell will oversee this division, and new positions for an Economic Development Director, a Strategic Initiatives Director and a Business Development Manager will be added to the economic development team. All will report to LeighAnn.

The Economic Development Director develops and implements the City's economic development program, maintains close relationships with federal, state, and local governments, businesses, property owners, commercial real estate professionals, developers and other economic development agencies and partners in order to support existing business and promote investment and development within the City. The Economic Development Director will manage public improvement projects related to economic development and redevelopment with the City, including public-private partnerships.

The Director of Strategic Initiatives will develop, oversee and help implement programs and projects that support the City of Muskegon's vision and short- and long-term plans. The Director of Strategy and Business Initiatives will work directly with other City Departments to deliver project management, strategic planning, and implementation support for key organizational initiatives.

The Business Development Manager will focus efforts on developing the city's commercial districts through attraction of investment, support of existing businesses, assistance with events, and promotion of the city. The manager will serve as staff support to the Downtown Development Association, the Downtown Muskegon Business Improvement District, and the Downtown Muskegon Development Corporation.

Public Works Division

The Public Works Division will include the Engineering Department, Water Filtration Plant, Utility Department and Department of Public Works. Leo Evans will oversee this division and continue to serve as the City Engineer.

Organizational Changes

February 11, 2019

LC Walker Arena

With Tim Taylor's resignation from the city, positions at the arena that had been filled by contract through GoodTemps will become positions within city government. Added positions include an Arena Maintenance Worker, an Arena Finance Manager, and an Arena Box Office Manager.

The Arena Maintenance Worker will report to the Convention Center Arena Manager and perform semi-skilled and skilled tasks to repair and maintain the arena as well as set up and dismantle equipment for scheduled events. Under the supervision of the city's Finance and Administrative Services Director, the Arena Finance Manager will manage finance activities for the arena including general accounting, budgets, accounts payable/receivable, contract compliance, reports/reconciliations, concessions, box office, tenants, ice rental, annex activities, and miscellaneous events hosted at the arena. The Arena Box Office Manager will report to the Arena Finance Manager and will direct and maintain a full-service box office operation, supervise cashiers involved in ticket sales, coordinate the sale of tickets in locations other than the arena, maintain accurate accounting records, complete final financial settlements with promoters and ticket outlets, and prepare related reports.

Commission Meeting Date: February 12, 2019

Date: February 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Sale of City-Owned Property

SUMMARY OF REQUEST:

Staff-initiated request to sell the bike path parcel that runs through the proposed Hartshorn Village development. The bike path will be relocated just to the north.

FINANCIAL IMPACT:

The sale is necessary to make the development work, which will lead to increased residential property taxes.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the estate agreement

COMMITTEE RECOMMENDATION:

None

REAL ESTATE SALE AGREEMENT

THIS REAL ESTATE SALE AGREEMENT ("**Agreement**") has been made as of the Effective Date (defined below), by the CITY OF MUSKEGON, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 ("**Seller**"), and HARBOR WEST, LLC, a Michigan limited liability company, of 108 South University, Suite 6, Mt. Pleasant, Michigan 48858 ("**Buyer**").

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and subject to the conditions set forth in this Agreement, those parcels of real estate as depicted on **Exhibit A**, attached hereto, adjacent to the Hartshorn Marina (the "**Marina**"), together with all improvements, fixtures, easements, division rights, hereditaments and appurtenances associated with that real estate (collectively, "**Property**").

1. **Purchase Price.** The purchase price for the Property shall be One and 00/100 U.S. Dollars (\$1.00) ("**Purchase Price**"), payable at Closing (as defined below) by bank money order, cashier's check, or wire transfer of immediately available funds.

2. **Default.**

(a) If Buyer defaults in Buyer's obligations under this Agreement so that the Purchase is not closed, then as Seller's sole remedy Seller may terminate this Agreement by notice to Buyer and neither Seller nor Buyer shall have any further liability to the other under this Agreement.

(b) If Seller defaults in Seller's obligations under this Agreement so that the Purchase is not closed, then Buyer may terminate this Agreement by notice to Seller, in which case neither Seller nor Buyer shall have any further liability to the other under this Agreement. Alternatively, Buyer may pursue any other right or remedy available at law or in equity, including, without limitation, injunctive relief and specific performance of this Agreement.

3. **Title; Survey.**

(a) Seller agrees to convey good and marketable title to the Property to Buyer by covenant deed ("**Covenant Deed**"). As evidence of Seller's title, within twenty (20) days after the Effective Date, Seller shall at Seller's expense furnish Buyer with a commitment ("**Title Commitment**") from Transnation Title Agency (the "**Title Company**") to issue an owner's title insurance policy insuring Buyer in the amount of the Purchase Price, without the standard printed exceptions, and which shall be in the latest form approved by the American Land Title Association ("**ALTA**"). The Title Commitment must show good and marketable title to be in Seller's name, subject only to beneficial easements and restrictions of record that are acceptable to Buyer in its sole discretion and the requirements to be satisfied under the Title Commitment and shall disclose no other easements, restrictions or encumbrances whatsoever.

(b) Buyer shall obtain, at Buyer's expense, a current staked survey of the Property in a form acceptable to Buyer and Buyer's lender, if any, including, without limitation the form of certification ("**Survey**"). Buyer and Seller acknowledge and agree that the legal description for the Property shall be that as set forth in the Title Commitment to be obtained by Seller, and furnished to Buyer under this Agreement, or the Survey obtained by Buyer. In the event of a conflict between the legal description in the Title Commitment and the Survey obtained by Buyer, the legal description contained in the Survey shall control.

(c) Buyer shall notify Seller prior to the expiration of the Inspection Period (defined below) if the Title Commitment discloses any exceptions not permitted by this Agreement or if the Survey shows any deviation from apparent boundaries or represented acreage, violation of zoning ordinances, or building and use restrictions, flood hazard area, encroachment, or condition that poses a problem for Buyer's lender, if any, or that, in Buyer's judgment, could interfere with Buyer's intended use of the Property (individually and collectively, a "**Defect**"). Seller shall remove each Defect at Seller's expense prior to the closing. In addition, Seller shall satisfy the requirements set forth in the Title Commitment on or before the closing date. If Seller fails or refuses to remove any Defect, then Buyer may: (i) proceed to closing, waiving the Defect at issue; (ii) terminate this Agreement by a written notice to Seller, in which case neither Seller nor Buyer shall have any further liability to the other under this Agreement; or (iii) proceed to closing and cure any Defect that is capable of being cured or satisfied by the payment of a sum certain, using sale proceeds otherwise payable to Seller.

4. **Inspections.**

(a) Buyer and its agents, consultants, and designees ("**Buyer's Agents**") may from time to time inspect the Property prior to the closing, and may enter the Property to perform the inspections referenced in this Agreement. Promptly upon Seller's execution of this Agreement, Seller shall provide to Buyer, or make available for review by Buyer and/or Buyer's agents, copies of the following documents to the extent that they are in Seller's possession or control ("**Seller's Documents**"): (i) all building permits, wetlands, and fill permits, zoning variances and approvals, and environmental reports with respect to the Property; (ii) all surveys of the Property; (iii) all site, "as-built", architectural, and engineering plans and specifications for any existing and planned improvements to the Property; (iv) any notices with respect to the Property received from a governmental agency; and (v) all maintenance and other contracts affecting the Property ("**Contracts**"). For purposes of this Agreement, documents in Seller's "possession and control" shall be deemed to be documents found by Seller following reasonable investigation.

(b) Without limiting the generality of the foregoing, Buyer and Buyer's Agents shall have the right to conduct an environmental assessment of the Property in one or more phases, including the procurement and analysis of samples of soil, groundwater, surface water, indoor air, or any other environmental medium, and any building component or other material located at the Property. The cost of the environmental assessment shall be borne by Seller. Buyer and Seller agree to cooperate in good faith to maximize any available development incentives, including without limitation, so-called "Brownfield" incentives with respect to the Property. Seller shall provide access and information to, and otherwise cooperate with, Buyer

and Buyer's Agents in the environmental assessment. Buyer shall have the right to interview employees and representatives of Seller who have or may have knowledge of conditions and events relevant to the operating history or environmental condition of the Property. Prior to conducting a Phase II, Buyer shall provide Seller a written work plan for approval that describes the proposed scope and content of the Phase II. Seller shall have seven days from receipt of the proposed Phase II scope of work to make any objections. If Seller does not make any objections, the proposed Phase II work plan shall be deemed approved. Buyer shall proceed with a Phase II if the parties agree upon a mutually-acceptable work plan. If the parties cannot agree upon a Phase II work plan within 10 days after Seller's receipt of the work plan, Buyer, in its sole discretion, may terminate this Agreement and the Deposit shall be returned to Buyer. Any Phase II work performed on the Property shall only be done in accordance with an approved work plan. If the Property is a "facility" within the meaning of Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq. ("**Part 201**"), Buyer may, at Buyer's expense, prepare and submit to the Michigan Department Environmental Quality ("**MDEQ**") a "baseline environmental assessment", pursuant to Section 26 of Part 201, MCL 324.20126. Buyer may also, at Buyer's expense, prepare a plan ("**Due Care Plan**") to meet due care obligations at the Property imposed under MCL 324.20107a. Buyer may, at its option and Buyer's expense, submit the Due Care Plan to MDEQ for approval as a no further action report under Section 14d of Part 201m MCL 324.20114d. Except to the extent arising solely from the negligence, gross negligence or willful misconduct of Seller, Buyer expressly agrees to defend, indemnify and hold Seller harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties arising out of Buyer's exercise of its right to conduct the inspections under this paragraph 4.

5. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer, which representations and warranties shall be true to the closing date, as follows:

(a) There are no pending or threatened condemnation proceedings against the whole or any part of the Property;

(b) To the best of Seller's knowledge, Seller has at all times operated the Property in compliance with all applicable laws, ordinances, orders, codes, rules, regulations, building and use restrictions, and other legal requirements, including, without limitation, Seller's timely application for, possession of, and compliance with all applicable environmental permits (collectively, "**Applicable Law**"), and the Property is free and clear of all violations of Applicable Law;

(c) Seller, through the person(s) executing this Agreement, has full power and authority to enter into this Agreement, and to assume and perform all of Seller's obligations under this Agreement;

(d) There are no agreements, contracts, or leases, written or oral, which affect the Property in any manner other than this Agreement and the Contracts, none of which are in default and any agreements disclosed by the Title Commitment;

(e) To the best of Seller's knowledge, all buildings and fixtures that constitute a portion of the Property are in good condition and working order, reasonable wear and tear excepted, and contain no defects which may impair Buyer's intended use of them;

(f) There is no pending or proposed special assessment affecting or which may affect the whole or any part of the Property;

(g) Seller has and can deliver to Buyer good and marketable title to the Property, subject only to the exceptions permitted by this Agreement, and the Property has legal and physical access from a publicly dedicated and improved right-of-way; and

(h) All necessary action to approve, execute, deliver, and perform this Agreement has been taken by Seller, and this Agreement is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Seller shall hold Buyer harmless, indemnify, and at Buyer's option, defend Buyer, from and against any loss, including, without limitation, reasonable attorney fees, incurred by reason of Seller's breach of any of the foregoing representations and warranties. For purposes of this Agreement, the "best of Seller's knowledge" shall refer only to the actual present knowledge of City of Muskegon, following a reasonable investigation.

6. **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller, which representations and warranties shall be true to the closing date, as follows:

(a) Buyer is a Michigan limited liability company duly organized, validly existing and in good standing under the laws of the State of Michigan.

(b) Buyer has the power and authority to enter into and perform Buyer's obligations under this agreement.

7. **Contingencies.** The obligation of Buyer to close the Purchase shall be contingent upon:

(a) Buyer's reasonable satisfaction with the results of its investigation of the compliance of the Property with applicable laws, ordinances and regulations, to be performed at Buyer's discretion and expense within sixty (60) days after the Effective Date, except that Buyer may unilaterally extend this date by an additional thirty (30) days as may be required to complete its environmental investigation of the Property (the "**Inspection Period**");

(b) Buyer's satisfaction, in its sole discretion, with the results of all inspections of the Property that Buyer desires, to be performed at Buyer's discretion and expense within the Inspection Period;

(c) All representations and warranties of Seller set forth in this Agreement being true as of the closing date;

(d) Seller having timely performed and complied in all respects with all covenants, obligations, and agreements to be performed or complied with by Seller under this Agreement;

(e) Buyer's satisfaction, in its sole discretion, with its review of Seller's Documents and the condition, permitted use and development prospects for the Property. Buyer shall perform such review, at its expense, within the Inspection Period. If Buyer is not satisfied with such review and inspections, then, as Buyer's sole remedy, Buyer may terminate this Agreement by a written notice to Seller, in which case neither Seller nor Buyer shall have any further liability to the other under this Agreement; and

(f) Buyer's satisfaction, in its sole discretion, with the environmental condition of the Property.

Buyer shall promptly commence and proceed diligently and in a reasonable manner to attempt to satisfy each of the contingencies set forth above, at Buyer's expense. Seller agrees to cooperate in such endeavor. If Buyer is unable to satisfy one or more of the contingencies, and is not willing to waive the contingency(ies), then Buyer may terminate this Agreement by a written notice to Seller, in which case neither Seller nor Buyer shall have any further liability to the other under this Agreement.

8. Closing.

(a) The closing shall take place as soon as reasonably possible following the satisfaction of the conditions and contingencies set forth in this Agreement, but no later than _____, 2019, or such later date as is mutually agreed upon by Seller and Buyer (the "**Closing Date**"). Within these limitations, the closing shall take place at such time and place and on such date as shall be specified by Buyer on at least one week's notice to Seller, or in the absence of such notice, at 10 a.m. on the last day permitted for closing, at the offices of Buyer's attorney.

(b) At closing, Seller shall execute and deliver the following:

- (i) The Covenant Deed, in recordable form;
- (ii) A real estate transfer tax valuation affidavit;
- (iii) A closing statement setting forth the Purchase Price and closing adjustments;
- (iv) Affidavit(s) in the form prescribed by the Title Company for the removal of its standard printed exceptions;
- (v) A corporate resolution or other evidence of authorization of the Purchase acceptable to the title company;

(vi) A certificate of nonforeign status;

(vii) A waiver of commercial real estate broker's lien executed by Broker (as defined below) in a form prescribed by the Title Company.

