

**BOARD OF REGENTS**  
EASTERN MICHIGAN UNIVERSITY

SECTION: 26
DATE:
June 15, 2016

**RECOMMENDATION  
APPROVAL OF PURCHASE AGREEMENT FOR  
PURCHASE OF 511 WEST FOREST AVENUE, YPSILANTI, MI 48197**

**ACTION REQUESTED**

It is recommended that the Eastern Michigan University Board of Regents (“the University”) approve the attached Purchase Agreement (“the Agreement”) for the purchase of the property described in attachment A (the “Property”) of the Agreement and commonly known as 511 West Forest Avenue, Ypsilanti, MI, Property Identification Number: 11-11-40-113-020, and to authorize the University President to execute all appropriate purchase, transfer and closing documents necessary for the sale.

**STAFF SUMMARY**

The University has agreed to purchase the Property from Most Reverend Earl Boyea, Bishop of the Roman Catholic Diocese of Lansing in accordance with the terms set forth in the attached Agreement.

The Property’s location at West Forest and Perrin Streets is immediately contiguous to the main campus.

The property was originally constructed in 1965. An addition was built in 2005. It is roughly 21,000 square feet. There is parking for 23 vehicles.

The University intends to use the Property to serve as the primary location for the Honors College, which has doubled in size since 2011 and last fall enrolled 1,400 students. Last fall, EMU enrolled nearly 500 freshmen students in the Honors College – the largest incoming class in its history. The building itself is well suited to meet the needs of the growing Honors College, with a large central room along with offices and classrooms. The building also has fire, smoke and security systems, along with a 2100 pound elevator. The building has an accessible bathroom and other accessible features. Overall, the building is in good condition and is well-maintained.

Upon execution of the Agreement, there will be a thirty day due diligence period during which EMU may enter the property and conduct inspections and survey the property.

The purchase of the property is made on an “as-is” basis.

The purchase price for the Property is Nine Hundred Forty Thousand and 00/100 (\$940,000.00) dollars.

**FISCAL IMPLICATIONS**

The purchase price of the Property is Nine Hundred Forty Thousand and 00/100 (\$940,000.00) dollars.

**ADMINISTRATIVE RECOMMENDATION**

The proposed Board action has been reviewed and is recommended for Board approval.

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**University Executive Officer**  
**Gloria A. Hage**

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**Date**

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is made as of May \_\_\_\_, 2015 by and between **MOST REVEREND EARL BOYEA, BISHOP of the ROMAN CATHOLIC DIOCESE OF LANSING**, whose address is 228 N. Walnut Street, Lansing, Michigan 48933, as seller ("Seller") and **EASTERN MICHIGAN UNIVERSITY**, a public body corporate organized and existing under the laws and Constitution of the State of Michigan, whose address is 11 Welch Hall, Ypsilanti, Michigan 48197, as purchaser ("Purchaser")

A. Seller is the owner of certain real property, interests, and improvements located, in part, in the City Ypsilanti, Washtenaw County, Michigan, consisting of approximately .92 acres of land, more or less, including the building thereon (part of St. John the Baptist Catholic Church Parish, previously Holy Trinity Chapel of St. John the Baptist Catholic Church), commonly known as 511 West Forest Avenue, Ypsilanti, Michigan 48197, and more particularly described in this Agreement; and

B. Seller is desirous of selling and Purchaser is desirous of purchasing said real property, interests, and improvements upon the terms and conditions stated in this Agreement; and

C. Seller and Purchaser desire to set forth the consideration, terms, and conditions upon which Seller shall sell and Purchaser shall purchase said real property, interests, and improvements.

