To: George Lahanas
Subject: Discussion of Michigan State Federal Credit Union draft project proposal for City Parking Lot #4 and review of draft purchase & sale agreement
Meeting: City Council Discussion Only - 18 Feb 2020
Department: Planning, Building, and Development
Staff Contact: Thomas Fehrenbach, Director of Planning, Building and Development

BACKGROUND INFORMATION:
In December 2019, the Council placed on the March 2020 ballot a question as to whether the voters should allow the Council to sell the approximately 13,250 square feet of property commonly known as City Parking Lot #4 to Michigan State University Federal Credit Union (MSUFCU). At that time, MSUFCU shared some very preliminary plans for a future development proposal, which included the relocation of their branch office, innovation center, a community-use room, and additional office space. At that time, Council asked that MSUFCU return in February to their discussion-only meeting with any update of their emerging plan prior to their formal application, which they agreed to do.

Staff is aware that MSUFCU has begun some due diligence on the site, and has held several meetings with the MSUFCU development team to help them understand our processes and what will be required in terms of a transfer of the property and the process for a project approval, should the voters decide to authorize the sale in March.

In anticipation of a potential sale, staff and the City Attorney have worked with MSUFCU to draft the attached preliminary Purchase & Sale Agreement, which includes the following:

1. Conditioned on Voter authorization in March
2. Purchase Price- $810,000, "As is"
3. City to provide title insurance
4. Standard warranties for City
5. MSUFCU limits building uses to those approved by voters
6. Conditions prior to close include due diligence, including any approvals needed from City.
7. Close within 60 days of conditions being satisfied.

Staff requests that Council review the draft PSA and provide any guidance to staff in terms of any concerns, desired edits, or other thoughts. If the voters approve the sale in March, staff will incorporate the Council's input into an updated draft for consideration by the Council and MSUFCU board.
Further, MSUFCU has been invited to provide an update on their emerging plan for a commercial office development on the site. Updated conceptual renderings are attached, and MSUFCU staff are expected to give an overview of their draft concept for Council feedback at your discussion-only meeting on February 18, 2020. Staff also expects that they will provide an update of their progress, including an anticipated timeline for their submission of a site plan and special use permit application. As Council is aware, said application would start the public approval process for a development on the site, which would include a review by the various boards and commissions, and ultimately consideration by the Council, as appropriate.

**ATTACHMENTS:**

- [Buy-Sell Agreement Draft 20-02-14](#)
- [MSUFCU Conceptual Renderings - 20-02-14](#)
- [ADD ON: Updated Purchase & Sale Agreement Draft 02-18-2020](#)
BUY AND SELL AGREEMENT

1. PURCHASER'S OFFER. The Undersigned Michigan State University Federal Credit Union (hereinafter the PURCHASER), hereby offers to buy from THE CITY OF EAST LANSING (the SELLER), the following property located in the City of East Lansing, County of Ingham, State of Michigan, commonly known as: Lot 4, East Lansing, Michigan 48823, identified as tax parcel number________________________, and legally described on Exhibit A attached hereto (hereinafter called the Property), subject to recorded building and use restrictions, zoning ordinances and easements, if any, and under the following terms and conditions.

2. PURCHASE PRICE. The purchase price for the Property is Eight Hundred Ten Thousand and 00/100 Dollars ($810,000.00), subject to performance by SELLER of the closing obligations specified in Section 14 below.

3. TERMS OF PAYMENT. The PURCHASER shall pay the full purchase price to the SELLER at Closing by wire transfer or certified funds upon execution and delivery of a warranty deed, conveying good and marketable title to the Property to Purchaser at Closing subject to the Permitted Exceptions.

4. SURVEY. If one is desired by PURCHASER, a new survey may be obtained by PURCHASER prior to Closing, and shall be paid for by PURCHASER. Upon PURCHASER’s request, the legal description of the Property as determined by the surveyor shall be substituted for the legal description of the Property specified above and used in the warranty deed and other closing documents, provided such legal description is accurate and satisfactory to PURCHASER and Seller.

5. CLOSING ADJUSTMENTS. The following adjustments shall be made between the parties as of the close of business on the closing date. PURCHASER shall receive a credit or assume responsibility, as the case may be, for amounts attributable to time periods following the closing date: None.