(viii) Actual physical possession of the Property, free of all tenants or other occupants. Seller shall deliver possession of the Property to Buyer in good condition, and in at least as good a condition as on the date of this Agreement, reasonable wear and tear excepted. Seller shall continue to maintain any buildings, fixtures, lawn and other components of the Property in their current condition until the closing.

(ix) An ALTA owner's title insurance policy which shall insure Buyer's title as required by Paragraph 3 above; and

(x) Any other documents reasonably necessary or legally required to evidence the Purchase.

(c) At closing, Buyer shall execute and/or deliver the following:

(i) The Purchase Price, as adjusted by prorations and other charges under this Agreement;

(ii) A closing statement setting forth the Purchase Price and closing adjustments; and

(iii) Any other documents reasonably necessary or legally required to evidence the Purchase.

(d) At closing, Seller shall pay all recording and filing costs in connection with curing its title to the Property, the transfer taxes for the Covenant Deed and the title insurance premium for Buyer's owner's policy of title insurance. Buyer shall pay the recording fee for the Covenant Deed. Seller and Buyer shall each pay one-half of any closing fee charged by the title company conducting the closing.

9. **Condition of Property.** No implied warranties of habitability, quality, condition, fitness for a particular purpose, or any other implied warranties shall operate between Seller and Buyer, and Buyer expressly waives any and all such implied warranties. Buyer understands and agrees that the Property are taken "**AS IS**" subject only to the representations and warranties set forth in this Agreement. Buyer represents that by closing on the purchase of the Property, Buyer will be purchasing the Property as a result of its inspection and investigation of the Property and that Buyer is satisfied with the condition of the land and the improvements thereon. Buyer further represents and warrants that it is not purchasing the Property based on any representations made by or on behalf of Seller except as specifically set forth in this Agreement.

10. **Taxes and Assessments.** All real estate and personal property taxes and special assessments with respect to the Property, whether or not payable in installments or deferrable

without penalty or interest to a later date, that first become due and payable (or in the case of special assessments, a lien upon the Property) on or before the Closing date, or which are assessed retroactively for the period of time prior to the Closing Date, shall be paid by Seller prorated as provided below. Buyer shall be responsible for all other subsequent taxes and assessments with respect to the Property. Real estate and personal property taxes that first became or will become due and payable during the year of the closing shall be prorated on a calendar year basis.

11. **Real Estate Brokers.** Seller and Buyer each agrees and represents to the other that no broker is involved in the Purchase who is entitled to a commission. If a broker makes a claim for remuneration in connection with the Purchase, Seller and Buyer each shall indemnify and hold harmless the other from any amount that the other may be required to pay to a broker that the other did not retain, including, without limitation, reasonable attorney fees expended to defend against such claim.

12. **Condemnation; Fire; Other Casualty.** Seller shall promptly notify Buyer of any impending or actual condemnation proceedings against the whole or any part of the Property of which Seller has actual notice or any fire or other casualty to the Property. If any portion of the Property is threatened to be taken or is taken as a result of condemnation proceedings or is damaged as a result of fire or other casualty prior to the closing, Buyer shall have the right:

(a) To terminate this Agreement by a written notice to Seller within ten (10) days after receipt of notice of such proceedings or damage, in which case neither Seller nor Buyer shall have any further liability to the other under this Agreement; or

(b) To proceed to closing as provided in this Agreement, agreeing to take the Property in its then-current condition, in which case Buyer will be entitled to receive all of the condemnation or insurance proceeds payable as a result of such condemnation or such damage, which Seller will assign to Buyer at closing pursuant to an assignment that is reasonably acceptable to Buyer.

13. **Miscellaneous.**

(a) This Agreement shall bind and benefit Seller, Buyer and their respective successors, assigns, heirs, executors, and personal representatives. Buyer may freely assign this Agreement to an entity of which the equity owners of Buyer own a majority of the equity ownership, but Buyer shall not be released from liability under this Agreement. Buyer shall promptly notify Seller of any such assignment.

(b) Seller and Buyer recognize that the law firm of Warner Norcross & Judd LLP ("**Legal Counsel**") is representing Buyer in the Purchase. Seller has either hired independent legal counsel or knowingly elected not to hire independent counsel to represent Seller in the Purchase. In such capacity, Legal Counsel has prepared this Agreement and may be called upon to prepare other documents necessary to close the Purchase. No ambiguity or inconsistency in this Agreement shall be construed against Buyer solely because Legal Counsel prepared this Agreement.

(c) All notices under this Agreement shall be in writing and shall be delivered to Seller and Buyer at their respective addresses set forth above, or at another address designated by like notice to one another. Personal delivery, facsimile transmission, or mailing of a notice by certified mail, postage prepaid, or delivery by recognized overnight service shall be sufficient notice. Notice shall be effective upon receipt, if personally delivered or faxed, upon mailing, if mailed, or upon deposit with the overnight delivery service.

(d) The "**Effective Date**" of this Agreement shall be the date of the last signature on this Agreement. Time is of the essence of this Agreement, except that Buyer may waive this provision for the purpose of meeting conditions and contingencies under this Agreement. If the date for closing, for the delivery of a document, or for giving of a notice, falls on a Saturday, Sunday or bank holiday, then it shall be automatically deferred to the next day that is not a Saturday, Sunday or bank holiday.

(e) This Agreement may not be amended, altered or modified except by means of a writing signed by the person against whom enforcement of any waiver, change, modification, or discharge is sought.

(f) The representations, warranties and agreements set forth in this Agreement shall survive the closing of the Purchase for a period of one year.

(g) This Agreement may be signed in one or more counterparts, and by different parties to this Agreement on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

(h) This Agreement and the exhibits to this Agreement contain all of the representations and statements by Seller and Buyer to one another and express the entire understanding between Seller and Buyer with respect to the Purchase. All prior and contemporaneous communications concerning the Purchase are merged in and replaced by this Agreement.

Seller and Buyer have signed or caused this Real Estate Sale Agreement to be signed by their duly authorized representatives as of the date(s) set forth opposite their signatures. The date of the last signature shall be the "**Effective Date**".

THE CITY OF MUSKEGON, a Michigan
municipal corporation

Dated: _____, 2019

By: _____

Its: _____

Seller

HARBOR WEST, LLC, a Michigan
limited liability company

Dated: _____, 2019

By: _____

Its: _____

Buyer

Property Depiction



FOR: HARBOR WEST, LLC

THAT PART OF BLOCK 57 OF THE REVISED PLAT OF 1903 OF THE CITY OF MUSKEGON, DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK 574; THENCE NORTH 88°13'54" WEST 270.33 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WESTERN AVENUE; THENCE NORTH 83°55'00" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE 456.97 FEET; THENCE NORTH 01°31'44" WEST 470.34 FEET TO THE POINT OF BEGINNING; THENCE NORTH 46°32'44" WEST 257.11 FEET; THENCE SOUTH 88°27'16" WEST 684.39 FEET; THENCE NORTH 01°31'44" WEST 16.00 FEET; THENCE NORTH 88°27'26" EAST 691.04 FEET; THENCE SOUTH 46°32'44" EAST 247.70 FEET; THENCE SOUTH 01°31'44" EAST 22.62 FEET TO THE POINT OF BEGINNING.

THAT PART OF BLOCK 574 OF THE REVISED PLAT OF 1903 OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK 574; THENCE NORTH 88°13'54" WEST 270.33 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WESTERN AVENUE; THENCE NORTH 1°09'31" WEST 100.00 FEET; THENCE NORTH 46°31'44" WEST 118.61 FEET TO THE POINT OF BEGINNING; THENCE NORTH 61°45'12" WEST 60.93 FEET; THENCE NORTH 46°31'44" WEST 227.22 FEET; THENCE NORTH 46°32'44" WEST 220.80 FEET; THENCE NORTH 01°31'44" WEST 22.62 FEET; THENCE SOUTH 46°32'44" EAST 236.79 FEET; THENCE SOUTH 46°31'44" EAST 286.01 FEET TO THE POINT OF BEGINNING.



DATE: 1-09-19
1 OF 1

FILE NO: 04311~0001

INVOICE

Invoice #: 238815
Invoice Date: 2/4/2019
File Number: 264286LKS
Other File Number:

To:

Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, MI 49503-2487
Attn: Jessica Back
Ph: 616-752-2704
JBack@wnj.com

From:

Transnation Title Agency of Michigan Lakeshore
Division
570 Seminole Road, Suite 102
Muskegon, MI 49444
Ph: 231-737-9111
Examined by: John Taylor
jtaylor@transmi.com

Loan Amount:

Open Date: January 16, 2019

Sales Price: \$TBD

Close Date:

Buyers: Harbor West, LLC, a Michigan limited liability
company

Sellers: City of Muskegon, a Michigan municipal
corporation

Properties:

1060 W. Western Ave
(Bike Path West), Muskegon, MI 49441
1010 W. Western Avenue
(Bike Path East), Muskegon, MI 49442

Description	Amount	Qty	Total
Basic Owner	\$TBD	1	\$TBD
Net Due in 30 days		Subtotal	\$TBD
		Grand Total	\$TBD

Net Due in 30 days

Additional Copies to:

Transnation Title Agency of Michigan, Suzanne Balcom sbalcom@transmi.com Fx:231-737-7304
Transnation Title Agency of Michigan, Teresa LaVigne tlavigne@transmi.com Fx:231-737-7304
Warner Norcross & Judd LLP, Jessica Back JBack@wnj.com Fx:616-222-2704

Please Remit To:

Transnation Title Agency of Michigan Lakeshore Division
570 Seminole Road, Suite 102, Muskegon, MI 49444
Ph: 231-737-9111 Fx: 231-737-7304

Thank You!

Underwritten by Fidelity National Title Insurance Company

SCHEDULE A

Issuing Office File No.: 264286LKS
Commitment No.: 264286LKS
Property Address: 1060 W. Western Ave
(Bike Path West), Muskegon, MI 49441; 1010 W. Western Avenue
(Bike Path East), Muskegon, MI 49442
Loan No.:

1. Commitment Date: January 23, 2018 at 08:00 am

2. Policy or Policies to be issued:

2006 ALTA Owner's Policy

Policy Amount: See Requirement No. 5

Proposed Insured: Harbor West, LLC, a Michigan limited liability company

3. The estate or interest in the land described or referred to in this Commitment is: Fee Simple

4. Title to the estate or interest in the Land is at the Commitment Date vested in: City of Muskegon, a Michigan municipal corporation

5. The Land is described as follows:
Located in the City of Muskegon, County of Muskegon, State of Michigan,

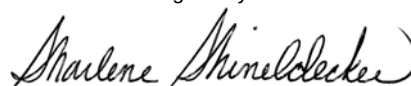
SEE ATTACHED EXHIBIT "A"

This page is only a part of a 2016 ALTA Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Underwritten by Fidelity National Title Insurance Company
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27C165B

Countersigned by:



Sharlene Shineldecker

Exhibit "A"

Parcel 1:

That part of Block 574 of the Revised Plat (of 1903) of the City of Muskegon, Muskegon County, Michigan, described as: Commencing at the Southeast corner of said Block 574; thence North 88 degrees 13 minutes 54 seconds West 270.33 feet to a point on the North right-of-way line of Western Avenue; thence North 83 degrees 55 minutes 00 seconds West along said North right-of-way line 456.97 feet; thence North 01 degrees 31 minutes 44 seconds West 470.34 feet to the point of beginning; thence North 46 degrees 32 minutes 44 seconds West 257.11 feet; thence South 88 degrees 27 minutes 16 seconds West 684.39 feet; thence North 01 degrees 31 minutes 44 seconds West 16.00 feet; thence North 88 degrees 27 minutes 26 seconds East 691.04 feet; thence South 46 degrees 32 minutes 44 seconds East 247.70 feet; thence South 01 degrees 31 minutes 44 seconds East 22.62 feet to the point of beginning.

Parcel 2:

That part of Block 574 of the Revised Plat (of 1903) of the City of Muskegon, Muskegon County, Michigan, described as: Commencing at the Southeast corner of said Block 574; thence North 88 degrees 13 minutes 54 seconds West 270.33 feet to a point on the North right-of-way line of Western Avenue; thence North 01 degrees 09 minutes 31 seconds West 100.00 feet; thence North 46 degrees 31 minutes 44 seconds West 118.61 feet to the point of beginning; thence North 61 degrees 45 minutes 12 seconds West 60.93 feet; thence North 46 degrees 31 minutes 44 seconds West 227.22 feet; thence North 46 degrees 32 minutes 44 seconds West 220.80 feet; thence North 01 degrees 31 minutes 44 seconds West 22.62 feet; thence South 46 degrees 32 minutes 44 seconds East 236.79 feet; thence South 46 degrees 31 minutes 44 seconds East 286.01 feet to the point of beginning.

Title No: 264286LKS

SCHEDULE B – SECTION I

REQUIREMENTS

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Until the Company is supplied the identity and amount for the Proposed Insured, for the purposes of this commitment the Proposed Insured will be City of Muskegon, a Michigan municipal corporation or its assignee or nominee and the proposed Policy Amount is limited to \$10,000.00. The Proposed Policy Amount(s) must be increased to the full value of the estate or interest being insured, and any additional premium must be paid. An Owner's policy should reflect the purchase price or full value of the land. A Loan Policy should reflect the loan amount or value of the property as collateral. Proposed Policy Amount(s) will be revised and premiums charged consistent therewith when the final amounts are approved. This commitment may be subject to such further requirements as may be deemed necessary.

NOTE: It has been requested by the Proposed Insured that the Company issue its ALTA Owner's Policy without standard exceptions. The ALTA Owner's Policy without standard exceptions shall be issued upon the Company determining that the following additional 2 requirements have been satisfied:

6. Submission of an affidavit in acceptable form executed by the present title holder establishing the following facts:
 - (a) That the present affiant is in possession of said property and has no knowledge of any other parties in possession or claiming rights of possession.
 - (b) That the affiant has no knowledge of the granting of any unrecorded water, mineral and/or oil rights, unrecorded easements or claims of easements, boundary line disputes, or claims of such grants or rights relative thereto.

This page is only a part of a 2016 ALTA Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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(c) That no improvements have been made in the last 120 days.

