

SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS

**Office of the Emergency Manager
Donald B. Weatherspoon**

Order 2012-11

BY THE POWER AND AUTHORITY VESTED IN THE EMERGENCY MANAGER FOR THE SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS, MICHIGAN (“EMERGENCY MANAGER”) UNDER THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT, 2011 PA 4, MCL 141.1501 to 141.1531,

THE EMERGENCY MANAGER, DONALD B. WEATHERSPOON, ISSUES THE FOLLOWING:

ORDER APPROVING SUBMISSION OF THE APPLICATION TO THE LOCAL EMERGENCY FINANCIAL ASSISTANCE LOAN BOARD (“BOARD”) CREATED BY THE EMERGENCY MUNICIPAL LOAN ACT, 1980 PA 243, MCL 141.931 to 141.942, REQUESTING EMERGENCY LOANS ENABLING THE SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS (“DISTRICT”) TO MEET ITS FINANCIAL OBLIGATIONS; ASSURING THE FISCAL ACCOUNTABILITY OF THE DISTRICT; APPROVING ISSUANCE OF DISTRICT LOAN NOTES TO THE BOARD; PRESCRIBING THE FORM OF THE NOTES; PROVIDING FOR THE RIGHTS OF NOTE HOLDERS AND ENFORCEMENT OF THE RIGHTS; DETERMINING LOAN TERMS, DETERMINING OTHER RELATED MATTERS; AND DELEGATING AUTHORITY TO MAKE DETERMINATIONS RELATING TO THE NOTES AND ASSOCIATED DOCUMENTS.

WHEREAS, the School District of the City of Muskegon Heights (“School District”) is a general powers school district under The Revised School Code, 1976 PA 451, MCL 380.1380.1852, (“Act 451”), and has the power conferred upon the School District by Act 451, the State Constitution of 1963 (“Constitution”), and other applicable law;

WHEREAS, the Emergency Municipal Loan Act, 1980 PA 243, MCL 1980 PA 243, MCL 141.931 to 141.942, authorizes municipalities, including school districts, to borrow money and the State of Michigan (“State”) to issue debt and securities as emergency loans;

WHEREAS, the School District is a municipality under Act 243 with the power to borrow money and issue evidences of indebtedness for repayment of obligations, including, but not limited to, money advanced or previously advanced approved or previously approved for advancement under Section The State School Aid Act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896 (“Act 94”), or money borrowed under Section 1225 of Act 451;

WHEREAS, the Revised Municipal Finance Act, 2001 PA 34, MCL 141.2101 to 141.2821 (“Act 34”), authorizing the borrowing of money and the issuance of certain debt and securities, providing for tax levies, authorizing the issuance of debt and securities, and generally governing municipal finance practices in the State;

WHEREAS, the School District is a municipality under Act 34 with the power to issue a security such as bonds, notes, contracts, obligations or other similar instruments;

WHEREAS, Section 11 of Act 451 allows school districts to levy taxes and use the proceeds to repay an emergency loan under Act 243;

WHEREAS, the School District is currently in receivership and under the supervision of an Emergency Manager appointed by the Governor (“Emergency Manager”) under the Local Government and School District Fiscal Accountability Act, 2011 PA 4, MCL 141.1501 to 141.1531 (“Act 4”);

WHEREAS, the Emergency Manager has broad powers under the Act to rectify the District’s financial emergency and to assure the School District’s fiscal accountability and capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare and to assure the fiscal accountability of the School District;

WHEREAS, under Section 18 of Act 4, a financial and operating plan adopted by the Emergency Manager must provide for the payment in full of the scheduled debt service requirements on all bonds, notes, and municipal securities of the School District and all other uncontested legal obligations;

WHEREAS, under Section 19(1)(g) of Act 4, the Emergency Manager may make, approve, or disapprove of any loan with respect to the School District;

WHEREAS, under Section 19(1)(s) of Act 4, the Emergency Manager may apply for a loan from the State on behalf of the School District, subject to the conditions of Act 243 in a sufficient amount to pay the expenses of the emergency manager and for other lawful purposes;