6. SPECIAL ASSESSMENTS/TAXES/FEES.
   a. Special assessments which are or become a lien on the Property on or before date of closing of this Agreement shall be paid in full by SELLER.
   b. Taxes shall be deemed to cover the Calendar Year in which the Taxes are first billed. Taxes which are first billed in years prior to the year of Closing shall be paid by SELLER without proration. Taxes which are first billed in the year of Closing shall be prorated so that SELLER shall be charged with taxes from the first of the year to the date of Closing and PURCHASER charged with taxes for the balance of year. If any bill for taxes proratable hereunder is not yet issued, the current Taxable Value, tax rate and administrative fee shall be substituted, therefore, and used in proration hereunder. The tax proration provisions contained in this Buy and Sell Agreement shall be interpreted and applied as if the amendments of law set forth in Public Acts 80 and 279 of 1994 did not exist. Exceptions: None.

7. TITLE INSURANCE. At SELLER's expense, SELLER shall provide PURCHASER with a standard ALTA owner's policy of title insurance, without standard exceptions, in the amount of the purchase price, effective as of the date of Closing. The owner's policy shall be obtained through Transnation Title Agency of Michigan (the “Title Company”), or another title office acceptable to PURCHASER. A commitment to issue such policy insuring marketable title vested in PURCHASER, including a tax status report, shall be ordered by the SELLER for PURCHASER'S inspection and delivered to PURCHASER within ten (10) business days of full execution and acceptance of this Agreement. PURCHASER shall be responsible for any survey required for an
owner’s policy of title insurance without standard exceptions, or said policy shall be issued with survey exceptions.

8. **CONVEYANCE.** Upon performance by PURCHASER of the closing obligations specified in Section 15 below, SELLER shall convey the Property to PURCHASER by warranty deed, as specified in Section 3 above.

9. **WARRANTIES OF SELLER.** Except as otherwise provided in this Agreement, SELLER represents and warrants to PURCHASER as follows:
   a. SELLER has fee simple title in the Property and same shall be transferred to PURCHASER on the Closing date, as provided in Section 1 above, free from liens, encumbrances, claims of others, unless otherwise specified herein, but subject to all ordinances and recorded building and use restrictions and easements.
   b. Performance of the obligations of SELLER under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to SELLER or the Property except that pursuant to Section 4.8, subparagraph b of the Charter of the city of East Lansing, Seller must obtain prior approval of the electors of the City of East Lansing in order to sell the Property.
   c. There is no litigation or proceeding pending, or to the SELLER’S knowledge threatened, against or involving the SELLER’s interest in the Property or the Property, and the SELLER does not know or have reason to know of any ground for any such litigation or proceeding, which could have a material adverse impact on PURCHASER or PURCHASER's title to and use of the Property, either before or after Closing.
   d. SELLER shall continue to operate the Property in the ordinary course of business and maintain the Property in its current condition and repair during the interim period between the acceptance of this Agreement and the closing date.
   e. There are no service, maintenance, supply, listing, or management contracts currently in effect with respect to the Property which will not be terminated by SELLER at closing.
   f. There are no underlying ground leases, land contracts, mortgages, tax liens or environmental liens which will not be paid off by SELLER at Closing.
   g. The Property is not in violation of environmental laws that Seller is aware of but an assessment has not been performed by Seller.
   h. The Property will be free and clear of all tenants, leases and occupancy Agreements at Closing.
   i. No latent defects exist on the Property which are known to SELLER which were not previously disclosed to PURCHASER in writing.
   j. SELLER will maintain hazard and liability insurance in commercially reasonable amounts on the Property at all times prior to closing.
   k. The Property is not subject to any Farmland Development Rights Agreement or Conservation Easement.
   l. Each of the persons or person executing this Agreement as SELLER or on behalf of SELLER warrants that he or she is authorized to execute this Agreement on behalf of SELLER, and makes this Agreement binding upon SELLER, and will provide evidence of such authority prior to closing sufficient to establish such authority to the title company providing the title commitment pursuant to section 7.

10. **WARRANTIES OF PURCHASER.** Except as otherwise provided in this Agreement, PURCHASER represents and warrants to SELLER as follows:
    a. PURCHASER shall accept the Property in its "as is" condition subject to reasonable use, wear and tear between the date of this Agreement and the Closing date.
    b. The performance of the obligations of PURCHASER under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to PURCHASER.
    c. There is no litigation or proceeding pending, or to PURCHASER'S knowledge threatened, against or involving PURCHASER, and PURCHASER does not know or have reason to know of any ground for any such litigation or proceeding, which could have an adverse impact on SELLER or SELLER'S interests under this Agreement.
    d. In entering into this Agreement, PURCHASER has not relied upon any written or oral representations made by SELLER or any representative of SELLER regarding the Property or any aspect of this transaction, which are not expressly set forth in this Agreement.
    e. PURCHASER agrees to limit building uses to only those approved by the voters.
    f. PURCHASER warrants that it intends to pursue a commercial office project on the site which it intends to own.
and operate, and will diligently work through any City approval process necessary to obtain authorization for
the project subject to the voter approval in the March 2020 ballot.