7. Submit satisfactory survey by an approved surveyor, certified to the Company, showing no encroachments or adverse rights upon the subject property or any variation between the property description in this commitment and the survey description.
8. Warranty Deed from City of Muskegon, a Michigan municipal corporation to Harbor West, LLC, a Michigan limited liability company.

NOTE: In the event the land to be insured is 'Commercial Real Estate' as defined in Public Act 201 of 2010 and the proposed transaction is or will be the subject of a written commission agreement running in favor of a commercial real estate broker, the Company shall be immediately notified and this Commitment will be revised and made subject to such further requirements and exceptions as deemed necessary.

9. Proof of payment of the Streetlight LED Citywide assessment in the amount of \$131.95. Past due. Plus penalty and interest, if any. Payable to the City of Muskegon Treasurer. (Parcel 1)
10. Proof of payment of the 2018 Winter taxes in the amount of \$18.85 if paid by February 14, 2019. Payable to the City of Muskegon Treasurer. (2018 Winter taxes exempt; consists solely of \$18.85 for Streetlight LED Citywide) (Parcel 1)

2018 Summer taxes are exempt.
 2018 State Equalized Value \$0.00.
 2018 Taxable Value \$0.00.
 Property located in Muskegon Public School District.
 Principal Residence Status for 2018 is 0%.
 Permanent Property No. 61-24-205-574-0001-05. (Parcel 1)

11. Proof of payment of the Streetlight LED Citywide assessment in the amount of \$131.95. Past due. Plus penalty and interest, if any. Payable to the City of Muskegon Treasurer. (Parcel 2)
12. Proof of payment of the 2018 Winter taxes in the amount of \$18.85 if paid by February 14, 2019. Payable to the City of Muskegon Treasurer. (2018 Winter taxes exempt; consists solely of \$18.85 for Streetlight LED Citywide) (Parcel 2)

2018 Summer taxes are exempt.
 2018 State Equalized Value \$0.00.
 2018 Taxable Value \$0.00.
 Property located in Muskegon Public School District.
 Principal Residence Status for 2018 is 0%.
 Permanent Property No. 61-24-205-574-0001-15. (Parcel 2)

NOTE: The policy to be issued does not insure against unpaid water, sewer, electric or gas charges, if any, that have not been levied as taxes against these lands.

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(Meter readings should be obtained and adjusted between appropriate parties.)

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SCHEDULE B – SECTION II

EXCEPTIONS

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I -Requirements are met.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete survey of the Land.
4. Easements or claims of easements not shown by Public Records and existing water, mineral, oil and gas exploration rights.
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the Public Records.
6. Any and all oil, gas, mineral, mining rights and/or reservations thereof.
7. Taxes or special assessments which are not shown as existing liens by The Public Records.
8. Taxes and assessments which become due and payable or which become a lien against the property subsequent to the interest insured and deferred and/or installment payments of said taxes and assessments. The Company assumes no liability for tax increases occasioned by uncapping and adjustment of the taxable value, retroactive revaluation, changes in the land usage or loss of any principal residence exemption status for the insured premises.
9. Any provisions contained in any instruments of record which provisions pertain to the transfer of divisions under Section 109(3) of the Subdivision Control Act of 1967, as amended.
10. Rights of the public and of any governmental unit in any part of the land taken, used or deeded for street, road or highway purposes.

JT

This page is only a part of a 2016 ALTA Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

OFTA LLCTM

Our Family Title Affiliates

Our Family Title Affiliates incorporates all of the divisions listed below.

Privacy Policy

We respect the privacy expectations of our customers and the requirements of federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

We collect Personal Information about you from the following sources;

- Information we receive from you, such as your name, address, telephone number, or social security number;
- Information about your transactions with us, our affiliates, or others. We receive this information from your lender, attorney, real estate broker, etc., and;
- Information from public records.

We do not disclose Personal Information about our customers to anyone, except as permitted by law. We will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you. We may also disclose your Personal Information to other title companies if needed to clear title or assist in title production.

One of the important responsibilities of our company, is to record documents in the public domain. Such documents may contain your Personal Information.

We restrict access to Personal Information about you to those employees who need to know that information to provide the products or services requested by you or your lender.

We maintain physical, electronic, and procedural safeguards that comply with appropriate Federal and State regulations. We utilize industry best practices with security and encryption standards, including Unified Threat Management firewalls and security practices, to shield and protect your personal data in electronic formats from outside threats.

Concurrently with this Notice you may also receive a Privacy Notice from the insurance company we represent in your transaction. Please review that Notice carefully as their privacy policy may differ from ours.

*Central Division; Great Lakes Division; Grand Rapids Division; Lakeshore Division
Mason Burgess Division; National Escrow Title Division; Metro Division; Northern Division*

FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, “FNF,” “our,” or “we”) respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

Types of Information Collected

We may collect two types of information from you: Personal Information and Browsing Information.

Personal Information. FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g. Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g. loan or bank account information); and
- other personal information necessary to provide products or services to you.

Browsing Information. FNF may automatically collect the following types of Browsing Information when you access an FNF website, online service, or application (each an “FNF Website”) from your Internet browser, computer, and/or mobile device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

How Personal Information is Collected

We may collect Personal Information about you from:

- information we receive from you on applications or other forms;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

How Browsing Information is Collected

If you visit or use an FNF Website, Browsing Information may be collected during your visit. Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

Other Online Specifics

Cookies. When you visit an FNF Website, a “cookie” may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

Revised May 1, 2018

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Do Not Track. Currently our FNF Websites do not respond to “Do Not Track” features enabled through your browser.

Links to Other Sites. FNF Websites may contain links to other websites. FNF is not responsible for the privacy practices or the content of any of those other websites. We advise you to read the privacy policy of every website you visit.

Use of Personal Information

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and third parties' products and services, jointly or independently.

When Information Is Disclosed

We may make disclosures of your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Please see “**Choices With Your Information**” to learn the disclosures you can restrict.

Security of Your Information

We maintain physical, electronic, and procedural safeguards to guard your Personal Information. We limit access to nonpublic personal information about you to employees who need to know that information to do their job. When we provide Personal Information to others as discussed in this Privacy Notice, we expect that they process such information in compliance with our Privacy Notice and in compliance with applicable privacy laws.

Choices With Your Information

If you do not want FNF to share your information with our affiliates to directly market to you, you may send an “opt out” request by email, phone, or physical mail as directed at the end of this Privacy Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you.

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

For California Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law.

Revised May 1, 2018

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For Nevada Residents: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

For Oregon Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

For Vermont Residents: We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

Information From Children

The FNF Websites are meant for adults and are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

International Users

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

FNF Website Services for Mortgage Loans

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except (1) as required or authorized by contract with the mortgage loan servicer or lender, or (2) as required by law or in the good-faith belief that such disclosure is necessary to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

Your Consent To This Privacy Notice; Notice Changes

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The revised Privacy Notice, showing the new revision date, will be posted on the FNF Website. Each time you provide information to us following any amendment of this Privacy Notice, your provision of information to us will signify your assent to and acceptance of the terms of the revised Privacy Notice for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you submit to us in any manner that we may choose without notice or compensation to you.

Accessing and Correcting Information; Contact Us

If you have questions, would like to access or correct your Personal Information, or want to opt-out of information sharing for affiliate marketing, send your requests via email to privacy@fnf.com, by phone to (888) 934-3354, or by mail to:

Fidelity National Financial, Inc.
601 Riverside Avenue,
Jacksonville, Florida 32204
Attn: Chief Privacy Officer



Fidelity National Title Insurance Company

COMMITMENT FOR TITLE INSURANCE

Issued by

Fidelity National Title Insurance Company

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Fidelity National Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within 180 Days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Countersigned by:

Sharlene Shineldecker

Authorized Countersignature

Transnation Title Agency of Michigan Lakeshore Division
Muskegon MI

TRANSNATION
TITLE AGENCY

FIDELITY NATIONAL TITLE INSURANCE COMPANY



By:

Attest:

President

Secretary

This page is only a part of a 2016 ALTA Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

27C165B

ALTA Commitment for Title Insurance 8/1/16

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COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; and
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I—Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

This page is only a part of a 2016 ALTA Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

27C165B

ALTA Commitment for Title Insurance 8/1/16

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <<http://www.alta.org/arbitration>>.

This page is only a part of a 2016 ALTA Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

27C165B

ALTA Commitment for Title Insurance 8/1/16

STATE OF MICHIGAN
COUNTY OF MUSKEGON
RECEIVED FOR RECORD

2001 JUL 27 PM 3:52

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

In the Matter of the Complaint and Petition by the City of
Muskegon to Condemn private property for public
purposes in the County of Muskegon, Michigan

Mark Fairchild
REGISTER OF DEEDS

CITY OF MUSKEGON,
a Michigan Municipal Corporation,

File No. 01 - 40889-CC

Plaintiff,

Hon. James M. Graves, Jr.
Circuit Judge

v.

FIFTH THIRD BANK, f/k/a AMERIBANK,
AMERIBANK, a Michigan Corporation,
UNITED RIGGERS & ERECTORS CO.,
VERPLANK TRUCKING CO., ASPHALT
PAVING, INC., DEPREE ELECTRIC CO.,
all Michigan corporations

I HEREBY CERTIFY this to be a true
and correct copy of the original on file
with the office of COUNTY CLERK.
This Certified Copy VALID
Only When SEAL and RED
SIGNATURE Are Affixed.

Susan R. Doriot
MUSKEGON COUNTY CLERK

Defendants.

Attorneys for Plaintiff

G. Thomas Johnson (P-15523)
Parmenter O'Toole
175 W. Apple Avenue
P.O. Box 786
Muskegon, MI 49443-0786
Telephone: 231/722-1621

Attorneys for Defendant

Great Lakes Dock & Materials, LLC
J. Scott Timmer (P-31855)
Lague, Newman & Irish
600 Terrace Plaza
P. O. Box 389
Muskegon, MI 49443-0389
Telephone: 231/725-8148

AFFIDAVIT OF G. THOMAS JOHNSON

STATE OF MICHIGAN
COUNTY OF MUSKEGON

I, G. Thomas Johnson, of the Law Firm of Parmenter O'Toole, attorneys for Plaintiff,
City of Muskegon, state that:

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Mr. Parmenter et al

27

1. Resolution 2001-48(e), determining the necessity to acquire land for public purposes by eminent domain for the City of Muskegon's non-motorized vehicle and pedestrian path adjacent to Waterfront Center was adopted by the City Commission on April 24, 2001, and is attached hereto as Exhibit A.

2. A Declaration of Taking, whereby the City of Muskegon acquired the land necessary for said non-motorized vehicle and pedestrian path, was also adopted and approved by the City Commission on April 24, 2001, and is attached hereto as Exhibit B. It covers the following described premises:

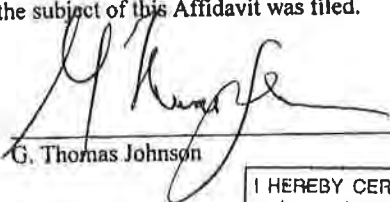
That part of Block 574 of the Revised Plat of 1903 of the City of Muskegon, described as commencing at the Southeast corner of said Block 574, thence North 88 degrees 13 minutes 54 seconds West 270.33 feet to a point on the North right-of-way line of Western Avenue; thence North 83 degrees 55 minutes 00 seconds West along said North right-of-way line 456.97 feet; thence North 01 degrees 31 minutes 44 seconds West 470.34 feet to the point of beginning; thence North 46 degrees 32 minutes 44 seconds West 257.11 feet; thence South 88 degrees 27 minutes 16 seconds West 684.39 feet; thence North 01 degrees 31 minutes 44 seconds West 16.00 feet; thence North 88 degrees 27 minutes 26 seconds East 691.04 feet; thence South 46 degrees 32 minutes 44 seconds East 247.70 feet; thence South 01 degrees 31 minutes 44 seconds East 22.62 feet to the point of beginning, City of Muskegon, Muskegon County, Michigan. (Parcel I.D. 61-10-25-200-004)

3. On June 1, 2001, a Complaint was filed with the Muskegon County Circuit Court (Case No. 01-40889-CC) for the condemnation and taking of the land described in the attached Exhibit B.

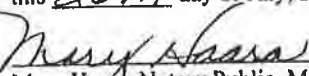
4. Attached as Exhibit C is a copy of the Summons issued in the captioned matter on June 1, 2001.

5. The title of the said land, taken by the City, passed to the City of Muskegon on June 1, 2001, the date that the suit which is the subject of this Affidavit was filed.

Further, affiant saith not.


G. Thomas Johnson

Subscribed and sworn to before me
this 26th day of July, 2001.


Mary Haara, Notary Public, Muskegon Co., MI
My commission expires: 09/23/03

I HEREBY CERTIFY this to be a true
and correct copy of the original on file
with the office of COUNTY CLERK.
This Certified Copy VALID
Only When SEAL and RED
SIGNATURE Are Affixed.


SUSAN R. DORIO
MUSKEGON COUNTY CLERK

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**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN**

RESOLUTION NO. 2001-48(e)

A resolution determining the necessity to acquire land for public purposes by eminent domain, for the City's non-motorized vehicle and pedestrian path adjacent to Waterfront Center.

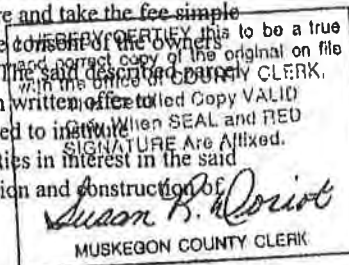
The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

1. The City of Muskegon is presently engaged in developing and acquiring a property located in Block 574 of the Revised Plat of 1903 of the City of Muskegon for the purpose of constructing a non-motorized vehicle and pedestrian path.
2. It appears that it is necessary to begin eminent domain proceedings because of the status and results of negotiations that have been carried on by the City.
3. The establishment of the said improvements at the said location will be advantageous to the development of the recreational, transportation and pedestrian needs and development of the City of Muskegon, and it is in the best interests of the City to establish the said improvements. Plans have been prepared and developed to sufficiently indicate the location of the improvements and their effect on the land to be acquired.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. The City Commission hereby declares and determines that it is in the public interest and constitutes a public purpose to acquire the property set forth in Schedule A attached to this resolution for the purpose of acquiring sufficient land to construct the non-motorized vehicle and pedestrian path.
2. The City Commission further declares and determines that it is necessary to construct the said improvements in Block 574 of the Revised Plat of the City of Muskegon, and the said improvements are necessary for the use and benefit of the public.
3. It is further declared and determined that it is necessary to acquire and take the fee simple estate in real property, fully described in Schedule A, without the consent of the owners thereof, for the purpose of constructing the said improvements. The said description of property is necessary for the use and benefit of the public and a good faith written offer to purchase said parcel has been made. The City Attorney is directed to institute condemnation proceedings against the owners and any other parties in interest in the said described parcel that has been deemed necessary for the acquisition and construction of the said improvements.