NOW, THEREFORE, with consideration for the following mutual covenants, agreements and benefits, the receipt and adequacy of which are mutually acknowledged, Seller and Purchaser agree as follows:

1. PROPERTY. The term "Property" shall mean the real property described in attached Exhibit A, together with the following:

1.1 Any and all improvements, tenements, hereditaments, privileges and appurtenances thereto belonging or in any way appertaining to the Property;

1.2 Any and all fixtures, equipment and other items of personalty currently being used in connection with the Property;

1.3 Any and all governmental licenses and permits in any way appertaining to the Property;

1.4 Any and all of Seller's right, title and interest in any and all streets, roads or avenues, open or proposed, abutting, adjacent, contiguous, or adjoining the Property, to the center line thereof;

1.5 Any and all of Seller's right, title and interest, in any and all easements, strips, and rights-of-way whether or not of record, abutting, adjacent, contiguous, or adjoining the Property;

1.6 Any and all right, title, and interest of Seller in and to any and all air, mineral, oil, gas, timber, and riparian rights in any way appertaining to the Property;

1.7 If the Property consists of unplatted lands, rights of Seller to make "all" divisions of the Property under Section 108 of the Michigan Land Division Act, provided that Seller makes no representation or warranty regarding the number, extent or nature of such divisions owned or transferred by Seller to Purchaser; and

1.8 All warranties, bonds, assurances of payment or performance, rights, if any, arising under construction contracts and subcontracts and all other rights and remedies arising out of or existing in favor of Seller with respect to the construction, improvement, maintenance and/or repair of the Property and all improvements located on the Property.

**[DISCUSS STATUS OF PERSONAL PROPERTY]**

2. SALE AND CONVEYANCE. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell and convey to Purchaser by warranty deed, and Purchaser agrees to buy from Seller, the Property, for the Purchase Price as hereinafter defined, subject only to Permitted Exceptions (as defined below). Said sale and purchase of the Property shall be in their current "as is" condition, without any warranty or representation whatsoever except as otherwise specifically provided in this Agreement.

3. PURCHASE PRICE. The purchase price for the Property shall be Nine Hundred Forty Thousand and 00/100 (\$940,000.00) U.S. Dollars (the "Purchase Price"). The Purchase Price shall be payable in full at Closing (as defined below) by cashier's check, certified check or wire transfer, minus the Deposit (as defined below) and plus or minus the net amount of any prorations and adjustments made pursuant to this Agreement.

4. DEPOSIT. Within two (2) business days of the execution of this Agreement by Seller, Purchaser shall deliver to the Title Company (as defined below) an earnest money deposit in the amount of Ten Thousand and 00/100 (\$10,000.00) U.S. Dollars, which, together with any interest earned thereon shall be referred to as the "Deposit." If Purchaser shall fail to so make the Deposit in the time and manner required by this Agreement, this Agreement shall be null and void at the option of Seller. The Deposit shall be held by the Title Company in a non-interest interest-bearing account. The Deposit shall be paid to Seller at the Closing (as defined below) or otherwise refunded to Purchaser or disposed of as provided for in this Agreement. At the Closing, Purchaser shall receive a credit against the Purchase Price for the Deposit. Seller and Purchaser acknowledge and agree that the Title Company is acting in this capacity as an accommodation to them and Seller and Purchaser agree to hold the Title Company harmless from any liability or claim with respect to the Deposit, other than claims arising or resulting from Title Company's gross negligence or willful misconduct. Seller and Purchaser agree that in the event of any dispute or disagreement with respect to the Deposit, the Title Company may begin an interpleader action in and tender the Deposit to the Clerk of the Circuit Court for Washtenaw County, Michigan, and the Title Company shall thereafter be relieved of any and all obligations with respect to the Deposit.

## 5. EVIDENCE OF TITLE.

5.1 As evidence of title to the Property, Seller shall furnish at Seller's expense, and in no case later than fifteen (15) days from the date of Seller's execution of this Agreement, a commitment for an owner's policy of title insurance, without standard exceptions, issued by Seaver Title Agency (the "Title Company") in the amount of the Purchase Price, dated as close as practical to the date of this Agreement (the "Title Commitment") undertaking to insure marketable fee simple title to the Property in Purchaser. If Purchaser does not obtain any survey required for issuance of an owner's policy of title insurance without standard exceptions, said policy shall be with standard exceptions as to matters of survey. The Title Commitment shall also include, at Seller's expense, one copy of all recorded liens, encumbrances, mortgages, restrictions or exceptions shown on the Title Commitment.