WHEREAS, under Section 19(1)(u) of Act 4, the Emergency Manager may authorize the borrowing of money by the School District as provided by law;

WHEREAS, under Section 19(1)(v) of Act 4, the Emergency Manager may approve or disapprove of the issuance of obligations of the School District on behalf of the School District;

WHEREAS, under Section 19(1)(x) of Act 4, the Emergency Manager may into agreements with creditors or other persons or entities to restructure debt on terms, at rates of interest, and with security as shall be agreed among the parties, subject to approval by the State Treasurer;

WHEREAS, under Section 20(e) of Act 4, the Emergency Manager may approve or disapprove of the issuance of obligations of the School District;

WHEREAS, under Section 19(1)(dd) of Act 4, the Emergency Manager may exercise solely, for and on behalf of the School District, all certain authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the School District as provided in Act 451 and Act 94;

WHEREAS, under Section 20(f) of Act 4, the Emergency Manager may exercise solely, for and on behalf of the School District, all other authority and responsibilities affecting the School District that prescribed by law to the school board and superintendent of the School District;

WHEREAS, under Section 19(1)(ee) of Act 4, the Emergency Manager may take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the School District, whether elected or appointed, relating to the operation of the School District;

WHEREAS, while the School District is in receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the School District under law, charter, and ordinance is suspended and vested in the Emergency Manager under Section 19(2) of Act 4;

WHEREAS, the Emergency Manager has broad powers under Act 4 to rectify the School District's financial emergency and to assure the District's fiscal accountability and capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare;

WHEREAS, the Emergency Manager has been granted the authority under Act 4 to act for and in the place and stead of the school board of the School District ("District Board"), the Emergency Manager has the power to exercise solely, on behalf of the School District, all other authority and responsibilities affecting the School District that are prescribed by law to the District Board and orders of the Emergency Manager constitute resolutions of the District Board for these purposes; and

WHEREAS, the Emergency Manager, on behalf of the School District, has determined that there exists or will exist a deficit in the School District's general fund for the current fiscal year that could not reasonably have been foreseen and adequately provided for in the current fiscal year budget;

WHEREAS, the Emergency Manager has further determined that insufficient monies are available for it to pay an outstanding note, issued within the last 18 months under Section 1225 of Act 451, when it becomes due;

WHEREAS, the School District is in receivership under Act 4 and the loan authorization requested is necessary to implement a financial and operating plan adopted for the School District;

WHEREAS, the School District has submitted or will submit a 5-year plan, approved by the Emergency Manager, to balance future expenditures with anticipated revenues; and

WHEREAS, as part of the financial and operating plan adopted for the School District, the Emergency Manager has determined that it is necessary and in the best interest of the School District to make application to the Local Emergency Financial Assistance Loan Board ("Board") to borrow a sum not to exceed \$20,000,000.00 to be evidenced by notes issued in one or more series;

WHEREAS, an emergency loan to the School District under Act 243 will enable the Emergency Manager to cause public educational services to continue to be provided to residents of the School District, allow for the repayment of existing School District debt obligations, and assure the fiscal accountability of the School District;

WHEREAS, pursuant to Act 451, Act 243, Act 34 and Act 4, the Emergency Manager, on behalf of the School District, may borrow money for permitted purposes and may issue notes or other evidences of indebtedness;

WHEREAS, under Act 451, Act 243, Act 34 and Act 4, the Emergency Manager, on behalf of the School District, may approve the issuance of municipal securities to finance the deficit within the School District and pay necessary expenditures of the School District;

WHEREAS, under Act 451, Act 243, Act 34, Act 4 and Act 94, the Emergency Manager, on behalf of the School District, may order or resolve the issuance of municipal securities, the order or resolution may contain an irrevocable provision for the levying of a tax in order to repay the municipal security from the receipt of the taxes, the order or resolution and may contain an irrevocable provision authorizing the withholding of all delinquent payments due on each municipal security from State money appropriated to the School District, including, but not limited to, money appropriated under Act 94, and the funds may be applied to the repayment of principal of or interest on each municipal security;

WHEREAS, the Emergency Manager seeks to make certain determinations for, and on behalf of and in the best interest of the School District in writing, to be filed and included with all other documentation of any emergency loan under Act 243; and

NOW, THEREFORE, THE EMERGENCY MANAGER, ON BEHALF OF THE SCHOOL DISTRICT, ORDERS AND RESOLVES THAT::

Section 1. The School District shall submit an application to the Board requesting a loan in an amount not to exceed \$20,000,000.00 or such part of that amount authorized by the Michigan Department of Treasury, for which one or more notes of the School District shall be issued as evidence of the loan.

