



**Memorandum**

TO: Administration Committee  
FROM: Greg Keil, CDD *GK*  
DATE: March 15, 2012  
RE: Former NMFR Station 36

An Option to Purchase agreement has been advanced to the city by FP One, LLC for the above-referenced city owned facility (FP One, LLC is affiliated with the Pfefferle Companies, owner of the parcels to the south of the former fire station). A copy of the option is attached. Staff has been discussing the terms of the option with the buyer and its attorney. We have reached consensus on most of the substantive terms, but have not received a revised offer which is pending resolution of four items.

These items include:

- 1.) The term of the option, which was originally proposed for one year.
- 2.) The placement of advertising signs on the premises.
- 3.) Conducting of on-site testing for geotechnical purposes.
- 4.) Rezoning of the parcel by the city to permit commercial use.

We may be able to reach resolution on these items prior to the March 19, 2012 Administration Committee meeting. In that event a revised option agreement will be presented to you at the meeting.



**WB-24 OPTION TO PURCHASE**

1 **Atty. BROKER DRAFTING THIS OPTION ON** December 5, 2011 [DATE] IS AGENT OF (SELLER)(BUYER)(DUAL-AGENT) **[STRIKE TWO]**  
2 The Seller, City of Menasha, Wisconsin, hereby grants to Buyer,  
3 FP One, LLC, an option to purchase (Option) the Property  
4 known as [Street Address] 901 Airport Road in the  
5 City of Menasha, County of Winnebago, Wisconsin.

6 (if this Option is to be recorded, insert legal description at lines 218-224 or attach as an addendum per line 225) on the following terms:  
7 **[DEADLINE FOR GRANT OF OPTION]** This Option is void unless a copy of the Option which has been signed by or on behalf of  
8 all Owners is delivered to Buyer on or before January 15, 2012 (Time is of the Essence).

9 **[OPTION TERMS]** An option fee of \$ 10.00 will be paid by Buyer within 10 days of the granting of this Option, and  
10 shall not be refundable if the Option is not exercised. If the Option is exercised, \$ 10.00 of the option fee shall be a credit  
11 against the purchase price at closing. This Option may only be exercised by delivering written notice to Seller no later than  
12 midnight **[see Addendum]**. Buyer may sign and deliver the notice at lines 247-248, or may deliver any other written notice  
13 which specifically indicates an intent to exercise this Option. ~~This Option shall be extended until \_\_\_\_\_, upon~~  
14 ~~payment of \$ \_\_\_\_\_ in cash or equivalent to Seller on or before \_\_\_\_\_, as an option extension~~  
15 ~~fee which shall not be refundable if this Option is not exercised. If this Option is exercised, \$ \_\_\_\_\_ of the option extension~~  
16 ~~fee shall be a credit against the purchase price at closing. The option fee and option extension fee shall be (paid directly to Seller)~~  
17 ~~(held in listing broker's trust account until N/A \_\_\_\_\_)~~ ) **[STRIKE ONE]**

19 This Option, or a separate instrument evidencing this Option, (may) ~~(may not)~~ **[STRIKE ONE]** be recorded. **CAUTION: FAILURE TO**  
20 **RECORD MAY GIVE PERSONS WITH SUBSEQUENT INTERESTS IN THE PROPERTY PRIORITY OVER THIS OPTION.**

21 **[TERMS OF PURCHASE]** If this Option is exercised per the terms of this Option, the following shall be the terms of purchase:  
22 ■ **PURCHASE PRICE: Seventy-Five Thousand**  
23 \_\_\_\_\_ Dollars (\$ 75,000.00 ) will be paid in cash or equivalent at closing unless otherwise provided below.  
24 ■ **ADDITIONAL ITEMS INCLUDED IN PURCHASE PRICE:** Seller shall include in the purchase price and transfer, free and clear of  
25 encumbrances, all fixtures, as defined at lines 172-175 and as may be on the Property on the date of this Option, unless excluded at lines  
26 28-29, and the following additional items: **[See additional terms included on Addendum]**

28 ■ **ITEMS NOT INCLUDED IN THE PURCHASE PRICE:** the existing structures located on the Property

30 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or  
31 other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and <sup>recorded</sup>  
32 agreements entered under them, recorded easements for the distribution of utility and municipal services, / <sup>recorded</sup> building and use  
33 restrictions and covenants, general taxes levied in the year of closing and no other exceptions <sup>recorded</sup> servicing the Property  
34 \_\_\_\_\_ (provided none  
35 of the foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller  
36 further agrees to complete and execute the documents necessary to record the conveyance.