5.2 If the Title Commitment shall show any liens, encumbrances, mortgages, restrictions, or exceptions, or if the Survey (as defined below) reveals any conditions, which, in the opinion of Purchaser and/or Purchaser's counsel, may interfere with Purchaser's use or ownership of the Property or does not provide for a marketable fee simple title to the Property, Purchaser shall object thereto and notify Seller thereof in writing within fifteen (15) days of the date on which Purchaser received both the Title Commitment (including copies of all liens, encumbrances, restrictions and exceptions) and the Survey, but in no event more than sixty (60) days after Purchaser has received the Title Commitment, and Seller shall thereafter have ten (10) days from the date of such notice to either: (i) eliminate such liens, encumbrances, mortgages, restrictions or exceptions, excluding liens and mortgages which can be satisfied and discharged through payment by Seller at the Closing; or (ii) terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchaser, and this Agreement shall thereafter be of no further force or effect; provided, however, that in any event Seller shall be obligated to discharge any consensual lien or mortgage granted by Seller at the Closing which is liquidated in amount and may be discharged by the payment of money; and further provided that prior to Seller's right to terminate, Purchaser shall have the right to waive the objections or terminate as provided in Section 5.3.

5.3 With respect to any liens, encumbrances, mortgages, restrictions or exceptions which Seller elects not to eliminate and is not obligated to eliminate under Section 5.2, Purchaser may, in Purchaser's sole discretion:

(a) In writing, consent to and waive its objections to and accept title and the Warranty Deed subject to such liens, encumbrances, mortgages, restrictions and/or exceptions; or

(b) Terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchaser, and this Agreement shall thereafter be of no further force or effect.

The liens, encumbrances, mortgages, restrictions or exceptions to title shown on the Title Commitment to which Purchaser does not object, or to which Purchaser consents to waive, are referred to in this Agreement as "Permitted Exceptions;" provided, however, in no event shall

liens or mortgages which Seller is obligated to discharge pursuant to the last sentence of Section 5.2 be deemed to be Permitted Exceptions.

5.4 Purchaser may require the Title Company to mark-up the Title Commitment at Closing to make the Title Commitment effective immediately after the Closing, and to delete such requirements of the Title Commitment and such liens, encumbrances, mortgages, restrictions and exceptions as are satisfied at the Closing. At the Closing, Seller shall deliver to the Title Company a standard form of owner's affidavit to the extent consistent with Seller's obligations, warranties and representations under this Agreement and, if required, such owner's indemnity as the Title Company may reasonably require in order to delete the standard exceptions to the Title Commitment other than as to matters of survey. Moreover, if desired by Purchaser, the Title Commitment also shall include such additional insurance by a zoning endorsement, access endorsement, contiguity endorsement, comprehensive endorsement, boundary/restrictions endorsement or other endorsement, each if and as available, as Purchaser may reasonably request, but in each case, the cost of such endorsement shall be paid by Purchaser. Purchaser shall also be responsible for obtaining any zoning letter required for Purchaser's requested endorsements.

5.5 After the Closing, a final policy of title insurance issued pursuant to the Title Commitment, in the form of an American Land Title Association Owner's Policy, Standard Form B, effective as of the time of the Closing, in the amount of the Purchase Price, shall be delivered to Purchaser at Seller's cost (except Purchaser shall be responsible for the cost of endorsements as provided in Section 5.4 hereof) insuring marketable fee simple title to the Property in Purchaser, subject only to Permitted Exceptions.