Section 2. Donald B. Weatherspoon, the Emergency Manager, any emergency manager or emergency financial manager that may be appointed for the School District, and any other official or employee of the School District or other individual authorized by the Board (when applicable) or the State to act on behalf of the School District for this purpose, (each an "Authorized Officer") are authorized and ordered to take action or execute documents and certificates as necessary or desirable and in the best interest of the School District in connection with the delivery of the notes authorized by this order and resolution and the School District's receipt of the proceeds of the loans authorized by this order and resolution.

Section 3. Notes of the School District designated “Emergency Loan Note (General Obligation Limited Tax), 2012-13 Series _” (each a “Note”) shall be issued in one or more series, with sequential series references as determined by an Authorized Officer, each in an amount determined by an Authorized Officer, not to exceed \$20,000,000.00 in the aggregate (each a “Loan” and collectively, the “Loans”). Each Note shall evidence the obligation of the School District to repay the applicable Loan to the State under Act 243. Each Note shall be dated as of the date of delivery of the Note to the State. Each Note shall bear interest from the date of delivery of the Note, and shall be payable as to principal and interest on the dates and in the amounts, at the rates, and subject to redemption before maturity, as determined by an Authorized Officer; provided that the final maturity shall not exceed 30 years from the applicable date of issuance, and the interest rates, or the maximum interest rate if issued on a variable rate basis, shall not exceed 10 percent. Principal and interest on each Note shall be payable to the State Treasurer.

Section 4. Each Note shall be a limited tax general obligation of the School District and the full faith and credit of the School District shall be pledged to the payment of the principal of and interest on the Note as and when due. The Note shall be payable out of the general funds of the School District, including collection of ad valorem taxes the School District may levy on property within the School District under Section 1211 of Act 451, within Constitutional and statutory limitations. As additional security for the payments due and owing under each Note, the School District pledges, and acknowledges the State’s statutory right to withhold the amount of all delinquent payments due on each Note from State money appropriated to the School District, including, but not limited to, money appropriated under Act 94, and authorizes the State to withhold the funds and apply the funds to the repayment of principal of or interest on any Note delinquent according to the terms of the Note.

Section 5. An Authorized Officer shall execute each Note on behalf of the School District and upon acknowledgment of receipt of the principal amount of the applicable Loan, the fully executed applicable Note shall be delivered to the Board as agent for the State.

Section 6. Each Note shall be in substantially the form attached to this order and resolution as Exhibit A with changes as approved by an Authorized Officer not inconsistent with the terms of this order and resolution.

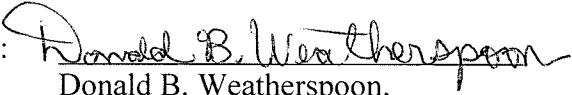
Section 7. The School District also acknowledges that there will be conditions of the Loan and agrees to comply with the requirements of the Board’s Order of Approval of Loan (“Board Order”) as approved by an Authorized Officer not inconsistent with this order and resolution. Once accepted, the terms and conditions of the Board Order shall be binding on the School District.

Section 8. The proceeds of each Loan shall be disbursed in accordance with a Use of Proceeds of Emergency Loan Table to be completed by an Authorized Officer at the time of issuance of the Loan.

Section 9. This Order is effective immediately.

Section 10. All orders and resolutions and parts of orders or resolutions conflicting with this order and resolution are rescinded. This order may be amended, modified, repealed, or terminated by any subsequent order issued by the Emergency Manager.