37 **[PLACE OF CLOSING]** This transaction is to be closed at the place designated by Buyer's mortgagee or Evans Title Companies  
38 \_\_\_\_\_ within 60 days after the exercise of the Option, unless another date or place is agreed to in writing.

39 **[OCCUPANCY]** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Option  
40 (lines 218-224 or in an addendum per line 225). Occupancy shall be given subject to tenant's rights, if any. Caution: Consider  
41 an agreement which addresses responsibility for clearing the Property of personal property and debris, if applicable.

42 **[LEASED PROPERTY]** ~~If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under the~~  
43 ~~lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) **[STRIKE ONE]**~~  
44 ~~lease(s), if any, are The Property will not be subject to any leases at closing~~

45 **[CLOSING PRORATIONS]** The following items shall be prorated at closing: real estate taxes, rents, private and municipal charges,  
46 property owner's association assessments, fuel and N/A  
47 \_\_\_\_\_ . Any income, taxes or expenses shall accrue to Seller, and be prorated, through the day prior to closing. Net  
48 general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, if known, otherwise on the net  
49 general real estate taxes for the preceding year) ( N/A ) . **[STRIKE AND COMPLETE AS APPLICABLE]**

51 **CAUTION: If proration on the basis of net general real estate taxes is not acceptable (for example, completed/pending**  
52 **reassessment, changing mill rate, lottery credits), insert estimated annual tax or other formula for proration.**

53 **[ZONING]** Seller represents that the property is zoned R-1 [see Addendum]

54 **[REPRESENTATIONS REGARDING PROPERTY AND TRANSACTION]** Seller represents to Buyer that as of the date Seller grants this  
55 Option Seller has no notice or knowledge of conditions affecting the Property or transaction (as defined at lines 63 - 88) ~~other than those~~  
56 identified in Seller's property condition report, dated \_\_\_\_\_, which was received by Buyer prior to Buyer signing  
57 this Option **[COMPLETE DATE OR STRIKE AS APPLICABLE]** and N/A  
58 \_\_\_\_\_

59 Seller agrees to notify Buyer of any condition affecting the Property or transaction which is materially inconsistent with the above  
 60 representations, which arises after this Option is granted, but prior to exercise of this Option. Buyer shall have reasonable access to the  
 61 Property, upon reasonable notice, from the time this Option is granted until the time for closing, for the purpose of inspecting and testing  
 62 the Property to the extent reasonably necessary to fulfill the inspection and testing provisions of this Option. (See lines 110-124)  
 63 A "condition affecting the Property or transaction" is defined as follows:

- 64 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the  
 65 Property or the present use of the Property;
- 66 (b) completed or pending reassessment of the Property for property tax purposes;
- 67 (c) government agency or court order requiring repair, alteration or correction of any existing condition;
- 68 (d) any land division involving the subject Property, for which required state or local approvals had not been obtained;
- 69 (e) any portion of the Property being in a 100 year floodplain, a wetland or a shoreland zoning area under local, state or federal laws;
- 70 (f) conditions constituting a significant health or safety hazard for occupants of Property; **Note: Possible LBP Disclosure Requirement.**
- 71 (g) underground or aboveground storage tanks on the Property for storage of flammable or combustible liquids including but not  
 72 limited to gasoline and heating oil which are currently or which were previously located on the Property; **NOTE: Wis. Adm.**  
 73 **Code, Chapter Comm 10 contains registration and operation rules for such underground and aboveground storage tanks.**
- 74 (h) material violations of environmental laws or other laws or agreements regulating the use of the Property;
- 75 (i) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;
- 76 (j) any portion of the Property being subject to, or in violation of, a Farmland Preservation Agreement under a County Farmland Preservation  
 77 Plan or enrolled in, or in violation of, a Forest Crop, Woodland Tax, Managed Forest, Conservation Reserve or comparable program;
- 78 (k) boundary disputes or material violation of fence laws (Wis. Stats. Chapter 90) which require the erection and maintenance of legal  
 79 fences between adjoining properties where one or both of the properties is used and occupied for farming or grazing purposes;
- 80 (l) wells on the Property required to be abandoned under state regulations (Wis. Adm. Code NR 112.26) but which are not abandoned;
- 81 (m) cisterns or septic tanks on the Property which are currently not servicing the Property;
- 82 (n) subsoil conditions which would significantly increase the cost of building on the property including, but not limited to, subsurface  
 83 foundations, organic or non-organic fill, dumpsites or containers on Property which contained or currently contain toxic or hazardous  
 84 materials, high groundwater, soil conditions (e.g. low load bearing capacity) or excessive rocks or rock formations on the Property;
- 85 (o) a lack of legal vehicular access to the Property from public roads;
- 86 (p) prior reimbursement for corrective action costs under the Agricultural Chemical Cleanup Program (Wis. Stats. §94.73);
- 87 (q) other conditions or occurrences which would reduce the value of the Property to a reasonable person with knowledge of the  
 88 nature and scope of the condition or occurrence.