6. SURVEY. In addition to the Permitted Exceptions, the Property shall be conveyed to Purchaser by warranty deed, subject to matters which would be disclosed by an accurate survey of the Property, and subject to Purchaser's right to obtain a survey as provided herein. Purchaser may, at its option and expense, during the Inspection Period (as defined below) procure an ALTA boundary survey of the Property and all buildings, structures and improvements thereon prepared by a registered land surveyor licensed in the State of Michigan and certified not earlier than the date of this Agreement to Purchaser, Seller and the Title Company (the "Survey"). The Survey shall be in such form and content as is acceptable to Purchaser in Purchaser's sole discretion. A copy of said survey shall be delivered to Seller upon Purchaser's receipt thereof. At any time during the title comment period referred to in Section 5.2 above, Purchaser may, in Purchaser's sole discretion, determine that the condition of the Property as reflected on the Survey is not acceptable and terminate the Agreement by written notice to the Seller. Thereupon, the Deposit shall be immediately returned to Purchaser, and this Agreement thereafter shall be of no further force or effect. Within ten (10) days from the date of Seller's execution of this Agreement, Seller shall provide Purchaser with a copy of all surveys of the Property in Seller's possession which Seller can readily locate, if any, that have not previously been provided to Purchaser.

## 7. INSPECTION PERIOD.

7.1 Upon Seller's execution of this Agreement, Purchaser and Purchaser's agents, employees, contractors, and consultants shall have a period of thirty (30) days (the "Inspection Period") to conduct such inspections, investigations, appraisals, tests and determinations of the Property as Purchaser shall desire in order to determine, in Purchaser's sole opinion, that the condition of the Property is acceptable and that the Property is suitable for Purchaser's intended use. Purchaser agrees to provide twenty-four (24) hours' notice to Seller of its intent to enter upon the Property for the purposes of such inspections, investigations, appraisals, tests, and determinations. Such inspections, investigations, appraisals, tests and determinations of the Property during the Inspection Period shall include, but shall not be limited to, inspecting structural, mechanical and electrical systems; inquiring as to the existence of utility services, public services and access; inquiring as to applicable zoning ordinances, use regulations and business codes; conducting soil tests of the Property, borings and other engineering and architectural tests; investigating the environmental conditions which exist at the Property, including an asbestos survey, a wetland survey, a Phase I and Phase II environmental assessment and a baseline environmental assessment (with due care plan, if necessary) and the Property's compliance with all applicable local, state and federal environmental laws and regulations; and determining the availability of any governmental approvals or permits. The cost of any and all such inspections, investigations, appraisals, tests, and determinations shall be paid for by Purchaser. Purchaser shall be required to repair all damages to the Property caused by Purchaser or Purchaser's agents, employees and contractors in connection with said inspections, investigations, appraisals, tests and determinations, and shall indemnify, defend and hold Seller harmless from any losses, costs, expenses, damages and liabilities incurred as a result of said inspections, investigations, appraisals, tests and determinations. Purchaser's obligations under this Section 7.1 shall survive closing, and the termination and expiration of this Agreement.

7.2 Within ten (10) days after Seller's execution of this Agreement, Seller shall provide Purchaser with a copy of any results or reports of any such inspections, investigations, appraisals, tests and determinations of the Property readily available to Seller. Seller acknowledges that during the Inspection Period or at any time before or after Closing, if the Property is determined to be a "Facility," Purchaser may prepare and file with the Michigan Department of Environmental Quality a baseline environmental assessment (with due care plan) ("BEA").

7.3 At any time during the Inspection Period, Purchaser may, in Purchaser's sole opinion, determine that the condition of the Property is not acceptable or that the Property is not suitable for Purchaser's intended use by providing Seller with written notice thereof. Thereupon, Purchaser may, in Purchaser's sole discretion, terminate this Agreement, in which event the Deposit shall be immediately returned to Purchaser and this Agreement shall thereafter be of no further force or effect except as otherwise provided herein. If Purchaser shall fail to provide such written notice to Seller prior to the expiration of the Inspection Period, Purchaser shall be deemed to have accepted the condition of the Property and Purchaser shall be obligated to proceed with the Closing in accordance with (and subject to) the other terms and conditions of this Agreement.

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7.4 In the event Purchaser proceeds to Closing, then in such event, Purchaser acknowledges that Purchaser has inspected the Property, and that Purchaser accepts the Property “as is”, in its present condition, including but not limited to the environmental condition, with all of its faults, and Purchaser, and Purchaser’s successors and assigns of the Property, hereby release Seller from any and all liabilities and obligations related to the condition of the Property, including but not limited to the environmental condition, and such release of Seller, hereunder shall survive the Closing, and the warranty deed shall contain this release.

