

DOWAGIAC CITY COUNCIL MEETING

Monday, February 9, 2015

A regular meeting of the Dowagiac City Council was called to order by Mayor Lyons at 7:00 p.m.

Mayor Lyons led the Pledge of Allegiance to the flag.

PRESENT: Mayor Donald D. Lyons, Mayor Pro-Tem Leon D. Laylin; Councilmembers Charles K. Burling, James B. Dodd, Lori A. Hunt and Danielle Lucas.

ABSENT: Bob B. Schuur.

STAFF: Kevin P. Anderson, City Manager; Rozanne H. Scherr, Assistant City Manager.

Councilmember Lucas moved and Councilmember Hunt seconded that the minutes of the January 26, 2015 regular meeting be approved.

Approved unanimously.

PROCLAMATIONS

1. Proclamation recognizing James E. Snow for over 30 years of service as City Clerk.

COMMUNICATIONS

1. Receive audit report for Fiscal Year 2013-14 from the independent auditing firm Yeo & Yeo.

Kristi L. Watson, CPA, YEO & YEO CPAs & BUSINESS CONSUTLANTS presented to Council a Summary of the City of Dowagiac Audit Results, September 30, 2014.

Communication #1
February 9, 2015

CITY OF DOWAGIAC

MEMO TO: Mayor and Council Members

FROM: Kevin P. Anderson, City Manager

DATE: February 6, 2015

SUBJECT: Financial Statements

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The auditors completed their work and presented the final audit for FY 2013-14. A copy is attached for your review. The auditors will be present to review the financial statements with you and address any questions you may have. The auditors have reported that our financial statements and procedures comply with good accounting practices and law.

The audit is an independent review of the City's financial position and recordkeeping. Council's action is to accept the report and make it part of the City's records. The audit report is available for public review in the Clerk's office or on the City's website.

Audits are independent so the appropriate action is to accept or reject the report.

ACCEPTED unanimously.

Moved by: Hunt

Seconded by: Lucas

Ayes: Five (5) Laylin, Burling, Dodd, Hunt, Lucas

Nays: None (0)

Absent: One (1) Schuur

Abstain: None (0)

2. LOCC recommendations regarding the rate of pay for City Clerk position that will be vacant February 13, 2015.

Councilmember Laylin offered and moved to TABLE the following resolution; seconded by Councilmember Burling.

WHEREAS, the Local Officers' Compensation Commission (LOCC) of the City of Dowagiac, at its meeting on February 3, 2015 approved a salary range and adjustment to the compensation for the City Clerk; and

WHEREAS, it is the recommendation of the LOCC that the salary range for the City Clerk be adjusted consistent with pay grade 7 of the City of Dowagiac Non-Union Classification & Compensation System, and;

WHEREAS, it is the recommendation of the LOCC that the City Clerk have an annual compensation rate of \$25.00 per hour; and

WHEREAS, it is the determination of the City Council that it is appropriate to adjust the salary range and make salary adjustments as recommended by the LOCC.

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NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by affirmative vote of its City Council, does hereby approve an amendment to the annual compensation of the City Clerk, in conjunction with the requirements established by the Local Officers' Compensation Commission as approved on February 3, 2015. In accordance with said recommendation, the City Clerk will be paid an annual compensation rate of \$25.00 per hour.

TABLED

APPOINTMENTS

1. Mayor will recommend appointment of a sub-committee that will solicit applications for City Clerk, interview applicants and prepare a recommendation for appointment of a City Clerk to City Council.

Mayor Lyons appointed Mayor Pro-Tem Laylin to form a sub-committee consisting of Councilmembers Burling and Dodd, and City Treasurer Coffey.

APPROVED unanimously.

RESOLUTIONS

1. Resolution to authorize the purchase of 214 Commercial Street for future development.

Councilmember Dodd offered and moved the adoption of the following resolution; seconded by Councilmember Laylin.

WHEREAS, the City has actively pursued the ongoing redevelopment and economic vitality of downtown, and;

WHEREAS, it is in the long-term best interest of the City and the downtown to acquire properties for future development as they become available and as the City has resources available, and;

WHEREAS, the City the negotiated purchase price is consistent with the sales price of other similar properties in downtown, and;

WHEREAS, the City Manager has negotiated a tentative purchase agreement, subject to City Council approval, with \$75,000 for purchase of the property at 214 Commercial Street that would accommodate said development, and;

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WHEREAS, the attached "Agreement for Sale and Purchase of Real Estate" has been prepared and reviewed by representatives of the City and Daniel & Bonnie Weaver, and;

WHEREAS, the attached "Post Closing Possession Lease Agreement" has been prepared and reviewed by representatives of the City and Daniel & Bonnie Weaver.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby authorize the City Manager to execute the attached "Agreement for Sale and Purchase of Real Estate" and the "Post Closing Possession Lease Agreement" for the purchase of property from Daniel & Bonnie Weaver.

ADOPTED unanimously.

CONTRACT OF SALE AND PURCHASE

THIS CONTRACT OF SALE AND PURCHASE (this "Agreement") is made and entered into effective as of _____, 2015 (the "Effective Date"), by and **DANIEL R. WEAVER** and **BONNIE WEAVER**, husband and wife (together "Seller"), and **CITY OF DOWAGIAC**, a Michigan municipal corporation ("Buyer").