89 **■ PROPERTY DIMENSIONS AND SURVEYS:** Buyer acknowledges that any land dimensions, total square footage/acreage  
 90 figures, or allocation of acreage information, provided to Buyer by Seller or by a broker, may be approximate because of  
 91 rounding or other reasons, unless verified by survey or other means. **CAUTION: Buyer should verify land dimensions, total**  
 92 **square footage/acreage figures or allocation of acreage information if material to Buyer's decision to purchase.**

93 **■ PROPERTY DAMAGE BETWEEN EXERCISE OF OPTION AND CLOSING:** Seller shall maintain the Property until the earlier of  
 94 closing or occupancy of Buyer in materially the same condition as of the date Buyer exercises this Option, except for ordinary wear and  
 95 tear. If, prior to closing, the Property is damaged in an amount of not more than five per cent (5%) of the purchase price, Seller shall be  
 96 obligated to repair the Property and restore it to the same condition that it was on the day this Option is exercised. If the damage is greater  
 97 than 5% of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Option may be rescinded by Buyer and  
 98 all Option fees paid by Buyer shall be immediately returned to Buyer. Should Buyer elect to exercise this Option despite such damage,  
 99 Seller shall either repair the Property and restore it to the same condition that it was on the day of exercise of this Option, except for  
 100 ordinary wear and tear or Buyer shall be entitled to the insurance proceeds relating to the damage to the Property, plus a credit  
 101 towards the purchase price equal to the amount of Seller's deductible on such policy.

102 **■ BUYER DUE DILIGENCE:** Prior to exercising this Option Buyer may need to perform certain inspections, investigations and testing.  
 103 Buyer is only authorized to do those inspections, investigations and tests which are authorized at lines 196-200 or lines 218-225. In  
 104 addition to these inspections, investigations and tests, Buyer may need to obtain financing, approvals or other information, including  
 105 but not limited to building permits, zoning variances, Architectural Control Committee approvals, review of condominium documents,  
 106 review of business records, estimates for utility hook-up expenses, special assessments, charges for installation of roads or utilities, etc.  
 107 **WARNING:** If Buyer contemplates developing Property or a use other than the current use, there are a variety of issues which should  
 108 be addressed in order to determine the feasibility of development of, or a particular use for, a property. Buyer is solely  
 109 responsible for all expenses relating to financing, inspections, investigations, testing, approvals, permits, estimates, etc.

110 **■ INSPECTIONS:** An "inspection" is defined as an observation of the Property which does not include testing of the Property, other than  
 111 testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. Seller agrees to allow Buyer's inspectors  
 112 reasonable access to the Property upon reasonable notice for those inspections authorized at lines 197-198. Buyer agrees to  
 113 promptly restore the Property to its original condition after Buyer's inspections are completed, unless otherwise agreed in this Option.

114 **■ TESTING:** Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the  
 115 Property. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and  
 116 the laboratory or other analysis of these materials. Seller agrees to allow Buyer's testers reasonable access to the Property upon  
 117 reasonable notice for those tests authorized at lines 199-200. Note: The authorization for testing should specify the areas of the  
 118 Property to be tested, the purpose of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's  
 119 testing and any other material terms of the authorization. Unless otherwise agreed, Buyer shall return the Property to its original  
 120 condition following testing. **Seller acknowledges that certain inspections or tests may detect environmental pollution**  
 121 **which may be required to be reported to the Wisconsin Department of Natural Resources.**

122 **■ PRE-CLOSING INSPECTION:** At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer  
 123 shall have the right to inspect the Property to determine that there has been no significant change in the condition of the Property,  
 124 except for changes approved by Buyer.