8. COVENANTS OF SELLER. Seller covenants with Purchaser that during the term of this Agreement:

8.1 Seller shall not sell, transfer, assign, convey, or dispose of any of its rights under this Agreement or in the Property.

8.2 Seller shall not grant any lien or encumbrance on or permit any lien or encumbrance on the Property.

8.3 Seller shall not grant any easement or right-of-way in or on the Property.

8.4 Seller shall not grant or modify (other than to terminate) any lease, license, or other right to use or occupy the Property to any person other than an entity affiliated with Seller that is terminable at or prior to the Closing.

8.5 Seller shall maintain the Property in its existing condition, ordinary wear and tear, and damage by casualty excepted.

8.6 Seller shall not materially modify the use of the Property from its existing use.

8.7 Seller shall not alter, modify, improve or impair any structure on the Property in any respect, except as required pursuant to Section 8.5 above.

8.8 Seller shall maintain its existing insurance coverages for the Property, including all buildings and improvements, against loss or damage for fire and extended coverage insurance, including additional perils.

8.9 Seller shall pay all real and personal property taxes (if any) and assessments levied against the Property during the term of this Agreement.

8.10 In connection with Purchaser's investigation of the environmental condition of the Property, Seller shall reasonably cooperate with Purchaser's environmental consultant and timely complete and provide Purchaser and its consultant with a customary environmental disclosure with regard to the best knowledge of the Seller’s representative completing the disclosure concerning the environmental condition of the Property. To the extent there is any change in the knowledge of Seller’s representative completing the response/disclosure during the term of this Agreement, Seller shall promptly inform Purchaser and update Seller's disclosure.

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9. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Purchaser as of the date of this Agreement that:

9.1 To Seller's actual knowledge, there are no unrecorded liens, or mortgages on or against the Property which are not of record.

9.2 To Seller's actual knowledge, no fact or condition exists that would result in the termination or impairment of access to the Property or the discontinuation of necessary utilities or services.

9.3 To the best of Seller's knowledge, there are no pending or, to Seller's actual knowledge, threatened actions, suits, claims, or proceedings against the Property (or against Seller that would affect the Property or Seller's ability to convey the Property) at law or in equity or before any federal, state or local governmental department or agency.

9.4 Seller has not received any notices that the Property or the operation of the Property violates any law, ordinance or regulation, which notices have not been cured.

9.5 Seller has duly and validly authorized and executed this Agreement and Seller has full power and authority to enter into and perform its obligations under this Agreement.

9.6 Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

9.7 Seller is not a party to or bound by any agreement of any kind whatsoever (including leases, licenses, options and rights of refusal or first offer), written or verbal, which might affect the Property, other than those that have been disclosed to Purchaser in writing or are terminable at will by Seller or Purchaser without recourse or liability against Purchaser or the Property.

At the Closing Seller shall provide an update on the status of the foregoing as of the date of the Closing.

10. WARRANTIES AND REPRESENTATIONS OF PURCHASER. Purchaser represents and warrants to Seller as of the date of the Closing, and subject to the approval of this transaction by Purchaser's Board of Regents as provided in Section 12.3, Purchaser (or if assigned by Purchaser to an entity to be formed, the assignee) shall have duly and validly authorized and executed this Agreement or ratified its earlier execution and that (subject to the approval of this transaction by Purchaser's Board of Regents as provided in Section 12.3) Purchaser has full power and authority to enter into and perform its obligations under this Agreement.

11. CLOSING. The consummation of the sale and purchase of the Property (the "Closing") shall take place within fifteen (15) days of the expiration of the Inspection Period, provided that all of the conditions precedent and contingencies to the Closing as set forth in this Agreement have been satisfied or waived in writing by Purchaser. The Closing shall be held at

the Title Company or such other place as the parties may mutually select. Seller may close this sale and purchase transaction by mail, if desired.