W I T N E S S E T H:

In consideration of the mutual covenants and agreements set forth below to be kept and performed, the sum of Ten Dollars (\$10.00), and other good and valuable consideration passing between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree that Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property described below for the price and upon the terms and conditions specified below:

1. **THE PROPERTY.** Seller agrees to sell, convey, assign, transfer and deliver to Buyer and Buyer agrees to purchase, acquire and take from Seller that certain real property located in Cass County, 214 Commercial Street, Dowagiac, Michigan 49047, measuring approximately ±_____ total acres as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, together with all of Seller's rights, title, and interests in and to any strips or gores of real estate adjoining such tracts; and together with any and all other improvements, tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining including, but not limited to, all rights, title and interests of Seller in and to adjacent streets, alleys, easements and rights-of-way, and all buildings, structures, fixtures and other improvements situated thereon (collectively, the "Property").

2. **PURCHASE PRICE; EARNEST MONEY; CLOSING AGENT.** The total purchase price (the "Purchase Price") for the Property shall be Seventy-Five Thousand and 00/100 Dollars (\$75,000.00). The Purchase Price shall be paid by Buyer by wire transfer or in certified funds at Closing (as hereinafter defined), after (a) crediting to Buyer the amount of One

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Thousand and 00/100 Dollars (\$1,000.00) (the "Earnest Money") delivered by Buyer to the Closing Agent (as hereinafter defined) within three (3) days after the Effective Date, which Closing Agent shall hold in accordance with the terms of this Agreement, and (b) applying such other prorations, credits, and adjustments as set forth herein. The closing agent hereunder shall be _____, Attention: _____, _____, () _____ phone, () _____ fax (the "Closing Agent"). If Buyer purchases the Property pursuant to the terms hereof, on the Closing Date the Earnest Money held by Closing Agent will be applied as part payment of the Purchase Price. Otherwise, subject in any event to the terms and provisions herein regarding refund or other disbursement of the Earnest Money, the Earnest Money shall be non-refundable and shall be paid to Seller. The Earnest Money is to be deposited by Closing Agent in an interest bearing account; all interest earned shall be the property of the party entitled to receive the Earnest Money pursuant to the terms of this Agreement.

3. **TITLE AND SURVEY; LEGAL DESCRIPTION.** On the Effective Date, Seller shall order from the Closing Agent an Owner's Title Insurance Commitment ("Commitment") obligating a title insurance company to issue to Buyer at Closing an Owner's Policy of Title Insurance ("Title Policy") in the full amount of the Purchase Price, without standard exceptions (or with extended coverage – as may be applicable), which Commitment shall show good and indefeasible fee simple title in Seller and all encumbrances and other matters, if any, relating to the Property, together with true, correct and legible copies of each document referred to in the Commitment. The Commitment and copies of all title documents referenced in the Commitment shall be delivered to Buyer within ten (10) days after the Effective Date hereof, or longer as may be determined by the Closing Agent. The cost of the Commitment and Title Policy shall be borne by Seller. Within three (3) business days prior to Closing, Seller shall cause the Closing Agent to again furnish Buyer a Commitment covering the Property. Said Commitment shall contain only the Permitted Exceptions (as defined below); and, subject to Paragraph 11 below, any exceptions stated therein other than the Permitted Exceptions shall be disposed of and cured by Seller prior to Closing.

Within a reasonable time period after the Effective Date, Buyer shall order an updated survey of the Property (the "Survey"). The Survey will be sufficient to cause the Closing Agent to delete the standard exceptions from the Owner's Policy of Title Insurance or otherwise permit the issuance of the Owner's Policy of Title Insurance with extended coverage. If the Survey reveals any matter which is unacceptable to Buyer and/or if the Commitment fails to show good and indefeasible fee simple title to the Property to be in Seller (except for Permitted Exceptions), then Buyer may object in the manner set forth in Paragraph 11 below on or before the expiration of the Inspection Period (as defined below). It is expressly understood and agreed that Seller shall use reasonable efforts to cure any such objections. Provided there are no material discrepancies between the legal description shown on the Survey and the legal description contained in Seller's vesting deed; then, in such event, Seller and Buyer hereby agree that the legal description to be attached to the deed at Closing shall be based upon the Survey.

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4. **DOCUMENTS/DUE DILIGENCE INFORMATION.** Within five (5) days after the Effective Date, Seller shall, to the extent not already delivered, deliver to Buyer copies of the following documents that are in Seller's possession and/or control (collectively, the "Property Documents"):

- (a) All boundary, topographic or other surveys of the Property, site-plans and all environmental studies or similar reports on the Property (including, but not limited to, any Phase I and Phase II Environmental Studies);
- (b) All vesting deeds for the Property into Seller;
- (c) All title insurance commitments and policies on the Property;
- (d) Copies of all real estate tax bills for the current year and two prior years;
- (e) All engineering and technical reports in the possession of Seller relating to the Property including, but not limited to, archeological surveys, geotechnical studies, soil compaction reports, wetlands reports, soils reports, assessments and certifications, and any utilities surveys or drawings;
- (f) Any agreement, order or other instrument, if any, which is applicable to the Property and will survive Closing that is not recorded in the Recorder's Office, Clerk of Court's Office, or other local registry;
- (g) All leases or occupancy agreements, if any, affecting the Property;
- (h) All service contracts, if any, that will remain in effect after the Closing Date; and
- (i) All notices, correspondences, contracts and agreements with any governmental entity, agency or authority or utility company or district or adjacent land owner pertaining to the Property, if any.