11. DAMAGE TO PROPERTY. If between the date of this Agreement and the closing date, all or any part of the
Property is damaged or taken pursuant to any power of eminent domain, SELLER shall immediately notify
PURCHASER of such occurrence, and PURCHASER may terminate this Agreement by written notice to the
SELLER within fifteen (15) days after PURCHASER’S receipt of such notice of damage or notice of taking. If
PURCHASER exercises the right to terminate this Agreement under this Section 11, any earnest money deposit
shall be returned to PURCHASER and this Agreement shall be null and void. If PURCHASER does not elect
to terminate this Agreement, there shall be no reduction of the purchase price and at closing SELLER shall assign
to PURCHASER whatever rights SELLER may have with respect to any insurance proceeds or eminent domain
award.

12. CLOSING. Sale shall be closed within sixty (60) days after satisfaction of the condition specified in Section
23.d. (the “Closing Date”); however, if title defect(s) other than Permitted Exceptions exist(s) and SELLER is
notified of same in writing, SELLER shall be allowed 30 days from such notice to cure such defect(s). In the
event SELLER is unable to cure such defects within said 30 day period, PURCHASER may, at its option, agree
to waive such defect and proceed to Closing, or to terminate this Agreement in which event the earnest money
deposit shall be promptly refunded to PURCHASER. If sale is not closed due to PURCHASER’s inability to
satisfy the contingency in Section 23.d. below or for reasons other than default by SELLER or PURCHASER,
then this Agreement shall terminate and the earnest money deposit shall be promptly refunded to PURCHASER.
SELLER shall pay all State and County real estate transfer taxes due on the transaction at closing. SELLER and
PURCHASER shall each pay one-half of the title company closing fee at Closing. The Closing shall be at the
offices of the Title Company in Ingham County, Michigan unless otherwise agreed by the Parties, and
PURCHASER and SELLER may close this transaction by mail.

13. POSSESSION. SELLER shall grant to PURCHASER possession of the Property upon completion of the
Closing, free and clear of all leases, tenants and occupants.

14. SELLER’S CLOSING OBLIGATIONS. At closing, SELLER shall deliver the following to PURCHASER:
   a. A warranty deed as specified in Section 3 of this Agreement;
   b. Any other documents required by this Agreement to be delivered by SELLER; and
   c. Any other documents reasonably requested by the Title Company or PURCHASER consistent with this
      Agreement.

15. PURCHASER’S CLOSING OBLIGATIONS. At closing, PURCHASER shall deliver to SELLER the
   following:
   a. The cash portion of the purchase price specified in Section 3 above, in the form of wire transfer of U.S.
      currency, certified check(s), certified money order(s), or cashier's check(s) as adjusted by the apportionments
      and assignments in accordance with this Agreement;
   b. Any other documents required by this Agreement to be delivered by PURCHASER; and
   c. Any other documents reasonably requested by the Title Company or SELLER consistent with this
      Agreement.

16. NOTICES. Any notice required or permitted by this Agreement shall be sufficient if in writing and delivered
   by email to the parties and the parties’ attorneys at the email addresses specified in the proximity of the parties’
signatures below, or personally served, or sent by certified mail return receipt requested addressed to the parties
at their addresses specified in the proximity of their signatures below. Any notices given by email or personally
served shall be effective upon the date such email is sent or the date of such personal service, whichever is
applicable. Any notices given by mail shall be deemed to have been given as of the day following the date of
posting.
17. ADDITIONAL ACTS. PURCHASER and SELLER agree to execute and deliver such additional documents and to perform such additional acts as may become reasonably necessary to effectuate the transfer and transaction contemplated by this Agreement.

18. ENTIRE AGREEMENT. This Agreement contains the entire Agreement of the parties with respect to the sale of the Property. All contemporaneous or prior negotiations have been merged into this Agreement. This Agreement may be modified or amended only by written instrument signed by the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

19. PURCHASER’S DEPOSIT. PURCHASER shall deposit Ten Thousand and 00/100 Dollars ($10,000.00) upon SELLER’S acceptance evidencing PURCHASER’S good faith, said deposit to be deposited in trust with Transnation Title Agency of Michigan, and apply as part of the purchase price. If this offer is not accepted this deposit will be refunded forthwith. This deposit shall be applicable to the purchase price at Closing. This deposit shall be refunded in the event any condition precedent in this Agreement is not satisfied or waived, including without limitation the condition of approval by electors as referenced in sections 9.b. and 23.d. This deposit shall be forfeited in the event of any default by PURCHASER, as SELLER’S sole remedy for default. PURCHASER shall be in default under this Agreement in the event of PURCHASER’S failure to perform any of PURCHASER’S obligations under this Agreement, which failure is not cured within ten (10) days after written notice of such failure is sent by SELLER to PURCHASER.