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EXHIBIT A

BE IT FURTHER RESOLVED that the Mayor and Clerk are authorized to execute the Declaration of Taking in the form attached to this resolution.

This resolution passed.

Ayes Aslakson, Benedict, Nielsen, Schweifler, Shepherd, Sieradzki, Spataro

Nays None

CITY OF MUSKEGON

By Gail A. Kunderger
Gail A. Kunderger, City Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission, held on April 24, 2001. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kunderger
Gail A. Kunderger, City Clerk

I HEREBY CERTIFY this to be a true and correct copy of the original on file with the office of COUNTY CLERK.
This Certified Copy VALID
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SIGNATURE Are Affixed.

Susan B. Doriot
MUSKEGON COUNTY CLERK

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SCHEDULE A

Legal Description and Map

Description of property for a proposed Bike Path across property owned by Waterfront Center. (Parcel I.D. 61-10-25-200-004)

That part of Block 574 of the Revised Plat of 1903 of the City of Muskegon, described as commencing at the Southeast corner of said Block 574; thence North 88 degrees 13 minutes 54 seconds West 270.33 feet to a point on the North right-of-way line of Western Avenue; thence North 83 degrees 55 minutes 00 seconds West along said North right-of-way line 456.97 feet; thence North 01 degree 31 minutes 44 seconds West 470.34 feet to the point of beginning; thence North 46 degrees 32 minutes 44 seconds West 257.11 feet; thence South 88 degrees 27 minutes 16 seconds West 684.39 feet; thence North 01 degrees 31 minutes 44 seconds West 16.00 feet; thence North 88 degrees 27 minutes 26 seconds East 691.04 feet; thence South 46 degrees 32 minutes 44 seconds East 247.70 feet; thence South 01 degree 31 minutes 44 seconds East 22.62 feet to the point of beginning.

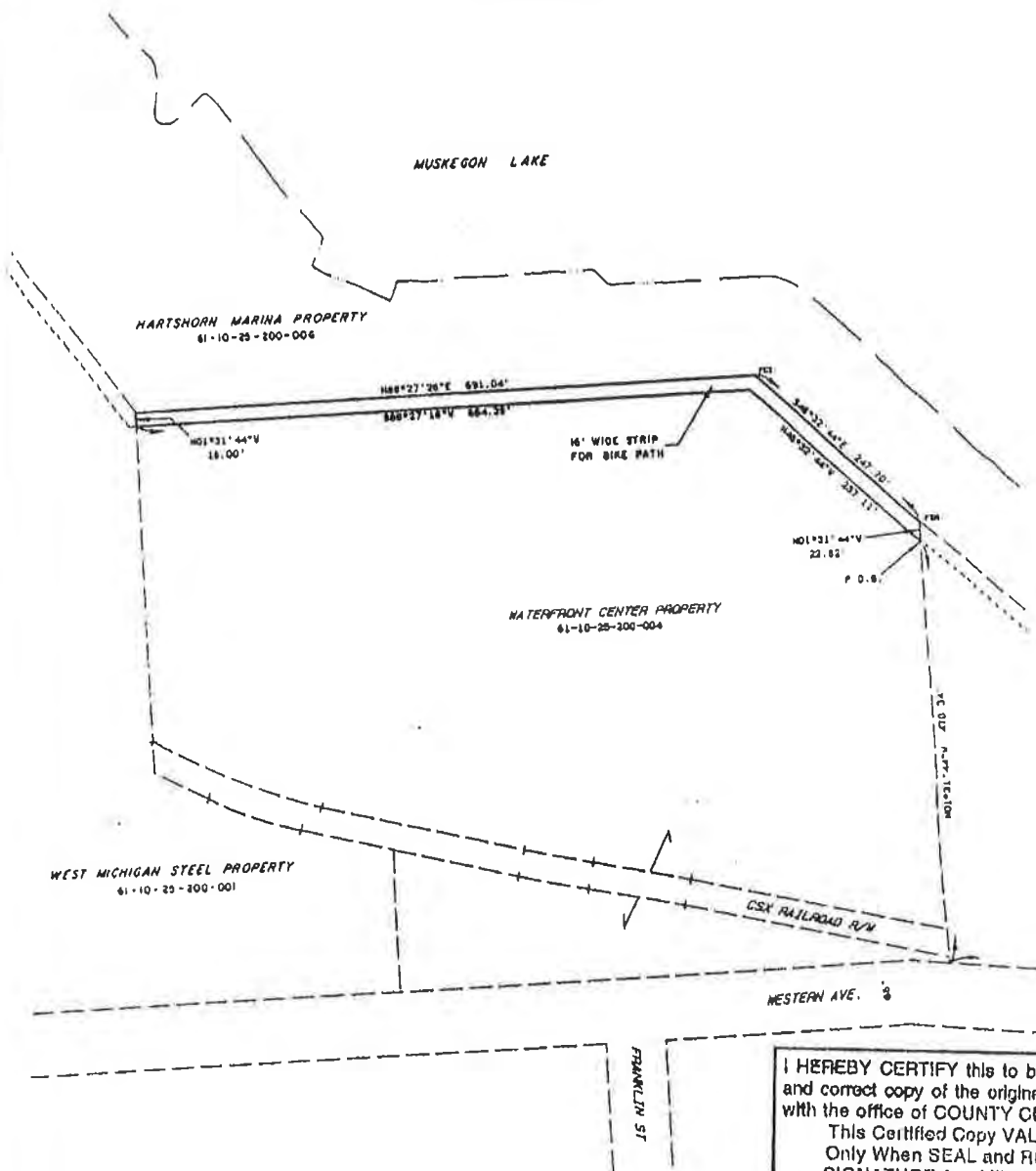
ILLEGIBILITY DUE
TO POOR ORIGINAL

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Susan R. Doriot
MUSKEGON COUNTY CLERK

SURVEY SKETCH



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Susan R. Doriot
MUSKEGON COUNTY CLERK

City of Muskegon
Muskegon County, Michigan

DECLARATION OF TAKING

2001-48(e)
WATERFRONT CENTER TRAIL PROPERTY

Land located in Block 574 City of Muskegon.

A statement of necessity has been made by the City Commission of the City of Muskegon setting forth that the construction of a non-motorized vehicle and pedestrian path is necessary. As a result, it is necessary to acquire certain property for said purpose, and a good faith written offer to purchase said parcels of property has heretofore been made.

Therefore, by virtue of the authority vested in the City of Muskegon by the Home Rule Act of the State of Michigan, MCL 117.4e, and the laws and constitution of the State, and pursuant to 1980 PA 87, MCLA 213.51, MSA 8.265(1), it is now declared that by the filing of the Complaint and this Declaration in the Circuit Court for the County of Muskegon, title to the property hereinafter described is taken in the name of the City of Muskegon for the purpose of constructing a non-motorized vehicle and pedestrian path.

A description of the property taken sufficient for its identification, the names of the persons interested in said property so far as known, a statement of the estate or interest being taken, and statement of the sum of money estimated by complainant to be just compensation for the part to be taken is as follows:

Legal Description
See attached Schedule A

Estate to be acquired: Fee Simple

Owner and other persons interested in the property:
Fifth Third Bank, f/k/a AmeriBank, a Michigan corporation
AmeriBank, a Michigan corporation
United Riggers & Erectors Co., Inc., a Michigan corporation
Asphalt Paving, Inc.
Verplank Trucking Co., a Michigan corporation
DePree Electric Co., a Michigan corporation

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Susan R. Doriot
MUSKEGON COUNTY CLERK

Estimated Just Compensation: \$22,000.00

Dated: April 24, 2001

CITY OF MUSKEGON

By *Fred J. Nielsen*
Fred J. Nielsen, Mayor

And *Gail A. Kunding*
Gail A. Kunding, City Clerk

CERTIFICATION
2001-48(e)

Attached is a true copy of the Declaration of Taking that was adopted at a regular meeting of the City Commission, held on April 24, 2001. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Gail A. Kunderger
Gail A. Kunderger, City Clerk

I HEREBY CERTIFY this to be a true
and correct copy of the original on file
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Susan B. Doriot
MUSKEGON COUNTY CLERK

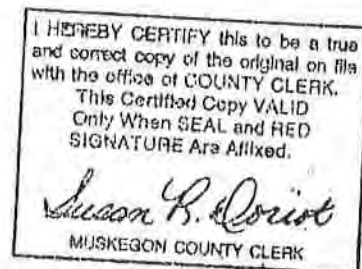
SCHEDULE A

Legal Description and Map

Description of property for a proposed Bike Path across property owned by Waterfront Center. (Parcel I.D. 61-10-25-200-004)

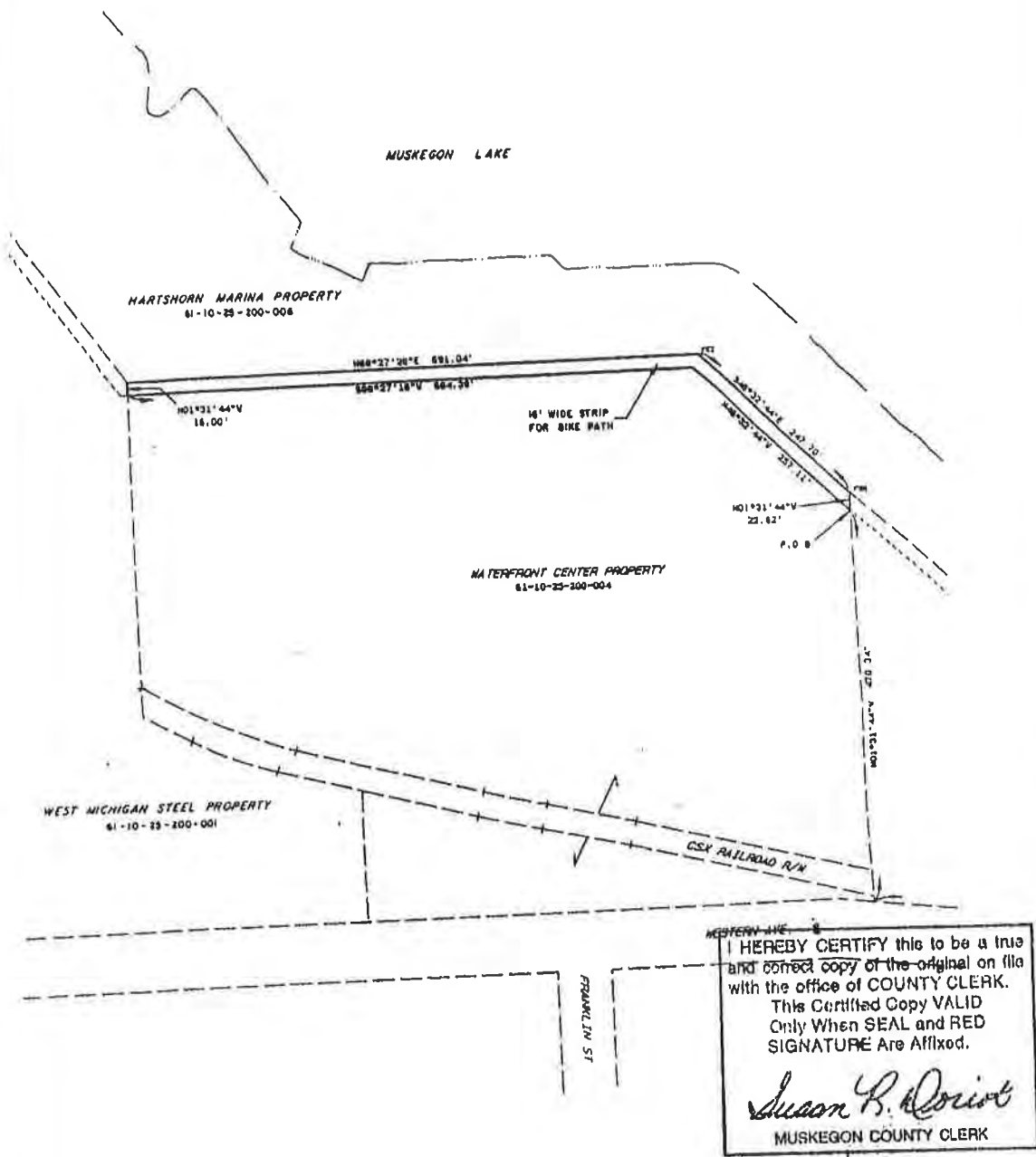
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ILLEGIBILITY DUE
TO POOR ORIGINAL



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SURVEY SKETCH



I HEREBY CERTIFY this to be a true and correct copy of the original on file with the office of COUNTY CLERK. This Certified Copy VALID Only When SEAL and RED SIGNATURE Are Affixed.

Susan B. Doriot
MUSKEGON COUNTY CLERK

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - ReturnSTATE OF MICHIGAN
JUDICIAL DISTRICT
14TH JUDICIAL CIRCUIT
COUNTY PROBATE

SUMMONS AND COMPLAINT

CASE NO.

01-40889 -cc

Court address 990 Terrace St., Muskegon, MI 49442

Court telephone no.
(231) 724-6333Plaintiff name(s), address(es), and telephone no(s).
CITY OF MUSKEGON,
Michigan Municipal Corporation,Plaintiff attorney, bar no., address, and telephone no.
Thomas Johnson (P15523)
Armenter O'Toole
75 W. Apple Ave.
Muskegon, MI 49443-0786
231) 722-1621Defendant name(s), address(es), and telephone no(s).
FIFTH THIRD BANK, f/k/a AMERIBANK,
AMERIBANK, UNITED RIGGERS &
ERECTORS CO., VERPLANK TRUCKING
CO., ASPHALT PAVING, INC., and DE
FREE ELECTRIC CO., all Michigan
Corporations,Serve On:
Fifth Third Bank
THIS CASE ASSIGNED TO
JUDGE WILLIAM C. MARIETTI**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

You are being sued.

YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).

If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 6-1-01	This summons expires 8-31-01	Court clerk Susan R. Dorio
------------------	---------------------------------	-------------------------------

This summons is invalid unless served on or before its expiration date.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.**Family Division Cases**

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint. A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge
------------	-------

VENUE

Plaintiff(s) residence (include city, township, or village)

Muskegon County, Michigan

Place where action arose or business conducted

Muskegon County, Michigan

Defendant(s) residence (include city, township, or village)
d/b/i
Ottawa County, Michigan

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

6-1-01

Signature of attorney/plaintiff G. Thomas Johnson (P15523)

You require special accommodations to use the court because of disabilities, contact the court immediately to make arrangements.

01 (9/98) SUMMONS AND COMPLAINT MCR 2.102(B)(1), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C)(2)(a), (b), MCR 3.206(A)

I HEREBY CERTIFY this to be a true and correct copy of the original on file with the office of COUNTY CLERK. This Certified Copy VALID Only for FILING and RED SIGNATURE ARE Affixed.
 Susan R. Dorio
 COUNTY CLERK

STATE OF MICHIGAN
COUNTY OF MUSKEGON
RECEIVED FOR RECORD

1998 AUG 21 AM 11:22

Carrie Carter
REGISTER OF CLERKS

WARRANTY DEED

190882

STATUTORY FORM FOR CORPORATIONS

Form No. M-961

KNOW ALL MEN BY THESE PRESENTS:

Michigan Corporation
a Michigan

That Lakeview Industrial Center, Inc., a

corporation, whose street is 1321 Division
Muskegon, MI 49441

Conveys and Warrants to City of Muskegon
whose street number and post office address is 933 Terrace
Muskegon, MI 49440

the following described premises situated in the City of Muskegon County of Muskegon and
State of Michigan, to-wit:

SEE EXHIBIT " A " ATTACHED HERETO AND MADE A PART HEREOF

More commonly known as: vacant land Western Ave., Muskegon, Michigan 49441

for the sum of ONE AND 00/100, (**\$1.00*) Dollars
for the sum of AFFIX REVENUE STAMPS AFTER RECORDING
subject to easements, use, building and other restrictions of record, if any;

Dated this 12th day of August, 1998

Signed and Sealed in presence of

Signed and Sealed:

Angela J. Schultz
ANGELA J. SCHULTZ
Katie Corcoran
KATIE CORCORAN

Lakeview Industrial Center, Inc.

BY *Bruce Walker*, President
Bruce Walker, President

STATE OF MICHIGAN

COUNTY OF Muskegon

} ss. ANGELA J. SCHULTZ
Notary Public, Muskegon County, Michigan
My Commission Expires 9-7-2001

The foregoing instrument was acknowledged before me this 12th day of August, 1998
by Bruce Walker, President, of Lakeview Industrial Center, Inc.

My Commission expires _____, _____ Notary Public, _____ County, Michigan

County Treasurer's Certificate
Muskegon, Mich: 8/18/98
"I hereby certify that there are no tax liens or taxes held by the
state or any individual against the within description, and all
taxes on same are paid for five years previous to the date of
this instrument, as appears by the records in my office."
1998 AUG 18 J. K. K. K. K. K.

City Treasurer's Certificate

After recording return to:
City of Muskegon
933 Terrace
Muskegon, MI 49440

Drafted By:
Lakeview Industrial Center
1321 Division
Muskegon, MI 49441

2001-15

ESCROW NO.: 190882
DATE : August 12, 1998

"EXHIBIT A"
LEGAL DESCRIPTION

* That part of Block 574 of the Revised Plat of 1903 of the City of Muskegon, described as commencing at the Southeast corner of said Block 574; thence North 88 degrees 13 minutes 54 seconds West 270.33 feet to a point on the North right-of-way line of Western Avenue; thence North 01 degree 09 minutes 31 seconds West 100.00 feet; thence North 46 degrees 31 minutes 44 seconds West 118.61 feet to the point of beginning; thence North 61 degrees 45 minutes 12 seconds West 60.93 feet; thence North 46 degrees 31 minutes 44 seconds West 227.22 feet; thence North 46 degrees 32 minutes 44 seconds West 220.80 feet; thence North 01 degrees 31 minutes 44 seconds West 22.62 feet; thence South 46 degrees 32 minutes 44 seconds East 236.79 feet; thence South 46 degrees 31 minutes 44 seconds East 286.01 feet to the point of beginning; included in the following described parcel of land:

Part of Blocks 574 and 575, Revised Plat of the City of Muskegon, Muskegon County, Michigan, described as: Commencing at the Southeast corner of said Block 574, thence North 88 degrees 43 minutes West 270.42 feet for point of beginning, thence Westerly 457.28 feet along the Northerly line of Western Avenue; thence North 02 degrees 04 minutes West 492.92 feet; thence South 47 degrees 05 minutes East to a point 100 feet North 01 degrees 40 minutes West of point of beginning; thence South 01 degrees 40 minutes 00 seconds East 100.00 feet to point of beginning.

10-25-200-005 / 00-08317-02

Parcel #01-22-25-200-005-1-1

08319-02

Commission Meeting Date: February 12, 2019

Date: February 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Sale of the City-owned lot at 1021 Jefferson St

SUMMARY OF REQUEST:

Staff initiated request to sell the lot at 1021 Jefferson St. After presenting the development proposal to the City Commission in November of 2018, staff executed a Letter of Intent to sell the property to General Capital Acquisitions, LLC for \$455,000.

FINANCIAL IMPACT:

Funds received from the sale will go into the general fund.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the "Offer to Purchase."

COMMITTEE RECOMMENDATION:

None

OFFER TO PURCHASE

THIS OFFER TO PURCHASE ("Offer") is made and entered into as of this 12th day of February, 2019 ("Effective Date"), by and between General Capital Acquisitions, LLC, a Wisconsin limited liability company and/or its assignee ("Buyer") and the City Of Muskegon ("Seller").

RECITALS

A. Seller currently holds title to that certain real property commonly known as 1021 Jefferson Street, located in the City of Muskegon, State of Michigan, identified as Parcel Number 61-24-205-355-0001-00, and legally described as on **Exhibit A** attached hereto (the "Property"). The term "Property" shall further include, without limitation, all of the following: all land identified herein (whether by address, tax parcel, property name or other description) as all or part of the Property; all buildings, parking, fixtures, improvements and easements located on or appurtenant to such land; and, all licenses, permits, plans, specifications and all other rights, title and interest appurtenant and otherwise relating to any and all such property.

B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, upon the terms and conditions hereinafter set forth.

In consideration of the mutual covenants and promises of the parties, Seller and Buyer hereby agree as follows:

AGREEMENT

1. Purchase Price. The purchase price ("Purchase Price") for the Property shall be Four Hundred Fifty-Five Thousand and No/100 Dollars (\$455,000.00), and shall be payable, subject to pro-rations, deferrals and credits as provided in this Offer, at Closing (as hereinafter defined) by delivery of a certified or cashier's check or by wire transfer. Within two (2) business days from the execution and delivery of this Offer by Buyer and Seller, Buyer shall deposit with the Title Company (defined below) in a joint order escrow pursuant to the Title Company's usual and customary escrow instructions, the sum of Twenty Thousand and No/100 Dollars (\$20,000.00) ("Earnest Money"). The Earnest Money may be invested by Title Company (at Buyer's option) in an interest bearing account with all interest accruing thereon paid to Buyer and applied toward the Purchase Price at Closing. Buyer shall pay all fees and costs related to the Earnest Money joint order escrow account. Except as otherwise set forth herein, the Earnest Money shall become non-refundable, but remain applicable to the Purchase Price, after the expiration of all Contingency Periods (as defined below).

2. Contingencies.

Buyer's obligations to conclude this transaction are contingent upon the following (each a "Contingency" and collectively, the "Contingencies"):

A. Survey. On or before November 30, 2019 ("Survey Period"), Buyer obtaining, at its expense, an up to date ALTA survey of the Property in form and substance satisfactory to Buyer, prepared by a registered land surveyor and

certified to Buyer and such others as Buyer may reasonably request, which survey shall show all exceptions noted on the Commitment (defined below) called for in Section 4 below and which shall be sufficient to delete all standard survey exceptions from the Commitment ("Survey").

B. Documentation Approval. On or before November 30, 2019 ("Document Approval Period"), Buyer reviewing and approving, in its sole discretion, copies of any and all documentation provided pursuant to Section 5 below.

C. Required Approvals. On or before November 30, 2019 ("Approvals Period"), Buyer obtaining, at its expense, approvals from any federal, state or municipal governmental department or agency as is necessary or desirable for the contemplated transaction to occur and to allow Buyer to use the Property as contemplated herein (collectively, "Approvals"), and reviewing and verifying, in its sole discretion, that the Property is fully compliant with all relevant governmental rules, regulations and restrictions governing Buyer's proposed use of the Property as multifamily housing. Seller shall reasonably cooperate with Buyer in connection with the procurement of the Approvals at no material cost to Seller. Provided Buyer makes timely application for all Approvals, and in good faith pursues all Approvals, Buyer shall have the right to extend the Approvals Period for up to an additional thirty (30) days by written notice to Seller prior to the end of the initial Approvals Period.

D. Environmental. On or before November 30, 2019 ("Environmental Period"), Buyer obtaining written environmental assessments and/or evaluations of the Property (including Phase I and Phase II studies) from an environmental consultant of Buyer's choice, confirming that (i) the Property complies with all Environmental Laws, as defined in Section 13 below; (ii) there are no liabilities (contingent or otherwise) affecting the Property arising under and Environmental Laws; (iii) there are no underground or aboveground storage tanks, associated pipes or equipment located on or at the Property; and (iv) there are no Hazardous Substances, as defined in Section 13 below, on, under, at, in or migrating to or from the Property.

E. Title Review & Insurance. On or before November 30, 2019 ("Title Review Period"), Buyer reviewing and approving, in its sole discretion, any and all easements, restrictive covenants, restrictions, land use regulations or other encumbrances affecting the Property. Also, Buyer determining that the Survey and Commitment called for in this Section 2 and Section 4 below are acceptable in Buyer's sole discretion. For purposes of this Offer, the term "Permitted Exceptions" shall mean only those title and survey exceptions reflected on the Commitment and the Survey either: (i) to which Buyer does not object in writing prior to the expiration of the time period set forth herein; or (ii) which Buyer accepts pursuant to Section 4(c) below, but in any case expressly excluding all liens and similar type encumbrances of a definite or ascertainable amount, including but not limited to mortgages, tax liens, mechanics' liens and judgment liens (collectively, "Liens").

F. Additional Inspection. On or before November 30, 2019 ("Due Diligence Period"), Buyer performing, at its expense, such inspections and other investigations and testing deemed appropriate by Buyer, including but not limited to appraisals, wetland and floodplain surveys, soil, pests and any investigations required to develop both architectural and engineering plans, and investigations into regulatory, title, lease, tenant, operations, insurance premiums and other matters deemed relevant by Buyer, which collectively indicate to the sole satisfaction of Buyer that the Property is in good condition and repair and that there are no material defects or deficiencies in any part thereof, and that the Property is otherwise acceptable to Buyer in Buyer's sole discretion.

G. Financing.

(i) On or before November 30, 2019 ("Financing Period"), Buyer obtaining (x) a written commitment from a lender to provide mortgage financing for Buyer's acquisition and development of the Property, (y) a written commitment for low income housing tax credits ("LIHTC") for Buyer's acquisition and development of the Property, (z) written commitments for additional subsidies for Buyer's acquisition and development of the Property, all upon terms and in amounts that are acceptable in Buyer's sole discretion (collectively, the "Financing"). Provided Buyer is in good faith pursuing such Financing, Buyer shall have the right to extend the Financing Period for up to an additional thirty (30) days by written notice to Seller prior to the end of the initial Financing Period.

(ii) Buyer intends to submit an application (the "Application") to the Michigan State Housing Development Authority ("MSHDA") for 2019 9% LIHTC by the deadline established by MSHDA for its Spring 2019 funding round (the "Spring Application Date"), which is anticipated to be April 1, 2019. If Buyer does not submit such Application by the Spring Application Date this Offer shall automatically terminate, the Earnest Money together with all interest thereon, if any, shall be immediately returned to Buyer and all rights, duties and obligations of the parties under this Offer shall thereafter cease and be of no further force or effect (except with respect to the provisions hereof which expressly survive the termination of this Offer).

(iii) Buyer agrees to keep Seller updated as to the submittal of the Application and award (if applicable) of LIHTC. If Buyer submits an Application by the Spring Application Date, but is not awarded LIHTC by MSHDA, Buyer shall have the opportunity to submit a second Application for 2019 9% LIHTC by the deadline established by MSHDA for its fall 2019 funding round (the "Fall Application Date"), which is anticipated to be October 1, 2019. If Buyer submits such second Application prior to the Fall Application Date, the Contingency Periods and Closing Date shall automatically be extended by seven (7) calendar months.

The Survey Period, Document Approval Period, Approvals Period, Environmental Period, Title Review Period, Due Diligence Period and Financing Period are collectively referred to herein as the "Contingency Periods".

3. Contingency Period.

(a) If Buyer does not notify Seller within the applicable Contingency Periods (as may be extended) set forth above that the Contingencies set forth above have been satisfied or waived by Buyer, this Offer shall automatically terminate, and all Earnest Money shall be returned to Buyer, and all rights, duties and obligations of the parties under this Offer shall thereafter cease and be of no further force or effect (except with respect to the provisions hereof which expressly survive the termination of this Offer). Buyer and Seller agree that Buyer shall not be required to attempt to satisfy all the Contingencies or to do so simultaneously, but may instead attempt satisfaction of the Contingencies in any sequential order established by Buyer. If at any point Buyer in good faith concludes it will not be able to complete the transaction, it will promptly give Seller written notice thereof and terminate this Offer.