For purposes hereof, a document is considered to be in Seller's possession if the same is in the possession of Seller, its agents or representatives.

The Inspection Period shall be extended automatically one day for every day after the expiration of the above-described 5-day period that Seller fails to deliver the Property Documents to Buyer.

5. **INSPECTION OF PROPERTY.** Buyer shall have a period of Sixty (60) days after the Effective Date (the "Inspection Period") to make all inspections Buyer may deem necessary to determine if the Property is satisfactory for its needs, including without limitation title searches, land surveys, geotechnical surveys, archeological surveys, soil tests, and environmental assessments of the Property (e.g., without limitation, Phase I and Phase II

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Environmental Studies). Notwithstanding the foregoing provisions of this Paragraph 5, in the event that Buyer, exercising its sole and absolute discretion, shall determine within said Inspection Period that the Property is not suitable or satisfactory for any reason or no reason, Buyer shall have the right to terminate this Agreement by notifying Seller and Closing Agent in writing prior to the expiration of the Inspection Period. In such event, this Agreement shall be deemed automatically null and void effective as of the date of Buyer's termination notice to Seller, and thereafter neither party shall have any liability hereunder, except as expressly set forth herein to the contrary.

Seller agrees that Buyer, Buyer's agents, contractors and employees shall have the right to enter upon the Property during normal business hours to conduct such inspections, tests and studies as Buyer may deem necessary, provided:

- (a) Such inspections, tests and studies shall not materially damage the Property other than normal wear and tear; and
- (b) Buyer shall leave the Property in at least the same condition as it was prior to entry onto the Property by Buyer or its agents, contractors or employees; or, in the event of any damage to the Property caused by Buyer's agents, contractors or employees (other than reasonable wear and tear), Buyer shall immediately repair and restore the Property to its prior condition. Buyer agrees to indemnify and hold harmless Seller against and from any actual material loss arising from any personal injury and/or damage to the Property or the property of any third party to the extent directly caused by the gross negligence or willful misconduct of Buyer or its employees, agents or contractors. The provisions of this Paragraph 5 shall survive any early termination of this Agreement and the Closing of the transaction contemplated hereunder, and shall not merge with the delivery of the warranty deed and related documents hereunder.

6. **SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.** To induce Buyer to enter into this Agreement and to purchase the Property, Seller makes the following covenants, representations and warranties:

- (a) The Property is owned beneficially and of record by Seller and Seller has full capacity, power and authority to convey the Property to Buyer in accordance with the terms and conditions of this Agreement, without the necessity of obtaining any consents or approvals of, or the taking of any other action with respect to, any third parties; and the person signing on behalf of Seller has full authority to execute this Agreement on behalf of Seller, and to bind Seller to all the terms and obligations herein;
- (b) Seller holds good and indefeasible fee simple title to the Property, and said title is free and clear of all mechanic's liens, liens, mortgages, or encumbrances of any nature (except for Permitted Exceptions or liens, mortgages or encumbrances that

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will be released on or before Closing), and no work has been performed or is in progress by Seller, and no materials have been furnished to the Property or any portion thereof, which might give rise to mechanic's, materialman's or other liens against the Property or any portion thereof;

- (c) No portion of the Property is, or as of the Closing Date will be, affected by any general, special, or other assessments which remain unpaid or which constitute or which could mature into a lien on the Property, excluding current year ad valorem property taxes levied by all applicable taxing authorities, and Seller has not received notice of any general, special, or other assessment affecting the Property;
- (d) Seller has not received any notice of any special assessments or condemnation or eminent domain proceedings pending or threatened which would affect the Property or any part thereof;
- (e) Seller has not received any notice of any actions, suits or proceedings (including condemnation proceedings) pending or, to the best of Seller's knowledge, threatened, against Seller or the Property (or any portion thereof) which could adversely affect the Property or any part thereof or Seller's ability to perform hereunder, including, without limitation, actions, suits or proceedings which question the compliance of the Property with any applicable rules, ordinances, laws and regulations affecting the Property;
- (f) There are no contracts of sale, leases, options to purchase, rights of first refusal or other agreements (other than Permitted Exceptions) which affect the Property and will survive Closing;
- (g) Neither the execution and delivery of this Agreement, the consummation of the transaction herein contemplated, nor the compliance with the terms, conditions and provisions hereof by Seller will conflict with, or result in a breach of, any of the terms, conditions or provisions of any agreement, order or other instrument to which Seller is a party or by which Seller or the Property is bound;
- (h) The Property has not previously been used as a landfill or as a dump for garbage or refuse, or as a site where Hazardous Materials (as hereinafter defined) have been generated, stored, disposed of or treated. For purposes hereof, "Hazardous Material(s)" shall include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, and in any regulations adopted and publications promulgated pursuant thereto, and in any other federal, state or local environmental laws, ordinances, rules or regulations (collectively, the "Applicable Environmental Laws"). Seller has not received any notice that the Property has