11.1 The Closing shall be consummated by the following, in form and content consistent with the requirements of this Agreement:

(a) The execution and delivery by Seller to Purchaser of a warranty deed conveying good and marketable title to the Property, subject only to Permitted Exceptions and subject to matters which would be disclosed in an accurate survey of the Property, and including Seller's right to make all land divisions of the Property under Section 108 of the Michigan Land Division Act, if any, if the Property is unplatted land as provided in Section 1.7 above.

(b) The execution and delivery of a closing settlement statement duly executed by Seller and Purchaser providing for the prorations and adjustments required by this Agreement.

(c) The execution and delivery by Seller to Purchaser of an affidavit certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, which shall include Seller's federal employer identification number.

(d) Payment by Purchaser to Seller of the Purchase Price minus the Deposit and plus or minus the net amount of any prorations and adjustments required by this Agreement.

(e) The execution and delivery by Seller to Purchaser of a bill of sale.

(f) The execution and delivery by Seller of an owner's affidavit and, to the extent necessary for the removal of the standard exceptions, an owner's affidavit in the form(s) required by the Title Company for the removal of its standard exceptions (except as to matters of survey).

(g) The execution and delivery by Seller to Purchaser and the Title Company of a legal opinion from Michael Murray, as legal counsel of the Catholic Diocese of Lansing concerning the statutory authority of the Bishop to convey the Property pursuant to Act 207 of the Public Acts of 1867, as amended, as evidence of the Seller's authority and authorization of the sale of the Property.

(h) Seller shall furnish exclusive occupancy of the Property to Purchaser at Closing, subject to no tenants, licensees or other persons.

(i) The execution and delivery by Seller to Purchaser of any other closing documents that Purchaser may reasonably require.

12. CONDITIONS PRECEDENT AND CONTINGENCIES TO PERFORMANCE OF AGREEMENT. Purchaser's obligation to consummate the purchase of the Property is absolutely contingent and conditional on the satisfaction of, or Purchaser's written waiver of, each of the following conditions precedent:

12.1 Seller shall be able to convey marketable fee simple to and possession of the Property in the condition required under this Agreement.

12.2 The representations and warranties of Seller under this Agreement are true and correct when made and as of the Closing.

12.3 Purchaser's Board of Regents has formally approved of the execution of this Agreement and the purchase of the Property pursuant to this Agreement (such action currently contemplated to take place at the Board of Regents meeting scheduled for June 16, 2015). Purchaser shall deliver a copy of said approval to Seller immediately upon Purchaser obtaining such approval.

12.4 Seller shall not be in default of this Agreement.

12.5 Seller shall have maintained the Property in the condition required hereunder during the term of this Agreement.

12.6 Seller shall deliver to Purchaser and the Title Company, if required by the Title Company, evidence of resolutions adopted by its governing body authorizing the execution and performance of this Agreement, and the sale of the Property as contemplated under this Agreement.

12.7 If any of the foregoing conditions precedent or contingencies are neither satisfied nor waived by Purchaser in writing, in Purchaser's sole discretion, as of the Closing, Purchaser shall have the right to terminate this Agreement, whereupon the Deposit shall be immediately refunded to Purchaser and this Agreement shall thereafter be of no further force or effect.

If the condition set forth in Section 12.3, (including delivery of a copy of such approval to Seller) is not satisfied by June 25, 2015, either Purchaser or Seller may terminate this Agreement upon written notice to the other party given at any time after June 25, 2015 and prior to Seller's receipt of proof of such satisfaction. Upon any such termination the Deposit shall be immediately refunded to Purchaser and this Agreement shall be of no further force or effect, except as to Purchaser's obligations hereunder which are specifically stated to survive termination.