125 **■ CONDOMINIUM DISCLOSURES:** If the Property is a Condominium, Seller agrees to provide Buyer, at Seller's cost (see  
 126 Wisconsin Statutes §703.20(2)), complete, current copies of the disclosure materials (organization and operational documents, plans, financial

127 statements, and in the case of a conversion condominium property information) as required by Wisconsin Statutes §703.33 no later than 15  
 128 days prior to closing and any amendment to these materials promptly after its adoption (except as limited for small residential  
 129 condominiums per Wisconsin Statutes §703.365). These materials are available at cost from the condominium association. As provided in  
 130 Wisconsin Statutes §703.33(4), Buyer may, within five business days after receipt of these documents, including any material modification  
 131 thereto, rescind this Option by written notice mailed or delivered to Seller, the date of mailing or actual delivery being the effective date of notice.

#### 132 **TITLE EVIDENCE**

133 ■ **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the  
 134 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. **CAUTION: IF TITLE  
 135 EVIDENCE WILL BE GIVEN BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

136 ■ **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title evidence shall  
 137 be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than 3 business days  
 138 before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject  
 139 only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as  
 140 appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE COMMITMENT PRIOR  
 141 TO CLOSING OR A "GAP ENDORSEMENT" WHICH WOULD INSURE OVER LIENS FILED BETWEEN THE EFFECTIVE DATE  
 142 OF THE COMMITMENT AND THE DATE THE DEED IS RECORDED.**

143 ■ **TITLE ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by  
 144 the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and  
 145 the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer  
 146 shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be  
 147 extended accordingly. If Buyer does not waive the objections, this Option shall be null and void. Providing title evidence acceptable for  
 148 closing does not extinguish Seller's obligations to give merchantable title to Buyer.

149 ■ **SPECIAL ASSESSMENTS:** Special assessments, if any, for work actually commenced or levied prior to date this Option is exercised  
 150 shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer. **CAUTION:** Consider a special  
 151 agreement if area assessments, property owner's association assessments or other expenses are contemplated. "Other expenses"  
 152 are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to  
 153 curb, gutter, street, sidewalk, sanitary and stormwater and storm sewer (including all sewer mains and hook-up and interceptor  
 154 charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. §66.55(1)(c) & (f).

#### 155 **DELIVERY/RECEIPT**

156 Unless otherwise stated in this Option, any signed document transmitted by facsimile machine (fax) shall be treated in all manner and respects  
 157 as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signature. Personal  
 158 delivery to, or actual receipt by, any named Buyer or Seller constitutes personal delivery to, or actual receipt by Buyer or Seller. Once  
 159 received, a notice cannot be withdrawn by the Party delivering the notice without the consent of the Party receiving the notice. A Party may  
 160 not unilaterally reinstate a contingency after a notice of a contingency waiver has been received by the other Party. The delivery  
 161 provisions in this Option may be modified when appropriate (e.g., when mail delivery is not desirable (see lines 203-209). Buyer  
 162 and Seller authorize the agents of Buyer and Seller to distribute copies of the Option to Buyer's lender, appraisers, title insurance companies  
 163 and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA).

#### 164 **DATES AND DEADLINES**

165 Deadlines expressed as a number of "days" from an event, such as exercise of this Option, are calculated by excluding the day the  
 166 event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as  
 167 a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other  
 168 day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day.  
 169 Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from  
 170 the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or  
 171 as the day of a specific event, such as closing, expire at midnight of that day.

172 **FIXTURES** A "fixture" is defined as an item of property which is physically attached to or so closely associated with land  
 173 or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items  
 174 not easily removable without damage to the Property, items specifically adapted to the Property, and items customarily  
 175 treated as fixtures.

176 **ENTIRE CONTRACT** This Option, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding  
 177 the transaction. All prior negotiations and discussions have been merged into this Option. This agreement binds and inures to the  
 178 benefit of the Parties to this Option and their successors in interest.

179 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions  
 180 of the terms of purchase after exercise of this Option. A material failure to perform any obligation under the terms of purchase after  
 181 exercise of this Option is a default which may subject the defaulting party to liability for damages or other legal remedies.

182 If **Buyer defaults** under the terms of purchase after exercise of this Option, Seller may:

- 183 (1) sue for specific performance and request the earnest money as partial payment of the purchase price, or
- 184 (2) terminate the purchase agreement and have the option to sue for actual damages.