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been identified by any federal, state or local agency as a site requiring environmental investigation or clean up or that a neighboring property has been used in the generation, storage or disposal of Hazardous Materials; and neither the Property nor Seller are currently in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Environmental Laws. Furthermore, there are no underground Hazardous Materials or petroleum products storage tanks located on or under the Property. Seller hereby represents and warrants as of the Effective Date that Seller has not received any notice that the Property does not comply with any Applicable Environmental Laws;

- (i) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or pending against Seller or the Property; and
- (j) As long as this Agreement remains in full force and effect Seller will not lease, mortgage or convey any portion of the Property, or any rights therein, nor enter into any easements, restrictions, liens, assessments, encumbrances or other agreements, or amendments thereto, with respect to the Property or any part thereof, nor alter the physical condition of the Property, nor remove any trees, without the prior written consent and approval of Buyer.

The continued validity in all respects of the representations, warranties and covenants set forth in the above paragraphs, both as of the Effective Date and Closing Date, shall be a condition precedent to Buyer's obligations hereunder. All representations, warranties and covenants contained in this Agreement shall be deemed remade as of the Closing Date and shall survive Closing. In the event any of the above representations, warranties and covenants are breached, Buyer shall have all remedies that are provided in Paragraphs 16 and 23.

7. **CLOSING AND DELIVERY OF POSSESSION.** The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at any time on or before the fifteenth (15th) day following the expiration of the Inspection Period (the "Closing Date"). Closing shall be held at 10:00 a.m., Eastern Standard Time, on the Closing Date at the offices of Closing Agent, or, at Buyer's option (exercisable upon written notice to Seller) at such other place as is reasonably agreed upon in writing by the parties hereto; provided that, the Closing and the delivery of documents to Closing may take place via facsimile (other than any documents to be recorded), email (other than any documents to be recorded), and/or overnight delivery by a nationally recognized courier. Buyer shall provide Seller with no less than five (5) days prior written notice of the proposed Closing Date and time and place of Closing.

At Closing, Buyer shall pay to Seller the Purchase Price as set forth in this Agreement and, simultaneously therewith, Seller shall convey the Property to Buyer in accordance with the terms of this Agreement; provided, however, the Purchase Price shall not be released to Seller

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until Buyer's closing attorney and/or agent updates title to the Property, confirms that there are no title exceptions except the Permitted Exceptions, and records the deed for the Property. Upon the consummation of the Closing.

Seller shall be entitled to retain possession of the Property for up to six (6) months in accordance with that certain Post-Closing Lease Agreement.

8. **CONVEYANCE; CLOSING DOCUMENTS.** At the Closing, Seller shall deliver to Buyer a duly executed and acknowledged warranty deed, in the form acceptable to Buyer in its discretion, conveying good and insurable fee simple title to the Property free and clear of all defects, claims, liens and encumbrances except the Permitted Exceptions.

At Closing, Seller shall also execute and deliver to Buyer the following:

- (a) An affidavit reflecting whether Seller is a foreign or non-foreign person in accordance with the provisions of the Internal Revenue Code and Internal Revenue Service Regulations;
- (b) An owner's/seller's affidavit reasonably satisfactory to the title insurance company (the "Title Insurer") issuing the Title Policy on the Property to Buyer, in order to delete from the title policy to be issued the standard printed exceptions relating to, *inter alia*, mechanics' liens and parties in possession;
- (c) Closing Statement;
- (d) A Certificate from Seller certifying that Seller's representations and warranties set forth in Paragraph 6 herein are true as of Closing; and
- (e) Such other instruments as are necessary or reasonable to consummate the transaction contemplated by this Agreement, including such documents as are necessary to cause the Title Insurer to issue the Title Policy, insuring, in the full amount of the Purchase Price, that after Closing, Buyer shall be the owner of fee simple title to the Property, subject only to the Permitted Exceptions.

9. **EXPENSES.** In addition to other provisions for the payment of the expenses contained in this Agreement, Seller shall pay for Seller's attorneys' fees, the cost of preparing and recording the warranty deed, the transfer taxes on the warranty deed, the cost of owner's title insurance, and all costs necessary to deliver marketable title to the Property in accordance with the terms of this Agreement. Buyer shall pay for the cost of all inspections and tests on the Property conducted by Buyer or at its request, and Buyer's attorneys' fees and other fees and expenses incurred by Buyer in connection with acquiring the Property.

10. **PRORATIONS.** Subject to the remaining provisions of this Paragraph 10, all taxes (including applicable user fees), assessments and any other expenses or income affecting the

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Property which accrue during the year of Closing shall be pro-rated as of the Closing Date. Prorated taxes shall be prorated based upon the best information available. Prorations at Closing shall not be final unless the tax bill on the Property for the year of Closing is available on or before Closing. If the tax bill for the year of Closing is not available on or before the Closing Date, Seller and Buyer shall re-prorate said taxes within thirty (30) days after receipt of the tax bill on the Property for the year of Closing. At Closing, Seller shall pay or credit against the Purchase Price all unpaid real property taxes; all roll-back and delinquent taxes, including penalties and interest; all assessments that are a lien as of the Closing Date; and all agricultural use valuation recoupments and other recoupments for all years prior to the year of Closing. This Paragraph 10 shall survive the Closing of the transaction contemplated hereunder.