Dated: August 3, 2012

By: 
Donald B. Weatherspoon,
Emergency Manager

**EXHIBIT A
TO EMERGENCY MANAGER ORDER 2012-8**

NOTE FORM

**UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MUSKEGON**

SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS

**EMERGENCY LOAN NOTE
(General Obligation Limited Tax)
2012-13 Series __**

Registered Owner: State of Michigan

Principal Amount: \$ _____

Date of Original Issue: _____, 2012

The School District of the City of Muskegon Heights, County of Muskegon, State of Michigan (the "Issuer"), acknowledges itself to owe and for value received hereby promises to pay to the State of Michigan ("State"), the Principal Amount specified above, in lawful money of the United States of America, in ___ consecutive annual installments of _____ Dollars (\$ _____) on _____ in each of the years 20__ to 20__, inclusive, unless prepaid prior thereto as hereinafter provided, with interest on the unpaid principal balance hereof from the Date of Original Issue specified above or such later date to which interest has been paid, until paid, at the rates per annum determined as set forth herein, first payable on _____, _____ and annually on each _____ thereafter. Both the principal of and interest on this note are payable at the Office of the State Treasurer in Lansing, Michigan, or such other place as may be designated in writing to the Issuer by the State Treasurer.

From the Date of Original Issue specified above until _____, _____ this note shall bear interest at the rate of ____% per annum. Commencing _____, _____, and on each _____ thereafter until this note is paid in full (each an "Interest Determination Date"), the State Treasurer shall determine the interest rate per annum to be paid on the unpaid principal amount hereof for the period commencing on each Interest Determination Date through and including the day preceding the next Interest Determination Date, which interest rate per annum shall be equal to _____. Interest on this note shall be computed on the basis of a ___-day year and _____.

This note is issued pursuant to an order an resolution of the Emergency Manager of the School District of the City of Muskegon Heights ("Emergency Manager") acting on behalf of the Issuer constituting a resolution of the governing body of the Issuer, and under and in full compliance with the Constitution and statutes of the State, including, but not limited to, the Emergency Municipal Loan Act, 1980 PA 243, MCL 1980 PA 243, MCL 141.931 to 141.942

("Act 243"), to evidence the obligation of the Issuer to make repayment of an emergency loan made by the State for the purpose of enabling the Issuer to meet its financial obligations.

The Issuer shall have the right to pay at any time or times prior to maturity, without penalty or premium, all or any portion of this note. Prepayments shall be credited to principal payments in direct order of maturity.

This Note, including the interest on the Note, is payable as a first budget obligation from the general funds of the Issuer, and the Issuer is required, if necessary, to levy ad valorem taxes on all taxable property within the geographic boundaries of the Issuer for the payment of the Note, subject to applicable constitutional, charter and statutory tax rate limitations.

This Note shall be payable out of the general funds of the Issuer, including, but not limited to, collection of ad valorem taxes the Issuer may levy on property within the Issuer under Section 1211 of The Revised School Code, 1976 PA 451, MCL 380.1211, within Constitutional and statutory limitations. As additional security for the payments due and owing under this Note, the Issuer pledges, and acknowledges the State's statutory right to withhold the amount of all delinquent payments due on each Note from State money appropriated to the Issuer, including under The State School Aid Act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896, and authorizes the State to withhold the funds and apply the funds to the repayment of principal of or interest on the Note that are delinquent according to the terms of this Note.

The Issuer covenants that the Issuer shall perform and meet all requirements imposed upon the Issuer as a result of receiving this Loan under Act 243 until this Note is paid in full.

It is certified and recited that all acts, conditions, and things required by law to be done, precedent to and in the issuance of this Note, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the Issuer, including this note, does not exceed any constitutional, charter, or statutory debt limitation.

IN WITNESS WHEREOF, the Issuer, by order and resolution of the Emergency Manager on behalf of the Issuer, has caused this note to be signed in the name of the Issuer by the manual signature an authorized representative of the Issuer, all as of the Date of Original Issue.

**SCHOOL DISTRICT OF THE CITY
OF MUSKEGON HEIGHTS**

County of Muskegon
State of Michigan

By _____

Its: _____