185 If **Seller defaults** under the terms of purchase after exercise of this Option, Buyer may:

- 186 (1) sue for specific performance; or
- 187 (2) terminate the purchase agreement and sue for actual damages.

188 In addition, the Parties may seek any other remedies available in law or equity.

189 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
 190 discretion of the courts. If either Party defaults, the Parties may renegotiate the terms of purchase or seek nonjudicial dispute resolution  
 191 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those  
 192 disputes covered by the arbitration agreement.

193 **RENTAL WEATHERIZATION** Unless otherwise agreed Buyer shall be responsible for compliance with Rental Weatherization Standards  
 194 (Wis. Adm. Code Comm. 67), if applicable.

195 PROPERTY ADDRESS: 901 Airport Road [page 4 of 4, WB-24]

196 **AUTHORIZATION FOR INSPECTIONS AND TESTS** Buyer is authorized to conduct the following inspections and tests (see lines 110-121).

197 INSPECTIONS: [See Addendum]

198

199 TESTS: [See Addendum]

200

201 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Option, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 203-212.

203 (1) By depositing the document or written notice postage or fees prepaid in the U.S. Mail or fees prepaid or charged to an account with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery designated at lines 206 or 208 (if any), for delivery to the Party's delivery address at lines 207 or 209.

206 Seller's recipient for delivery (optional): Greg Keil, Director, Community Development

207 Seller's delivery address: 140 Main St., Menasha, WI 54952

208 Buyer's recipient for delivery (optional): Todd Platt

209 Buyer's delivery address: Pfefferle Co., 200 E. Washington, Ste. 2A, Appleton, WI 54911

210 (2) By giving the document or written notice personally to the Party or the Party's recipient for delivery if an individual is designated at lines 206 or 208.

211 (3) By fax transmission of the document or written notice to the following telephone number:

212 Buyer: ( 920 ) 730-4286 Seller: ( 920 ) 967-5272

213 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to payment of option fees and extension fee and all other dates and deadlines in this Option except: \_\_\_\_\_ . If "Time is of the Essence"

215 applies to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

217 This Option (is)(is not) **STRIKE ONE** assignable. This Property (is)-(is not) **STRIKE ONE** homestead property.

218 **ADDITIONAL PROVISIONS** [See additional terms included on Addendum]

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220  
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224

225 **ADDENDA** The attached Addendum is/are made part of this Option.

226 IF GRANTED, THIS OPTION CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS OPTION AND ALL ATTACHMENTS CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OPTION BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OPTION OR HOW TITLE SHOULD BE TAKEN AT CLOSING IF THE OPTION IS EXERCISED. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

231 This Option was drafted on 12/05/2011 [date] by [Licensee and Firm] Atty. Richard J. Knight

232 (x) FP ONE, LLC

233 Buyer's Signature ▲ Print Name Here: ► \_\_\_\_\_ Social Security No. or FEIN (Optional) ▲ Date ▲

234 (x) By: [Signature] \_\_\_\_\_ 12-6-11

235 Buyer's Signature ▲ Print Name Here: ► John Pfefferle, Manager Social Security No. or FEIN (Optional) ▲ Date ▲

236 SELLER GRANTS THIS OPTION. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OPTION SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. THE UNDERSIGNED HEREBY AGREES TO CONVEY THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OPTION.

240 (x) \_\_\_\_\_  
241 Seller's Signature ▲ Print Name Here: ► \_\_\_\_\_ Social Security No. or FEIN (Optional) ▲ Date ▲

242 (x) \_\_\_\_\_  
243 Seller's Signature ▲ Print Name Here: ► \_\_\_\_\_ Social Security No. or FEIN (Optional) ▲ Date ▲

244 This Offer was presented to Seller by \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

245 THIS OPTION IS REJECTED \_\_\_\_\_ THIS OPTION IS COUNTERED [See attached counter] \_\_\_\_\_

246 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

247 **NOTICE OF EXERCISE OF OPTION** By signing below and delivering this notice (see lines 201-212) Buyer exercises the Option to Purchase.