11. **MATTERS TO WHICH THE DEED MAY BE SUBJECT.** The Property is being sold subject to the following Permitted Exceptions, and appropriate provisions shall be contained in the warranty deed and other closing documents from Seller to Buyer making the same subject to the following matters (collectively, the "Permitted Exceptions"):

- (a) Subject to the provisions of Paragraph 10 hereof, all real property taxes and assessments which are a lien on the Property, but are not yet due and payable; and
- (b) Only those Survey matters, easements, covenants and restrictions of record as of the Effective Date to which Buyer does not object in writing (the "Objection Notice") upon or before expiration of the Inspection Period.

Seller may, but is not obligated to cure said objection(s), and shall give Buyer written notice of its election to cure such objection(s), if any, within five (5) days of receipt of the Objection Notice (the "Objection Response"); provided Seller shall be required to remove and/or satisfy all monetary liens affecting the property, other than taxes not yet due or owing, prior to or at Closing so that the same do not appear on the final Title Policy. In the event that Seller elects not to cure any such objectionable title matters, or the objection(s) are not cured within thirty (30) days of receipt of the Objection Notice, Buyer may, at its option, terminate this Agreement by delivering written notice of such termination (the "Termination Notice") to Seller, in which event the rights and obligations of the parties hereto shall automatically cease and terminate and the Earnest Money shall be refunded to Buyer. Buyer's failure to deliver an Objection Notice and/or Termination Notice shall be conclusive evidence of its waiver of all objection(s) and agreement to accept the status of the title to the Property.

12. **USE OF PURCHASE MONEY TO CLEAR TITLE.** To enable Seller to make the conveyance as herein provided, Seller shall, if not otherwise paid at or prior to Closing, at the time of delivery of the deed, use any portion of the Purchase Price to clear title of any or all encumbrances or interests, provided that all instruments so procured are recorded and filed simultaneously with the delivery of the deed; or in the case of institutional mortgages, provided that arrangements in accordance with customary conveyancing practices are made for a discharge to be promptly procured, recorded or filed after the delivery of the deed.

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13. **CONDEMNATION.** If, prior to Closing, Seller receives notice of any eminent domain proceedings or notice of the intention of any governmental or quasi-governmental authority to initiate eminent domain proceedings, or if any such proceedings commence or an actual condemnation or taking of the Property, or any portion thereof, occurs, Seller shall promptly notify Buyer in writing and Buyer, by written notice to Seller within thirty (30) days following receipt of Seller's notice, may elect to either terminate this Agreement, in which event Buyer shall receive a full refund of the Earnest Money and this Agreement shall thereafter be null, void and of no further effect (subject to Paragraph 24(j)), or continue this Agreement in full force and effect. In the event that Buyer elects to continue this Agreement in full force and effect, Seller shall at Closing assign to Buyer all of its rights in and to any such condemnation awards or proceedings.

14. **CASUALTY.** In the event that the Property is damaged by an earthquake or other casualty prior to the Closing Date, Buyer may elect to terminate this Agreement in which event Buyer shall receive a full refund of the Earnest Money and this Agreement shall thereafter be null, void and of no further effect (subject to Paragraph 24(j)); or if Buyer so elects, Buyer may purchase the Property in its damaged condition.

15. **BROKERS.** Seller and Buyer represent and warrant each to the other that neither Seller nor Buyer has dealt or consulted with any real estate broker in connection with the transaction contemplated by this Agreement other than _____, the broker for Seller. Without limiting the effect of the foregoing, Seller hereby agrees to indemnify and hold Buyer harmless against and from any claim or demand made by any real estate broker or agent claiming to have dealt or consulted with Seller contrary to the foregoing representation. Similarly, Buyer hereby agrees to indemnify and hold Seller harmless against and from any claims or demands made by any real estate broker or agent claiming to have dealt or consulted with Buyer contrary to the foregoing representation.

16. **DEFAULT BY SELLER.** In the event Seller shall fail to perform or comply with any covenant, agreement or condition contained in this Agreement for any reason other than Buyer's default, and fail to cure such breach within five (5) days after written notice thereof, then Seller shall be in default hereunder and Buyer may, at its option:

- (a) Terminate this Agreement, by written notice to Seller and Closing Agent, and receive a full refund of the Earnest Money; and/or
- (b) Proceed at law and/or in equity to enforce Buyer's rights under this Agreement including, but not limited to, the right to seek specific performance and/or damages.

17. **DEFAULT BY BUYER.** In the event Buyer has not terminated this Agreement in a timely manner as herein expressly provided and thereafter fails to consummate this Agreement for any reason, except for Seller's default and/or the non-fulfillment of any of the Closing conditions set forth herein, Seller shall be entitled, as its sole and exclusive remedy, to

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terminate this Agreement by written notice to Buyer and Closing Agent and to receive the Earnest Money (“Seller’s Liquidated Damages”) for Buyer’s breach of this Agreement; it being agreed between the parties hereto that the actual damages to Seller in the event of such breach are impractical to ascertain and that Seller’s Liquidated Damages represents not a penalty, but a reasonable estimate of such actual damages to Seller. Except as set forth in this Paragraph 17, Seller hereby expressly waives any and all other rights and remedies with respect to a default by Buyer hereunder. The rights of Seller set forth in this Paragraph 17 shall survive any termination of this Agreement.