20. ADVICE OF COUNSEL. Any evidence of title and supporting documents are to be examined on behalf of PURCHASER to determine if they are consistent with this Agreement by Purchaser’s Chief Legal Counsel.

21. NOTICE OF HAZARDOUS WASTES OR SUBSTANCES AND UNDERGROUND STORAGE TANKS. There are numerous federal, state and local laws and regulations in existence which are intended to control and/or correct environmental contamination. These laws and regulations may expose owners, tenants and other users of property to liability for damages and/or clean-up costs occasioned by environmental contamination regardless of fault and regardless of when in time the contamination may have occurred. The costs associated with the clean-up of environmental contamination can be very substantial. Accordingly, it is prudent for each party to a real estate transaction to seek legal and/or technical counsel from professionals experienced in such matters so that each may be better apprised of their respective rights and responsibilities with respect to environmental issues. SELLER does not possess the expertise necessary to assess environmental risks or to determine the presence of environmental contamination.

The term "hazardous wastes or substances," as used in this NOTICE may include, but are not limited to, petroleum based products, paints and solvents, leads, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property and this NOTICE is therefore meant to apply to any transaction involving any type of real property, whether improved or unimproved.

22. ACCEPTANCE OF OFFER. PURCHASER gives the SELLER until 5 p.m. on April 1, 2020 to deliver SELLER’S written acceptance of or Counter Offer to this Agreement in default of which this Agreement shall become null and void absent written Agreement to the contrary.

23. OTHER PROVISIONS.
   a. ADDITIONAL CONDITIONS PRECEDENT: INSPECTIONS. Prior to Closing, PURCHASER shall have the right to perform such due diligence and conduct such inspections and investigations as the PURCHASER deems necessary or desirable including, but not limited to, the examinations of title, survey, soils, zoning, utilities, drainage, leases, and environmental reports, and to obtain any desired zoning, special use permits, variances, and other permits and approvals from the City of East Lansing and other governmental entities for PURCHASER's intended use. Satisfactory results of said due diligence, inspections and investigations, in PURCHASER’s sole discretion, are conditions precedent to PURCHASER’S obligation to perform the covenants in this Agreement including payment of the purchase price. All PURCHASER’S due diligence cost and expenses shall be paid by PURCHASER. In the event PURCHASER terminates this Agreement
because a condition precedent is not met, the Deposit shall be returned to PURCHASER and neither party shall have any further obligation or liability to the other. PURCHASER agrees to indemnify, defend and hold SELLER harmless from all claims, losses, costs, damages or expenses arising due to the negligence or misconduct of PURCHASER or PURCHASER’S agents, directors, officers, employees, invitees and contractors when entering onto the Property to conduct said due diligence, inspections and investigations pursuant to this Section 23.a. PURCHASER shall have the right to enter upon the Property and perform such due diligence, including without limitation invasive environmental and soil inspections. In the event sale is not closed for any reason other than SELLER’s default, PURCHASER shall restore the Property to a condition as near as possible to the condition in which it existed prior to the invasive inspections.

b. DOCUMENTS. SELLER agrees to provide to PURCHASER within five (5) days of acceptance of this Agreement copies of all leases, surveys, engineering, environmental, soil tests and other related studies particular to the subject Property.

c. ASSIGNMENT. No assignment of this Agreement shall be permitted without SELLER’s prior written consent.

d. CONDITION PRECEDENT. PURCHASER’s obligation to close and SELLER’s obligation to sell is conditioned upon SELLER being authorized to sell the property pursuant to Section 4.8 of the City Charter. SELLER agrees to seek said permission in the March 2020 election.

e. SURVIVAL. The warranties, representations and covenants of SELLER and PURCHASER in Sections 9, 10, 11, and 19 above shall survive Closing under this Agreement.

f. AUTHORITY. Each signatory of a party to this Agreement represents and warrants to the other party to this Agreement that said signatory is properly authorized by the party for which such signatory is signing to execute this Agreement for said party. Each party shall provide such evidence of said party’s authorization to enter into this Agreement, and authorization to execute closing documents upon the reasonable request of the Title Company or other party to this Agreement.

