

SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS

Office of the Emergency Manager
STEVEN M. SCHILLER

EM Order 2016-4

BY THE POWER AND AUTHORITY VESTED IN
THE EMERGENCY MANAGER FOR THE
SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS, MICHIGAN
(AEMERGENCY MANAGER@)
THROUGH MICHIGAN COMPILED LAW (AMCL@) §§141.1541 - 141.1575,
380.1 - 380.1853, 388.1601 - 388.1772, 423.201 - 423.217 and 38.71 - 38.191

THE EMERGENCY MANAGER, STEVEN M. SCHILLER
HEREBY ISSUES THE FOLLOWING:

**ORDER TRANSFERRING SCHOOL DISTRICT PROPERTY TO THE CITY OF
MUSKEGON HEIGHTS AND SALE OF MARTIN LUTHER KING ELEMENTARY, 600
EAST BARNEY AVENUE, MUSKEGON HEIGHTS, MI 49444**

By the authority of the Emergency Manger Act granted under Public Act 436 of the Public Acts of Michigan, 2012 (the "Act"), and further pursuant to MCL 141.1552 and 1559, and by the appointment of the Emergency Manager of the District by the Governor of the State of Michigan pursuant to that Act, the following preamble and order is issued:

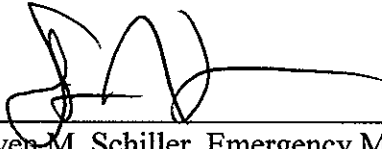
WHEREAS:

1. The City of Muskegon Heights, Michigan, offered the District \$40,000.00 for the Martin Luther King Elementary premises at 600 East Barney Avenue, Muskegon Heights, MI 49444, which was accepted by the Emergency Manager.
2. Steven M. Schiller, the Emergency Manager, is authorized and empowered, for and on behalf of the Muskegon Heights Public Schools to act as signatory, to do any and all acts and things and execute any and all instruments, papers or documents that may be or become necessary, desirable or appropriate to effectuate the sale of the property to the City of Muskegon Heights, Michigan.

NOW, THEREFORE, BE IT ORDERED THAT:

1. The sale of the Martin Luther King Elementary premises, located at 600 East Barney Avenue, Muskegon Heights, MI 49444, for the sum of Forty Thousand Dollars (\$40,000.00), is hereby ratified and the Emergency Manager shall transfer ownership in conformance with the Purchase Agreement attached hereto and incorporated herein reference.
2. Steven M. Schiller, the Emergency Manager, is authorized and empowered, for and on behalf of the Muskegon Heights Public Schools to act as signatory, to do any and all acts and things and execute any and all instruments, papers or documents that may be or become necessary, desirable or appropriate to effectuate the sale of the property to the City of Muskegon Heights, Michigan.

Dated: May 13, 2016



Steven M. Schiller, Emergency Manager

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT, dated the 18 day of March, 2016, by and between the City of Muskegon Heights, a Michigan municipal corporation, having an address at 2724 Peck Street, Muskegon Heights, Michigan 49444 (the "Purchaser") and the School District of the City of Muskegon Heights, a Michigan school district, having an address at 2603 Leahy Street, Muskegon Heights, Michigan 49444 (the "Seller").

1.0 Property to be Purchased. On and subject to the terms and conditions hereinafter set forth, Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller, the parcels of real property located at 600 East Barney Avenue in the City of Muskegon Heights, County of Muskegon, State of Michigan (the "Premises"), which are legally described below:

Parcel 1: Vanderwerp's 2nd Addition to the City of Muskegon Heights, Block 1, Lots 1 to 4 Inc., together with the vacated alley running through said Block 1, as recorded in Liber 5 of Plats, Page 33 (PPN 61-26-822-001-0001-00);

Parcel 2: Vanderwerp's Addition to the City of Muskegon Heights, Block 5, Lots 1 to 4 Inc., together with the vacated alley running through said Block 5, as recorded in Liber 6 of Plats, Page 22 (PPN 61-26-820-005-0001-00);

Parcel 3: Ezra E. Tyler's Addition to the City of Muskegon Heights, Block 5, Lots 1 to 22 Inc., together with the vacated alley running through said Block 5, as recorded in Liber 3 of Plats, Page 30 (PPN 61-26-790-005-0001-00);

Parcel 4: Ezra E. Tyler's Addition to the City of Muskegon Heights, Block 6, Lots 1 to 22 Inc., together with the vacated alley running through said Block 6, as recorded in Liber 3 of Plats, Page 30 (PPN 61-26-790-006-0001-00).