248 (x) \_\_\_\_\_ (x) \_\_\_\_\_  
249 Buyer's Signature ▲ Date ▲ Buyer's Signature ▲ Date ▲

**ADDENDUM TO OPTION TO PURCHASE**  
**PROPERTY: 901 Airport Road, Menasha**  
**BUYER: FP One, LLC**

A. The terms of the printed WB-24 Option to Purchase are modified and supplemented as follows:

1. Line 12. The Option may be exercised no later than midnight on the first year anniversary following the date on which the Seller certifies to the Buyer that (a) the former fire station and all other improvements on the Property and all building foundations have been removed; (b) all debris from the demolition of the improvements has been removed from the Property and properly disposed of; (c) engineered fill has been delivered and rough graded to properly fill holes left following demolition of the improvements; and (d) the Seller delivers to Buyer copies of Phase I and Phase II environmental audit reports, as described below, indicating that no hazardous conditions exist on the Property, as also described below.

2. Environmental Audit. The environmental audit reports referenced above, to be provided by the Seller are described as follows:

The Seller shall provide a written environmental assessment of the property from an independent environmental consultant approved by Buyer, indicating that: (1) the property is free from all toxic and hazardous substances and environmental contaminants, (2) the property complies with all federal, state and local environmental, health and safety laws and regulations, and (3) there are no material contingent liabilities affecting the property under said laws and regulations. The cost of obtaining the report shall be paid by Seller and Seller shall be responsible for obtaining it.

The Assessment shall evaluate the present and past uses of the Property, and the presence on, in or under the Land (and on land sufficiently proximate to any of the Property as to pose the risk to migration, or other adverse effect on any of the Property) of any Hazardous Materials. The Assessment shall reveal no Hazardous Material on or Hazardous Condition at any of the Property and no other environmental matters unacceptable to Buyer. In the event that (i) the results of the Assessment are inconclusive, or (ii) the results of the Assessment reveal material environmental matters unacceptable to Buyer, in its sole judgment, then Seller agrees to proceed immediately with a Phase II assessment and to be responsible for all costs required to pursue the recommendations of the environmental consultant with regard to Phase II physical testing of the property and to remediate the Property so as to make it free of environmental "defects", as described above.

Seller shall execute an Indemnification Agreement at closing in which the Seller agrees to indemnify and hold the Buyer, its agents and assigns, harmless from all costs and expenses for which the Buyer may be obligated in order to completely eliminate all environmental defects. The indemnification shall extend to the cost of attorney's fees, disbursements and court costs and all other professional and consultants' expenses.

Notwithstanding the foregoing, if at any time, the environmental consultant estimates that the cost of testing and remediation of the Property is likely to exceed \$100,000, then the Seller may choose to terminate the Option to Purchase and declare the agreement null and void in which case all option fees shall be returned promptly to Buyer.

B. The following additional provisions shall apply to this transaction:

1. Rezoning. No later than the date of closing, the Property shall be rezoned to C-1 by the Seller at Seller's cost.

2. Survey. Within twenty-one (21) days of the date of Buyer's exercise of the Option, Seller shall deliver to Buyer an updated survey of the Property (the "Survey"), dated as of a date on or after the date the Option is exercised, prepared by a surveyor duly registered in the State of Wisconsin, and certified by said surveyor as having been prepared in accordance with the minimum detail and classification requirements of the land survey standards of the American Land Title Association, and specifically incorporating all of the standards and protocols contemplated by the minimum standard detail requirements and classifications for ALTA/ASCM land title surveys and shall include an "ALTA Certification", acceptable to the title company, to permit the maximum possible removal of title exceptions resulting from a survey. The cost of the survey shall be paid by Seller.

3. Right to Advertise and Access the Property. The Seller agrees that the Buyer and a real estate broker with whom the Seller enters into a listing agreement may post signs on the Property advertising the Property for development including for sale or lease. The Buyer shall be permitted to post such signs and to have unrestricted access to the Property effective on the date of the Option to Purchase. In addition to the Buyer having access to the Property to advertise it and to show it to prospects for sale or lease, the Buyer may also conduct such inspections and tests on the Property as Buyer chooses provided that the Buyer repairs all damage caused to the Property and returns it to the same condition as existed prior to the inspection or test.

4. Electronic Document Delivery. The parties agree that the delivery standards and definitions set forth in the above provisions of this Option to Purchase (the "Document") are supplemented to add delivery of documents or written notices relating to this Document by e-mail. E-mail delivery of documents and written notices is effective upon the electronic transmission of the document or notice to the e-mail address specified below for the party:

The parties' e-mail addresses are:

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