18. **TIME.** TIME IS OF THE ESSENCE with respect to each and every provision of this Agreement; provided, however, that if any time period provided for herein shall end on a Saturday, Sunday or legal holiday, such time period shall extend to 5:00 P.M. Eastern Standard Time on the next full business day.

19. **NOTICES.** Any notice, demand or request which may be provided or permitted to be given under this Agreement must be in writing and may be sent either by: (1) hand delivery; (2) facsimile; or (3) by delivery through a nationally recognized overnight courier that can provide written proof of delivery, and addressed as follows, or to such other address as a party may specify by duly given notice:

If intended for Seller:

with a copy (which shall not constitute notice hereunder) to:

If intended for Buyer:

Kevin Anderson
City of Dowagiac
241 South Front Street
P.O. Box 430
Dowagiac, MI 49047
Direct: (269) 783-2530

with a copy (which shall not constitute notice hereunder) to:

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Kotz Sangster Wysocki P.C.
Attn: Mitt S. Drew, Esq.
12 Longmeadow Village Drive
Niles, MI 49120
Direct: (269) 591-6917

Notices, demands and requests, if delivered in the manner aforesaid (unless otherwise specifically provided herein), will be deemed received for all purposes hereunder on the date which is the confirmed date of delivery.

20. **COVENANTS OF SELLER.** Seller hereby covenants with Buyer, from the Effective Date until the Closing or earlier termination of this Agreement, as follows:

- (a) Seller shall provide Buyer with notice of any violations of any applicable local, state or federal law, municipal ordinance or regulation, order, rule or requirement of any federal, state or municipal department or agency having jurisdiction over or affecting the Property or the construction, management, ownership, maintenance, operation, use, improvement, acquisition or sale thereof, including, without limitation, all health and Applicable Environmental Laws, building laws, regulations and ordinances, and equal access opportunity laws, regulations and ordinances.
- (b) Seller covenants and agrees that, as of the Closing Date, the Property will comply with all Applicable Environmental Laws.
- (c) Seller will continue to maintain the Property in its present condition and repair, subject to normal wear and tear, in accordance with its past practices.
- (d) Seller will not enter into any service contracts which cannot by their express terms be terminated on not more than thirty (30) days' notice and will survive Closing or otherwise affect the use, operation or enjoyment of the Property after Closing, without Buyer's prior written consent.
- (e) Seller will not lease, mortgage or convey any portion of the Property, or any rights therein, nor enter into any easements, restrictions, liens, assessments, encumbrances or other agreements, or amendments thereto, with respect to the Property or any part thereof, nor alter the physical condition of the Property without the prior written consent and approval of Buyer.

21. **CONDITIONS PRECEDENT TO OBLIGATION OF BUYER.** The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Buyer in its sole discretion:

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- (a) Seller shall have delivered to Buyer all of the items in Seller's possession required to be delivered to Buyer pursuant to the terms of this Agreement.
- (b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Effective Date and the Closing Date; and Seller shall not have, on or prior to Closing, failed to meet, comply with or perform in any material respect any condition or agreement as required by the terms of this Agreement.
- (c) Seller shall have performed and observed all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.
- (d) There shall have been no material adverse change in the environmental or other physical condition of the Property; in title matters affecting the Property; in the availability of access to and from the Property; in the availability of utilities to the Property; in the zoning of the Property; or in the results of any other due diligence investigation performed by Buyer with respect to the Property from and after the Effective Date through and including the Closing Date.
- (e) There shall be no change in the matters reflected in the Commitment, and there shall not exist any encumbrance or title defect affecting the Property not described in the Commitment except for the Permitted Exceptions.
- (f) There shall be no material and substantial change in the matters reflected in the Survey, and there shall not exist any easement, right-of-way, encroachment, waterway, pond, flood plain, conflict or protrusion with respect to the Property not shown on the Survey.
- (g) No material and substantial adverse physical change shall have occurred with respect to the Property which would in any way affect the findings made in the inspection of the Property.

If any of the contingencies specified in this Paragraph 21 are not satisfied pursuant to the terms thereof, Buyer may, at Buyer's option, terminate this Agreement by written notice sent or delivered to Seller and Closing Agent, whereupon Buyer shall receive a full refund of the Earnest Money and neither party hereto shall have any further rights or obligations hereunder (subject to Paragraph 24(j)). Alternatively, Buyer may, at Buyer's option, waive any of the aforementioned contingencies and proceed with the Closing.

22. **STANDSTILL.** From and after the Effective Date, and through and including the Closing Date or earlier termination of this Agreement (as applicable), Seller shall not, directly or indirectly, initiate, encourage, pursue, continue, accept or permit any agent, attorney, accountant, or other representative of Seller to discuss, solicit, initiate, encourage, pursue (including the

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furnishing of any information) or accept any inquiries, discussions, offers or proposals which reasonably could lead to a sale or other disposition of the Property.