2.0 Purchase Price. The purchase price of the Premises (the "Purchase Price") shall be Forty Thousand Dollars (\$40,000.00). Purchaser shall pay the full Purchase Price to Seller upon execution and delivery of a warranty deed subject to the conditions set forth herein.

3.0 Title Examination of Premises. Purchaser will request Transnation Title Insurance Company (the "Title Company") to issue Purchaser a commitment for ALTA owner's policy of title insurance (the "Commitment"), in an amount equal to the Purchase Price, guaranteeing the title in the condition required for the performance of this Agreement.

3.1 Purchaser agrees to accept title to the Premises subject to applicable zoning ordinances.

- 3.2 The Seller shall pay all fees charged by the Title Company in connection with the Commitment and the issuance of an owner's policy of title insurance.
- 4.0 **Title.** Seller shall convey good and marketable fee simple title to the premises to Purchaser by general warranty deed (the "Deed") subject applicable zoning ordinances. The Deed shall recite nominal consideration and Seller shall execute a Real Estate Transfer Tax Valuation Affidavit.
- 5.0 **Representations and Warranties.** Seller makes the following representations and warranties to Purchaser, and Seller shall indemnify, defend and hold Purchaser harmless from and against any and all claims or demands and any and all loss, cost, damage or expense, including, without limitation, attorney fees, arising from Seller's breach of any of the following representations and warranties.
- 5.1 Seller is the owner of good and marketable indefeasible fee simple title in and to the Premises.
- 5.2 There are no outstanding written or oral leases in any way affecting the Premises, and no person or entity has any right with respect to all or any portion of the Premises (whether by option to purchase, right of first refusal, contract or otherwise) that would prevent or interfere with Purchaser taking title to, and possession of, all of the Premises on the Closing Date.
- 5.3 There are no pending or threatened court or administrative actions, suits or proceedings against or concerning the Premises.
- 5.4 Seller shall provide any and all environmental reports in its possession within seven (7) days of a fully executed agreement.
- 5.5 The Seller warrants that all property taxes due up to the date of closing have been paid and will present satisfactory proof of same. Current year property taxes shall be prorated on a calendar year basis.
- 5.6 The above representations and warranties shall survive the closing and recording of the Deed.
- 6.0 **Conditions of Purchaser's Obligations to Close**
- 6.1 The obligation of Purchaser to consummate the transaction contemplated by this Agreement is conditioned upon the fulfillment of each of the following conditions as of the Closing Date (all or any portion of which may be waived in whole or in part by Purchaser at or prior to the Closing Date).
- 6.1.1 Seller shall have performed, observed and complied with all of the covenants, agreements and conditions required by this Agreement to be

performed, observed and complied with by Seller prior to or as of the Closing Date as and when required;

- 6.1.2 All of the representations and warranties made by Seller and set forth in this Agreement shall be true and correct as of the execution date and as of the Closing Date;
- 6.1.3 The Title Company shall be prepared to issue the title policy;
- 6.1.4 All governmental approvals shall have been obtained.
- 6.1.5 Seller shall have executed an Affidavit in accordance with Section 1445 of the Internal Revenue Code (26 USC Sec. 1445) confirming that Seller is not a foreign person for purposes of that Section.
- 6.2 Purchaser shall endeavor to satisfy all of the conditions listed above during the inspection period, provided, however, the inspection period may be extended by Purchaser if necessary to obtain government approvals referenced above in Section 6.1.4.

7.0 Conditions of Seller's Obligations to Close.

7.1 The obligation of Seller to consummate the transaction contemplated by this Agreement is conditioned upon the fulfillment of each of the following conditions as of the Closing Date (all of any portion of which may be waived in whole or in part by Seller at or prior to the Closing Date).

7.1.1 Purchaser shall have performed, observed and complied with all the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by Purchaser prior to or as of the Closing Date as and when required.