### 13. PRORATIONS AND ADJUSTMENTS.

13.1 All taxes, penalties and interest on or otherwise affecting the Property for which bills have been issued prior to the date of Closing shall be paid by Seller and all taxes for which bills are issued after the date of Closing shall be paid by Purchaser notwithstanding the fact that such taxes may have become a lien upon or against the Property as a result of PA 80 and PA 219 of 1994. Current taxes, being the winter and summer tax bills issued for the Property within the twelve (12) months immediately preceding the Closing, shall be prorated and adjusted as of the date of Closing in accordance with the due date basis of the municipality or taxing unit in which the Property is located, as if paid in advance.

13.2 All assessments due, even if payable in installments, including any special, water, and sewer use charges, shall be prorated and adjusted as of the date of Closing. Seller shall escrow with the Title Company at the Closing such amount estimated by Purchaser as being necessary to cover such water or sewage charges as of the Closing.

13.3 All state and county transfer taxes shall be paid by Seller at the Closing. The cost of recording the warranty deed shall be paid by Purchaser.

13.4 Notwithstanding Sections 13.1 and 13.2 above, there will be no prorations until the date of possession if Seller continues to occupy the Property after the date of Closing (which is not intended to and does not permit Seller to retain possession).

13.5 Purchaser and Seller shall each pay one-half of any escrow fees or charges for the Title Company to close the transaction.

14. CONDEMNATION OF PROPERTY BEFORE CLOSING. If, at any time before the Closing, any authority having the right of eminent domain shall commence any legal action for the temporary or permanent taking or acquisition of all or any part of the Property, Seller shall immediately give written notice thereof to Purchaser, and Purchaser shall have the right, upon providing Seller with written notice thereof, to consummate the purchase of the Property as provided by this Agreement with a reduction being made in the Purchase Price in an amount equal to any proceeds received by Seller prior to the Closing resulting from a condemnation award or judgment and an assignment from Seller of the right to receive any and all future proceeds of any condemnation award or judgment. If Purchaser shall elect to not so consummate the purchase of the Property, upon written notice thereof to Seller Purchaser may terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchaser and this Agreement shall thereafter be of no further force or effect.

15. DAMAGE OR DESTRUCTION OF PROPERTY BEFORE CLOSING. If, at any time before the Closing, all or any part of the Property is damaged or destroyed by any casualty or loss whatsoever, Seller shall immediately notify Purchaser in writing of such damage, and Purchaser shall have the right, upon providing written notice thereof to Seller, to either consummate the purchase of the Property as provided in this Agreement (whereupon Purchaser shall take the proceeds of any insurance covering such damage or destruction of the Property) or terminate this Agreement (whereupon the Deposit shall be immediately returned to Purchaser and this Agreement shall thereafter be of no further force or effect).

16. DEFAULT.

16.1 If Purchaser is in default under this Agreement, provided Seller is also not in default, then Seller's sole and exclusive remedy, after notice to Purchaser and reasonable opportunity to cure, shall be to terminate this Agreement by giving written notice thereof to Purchaser, whereupon the Deposit shall be retained by Seller as liquidated damages, as Seller's sole and exclusive remedy on account of such default hereunder by Purchaser, and neither party shall have any further liability or obligation to the other, except as otherwise provided herein.

16.2 If Seller is in default under this Agreement, provided Purchaser is also not in default, then Purchaser's sole and exclusive remedy shall be to either:

(a) Terminate this Agreement by written notice to Seller, whereupon the Deposit shall be immediately returned to Purchaser; or

(b) Be entitled to seek specific performance of this Agreement by Seller in a court of equity.

16.3 The parties acknowledge and agree that actual damages in any such event of default are uncertain in amount and difficult to ascertain and that the foregoing remedies, have been reasonably determined by the parties as the sole remedies available to the parties.

16.4 In the event any party fails to make any payment required under this Agreement, or fails to perform any obligation of such party under this Agreement, and such failure continues for seven (7) days after the mailing of written notice of such failure by the other party, said first party shall be in default of this Agreement.