24. **LIMITATION OF REMEDIES FOR PURCHASER:** Except for claims by the Purchaser that the Purchaser is entitled to return of the Deposit pursuant to the terms of this Agreement, Purchaser agrees that its sole and exclusive remedy against the Seller for any claim arising out of this Agreement shall be to seek and obtain specific performance of the terms of this Agreement including temporary and permanent injunctive relief. All other claims arising out of this Agreement, whether for breach of contract, tort, or otherwise, including any misrepresentation or inaccuracy of the SELLER’s warranties are waived by Purchaser even if this Agreement is hereafter declared to be invalid. The prevailing party in any proceeding or court action to enforce the terms of this Agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan law, and the amount of the Deposit owed to the Purchaser in accordance with the terms of this Agreement.

25. **LIMITATION OF REMEDIES FOR SELLER:** Seller’s sole and exclusive remedy shall be limited to its rights to the Deposit pursuant to this Agreement and its right to indemnification. The prevailing party in any proceeding or court action to enforce the terms of this Agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan law, and the amount of the Deposit owed to the Seller in accordance with the terms of this Agreement.

26. **RECEIPT OF COPY.** By signing below, PURCHASER and SELLER acknowledge receipt of a copy of this Agreement.
[Signatures on following page]
Witness:
____________________________________

SELLER:
City of East Lansing
410 Abbot Rd, East Lansing, MI 48823

By:____________________________________

Its:____________________________________
Email:__________________________________
Date:___________________________________

Witness:
____________________________________

PURCHASER:
Michigan State University Federal Credit Union
3777 West Rd, East Lansing, MI 48823

By:____________________________________
   April M. Clobes
Its: President/CEO
Email: april.clobes@msufcu.org
Date:______________________________

SELLER Attorney: Tom M. Yeadon
Email: tomyeadon@mcgintylaw.com

PURCHASER Attorney: Steven L. Owen
Email: steve.owen@msufcu.org
PLEASE NOTE THAT THE DRAWINGS AND INFORMATION CONTAINED HEREIN ARE PRELIMINARY AND SUBJECT TO CHANGE AT THE DISCRETION OF THE DEVELOPER AND DESIGN CONSULTANTS.

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EXTERIOR CONCEPT - ABBOTT ROAD

February 14, 2020
BUY AND SELL AGREEMENT

1. PURCHASER'S OFFER. The Undersigned Michigan State University Federal Credit Union (hereinafter the PURCHASER), hereby offers to buy from THE CITY OF EAST LANSING (the SELLER), the following property located in the City of East Lansing, County of Ingham, State of Michigan, commonly known as: Lot 4, East Lansing, Michigan 48823, identified as tax parcel number ______________________, and legally described on Exhibit A attached hereto (hereinafter called the Property), subject to recorded building and use restrictions, zoning ordinances and easements, if any, and under the following terms and conditions.

2. PURCHASE PRICE. The purchase price for the Property is Eight Hundred Ten Thousand and 00/100 Dollars ($810,000.00), subject to performance by SELLER of the closing obligations specified in Section 14 below.

3. TERMS OF PAYMENT. The PURCHASER shall pay the full purchase price to the SELLER at Closing by wire transfer or certified funds upon execution and delivery of a warranty deed, conveying good and marketable title to the Property to Purchaser at Closing subject to the Permitted Exceptions.

4. SURVEY. If one is desired by PURCHASER, a new survey may be obtained by PURCHASER prior to Closing, and shall be paid for by PURCHASER. Upon PURCHASER’s request, the legal description of the Property as determined by the surveyor shall be substituted for the legal description of the Property specified above and used in the warranty deed and other closing documents, provided such legal description is accurate and satisfactory to PURCHASER and Seller.

5. CLOSING ADJUSTMENTS. The following adjustments shall be made between the parties as of the close of business on the closing date. PURCHASER shall receive a credit or assume responsibility, as the case may be, for amounts attributable to time periods following the closing date: None.

6. SPECIAL ASSESSMENTS/TAXES/FEES.
   a. Special assessments which are or become a lien on the Property on or before date of closing of this Agreement shall be paid in full by SELLER.
   b. Taxes shall be deemed to cover the Calendar Year in which the Taxes are first billed. Taxes which are first billed in years prior to the year of Closing shall be paid by SELLER without proration. Taxes which are first billed in the year of Closing shall be prorated so that SELLER shall be charged with taxes from the first of the year to the date of Closing and PURCHASER charged with taxes for the balance of year. If any bill for taxes proratable hereunder is not yet issued, the current Taxable Value, tax rate and administrative fee shall be substituted, therefore, and used in proration hereunder. The tax proration provisions contained in this Buy and Sell Agreement shall be interpreted and applied as if the amendments of law set forth in Public Acts 80 and 279 of 1994 did not exist. Exceptions: None.