23. **INDEMNITY.** Seller hereby indemnifies Buyer against and agrees to defend and hold Buyer harmless from any losses incurred by Buyer as a result of Seller's breach of any representation, covenant or warranty hereof. Furthermore, Seller hereby indemnifies Buyer against and agrees to defend and hold Buyer harmless from all fees, charges, claims, demands, causes of action, and suits of any nature whatsoever arising out of (i) the ownership or operation of the Property prior to the Closing; and (ii) any and all activities related thereto, including, without limitation, any injury to tenants, invitees, licensees, guests, customers or other persons who were injured on the Property prior to Closing. This Paragraph 23 shall survive the Closing of the transaction contemplated hereunder and shall not merge with the delivery of the deed and related documents.

24. **MISCELLANEOUS PROVISIONS.**

- (a) Binding Effect. This Agreement and all covenants, terms, conditions, warranties, and undertakings contained herein, and all amendments, modifications and extensions hereof, as applicable, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
- (b) Counterparts; Faxed Signatures. Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument. Signature pages to this Agreement transmitted by e-mail or facsimile for assembly into an integrated document shall operate to bind the party to this Agreement whose signature has been e-mailed or faxed to the other party.
- (c) Choice of Law. This Agreement is to be governed by, enforced and construed in accordance with the laws of the state of Michigan regardless of conflict of laws principles.
- (d) Assignment. Buyer may not assign its rights and obligations pursuant to this Agreement, in whole or in part, to another party without Seller's consent, not to be unreasonably withheld, conditioned or delayed; provided, however, no such assignment shall relieve Buyer of its obligations hereunder. Seller may not assign its rights and obligations pursuant to this Agreement without Buyer's prior written consent.
- (e) Tax Free Exchange. The parties acknowledge that either or both parties hereto may consummate the transaction contemplated by this Agreement through an exchange permitted by Section 1031 of the Internal Revenue Code of 1986, as amended. The parties shall reasonably cooperate with one another in

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accomplishing such exchange(s) and shall execute any and all documents which may be reasonably required to effectuate such exchange(s); provided, however, that neither party shall have an obligation to do anything that would cause it to incur any liability or obligation or to take title to any property other than the Property, and provided further that such exchange(s) shall in no event delay the Closing.

- (f) Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer and cannot be varied or modified except by written instrument signed by both parties hereto. The parties further agree that there are no other written or oral agreements, understandings, representations, or warranties which have not been expressly set forth herein.
- (g) Attorneys' Fees. If any litigation shall be instituted for the purpose of enforcing or interpreting any of the provisions of this Agreement, the prevailing party or parties, as determined by the court having jurisdiction thereof, shall be entitled to recover, in addition to all other relief, an amount equal to all costs and expenses incurred in connection therewith, including, without limitation, reasonable legal expenses (including but not necessarily limited to fees for services of attorneys, paralegals and legal assistants) at the trial level and in connection with all appellate proceedings.
- (h) Waiver. No waiver hereunder of any condition or breach shall be deemed to be a continuing waiver or a waiver of a subsequent breach.
- (i) Headings. Headings used hereunder are for convenience only and do not constitute a substantive part of this Agreement.
- (j) Survival of Agreement. The warranties, representations and covenants made herein (excluding Closing obligations) shall survive any early termination of this Agreement or the Closing hereof, and shall not merge with the delivery of the deed and related documents.
- (k) Interpretation Presumption. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Agreement, and that, in the event of a dispute concerning the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the provision or document.
- (l) Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and

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shall not be affected by the severance of such illegal, invalid, or unenforceable provision from this Agreement.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized officers effective as of the Effective Date.

SELLER:

DANIEL R. WEAVER

BONNIE WEAVER

BUYER:

CITY OF DOWAGIAC, a Michigan municipal corporation

By: _____
Name:
Title:

EXHIBIT A

Legal Description

POST CLOSING POSSESSION LEASE AGREEMENT

THIS POST CLOSING POSSESSION LEASE AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2015, by and between **CITY OF DOWAGIAC**, a Michigan municipal corporation (hereinafter referred to as "Lessor"), and **DANIEL R. WEAVER** and **BONNIE WEAVER**, husband and wife (hereinafter collectively referred to as "Lessee"). "

W I T N E S S E T H:

WHEREAS, Lessor and Lessee are the parties to that certain Contract of Sale and Purchase dated _____, 2015 (the "Purchase Agreement"), wherein Lessee agreed to sell to Lessor that real property described in Exhibit "A", attached hereto and incorporated herein

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by this reference (said property, together with all improvements thereon, being hereinafter collectively referred to as the "Property"); and

WHEREAS, contemporaneous with the date of this Agreement, Lessor has acquired fee simple interest in and to the Property in accordance with the provisions of the Purchase Agreement; and

WHEREAS, pursuant to the provisions of the Purchase Agreement, Lessor desires to grant to Lessee, and the Lessee desires to accept, a temporary lease the continued occupancy by Lessee the Property for a period of time not to exceed one hundred eighty (180) days all in accordance with the provisions of this Agreement.