17. BROKERS. Seller represents and covenants to Purchaser that Seller has not utilized and will not during the term of this Agreement utilize the services of any broker or finder in connection with the sale or purchase of the Property. Purchaser represents and covenants to Seller that Purchaser has not utilized and will not during the term of this Agreement utilize the services of any broker or finder in connection with the purchase or purchase of the Property. Seller and Purchaser shall indemnify, defend, and hold each other and their shareholders, partners, officers, directors, members, managers, employees, and agents harmless from any and all claims, demands, liabilities, costs, expenses, penalties, and damages (including reasonable attorney fees) for any and all such commissions or fees related to their breach of the foregoing representation.

## 18. GENERAL PROVISIONS.

18.1 Integration and Merger. This Agreement, together with the attached exhibits, constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior discussions, negotiations, agreements and understandings. This Agreement and its terms, representations, warranties and covenants shall survive the Closing and shall not merge into title to the Property.

18.2 Choice of Law. This Agreement shall be governed and controlled in all respects by the laws of the State of Michigan, including as to interpretation, enforceability, validity and construction, without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan.

18.3 Choice of Forum. The parties submit to the exclusive jurisdiction in Michigan for all disputes under this Agreement. Additionally, the parties stipulate that the venue of the Circuit Court for the County of Washtenaw, State of Michigan, or if original jurisdiction can be

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established, the United States District Court for the Eastern District of Michigan is convenient with respect to any action arising, directly or indirectly, out of this Agreement.

18.4 Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient if delivered personally, mailed by certified or registered mail, return receipt requested, or sent via e-mail. Notice shall be deemed to have been given when personally delivered, two business days after having been mailed by certified or registered mail, return receipt requested, or the date on which the notice was e-mailed.

If to Seller: Catholic Diocese of Lansing  
Attn: Alan Olsen  
228 N. Walnut Street  
Lansing, MI 48933  
E-Mail: aolsen@dioceseoflansing.org

With a copy to  
Purchaser's counsel: Brent A. Titus, Esq.  
Foster Swift  
313 Washington Square  
Lansing, MI 48933  
E-Mail: btitus@fosterswift.com

If to Purchaser: Eastern Michigan University  
Attn: Michael Valdes  
Chief Financial Officer  
101 Welch Hall  
Ypsilanti, MI 48197  
E-Mail: mvaldes@emich.edu

With a copy to  
Purchaser's Counsel: Cameron H. Piggott, Esq.  
Dykema Gossett PLLC  
400 Renaissance Center  
Detroit, MI 48243  
E-Mail: cpiggott@dykema.com

18.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If any provision is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

18.6 Amendment. The terms of this Agreement may not be varied or modified in any manner, except in a subsequent writing executed by both parties.

18.7 Assignment. Purchaser shall have the right to assign in writing all of its right, title and interest in and to this Agreement to a corporation, limited liability company or other entity to be formed, upon written notice to Seller together with a copy of said assignment given not less than seven (7) days prior to closing hereunder, in which case references in this Agreement to "Purchaser" shall be deemed to mean such corporation, limited liability company or other entity, provided however that the original Purchaser shall continue to have liability under this Agreement. Otherwise, neither Purchaser nor Seller shall have the right to assign any of their rights, duties or obligations under this Agreement without the consent of the other party. In the event of a permitted assignment, this Agreement shall be binding upon and inure to the benefit of the Purchaser's successors and assigns.

18.8 Counterparts. This Agreement may be executed in one or more counterparts (including electronically or by facsimile), each of which shall be deemed an original, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

18.9 Titles. Titles and headings to articles, sections, or paragraphs in this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of the Agreement.

18.10 Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any third party other than the parties to this Agreement and their respective successors and permitted assigns.

18.11 Time. Time is of the essence in this Agreement.

**SELLER:**

**Most Reverend Earl Boyea, Bishop of the Roman  
Catholic Diocese of Lansing**

\_\_\_\_\_

**PURCHASER:**

**Eastern Michigan University**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

Certain real estate\* located in the City of Ypsilanti, County of Washtenaw, State of Michigan, described as follows:

Commonly known as:                    511 West Forest Avenue, Ypsilanti, MI 48197

Property Identification Number: 11-11-40-113-020

\*Subject to verification after receipt of the title commitment and survey.

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