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   a. SELLER has fee simple title in the Property and same shall be transferred to PURCHASER on the Closing date, as provided in Section 1 above, free from liens, encumbrances, claims of others, unless otherwise specified herein, but subject to all ordinances and recorded building and use restrictions and easements.
   b. Performance of the obligations of SELLER under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to SELLER or the Property except that pursuant to Section 4.8, subparagraph b of the Charter of the city of East Lansing, Seller must obtain prior approval of the electors of the City of East Lansing in order to sell the Property.
   c. There is no litigation or proceeding pending, or to the SELLER'S knowledge threatened, against or involving the SELLER’s interest in the Property or the Property, and the SELLER does not know or have reason to know of any ground for any such litigation or proceeding, which could have a material adverse impact on PURCHASER or PURCHASER's title to and use of the Property, either before or after Closing.
   d. SELLER shall continue to operate the Property in the ordinary course of business and maintain the Property in its current condition and repair during the interim period between the acceptance of this Agreement and the closing date.
   e. There are no service, maintenance, supply, listing, or management contracts currently in effect with respect to the Property which will not be terminated by SELLER at closing.
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   g. The Property is not in violation of environmental laws that Seller is aware of but an assessment has not been performed by Seller.
   h. The Property will be free and clear of all tenants, leases and occupancy Agreements at Closing.
   i. No latent defects exist on the Property which are known to SELLER which were not previously disclosed to PURCHASER in writing.
   j. SELLER will maintain hazard and liability insurance in commercially reasonable amounts on the Property at all times prior to closing.
   k. The Property is not subject to any Farmland Development Rights Agreement or Conservation Easement.
   l. Each of the persons or person executing this Agreement as SELLER or on behalf of SELLER warrants that he or she is authorized to execute this Agreement on behalf of SELLER, and makes this Agreement binding upon SELLER, and will provide evidence of such authority prior to closing sufficient to establish such authority to the title company providing the title commitment pursuant to section 7.

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    a. PURCHASER shall accept the Property in its "as is" condition subject to reasonable use, wear and tear between the date of this Agreement and the Closing date.
    b. The performance of the obligations of PURCHASER under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to PURCHASER.
    c. There is no litigation or proceeding pending, or to PURCHASER'S knowledge threatened, against or involving PURCHASER, and PURCHASER does not know or have reason to know of any ground for any such litigation or proceeding, which could have an adverse impact on SELLER or SELLER'S interests under this Agreement.
    d. In entering into this Agreement, PURCHASER has not relied upon any written or oral representations made by SELLER or any representative of SELLER regarding the Property or any aspect of this transaction, which are not expressly set forth in this Agreement.
    e. PURCHASER agrees to limit building uses to only those approved by the voters.
    f. PURCHASER warrants that it intends to pursue a commercial office project on the site which it intends to own
and operate, and will diligently work through any City approval process necessary to obtain authorization for the project subject to the voter approval in the March 2020 ballot.

11. DAMAGE TO PROPERTY. If between the date of this Agreement and the closing date, all or any part of the Property is damaged or taken pursuant to any power of eminent domain, SELLER shall immediately notify PURCHASER of such occurrence, and PURCHASER may terminate this Agreement by written notice to the SELLER within fifteen (15) days after PURCHASER’S receipt of such notice of damage or notice of taking. If PURCHASER exercises the right to terminate this Agreement under this Section 11, any earnest money deposit shall be returned to PURCHASER and this Agreement shall be null and void. If PURCHASER does not elect to terminate this Agreement, there shall be no reduction of the purchase price and at closing SELLER shall assign to PURCHASER whatever rights SELLER may have with respect to any insurance proceeds or eminent domain award.

12. CLOSING. Sale shall be closed on or before September 23, 2020 (the “Closing Date”) unless SELLER and PURCHASER agree to extend the Closing Date to allow PURCHASER additional time to obtain necessary City approvals, which approvals PURCHASER agrees to diligently pursue upon execution of this Agreement. Sale shall be closed within sixty (60) days after satisfaction of the condition specified in Section 23.d. (the “Closing Date”); however, if title defect(s) other than Permitted Exceptions exist(s) and SELLER is notified of same in writing, SELLER shall be allowed 30 days from such notice to cure such defect(s). In the event SELLER is unable to cure such defects within said 30 day period, PURCHASER may, at its option, agree to waive such defect and proceed to Closing, or to terminate this Agreement in which event the earnest money deposit shall be promptly refunded to PURCHASER. If sale is not closed due to PURCHASER’s inability to satisfy the contingency in Section 23.d. below or for reasons other than default by SELLER or PURCHASER, then this Agreement shall terminate and the earnest money deposit shall be promptly refunded to PURCHASER. SELLER shall pay all State and County real estate transfer taxes due on the transaction at closing. SELLER and PURCHASER shall each pay one-half of the title company closing fee at closing. The Closing shall be at the offices of the Title Company in Ingham County, Michigan unless otherwise agreed by the Parties, and PURCHASER and SELLER may close this transaction by mail.