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Lease; Exclusive Use. Lessor does hereby grant to Lessee the right to use, occupy and possess the Property for a period of time, commencing on the date of this Agreement and terminating on the date that is one hundred eighty (180) days thereafter (the "Lease Term") for residential and no other purposes. During the Lease Term, Lessee shall be entitled to the exclusive use of the Property.
2. Use; Compliance with Laws. The Property shall be used and occupied by Lessee only for the purposes herein set forth. Lessee shall comply with all laws and regulations affecting the Property and the use and occupancy thereof. All improvements, personal property and fixtures remaining on the Property at the expiration of the Lease Term shall be deemed the property of Lessor and may be disposed of by Lessor in its sole and absolute discretion.
3. Utilities. Lessee shall be responsible for arranging and paying for all utility services required on the Property during the Lease Term, including, without limitation, gas, electricity, cable, telephone, water and sewage.
4. Maintenance; Liens. Lessee shall be solely responsible for all maintenance of the Property. Lessee will not, under any circumstances, suffer or permit any lien to attach to the Property or any portion thereof. If any such lien be asserted, Lessee shall pay and procure the immediate discharge thereof.
5. Release; Indemnity. During the Lease Term, Lessor shall not be liable to Lessee for (i) any damages suffered by Lessee by reason of its use or occupancy of the Premises, or (ii) any injury to Lessee or any persons on or about the Property, whether or not said damages or injuries result from conditions arising upon the Premises, except to the extent caused by the gross negligence or willful misconduct of Lessor. Lessee hereby agrees to indemnify and hold Lessor, its officers, directors, stockholders, beneficiaries, partners, representatives, agents and employees

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harmless with respect to any and all claims for damages to the Property, or to persons or property which in any way are related to occurrences upon the Property during the Lease Term.

6. Assignment. Lessee shall have no right to assign this Agreement or any rights conferred hereunder, the parties acknowledging and agreeing that the lease herein granted is personal to Lessee and shall not inure to the benefit of any other party.

7. Default. In the event Lessee fails to observe the terms of this Agreement, Lessee shall be in default hereunder, and Lessor shall be entitled to terminate this Agreement and to such remedies as may be available at law or in equity in connection with such default. In case of any action or proceeding to compel compliance with, or for a breach of, the terms and conditions of this Agreement, the prevailing party shall be entitled to recover from the losing party all costs and fees of such action or proceeding, including, but not limited to, reasonable attorney's fees. Notwithstanding the foregoing, Lessee shall be entitled to possession of the Property until the expiration of the Lease Term.

8. Removal of Property: During and until the expiration of the Lease Term, Lessee shall be entitled to remove any and all personal property, equipment, fixtures and any other contents of the building and improvements located upon the Property.

9. Miscellaneous.

(a) No delay of Lessor in enforcing any right, remedy, privilege or recourse accorded to Lessor, either by the express terms hereof or by law, shall affect, diminish, suspend or exhaust any of such rights, remedies, privileges or recourses.

(b) None of the covenants, terms or conditions of this Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by a written instrument, duly signed and acknowledged, and delivered by the other party, and not otherwise.

(c) Time is of the essence of this Agreement and of each and every one of the provisions hereof.

(d) This Agreement shall constitute the entire agreement between the parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, if any, whether written or oral.

(e) This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall be one and the same instrument.

(f) This Agreement is to be governed by, enforced and construed in accordance with the laws of the State of Michigan regardless of conflict of laws principles.

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IN WITNESSETH WHEREOF, the parties have executed this Agreement as of the date above first written.

LESSOR:

LESSEE:

CITY OF DOWAGIAC, a Michigan
municipal corporation

By: _____
Name: **DANIEL R. WEAVER**

By: _____
Name: _____
Title: _____

By: _____
Name: **BONNIE WEAVER**

Exhibit A

Property

That Property located in _____, Michigan, identified as tax parcel: 14-160-200-028-00

2. Resolution to authorize the adoption of a revised budget for the 2014-15 fiscal year..

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, the City administration has reviewed the attached budgets for the 2014-15 fiscal year and the actual revenues and expenditures through the first quarter of 2014-15 fiscal year; and

WHEREAS, the City administration recommends revision of the attached budgets in accordance with the latest projections available; and

WHEREAS, the attached report for these funds indicates the current budget and the recommended budget revisions.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby adopt the attached, recommended revised budgets.

ADOPTED unanimously.

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3. Resolution to authorize and direct the City Treasurer to pay the following bills and payroll due:

Councilmember Burling offered and moved the adoption of the following resolution; seconded by Councilmember Laylin.

WHEREAS, the following information has been reviewed by the City Manager and City Treasurer and is being presented to City Council with a recommendation to approve invoices and payroll #10 for the period ending 2/5/15:

Invoices	\$155,666.44
Payroll #10	<u>\$115,381.19</u>
Total	\$271,047.63

BE IT RESOLVED that the City Manager and City Treasurer are hereby authorized and directed to pay the following bills and payroll due:

<u>BILLS</u>	<u>PAYROLL</u>	<u>TOTAL</u>
\$155,666.44	\$115,381.19	\$271,047.63

ADOPTED on a roll call vote.

Ayes: Five (5) Burling, Dodd, Hunt, Laylin, Lucas

Nays: None (0)

Absent: One (1) Schuur

Abstain: None (0)

COMMENTS FROM CITY OFFICIALS

ADJOURNMENT

Upon motion by Councilmember Dodd and seconded by Councilmember Laylin, the Dowagiac City Council adjourned at 7:41 PM.

Donald D. Lyons, Mayor

Rozanne H. Scherr, Assistant City Manager