8.0 Closing. The Closing shall take place within two (2) weeks of the approval of this Agreement at the offices of Transnation Title. If the Closing of the sale is delayed by reasons of delays in title work, required inspections, surveying or by title defects which can readily be corrected, then an extension of thirty (30) days shall be allowed for closing.

8.1 Purchaser and Seller shall each pay one-half (1/2) of the Title Company's closing fee.

9.0 Possession. Possession shall be delivered by Seller to Purchaser at Closing, free of all tenancies whatsoever.

10.0 Earnest Money. Purchaser, upon acceptance, deposits One Thousand Dollars (\$1,000.00) evidencing Purchaser's good faith to be held by Transnation Title Company and to apply

on the Purchase Price. If title is not marketable or other contingencies as specified cannot be met, this deposit will be refunded. In the event of default by Purchaser, the deposit made herein will be forfeited as liquidated damages at Seller's election, or alternatively, Seller may retain the deposit as part payment of the Purchase Price and pursue its legal and equitable remedies hereunder against Purchaser. In the event of Seller's default hereunder, Purchaser shall have all legal remedies available to it hereunder, including specific performance.

- 11.0 Notices. Any notices, request or consents required to be given under this Agreement shall be in writing and shall be given (i) personally, (ii) by mailing such notices, requests or consents by registered or certified United States Mail, return receipt requested, postage prepaid, or (iii) by delivery by any nationally recognized receipted overnight courier, addressed to the respective parties as set forth below, or at such other address as may be specified from time to time, delivered to the other party as herein provided, and the time of the rendition of such notice shall be when it is deposited in an official United States Post Office, postage prepaid, if mailed, or when received or refused, if delivered personally or by overnight courier.


If to Purchaser: Clerk
City of Muskegon Heights
2724 Peck Street
Muskegon Heights, MI 49444

If to Seller: Steve Schiller, Emergency Manager
School District of the City of Muskegon Heights
2603 Leahy Street
Muskegon Heights, MI 49444

- 12.0 Miscellaneous. This Agreement constitutes the entire agreement between Seller and Purchaser regarding the sale and purchase of the Premises, and shall be binding upon, and inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.
- 13.0 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall constitute one agreement, binding on all the parties, notwithstanding that all the parties are not signatories to the same counterpart.
- 14.0 Execution Date. The term "Execution Date" as used herein shall mean the later of the dates on which Seller and Purchaser executed this Agreement.
- 15.0 Survival. The terms and conditions of this Purchase Agreement shall survive Closing.
- 16.0 Governing Law. This Purchase Agreement shall be construed in accordance with and governed by the laws of the State of Michigan with the exception that the terms used in this Purchase Agreement shall be given their common and ordinary meaning and shall not be construed against either party.


- 17.0 Amendments. This Purchase Agreement may be amended or modified only by a document in writing executed by each of the parties who are signatories to this document, or their successors.
- 18.0 This Purchase Agreement shall remain valid until March 26, 2016.

PURCHASER: City of Muskegon Heights



By Kimberley Sims
Its Mayor
Date 3/18/16

SELLER: School District of the City of Muskegon Heights *See attached counter proposal*



By Steve Schiller
Its Emergency Manager
Date 3/21/16

COUNTER PROPOSAL TO PURCHASE AGREEMENT

Seller hereby accepts the terms and conditions set forth in the Purchase Agreement dated March 18, 2016, between the School District for the City of Muskegon Heights and the City of Muskegon Heights except as follows:

1. Section 4.0 of the agreement shall be amended by adding:
The Deed shall contain the following restrictions:

(a) The building shall not be used for a K-12 charter school as it would be in direct competition with the Muskegon Heights Public Schools; and,

(b) The east portion of property consisting of the following parcels remain open for public use as a park: 61-26-790-006-0001-00
61-26-822-001-0001-00

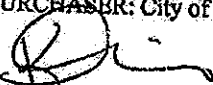
This Counter Proposal shall remain valid until 5pm, March 27, 2016.

SELLER: School District of the City of Muskegon Heights



By: Steve Schiffer
Its: Emergency Manager
Date: 3/21/16

PURCHASER: City of Muskegon Heights



By: Kimberly Sims
Its: Mayor
Date: 3/25/16