13. POSSESSION. SELLER shall grant to PURCHASER possession of the Property upon completion of the Closing, free and clear of all leases, tenants and occupants.

14. SELLER’S CLOSING OBLIGATIONS. At closing, SELLER shall deliver the following to PURCHASER:
   a. A warranty deed as specified in Section 3 of this Agreement;
   b. Any other documents required by this Agreement to be delivered by SELLER; and
   c. Any other documents reasonably requested by the Title Company or PURCHASER consistent with this Agreement.

15. PURCHASER’S CLOSING OBLIGATIONS. At closing, PURCHASER shall deliver to SELLER the following:
   a. The cash portion of the purchase price specified in Section 3 above, in the form of wire transfer of U.S. currency, certified check(s), certified money order(s), or cashier's check(s) as adjusted by the apportionments and assignments in accordance with this Agreement;
   b. Any other documents required by this Agreement to be delivered by PURCHASER; and
   c. Any other documents reasonably requested by the Title Company or SELLER consistent with this Agreement.

16. NOTICES. Any notice required or permitted by this Agreement shall be sufficient if in writing and delivered by email to the parties and the parties’ attorneys at the email addresses specified in the proximity of the parties’ signatures below, or personally served, or sent by certified mail return receipt requested addressed to the parties at their addresses specified in the proximity of their signatures below. Any notices given by email or personally served shall be effective upon the date such email is sent or the date of such personal service, whichever is applicable. Any notices given by mail shall be deemed to have been given as of the day following the date of
posting.

17. ADDITIONAL ACTS. PURCHASER and SELLER agree to execute and deliver such additional documents and to perform such additional acts as may become reasonably necessary to effectuate the transfer and transaction contemplated by this Agreement.

18. ENTIRE AGREEMENT. This Agreement contains the entire Agreement of the parties with respect to the sale of the Property. All contemporaneous or prior negotiations have been merged into this Agreement. This Agreement may be modified or amended only by written instrument signed by the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

19. PURCHASER'S DEPOSIT. PURCHASER shall deposit Ten Thousand and 00/100 Dollars ($10,000.00) upon SELLER’S acceptance evidencing PURCHASER’S good faith, said deposit to be deposited in trust with Transnation Title Agency of Michigan, and apply as part of the purchase price. If this offer is not accepted this deposit will be refunded forthwith. This deposit shall be applicable to the purchase price at Closing. This deposit shall be refunded in the event any condition precedent in this Agreement is not satisfied or waived, including without limitation the condition of approval by electors as referenced in sections 9.b. and 23.d. This deposit shall be forfeited in the event of any default by PURCHASER, as SELLER’S sole remedy for default. PURCHASER shall be in default under this Agreement in the event of PURCHASER’S failure to perform any of PURCHASER’S obligations under this Agreement, which failure is not cured within ten (10) days after written notice of such failure is sent by SELLER to PURCHASER.

20. ADVICE OF COUNSEL. Any evidence of title and supporting documents are to be examined on behalf of PURCHASER to determine if they are consistent with this Agreement by Purchaser’s Chief Legal Counsel.

21. NOTICE OF HAZARDOUS WASTES OR SUBSTANCES AND UNDERGROUND STORAGE TANKS. There are numerous federal, state and local laws and regulations in existence which are intended to control and/or correct environmental contamination. These laws and regulations may expose owners, tenants and other users of property to liability for damages and/or clean-up costs occasioned by environmental contamination regardless of fault and regardless of when in time the contamination may have occurred. The costs associated with the clean-up of environmental contamination can be very substantial. Accordingly, it is prudent for each party to a real estate transaction to seek legal and/or technical counsel from professionals experienced in such matters so that each may be better apprised of their respective rights and responsibilities with respect to environmental issues. SELLER does not possess the expertise necessary to assess environmental risks or to determine the presence of environmental contamination.

The term "hazardous wastes or substances," as used in this NOTICE may include, but are not limited to, petroleum based products, paints and solvents, leads, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property and this NOTICE is therefore meant to apply to any transaction involving any type of real property, whether improved or unimproved.

22. ACCEPTANCE OF OFFER. PURCHASER gives the SELLER until 5 p.m. on April 1, 2020 to deliver SELLER’S written acceptance of or Counter Offer to this Agreement in default of which this Agreement shall become null and void absent written Agreement to the contrary.