4. Title Insurance.

(a) Seller shall, within twenty (20) days of the Effective Date, obtain and deliver to Buyer a title insurance commitment ("Commitment") from Cinnaire Title Services, 1118 S. Washington Avenue, Lansing, Michigan, Attn: Steve Smith (SSmith@cinnnaire.com) (the "Title Company") to issue an owner's policy of title insurance in the amount of the Purchase Price, naming Buyer as the insured. Such Commitment shall show fee simple title to the Property in Seller and shall be accompanied by copies of all exceptions noted in the Commitment or of record. Seller shall require the Commitment to obligate the Title Company to issue a policy that will guarantee Buyer's title to be in the condition required under this Section 4 and Section 7 below (without standard exceptions) as of the Closing Date (as hereinafter defined) and shall require that the Commitment include a gap endorsement, zoning endorsement, contiguity endorsement, access endorsement and any other endorsements reasonably requested by Buyer; the cost of the title insurance premium, including the gap endorsement, shall be the responsibility of Seller, and the cost of all other endorsements, and the costs related to any lender's policy, shall be the responsibility of Buyer.

(b) If the Commitment or Survey discloses matters or exceptions that are not acceptable to Buyer, in Buyer's sole discretion, Buyer shall deliver written notice of such objections to Seller prior to the expiration of the Title Review Period (the "Objection Notice"). Except as set forth herein, if Buyer fails to deliver the Objection Notice during the Title Review Period, then Buyer shall be deemed to have accepted all matters of record as of the effective date of the Commitment, and all such matters shall be deemed "Permitted Exceptions", except as set forth herein. Following receipt of the Objection Notice, Seller may remedy, or agree to remedy prior to Closing, Buyer's title objections to the satisfaction of Buyer and the Title Company by delivering a notice to that effect (the "Objection Response") within five (5) business days after Seller's receipt of the Objection Notice ("Seller's Title Response Period"). Notwithstanding anything to the contrary herein, Permitted Exceptions shall not include any Liens. Seller shall be required to cure or remove all Liens (by payment, bond deposit or indemnity acceptable to the Title Company and Buyer) at or before Closing.

(c) If Seller does not timely deliver an Objection Response indicating that it will cure or remedy all of the title objections set forth in the Objection Notice, then Buyer, at its election, shall have the right either to: (a) proceed to Closing, in which case Buyer shall accept title to the Property subject to the objections that Seller has not agreed to cure or remedy (and such matters shall be deemed Permitted Exceptions, except for any Liens), with the right to deduct Liens from the Purchase Price paid at Closing; or (b) terminate this Offer by delivery of written notice to Seller, in which event the Earnest Money shall be immediately returned to Buyer and all rights, duties and obligations of the parties under this Offer shall thereafter cease and be of no further force or effect (except with respect to the provisions hereof which expressly survive the termination of this Offer). In addition, if Seller delivers an Objection Response but subsequently fails (despite the exercise of commercially reasonable good faith efforts) to cure or remedy all of the title objections that it had obligated itself to do so in the Objection Response, then Buyer, at its election, shall have the right either to: (a) proceed to Closing, in which case Buyer shall accept title to the Property subject to the objections that Seller has failed to cure or remedy (and such matters shall be deemed Permitted Exceptions, except for any Liens) with the right to deduct Liens from the Purchase Price paid at Closing; or (b) treat such failure by Seller as a default under this Offer.

(d) At any time prior to the Closing, Buyer shall have the right to object to any title matter appearing for the first time on a title commitment that is updated subsequent to the Commitment (the "Updated Title Commitment"). All such Updated Title Commitment objections shall be handled in the same manner as the objections described above, and, if reasonably required by Seller in order to effect a cure of any title objection that Seller is required or agrees to cure hereunder, the Closing Date shall be extended accordingly for a period not to exceed five (5) days beyond the Closing Date, to enable Seller to cure such title objection.

5. Document Production. Seller shall, (a) within twenty (20) days of the Effective Date, provide Buyer with copies of and/or full access to all documents, including but not limited to, all leases, agreements, reports, environmental information, title documentation, notices and correspondence pertaining to the Property and (b) within five (5) days of the Effective Date, provide Buyer with copies of and/or full access to all plans, specifications and surveys pertaining to the property (the documents in (a) and (b) are collectively referred to herein as, "Due Diligence Documents"). For every day that Seller is late delivering any documentation required pursuant to this Section 5, an additional day shall be added to all of the Contingency Periods set forth in Section 2 of this Offer.

6. Access and Cooperation. Buyer and its employees, officers, agents, engineers, surveyors, appraisers, lenders, attorneys, consultants, contractors and other representatives, at any time after the Effective Date, shall have the right to enter the Property to conduct inspections, studies and investigations of the Property, including the right to take and remove reasonable test samples and to undertake all Contingencies set forth in Section 2, upon at least one days' prior notice to Seller. Seller shall cooperate with Buyer in Buyer's exercise of its rights hereunder. Buyer shall indemnify, defend and hold Seller harmless from any and all claims, losses, damages (excluding punitive, speculative or consequential damages), costs (including reasonable and actual attorneys' and other professionals' fees, expenses, and disbursements) and liabilities which may arise due to actions taken by Buyer and its employees, agents and contractors on the Property prior to the Closing, including surveys, tests, investigations and the

like; provided, however, that Buyer will not be responsible for indemnifying Seller or from the mere discovery of any pre-existing adverse condition on the Property (environmental or otherwise). Additionally, Seller shall cooperate with Buyer in applying for and obtaining any licenses, permits or approvals, that are necessary or desirable for Buyer's redevelopment of the Property, including signing applications for such approvals and permits, provided, Seller shall not incur any costs as a result of such cooperation.

7. Condition of Title. Seller shall, at Closing, convey fee simple title in the Property to Buyer by good and sufficient warranty deed, free and clear of all liens and encumbrances except the Permitted Exceptions and general real estate taxes levied in the year of Closing (the "Deed").

8. Default.

(a) If Buyer is in default under this Offer and such default is not cured within five (5) days following written notice thereof from Seller, then Seller may, as its sole and exclusive remedy, terminate this Offer and retain the Earnest Money as liquidated damages. Upon any such termination, neither party shall have any further rights or obligations regarding this Offer other than those that expressly survive such termination. Seller has agreed to this liquidated damage provision because of the difficulty of ascertaining Seller's actual damages given the uncertainties of the real estate market, the fact that Seller retains ownership of the Property, fluctuating property values, and differences of opinion with respect to such matters. Seller waives the right to assert the defense of lack of mutuality in any action for specific performance instituted by Buyer.

(b) If Seller defaults in the performance of any of its obligations under this Offer and fails to cure such default within five (5) days following written notice thereof from Buyer (provided, that the foregoing five (5) day cure right shall not apply to a failure by Seller to deliver the documents and instruments required to be delivered by Seller at Closing, it being agreed that Seller shall not be entitled to notice or an opportunity to cure any such failure by Seller), Buyer may (i) terminate this Offer, in which event the Earnest Money shall be returned immediately to Buyer, Seller shall reimburse Buyer for all costs incurred by Buyer in negotiating this Offer and all due diligence performed with respect to the Property, including interest thereon, or (ii) Buyer may seek any remedies available at law or in equity, including the remedy of specific performance (and, in such event, Seller agrees to indemnify Buyer for all of Buyer's costs and expenses, including without limitation reasonable attorneys' fees and court costs, incurred in such action). If Buyer seeks, but is not awarded, the remedy of specific performance, Buyer may then proceed under subsection (i) herein.

(c) The foregoing limitations of remedies and liquidated damages provisions shall not apply to a breach of any of the representations and warranties of Seller set forth in this Offer, the indemnity obligations of either party under the provisions of this Offer, or defaults by either party under the closing documents.

The provisions of this Section shall survive the termination of this Offer.

9. Binding Contract. The parties hereto acknowledge that Buyer will expend material sums of money in reliance on Seller's obligations under this Offer, in connection with negotiating and executing the Offer, conducting the inspections contemplated by this Offer, and preparing for Closing, and that Buyer would not have entered into this Offer without the availability of a the Contingency Periods. In consideration of the foregoing, and the provision of a One Hundred Dollars (\$100.00) nonrefundable deposit (the "Independent Consideration"), the parties agree that adequate consideration exists so that Buyer's rights to terminate this Offer do not render this Offer illusory. Seller and Buyer each waive any and all rights to challenge the enforceability of this Offer on the basis that any of the conditions or contingencies set forth herein are at Seller's or Buyer's sole discretion or that any of the agreements contained herein are illusory. If either party challenges the enforceability of this Offer in a manner that is inconsistent with the foregoing waiver, such party shall pay the other party's costs and expenses (including reasonable attorneys' fees) in enforcing this Offer. The Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Offer and shall be retained by Seller notwithstanding: (a) the exercise of Buyer's rights to terminate the Offer, and/or (b) any other provision of this Offer. The Independent Consideration shall be applied to the Purchase Price if this transaction closes.

10. Closing. This transaction is to be closed (the "Closing") at the Title Company, or at such other location agreed to by Seller and Buyer, within ninety (90) days from the expiration of the last Contingency Period to expire, or on such earlier date as Buyer may elect by giving Seller at least ten business (10) days prior written notice thereof, or at such other time as may be agreed to by Buyer and Seller ("Closing Date"). Seller shall provide Buyer with copies of all closing documents not less than ten (10) days prior to the Closing Date. Seller shall deliver possession of the Property to Buyer on the Closing Date.

(a) At Closing, Seller shall deliver all of the following to Buyer or the Title Company, all of which shall be fully-executed by Seller, where required:

- (i) The Deed;
- (ii) Customary seller's affidavit, ALTA statement, gap indemnity and such other affidavits of Seller or other documents as may be reasonably required by the Title Company in order to record the Deed and issue the Title Insurance Policy (defined below);
- (iii) Any required real estate transfer declarations and stamps, and Seller shall pay the amount of any state, county and local transfer taxes;
- (iv) A non-foreign affidavit ("FIRPTA" affidavit);
- (v) Satisfactory evidence of Seller's authority (including, without limitation, evidence of the authority of all persons executing any documents on behalf of Seller) to enter into this Offer, sell the Property to Buyer and perform Seller's other obligations under this Offer;

- (vi) A signed pro forma or signed mark-up of the Commitment (the "Title Insurance Policy") issued by the Title Company in the amount of the Purchase Price pursuant to the Commitment and subject only to Permitted Exceptions, and including such endorsements as requested by Buyer;
- (vii) A closing statement setting for the Purchase Price and the adjustments and prorations set forth herein (the "Closing Statement");
- (viii) Pay-off letters with respect to all mortgages of record;
- (ix) A statement certifying that all of the representations and warranties of Seller contained herein are true and correct as of the Closing Date;
- (x) Intentionally Deleted; and
- (xi) Such other documents as may be reasonably required by Buyer or the Title Company.

(b) At Closing, Buyer shall deliver all of the following to Seller or The Title Company, all of which shall be fully-executed by Buyer, where required:

- (i) The balance of the Purchase Price, plus or minus prorations, credits and other adjustments, by wire transfer or otherwise in immediately available funds;
- (ii) A counter-part to the Closing Statement; and
- (iii) Such other documents as may be reasonably required by the Title Company in order to record the Deed and issue the Title Insurance Policy.

11. Pro-rations/Credits. The following items shall be calculated by Buyer and Seller and prorated or credited at Closing as follows:

Net general real estate taxes for the year of Closing shall be prorated as of the Closing Date, inclusive of said date, on the basis of the net general real estate taxes for the year of Closing, if known, otherwise on the net general real estate taxes for the preceding year. Seller shall pay prior to the Closing Date all general real estate taxes attributable to any time period prior to the year of Closing. General and special assessments for any work on or relating to the Property commenced, assessed, accrued or levied prior to the Closing Date shall be paid by Seller at or prior to Closing.

All other expenses for utilities and other operating items related to the Property shall be prorated as of the Closing Date.

At the Closing, Seller shall pay for the Commitment and the gap endorsement, special assessment letters (if any) and any transfer taxes for the transaction.

Buyer shall pay for the cost to record the Deed. The parties shall split the cost of the Title Company's closing fee.

12. Operation/Closing Conditions.

(a) From the date of this Offer through the Closing Date, Seller shall: (a) maintain the Property in a manner consistent with the condition of the Property at the time of the Effective Date and shall pay all bills and discharge all obligations arising by reason of Seller's ownership, operation and management of the Property, as they become due; (b) not, without obtaining the prior written consent of Buyer, enter into any leases, easements or other agreements with respect to the Property which will extend in force beyond the Closing and purport to bind Buyer or the Property or will not be fully performed by Seller prior to the Closing; (c) advise Buyer promptly of any litigation, arbitration or administrative hearing before any court or governmental agency concerning or affecting the Property or this Offer; (d) upon receipt of notice thereof, notify Buyer promptly of any violation or potential violation of any applicable law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, agreement, or other direction or requirement of any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them now existing or hereafter enacted, adopted, promulgated, entered, or issued applicable to the Seller or the Property ("Government Requirement"); (e) not take, or omit to take, any action that would have the effect of violating any of the representations, warranties, covenants and agreements of Seller contained in this Offer; and (f) prior to Closing, at Seller's sole cost: (i) remove all debris from the Property, (ii) remove from the Property all personal property, and (iii) leave any and all buildings and other structures in "broom clean" condition. Buyer shall have the right to terminate this Offer and receive a return of the Earnest Money upon receipt of any notice of a violation of a Governmental Requirement, whether from Seller or otherwise. The provisions of this Section shall survive Closing.

(b) This Offer and Buyer's obligation to close are subject to the following additional express conditions precedent. Buyer shall have the right to terminate this Offer and receive a return of the Earnest Money if the following conditions precedent are not satisfied prior to closing. Notwithstanding anything to the contrary which may be contained herein, each of the following conditions is intended for the exclusive protection and benefit of Buyer (and may be waived by Buyer):

- (i) The continued validity of each and all of the representations, warranties and covenants of Seller contained in this Offer in all material respects, as of the Closing Date;
- (ii) Seller shall have performed, observed and complied with all of the covenants, agreements and conditions required by this Offer to be performed, observed and complied with by Seller prior to or as of the Closing; and
- (iii) No proceeding by any governmental body or other person shall have been instituted or threatened which seeks to enjoin, restrain or

prohibit, or which questions the validity or legality of the transaction contemplated hereby or which otherwise seeks to affect or could affect the transactions contemplated hereby.