23. OTHER PROVISIONS.
   a. ADDITIONAL CONDITIONS PRECEDENT: INSPECTIONS. Prior to Closing, PURCHASER shall have the right to perform such due diligence and conduct such inspections and investigations as the PURCHASER deems necessary or desirable including, but not limited to, the examinations of title, survey, soils, zoning, utilities, drainage, leases, and environmental reports, and to obtain any desired zoning, special use permits, variances, and other permits and approvals from the City of East Lansing and other governmental entities for PURCHASER's intended use. Satisfactory results of said due diligence, inspections and investigations, in PURCHASER’s sole discretion, are conditions precedent to PURCHASER’s obligation to perform the
covenants in this Agreement including payment of the purchase price. All PURCHASER’S due diligence cost and expenses shall be paid by PURCHASER. In the event PURCHASER terminates this Agreement because a condition precedent is not met, the Deposit shall be returned to PURCHASER and neither party shall have any further obligation or liability to the other. PURCHASER agrees to indemnify, defend and hold SELLER harmless from all claims, losses, costs, damages or expenses arising due to the negligence or misconduct of PURCHASER or PURCHASER’S agents, directors, officers, employees, invitees and contractors when entering onto the Property to conduct said due diligence, inspections and investigations pursuant to this Section 23.a. PURCHASER shall have the right to enter upon the Property and perform such due diligence, including without limitation invasive environmental and soil inspections. In the event sale is not closed for any reason other than SELLER’s default, PURCHASER shall restore the Property to a condition as near as possible to the condition in which it existed prior to the invasive inspections.

b. DOCUMENTS. SELLER agrees to provide to PURCHASER within five (5) days of acceptance of this Agreement copies of all leases, surveys, engineering, environmental, soil tests and other related studies particular to the subject Property.

c. ASSIGNMENT. No assignment of this Agreement shall be permitted without SELLER’s prior written consent.

d. CONDITION PRECEDENT. PURCHASER’s obligation to close and SELLER’s obligation to sell is conditioned upon SELLER being authorized to sell the property pursuant to Section 4.8 of the City Charter. SELLER agrees to seek said permission in the March 2020 election.

e. SURVIVAL. The warranties, representations and covenants of SELLER and PURCHASER in Sections 9, 10, 11, and 19 above shall survive Closing under this Agreement.

f. AUTHORITY. Each signatory of a party to this Agreement represents and warrants to the other party to this Agreement that said signatory is properly authorized by the party for which such signatory is signing to execute this Agreement for said party. Each party shall provide such evidence of said party’s authorization to enter into this Agreement, and authorization to execute closing documents upon the reasonable request of the Title Company or other party to this Agreement.

24. LIMITATION OF REMEDIES FOR PURCHASER: Except for claims by the Purchaser that the Purchaser is entitled to return of the Deposit pursuant to the terms of this Agreement, Purchaser agrees that its sole and exclusive remedy against the Seller for any claim arising out of this Agreement shall be to seek and obtain specific performance of the terms of this Agreement including temporary and permanent injunctive relief. All other claims arising out of this Agreement, whether for breach of contract, tort, or otherwise, including any misrepresentation or inaccuracy of the SELLER’s warranties are waived by Purchaser even if this Agreement is hereafter declared to be invalid. The prevailing party in any proceeding or court action to enforce the terms of this Agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan law, and the amount of the Deposit owed to the Purchaser in accordance with the terms of this Agreement.

25. LIMITATION OF REMEDIES FOR SELLER: Seller’s sole and exclusive remedy shall be limited to its rights to the Deposit pursuant to this Agreement and its right to indemnification. The prevailing party in any proceeding or court action to enforce the terms of this Agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan law, and the amount of the Deposit owed to the Seller in accordance with the terms of this Agreement.

26. RECEIPT OF COPY. By signing below, PURCHASER and SELLER acknowledge receipt of a copy of this Agreement.
[Signatures on following page]
Witness: 

____________________________________

SELLER:
City of East Lansing
410 Abbot Rd, East Lansing, MI 48823

By:______________________________

Its:______________________________
Email:____________________________
Date:____________________________

Witness: 

____________________________________

PURCHASER:
Michigan State University Federal Credit Union
3777 West Rd, East Lansing, MI 48823

By:______________________________

April M. Clobes
Its: President/CEO
Email: april.clobes@msufcu.org
Date:____________________________

SELLER Attorney: Tom M. Yeadon
Email: tomyeadon@mcgintylaw.com

PURCHASER Attorney: Steven L. Owen
Email: steve.owen@msufcu.org