13. Warranties and Representations.

(a) Seller hereby represents and warrants to Buyer the following (subject to Seller's actual knowledge, where indicated below ("Seller's Knowledge")):

Authority/Litigation. Seller has full power and authority to execute this Offer and convey the Property to Buyer. The execution, delivery and performance by Seller of this Offer will not constitute or cause a default or breach of any agreement on the part of Seller. Seller has no knowledge of any claim, demand, damage, action or cause of action of any person, entity or governmental agency or instrumentality affecting the Property or Seller. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy law is pending against Seller, and Seller has not made an assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature.

Compliance with Laws. The Property is not in violation of any Environmental Laws, as defined below.

Underground Tanks. There are no underground storage tanks or wells presently located on the Property nor, to Seller's Knowledge, have there ever been any located on the Property.

Environmental. To Seller's Knowledge, there are no Hazardous Substances (as hereafter defined) on, under or at the Property including, without limitation, in the groundwater. No Hazardous Substances have been treated, recycled or disposed of (intentionally or unintentionally) on, under or at the Property. There have been no activities on the Property which would subject Buyer or any subsequent owner of the Property to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or common law theory of liability. No property adjacent to the Property has ever been used for the treatment, recycling or disposal (intentional or unintentional) of Hazardous Substances nor has there been a release or threatened release of any Hazardous Substances from such adjacent property. The term "Environmental Laws" shall mean all federal, state and local laws including statutes, regulations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process wastewater or the disposal of solid or hazardous waste or otherwise relating to the environment or hazardous substances or employee health and safety including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Occupational Safety and Health Act of 1970 (all as the same may have been amended), regulations of the Environmental Protection Agency, and regulations of any state department of natural resources or state

environmental protection agency now or at any time hereafter in effect. The term "Hazardous Substances" shall mean all hazardous and toxic substances, wastes and materials; any pollutants or contaminants (including, without limitation, petroleum products, asbestos and raw materials which include hazardous constituents); and any other similar substances or materials which are regulated under Environmental Laws.

Other Government Actions. Seller has no notice or knowledge of any violation of any law or zoning or environmental regulation and no notice from any governmental body or other person has been served upon Seller or upon the Property claiming violation of any such law or regulation.

Documents. All documentation delivered by Seller pursuant to this Offer is true, correct and complete in all material respects. To Seller's Knowledge, the Due Diligence Documents provided by Seller have not been amended or altered, are true, accurate and complete, and are all Diligence Documents in Seller's possession or control.

Special Assessments and Deferred Charges. Seller has no notice or knowledge of any existing special assessments, deferred water or sewer charges or special charges pertaining to the Property, nor any planned, contemplated or commenced public improvements which may result in special assessments or special charges pertaining to the Property.

Leases. There are no leases, landlord/tenant relationships or written or oral agreements regarding the use of the Property by a third person or party or otherwise affecting the Property.

Foreign Person. Seller is not a "foreign person", "foreign corporation", "foreign trust" or "foreign estate", as those terms are defined in The Internal Revenue Code of 1986, as amended ("Code") Section 1445.

Property. There are no pending requests, applications, or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property. Seller is not aware of and has received no notice of any eminent domain condemnation, environmental, zoning or other land use regulation proceedings which affects or will affect the Property.

OFAC. Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons list), or under any statute, executive order (including the September 24, 2002, Executive Order ("Executive Order") blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action and is not and will not engage in any dealing or transaction or be otherwise associated with such persons or entities. This Offer may be terminated by Buyer if Seller is determined to be a blocked person within the meaning of the Executive Order and the Earnest Money shall

be returned to Buyer.

(b) Buyer hereby represents and warrants to Seller the following:

Authority. Neither the execution of this Offer by Buyer nor the performance of its obligations hereunder, will violate its organizational documents or constitute a breach or violation of any agreement, law, regulation or order applicable to Buyer. Buyer is in good standing in the state of its organization.

OFAC. Buyer is not, and will not become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of OFAC of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons list), or under any statute, executive order (including the Executive Order blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action and is not and will not engage in any dealing or transaction or be otherwise associated with such persons or entities. This Offer may be terminated by Seller if Buyer is determined to be a blocked person within the meaning of the Executive Order and the Earnest Money shall be immediately returned to Buyer.

(c) Each party (in such context an "Indemnitor") shall indemnify, defend and hold the other and such other's officers, members, managers, directors, employees, agents, successors, assigns and grantees (in such context, collectively the "Indemnitees") harmless from and against all liability, loss, costs, damages, claims and expenses (including reasonable attorneys' fees) arising out of or in connection with the breach by the Indemnitor of any of its warranties, covenants and representations set forth herein, all of which shall survive the Closing for a period of twenty-four (24) months and be deemed to have been remade upon the Closing.

14. Indemnification. Except as specifically provided otherwise in this Offer, Seller shall indemnify and hold Buyer harmless from and against any and all loss, cost, damages, injury or expense arising out of or in any way related to claims for injury to or death of persons, damage to property or contract liabilities associated with the ownership or operation of the Property or the business conducted thereon, arising out of events or transactions occurring on or before the Closing Date or caused by Seller, its agents, contractors or employees, but not as to any liabilities caused by Buyer, its agents contractors or employees.

15. Notices. Any notice or election required or permitted to be given or served hereunder shall be in writing and be delivered either in person or sent by (i) United States certified or registered mail, postage prepaid, return receipt requested; (ii) courier service; (iii) telecopy transmission or (iv) email. Any such notice, if mailed as provided herein, shall be deemed to have been mailed, rendered, given or served on the date mailed and shall be deemed to have been received on the expiration of two business days after mailing. Any such notice, if sent by overnight courier, shall be deemed to have been mailed, rendered, given or served on the deposited with such courier and shall be deemed to have been received on the following business day. Any notice or communication personally delivered or delivered via telecopy or email shall

be deemed to have been given or served upon the party to whom delivered immediately upon delivery thereof.

All notices shall be in writing and shall be served on the parties at the following addresses:

If to Buyer: General Capital Acquisitions, LLC
Attn: Joshua Hafron
6938 N. Santa Monica Blvd.
Fox Point, WI 53217
Fax No. 414 228 3700
joshua@generalcapitalgroup.com

with copy to: David Weiss
6938 N. Santa Monica Blvd.
Fox Point, WI 53217
Fax No. 414 228 3700
david@generalcapitalgroup.com

If to Seller: _____

with a copy to: _____

The above addresses and facsimile numbers and emails may be changed by notice to the other party; provided that no notice of a change shall be effective until actual receipt of such notice. Notice by any party may be given by such party or its counsel to the other party or such other party's counsel.

16. Brokerage Commissions. Seller represents and warrants that it has not dealt with any agent, broker or other person in connection with the transaction contemplated by this Offer. Buyer represents and warrants that it has not dealt with any agent, broker, finder or other person in connection with the transaction contemplated by this Offer. Each party hereby indemnifies and agrees to hold the other harmless against and from the claims and demands of anyone who claims a commission, fee, or similar payment by, through, or under the indemnifying party. The provisions of this Section shall survive Closing.

17. Miscellaneous.

(a) This Offer shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns. Buyer may assign its rights under this Offer without the prior written consent of Seller upon written notice to Seller.

(b) The laws of the state of Michigan shall govern the validity, construction, enforcement and interpretation of this Offer.

(c) No provision of this Offer shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Offer; both parties having fully participated in the negotiation of this instrument, hereby agree that this Offer shall not be subject to the principle that a contract would be construed against the party which drafted the same.

(d) On the Closing Date, or thereafter if necessary, each party shall, without cost or expense to the other party, obtain and deliver to or cause to be executed and delivered to the other party, such further instruments of transfer and conveyance as may reasonably be requested, and take such other action as a party may reasonably request to carry out more effectively the transactions contemplated herein.

(e) In the event any portion of the Property is condemned or taken by eminent domain or conveyed by deed in lieu thereof, or if any condemnation proceeding is commenced against all or any portion of the Property prior to Closing (collectively, a "Condemnation"), Seller shall give written notice of such Condemnation to Buyer promptly after Seller receives notice of such Condemnation, and Buyer may elect to terminate this Offer by written notice thereof to the Seller within fifteen (15) business days after Buyer is notified of the Condemnation. Upon termination of this Offer, the Earnest Money shall be returned to Buyer and all rights, duties and obligations of the parties under this Offer shall thereafter cease and be of no further force or effect (except with respect to the provisions hereof which expressly survive the termination of this Offer). If Buyer does not terminate this Offer as aforesaid, then both parties shall proceed to close the transaction contemplated herein pursuant to the terms hereof, in which event (i) Buyer shall receive all condemnation proceeds with respect to such Condemnation, (ii) Seller shall deliver to Buyer at the Closing any proceeds received by Seller from such Condemnation and assign to Buyer its interest in and to any such proceeds which Seller has not yet received, and (iii) there shall be no reduction in the Purchase Price.

(f) In the event that the Property or any portion thereof shall be damaged or destroyed by fire or other casualty prior to Closing ("Casualty"), Seller shall give written notice of such Casualty to Buyer promptly after Seller receives notice of such Casualty, and Buyer may terminate this Offer by written notice thereof to the Seller within fifteen (15) business days after Buyer is notified of the Casualty. Upon termination of this Offer, the Earnest Money shall be returned to Buyer and all rights, duties and obligations of the parties under this Offer shall thereafter cease and be of no further force or effect (except with respect to the provisions hereof which expressly survive the termination of this Offer). If Buyer does not terminate this Offer as aforesaid,

then both parties shall proceed to close the transaction contemplated herein pursuant to the terms hereof, in which event (i) Buyer shall have the right to receive insurance proceeds with respect to such Casualty with respect to the Property, (ii) Seller shall deliver to Buyer at the Closing any insurance proceeds received by Seller attributable to the Buyer from such Casualty (except for proceeds previously used to repair the Property to the extent that immediate repairs are reasonably necessary) and assign to Buyer all of Seller's right, title and interest in and to any claims which Seller may have under the insurance policies covering the Property, (iii) Buyer shall receive a credit against the Purchase Price at Closing for any applicable insurance deductible under the insurance policy or policies, and (iv) the Purchase Price shall be reduced by an amount equal to the positive difference between (x) the total costs and expenses to repair all damage arising from such Casualty, and (y) the total insurance proceeds delivered or assigned to Buyer as aforesaid under such insurance policies with respect to such Casualty.

(g) If it shall be necessary for either Buyer or Seller to employ an attorney to enforce its rights pursuant to this Offer, the non-prevailing party shall reimburse the prevailing party for its actual reasonable attorneys' fees, and actual reasonable legal costs and expenses.

(h) This Offer may be signed in counterparts, each of which upon execution and delivery as prescribed, shall be deemed an original for all purposes. Photocopies, facsimile transmissions or other such reproductions of this Offer, including such reproductions of the signatures of the parties hereto, shall be deemed to be the equivalent of originals.

(i) This Offer shall be null and void unless a copy signed and accepted by Seller is returned to Buyer, at the address set forth below for notices, on or before December 31, 2018.

(j) Seller shall not market, solicit, negotiate or otherwise engage with other potential buyer(s) while this Offer is effective.

(k) Seller and Buyer shall not disclose the terms and conditions contained in this Offer and shall keep the same confidential, provided that Seller and Buyer may disclose the terms and conditions of this Offer (i) as required by law, (ii) to consummate the terms of this Offer, or any financing relating thereto, (iii) to Buyer's or Seller's lenders, attorneys, consultants, investors and accountants, or (iv) to Buyer's prospective purchasers, partners or equity holders.

(l) If the date for Closing or performance of an obligation falls on a Saturday, Sunday or federal holiday, the date shall be deferred until the next business day.

(m) Except as otherwise provided herein, no delay or omission to exercise any right or power accruing upon any default, omission, or failure of performance hereunder shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as

often as may be deemed expedient. No waiver, amendment, release, or modification of this Offer shall be established by conduct, custom, or course of dealing.

(n) This Offer contains the entire agreement of the parties with respect to the sale and purchase of the Property. All previous and contemporaneous negotiations, understandings and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument, which alone fully and completely expresses the parties' rights and obligations. No amendments, modifications or changes shall be binding upon a party unless set forth in a duly executed document.

[Signatures on the following page]

IN WITNESS WHEREOF, the Buyer has caused this Offer to be executed this 12th day of February, 2018.

BUYER:

GENERAL CAPITAL ACQUISITIONS, LLC

By: _____

Name: _____

Its _____

SELLER:

CITY OF MUSKEGON

By: _____

Name: _____

Its _____

Accepted this 12th day of February, 2019.

EXHIBIT A

Legal Description

[To be attached upon receipt of title insurance commitment]

November 5, 2018

VIA E-MAIL: mike.franzak@shorelinecity.com

Mr. Mike Franzak
City of Muskegon
Planning & Economic Development Department
933 Terrace Street
Muskegon, MI 49443-0536

RE: 1021 Jefferson Street, Muskegon

Dear Mike,

This letter constitutes the undersigned's proposal to purchase the above referenced property from the City of Muskegon. This letter expresses a preliminary and non-binding intent only, and as such, is intended not as an agreement, but merely as a focus for negotiations. Except as otherwise specifically stated in Section 12 (Exclusivity) below, no agreement with respect to the subject matter of this letter exists or shall exist unless and until a Contract (defined below), as contemplated by this letter, is entered.

1. Purchaser: General Capital Acquisitions, LLC ("Purchaser"), an affiliate of General Capital Group, or a nominee controlled by it, or its assignee.

The "Property" consists of the following: Fee simple interest in the Real Property and Land ("Real Property") located at 1021 Jefferson Street, Muskegon, Michigan

2. Price: The total Purchase Price for the Property shall be *Four Hundred Fifty-Five Thousand (\$455,000)*. The Purchase Price shall be paid at Closing (defined below) in immediately available funds subject to adjustment for pro-rations which are usual and customary in the local area for real estate investments of this type and size.
3. Purchase Agreement: The transaction is subject to negotiation and execution of a purchase and sale agreement (the "Contract") in form and substance satisfactory to both parties. The Contract will set forth the terms contained herein, as well as all obligations of the parties, including, such representations and warranties, covenants and other provisions as are customary for transactions of this nature. Purchaser's attorney shall prepare the initial draft of the Contract and Purchaser shall deliver the Contract to Seller within fifteen (15) business days after full execution of this Letter of Intent.
4. Earnest Money Deposit: Within two business days following the date upon which the Contract is fully executed (the "Contract Date"), Purchaser will deposit \$20,000 with the Cinnaire Title Services ("Escrow Holder") for deposit into a joint order escrow

account (the "Earnest Money Deposit"). The Earnest Money Deposit shall be invested by Escrow Holder in an interest-bearing account as directed by Purchaser with all interest accruing thereon paid to Purchaser and shall be applied toward the Purchase Price at Closing. The balance of the Earnest Money Deposit escrow shall become non-refundable and shall be payable to the Seller with no contingencies after expiration of the last to expire of the Due Diligence Period, Financing Contingency Period and Required Approval Contingency Period (each as specifically defined below; collectively the "Contingency Periods").

5. Due Diligence Period: Purchaser shall until November 30, 2019 to conduct an inspection of the Property (the "Due Diligence Period"). During the Due Diligence Period, Purchaser shall have the right to inspect the Property and perform studies with respect to the condition of the Property, including, without limitation, structural, mechanical and environmental studies and investigations into regulatory, title, lease, tenant, operations, insurance premiums and other matters deemed relevant by Purchaser. If, after such investigation, Purchaser, in its sole discretion, determines that the Property is not satisfactory to Purchaser for any reason, Purchaser may terminate the Contract by written notice to Seller delivered prior to the expiration of the Due Diligence Period in which event the Earnest Money Deposit, together with all interest earned thereon, shall be returned to Purchaser. Seller will grant access upon reasonable notice and at reasonable times, to Purchaser and its representatives, agents, employees, independent contractors, consultants, engineers, architects, accountants and contractors to perform such tests and studies as Purchaser deems necessary during the Due Diligence Period.
6. Financing: Buyer shall have until November 30, 2019 to procure mortgage financing, Low Income Housing Tax Credits ("LIHTC") and additional project subsidy acceptable to Purchaser in its sole discretion (the "Financing Contingency Period"). The Purchaser intends to make application for 2019 LIHTC. A full application will be made to WHEDA by the end of December 2018. Awards are expected to be announced in March of 2018. If, prior to the expiration of the Financing Contingency Period, Purchaser notifies Seller that it is unable to procure acceptable financing, Purchaser will terminate the Contract by written notice to Seller in which event the Earnest Money Deposit, together with all interest earned thereon, shall be returned to Purchaser. Purchaser will notify Seller if transaction becomes untenable for any reason.
7. Required Approvals: Purchaser shall have until November 30, 2019 to procure approvals from any federal, state or municipal governmental department or agency whose approval is necessary for the contemplated transaction to occur (the "Required Approval Contingency Period"). Seller shall reasonably cooperate with Purchaser in connection with the procurement of the approvals. Provided Purchaser makes timely application for all required approvals, and in good faith pursues all required approvals Purchaser shall have right to extend Required Approval Contingency Period for up to an additional thirty (30) days. If, prior to the expiration of the Required Approval Contingency Period, Purchaser notifies Seller that it is unable to procure all applicable approvals, Purchaser may terminate the Contract by written notice to Seller in which event the Earnest Money Deposit, together with all interest earned thereon, shall be

returned to Purchaser. The Contract will require Seller to follow any governmental requirements for transferring title.

8. Closing: Transfer of title to Purchaser (the "Closing") shall be by general warranty deed and shall occur no later than ninety days (90) days following the expiration of the last Contingency Period to expire. The Closing shall take place at the offices of Escrow Holder, Chicago Title Insurance. Seller shall deliver copies of all proposed closing documents at least 20 days prior to Closing for Purchaser's review.
9. Title: Within 20 days after the Contract Date, Seller will deliver to Purchaser, a title insurance commitment (the "Title Commitment") issued by Escrow Holder and, at the Closing, a standard ALTA Form B Owner's Title Insurance Policy in the amount of the Purchase Price, showing fee simple title to the Real Property in Purchaser, free and clear of all encumbrances, except those agreed to in writing by Purchaser, containing "extended coverage" over all general exceptions and including, without limitation, a 3.1 zoning endorsement, contiguity and access endorsement and any other endorsements reasonably requested by Purchaser. All endorsements are at Purchaser's expense. Together with the Title Commitment, Seller shall deliver to Purchaser copies of all underlying title documents referenced therein. Purchaser may obtain, at Purchaser's expense, an updated ALTA survey to 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by the American Land Title Association and National Society of Professional Surveyors on February 23, 2011 reflecting no encroachments of any of the improvements located on the Real Property onto any adjacent property, easements or rights of way, and which survey will be sufficient to cause the title company to issue the required owner's title policy free of any exceptions for survey matters. Seller shall pay the title insurance premium, including the cost of a GAP Endorsement and Purchaser shall pay for the premiums for any additional endorsements and any lender's policy required by Purchaser. The issuance of an ALTA extended coverage policy of title insurance shall be a condition of Purchaser's obligation to close.
10. Conduct of Business: During the period from the Contract Date to the Closing: (a) the Property shall be operated by Seller, in all material respects, in accordance with all applicable laws, rules and regulations and in a manner consistent with past customs and practices; (b) Seller will not enter into any transaction or lease other than in the ordinary course of business without the prior approval of the Purchaser.
11. Exclusivity. Seller agrees that for a period of 45 days from the date of the acceptance of this Letter of Intent, Seller will not negotiate terms for, nor solicit a possible sale of the Property with any other party or provide any information regarding the Property to any other party. Seller and Purchaser agree to negotiate in good-faith the terms of the Contract and, to the extent the Contract is executed, Seller will not solicit a possible sale of all or any part of the Property or provide any information regarding the Property to any third party during the period of the Contract. The specific agreements of Seller under this Section 11 shall be enforceable notwithstanding the general non-binding nature of this letter of intent.

12. Brokerage Agreements. Neither Purchaser or Seller has engaged a broker in this transaction. Seller and Purchaser will indemnify each other against any claims from any broker claiming to be involved with this transaction.
13. Binding Nature. This letter reflects the understandings and agreements of Seller and Purchaser in principle but is expressly understood that this letter of intent is not intended to constitute a complete statement of terms or a legally binding or enforceable agreement of Seller and Purchaser. Seller and Purchaser acknowledge that they have not attempted to include all essential terms of the transaction contemplated hereby and that such essential terms are subject to further negotiations. It shall remain in the sole discretion of each party whether to enter into the Contract and neither party has any liability for failing to do so.

14. Expiration. Purchaser's proposal contained in this letter shall remain valid until 5p.m. Central Standard Time on November 26, 2018 at which time this proposal shall be null and void.

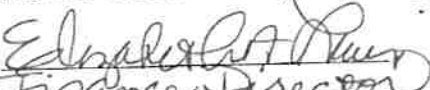
General Capital Acquisitions, LLC

By: 

Its: Authorized Agent

ACCEPTED AND AGREED TO THIS
12th DAY OF November, 2018

OWNER OF RECORD: City of Muskegon

By: 

Its: Finance Director

Commission Meeting Date: February 12, 2019

Date: February 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: PILOT - Gencap 1021 Jefferson Limited Dividend Housing Association, LLC

SUMMARY OF REQUEST:

Gencap 1021 Jefferson Limited Dividend Housing Association, LLC is proposing an affordable housing development at 1021 Jefferson St and is requesting a Payment in Lieu of Taxes (PILOT) for the project. The development will include 73 residential units and 2,300 sf of commercial space. There will be 55 one-bedroom units and 18 two-bedroom units. Ten units will be at 30% AMI, nine units will be at 40% AMI, 11 units will be low-income disability units, 14 units will be at 60% AMI and 29 units will be at 80% AMI. A service charge of 4% will be imposed, as well as a municipal services fee of 2%.

FINANCIAL IMPACT:

Although the PILOT for the project will be less than the taxes captured for a similar market-rate project, the situation with this particular property is that the contribution towards the City will be greater to the City with the development under a PILOT than it is as a vacant lot. In addition, taxes would apply to the commercial square footage within the building.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the attached "Contract for Housing Exemption" and "Professional Services Agreement."

COMMITTEE RECOMMENDATION:

None

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this ____ day of January, 2019 between **GENCAP 1021 JEFFERSON LIMITED DIVIDEND HOUSING ASSOCIATION, LLC**, a Wisconsin limited liability company, with an office at 6938 N Santa Monica Blvd, Fox Point, WI 53217, and its successors and/or assigns (the “Developer”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Developer has acquired an option to purchase a site in the City of Muskegon known as 1021 Jefferson Street Apartments for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Developer acknowledges that such needs may be greater than typically situated residential developments.

D. The Developer desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Developer shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect. ("Municipal Services Fee"). The Municipal Service Fee shall be two (2%) percent of gross rent potential annually starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City's fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Developer shall submit, upon request, a copy of the annual audit of the Project prepared by independent CPA's along with the payment of the service charge.
5. **Exclusive Benefit.** The obligations of the Developer hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Developer agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Developer agrees to be liable for all costs of collection including reasonable attorney's fees and costs incurred by the City in the enforcement of the terms of this Agreement.
7. **Assignment.** Upon the written consent of the City, the Developer may transfer or assign its rights and obligations under this Agreement to a buyer ("Transferee") of the Project. The Transferee must agree to assume the Developer's obligations under this Agreement and the Development Agreement which has been executed by the Developer with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Developer shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Developer may assign this Agreement, without the written consent of the City, to an affiliate of Developer (provided that such affiliate agrees to assume the Developer's obligations hereunder and provided that the Developer and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Developer).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Developer:

GENCAP 1021 JEFFERSON LIMITED DIVIDEND HOUSING ASSOCIATION, LLC
Attn: Joshua Hafron
6938 N. Santa Monica Blvd.
Fox Point, WI 53217

with a copy to:

David Weiss
6938 N. Santa Monica Blvd.
Fox Point, WI 53217

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all of the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

City of Muskegon

Dated: January __, 2019

By: _____
Steve Gawron, Mayor

Dated: January __, 2019

By: _____
Ann Meisch, City Clerk

**GENCAP 1021 JEFFERSON LIMITED
DIVIDEND HOUSING ASSOCIATION, LLC,
a Michigan limited liability company**

Dated: January __, 2019

By: GenCap 1021 Jefferson MM, LLC, a
Wisconsin limited liability company, its Sole
Member

By: General Capital Group, Inc, a Wisconsin
corporation, its Manager

By: _____
David Weiss, CEO

CITY OF MUSKEGON

CONTRACT FOR HOUSING EXEMPTION

This Agreement between **GENCAP 1021 JEFFERSON LIMITED DIVIDEND HOUSING ASSOCIATION, LLC**, a Michigan limited liability company (the “Developer”) and **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, Michigan (the “City”) is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II “Taxation” of the City Code of Ordinances, providing for tax exemption (the “Ordinance and provide for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with an Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq) (the “Act”);

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income senior persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

The City acknowledges that the Sponsor (as defined below) has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to construct/acquire and rehabilitate, own and operate a housing project identified as 1021 Jefferson Street Apartments on certain property located at 1021 Jefferson Street in the City (the “Project”) to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes.

C. Developer has acquired an option to purchase a site in the City of Muskegon (1021 Jefferson Street) for the construction of a proposed low-income housing project (for the elderly) as defined in City Section 82-46 of the Ordinance.

D. Developer and an affiliate of Developer, to be formed, have or will enter into an agreement to form a limited dividend housing association limited liability company to function as

owner of the proposed low-income housing Project. The owning entity to be formed will be identified as GenCap1021 Jefferson Limited Dividend Housing Association, LLC.

E. The City encourages construction and financing of the said low-income housing project which is identified by the working name of 1021 Jefferson Street .

F. To further enable and encourage the construction of the housing project, Developer and the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1 “Authority” means the Michigan State Housing Development Authority.

1.2. “Annual Shelter Rent” means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

1.3. “Contract Rents” means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities.

1.4. “Low Income Persons and Families” means persons and families eligible to move into a housing project.

1.5 “Low Income Housing Tax Credits” means credits allocated under Section 42 of the Internal Revenue Code (“LIHTC”)

1.6. “Mortgage Loan” means a Federally-Aided Mortgage or loan or grant made or to be made by the Authority to the Sponsor for the construction and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. “Sponsor” means General Capital Development, LLC and any entity that receives or assumes a Mortgage Loan.

1.8. “Utilities” means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the “Act”), the City hereby grants

an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible low income senior persons and families as defined by the Authority.

3. Term of Exemption. This exemption shall continue for the period of time the housing units remain subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Codes of 1986, as amended (IRS Codes), or the Authority Regulatory Agreement not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is financed by the Authority or receives low income housing tax credits under Section 42 of the IRS Codes, provided that the said Mortgage Loan or a loan originally financed by the low income housing tax credits continues outstanding as more particularly set forth in Section 82-50(3) of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Developer. The Developer agrees to perform the following:

4.1 The Developer shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1, of each year during the time the exemption is in effect. The service charge shall equal four percent (4%) of the rents charged for the total of all units in the exempt housing project, whether the units are occupied or not and whether or not the rents are paid.

4.2 The Developer agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31, as required by the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, and 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that the use of low income housing tax credits constitutes financing of the loan by the Authority in fulfillment of the requirements of Section 82-50(3) of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

7. Payment of Service Charge. The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before April 1st of the following year.

Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 3, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Effective Date. The effective date of this Agreement is the date that Developer or its assignee completes construction and receives a temporary or permanent certificate of occupancy from the City for the Property.

12. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

13. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

14. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

City of Muskegon

Dated: _____, 2015

By: _____
Steve Gawron, Mayor

Dated: _____, 2015

By: _____
Ann Meisch, Clerk

**GENCAP 1021 JEFFERSON
LIMITED DIVIDEND HOUSING
ASSOCIATION LIMITED
PARTNERSHIP, LLC**

By: GenCap 1021 Jefferson MM,
LLC, a Wisconsin limited liability
company, its Sole Member

Dated: _____, 2015

By: General Capital Group, Inc, a
Wisconsin corporation, its Manager

By: _____
David Weiss, CEO

EXHIBIT A

LEGAL DESCRIPTION

CITY OF MUSKEGON REVISED PLAT OF 1903 ALL OF BLOCK 355 EXC LOT 4 AND THE
W 1/2 OF LOT 3