

GROUND LEASE

This Ground Lease (this "Lease") is entered into as of July 7, 2015, by and between the **City of Menasha**, a Wisconsin municipal corporation ("Lessor") and **Menasha Downtown Development, LLC**, a Wisconsin limited liability company ("Lessee"). Lessor and Lessee may be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

A. Lessor owns the real property legally described on attached Exhibit A (the "Premises").

B. Lessor and Lessee have entered into that certain Developer Agreement dated June ____, 2015 ("Development Agreement"), which is hereby incorporated by reference, pursuant to which Lessor is required to enter into a ground lease with Lessee with respect to the Premises. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Development Agreement.

B. Lessee desires to enter into a lease of the Premises for the purpose of constructing certain improvements thereon.

C. Lessor desires to enter into a lease with Lessee hereunder for such purpose on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the rent herein stipulated to be paid and other provisions to be performed, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee do hereby covenant and agree as follows:

ARTICLE I DEMISE OF PREMISES

Lessor hereby demises and leases the Premises to Lessee, and Lessee hereby takes and leases the Premises from Lessor, for the Term and upon the provisions hereinafter specified.

ARTICLE II CERTAIN DEFINITIONS

Together with other capitalized words, terms and phrases specifically defined in this Lease and in the Development Agreement, the following capitalized words, terms and phrases shall have the meanings set forth below:

- (a) "Additional Rent" means all Rent other than Rent.
- (b) "Assignment" means an assignment to a third party by Lessee of all of its rights and obligations under this Lease.

(c) “Assignee” means the assignee under an Assignment.

(d) “Commencement Date” means July 7, 2015.

(e) “Governmental Authorities” means all federal, state and municipal governments, courts, departments, commissions, boards, and officers having jurisdiction over the Premises, the improvements or the construction thereof, Lessor or Lessee.

(f) “Governmental Requirements” means all present and future laws, ordinances, rules, regulations and requirements of any Governmental Authority having jurisdiction over the improvements or the Premises or the use of either of them of this Lease and all building permits and other licenses and approvals required by the appropriate Governmental Authorities in connection with the improvements or this Lease.

(g) “Leasehold Estate” means Lessee’s interest in and to the Premises pursuant to this Lease including any improvements constructed on the Premises by Lessee.

(h) “Leasehold Mortgagee” means any lender which holds a Leasehold Mortgage.

(i) “Lease Year” means a period of twelve (12) consecutive months. The first Lease Year shall commence as of the Commencement Date and shall end the day prior to the first anniversary of such Commencement Date. Each subsequent Lease Year shall commence as of the subsequent anniversary of the Commencement Date.

(j) “Rent” means all amounts payable by Lessee to Lessor for the use of the Premises under this Lease.

(k) “Term” means the duration of this Lease. The Term shall commence on the Commencement Date and end on the termination of the Tax Incremental District as defined in the Development Agreement, unless sooner terminated in accordance with the terms of this Lease.

ARTICLE III TERM

Subject to the provisions hereof, Lessee shall have and hold the Premises for the Term.

ARTICLE IV RENT

Lessee shall pay rent (“Rent”) to Lessor during the Term of this Lease in the amount of One Dollar (\$1.00) per year, payable in advance on the Commencement Date and thereafter on

the first day of each Lease Year during the Term. Lessee shall pay Additional Rent as provided elsewhere in this Lease.

ARTICLE V NET LEASE

This Lease shall be a net lease, meaning that, subject to the terms of the Development Agreement, Lessee shall pay all utilities and other expenses relating to the ownership and operation of the Premises during the Term, including without limitation, all charges for water, sewer, utility or communication services which accrue against the Premises during the Term hereof. Any such amounts paid by Lessor shall be Additional Rent and shall be reimbursed by Lessee upon Lessor providing Lessee with a copy of the paid bills for such expenses. Lessee shall maintain the Premises in accordance with industry standards, which shall include regular maintenance and inspections. Lessee shall keep a log of all such maintenance and inspections. Lessor shall be permitted to inspect the condition of the Premises and review and receive a copy of all maintenance and inspection records of Lessee relating to the Premises at any time during the Term of this Lease upon reasonable advance notice.

In the event that Lessee is required to pay any real or personal property tax not attributed to the value of the Building (as defined in the Development Agreement) during any Lease Year, Lessor acknowledges and agrees that the total amount of Performance Incentive (as such term is defined in the Development Agreement) shall automatically be increased by the amount of such tax paid by Lessee and the Performance Incentive payable to Lessee in such lease year shall automatically be increased by such amount.

ARTICLE VI DEVELOPMENT OF THE PREMISES

Section 6.1. Scope of Development. Lessee intends to improve the Premises by constructing a Parking Garage as described in the Development Agreement. Lessor hereby authorizes Lessee to construct such improvements, subject to Lessee receiving all required governmental approvals.

Section 6.2. Costs of Construction. The entire cost and expense of constructing any and all improvements to the Premises shall be borne and paid by Lessee, subject to the terms of the Development Agreement.

Section 6.3. Responsibilities of Lessor.

(a) **Governmental Approvals.** Lessor will assist and cooperate with Lessee in connection with reasonable requests by Lessee to obtain all Governmental Requirements, permits, licenses, variances, or other approvals from any Governmental Authority which may be reasonably necessary for or which will facilitate the development, operation and use of the improvements pursuant to this Lease.

(b) Easements. Lessor agrees to join in granting or dedicating such public or private utility company easements as may be reasonably required for the development of the Premises in accordance with this Lease.

ARTICLE VII NO ASSIGNMENT OR SUBLETTING

Neither Party may assign this Lease or any interest herein, or otherwise sell, lease, transfer or convey any right, title or interest in this Lease without the express written consent of the other Party.

ARTICLE VIII MORTGAGING

Section 9.1. Lessee's Right to Mortgage. Lessee shall have the right, from time to time, to encumber, hypothecate or mortgage Lessee's Leasehold Estate to a Leasehold Mortgagee with the prior consent of Lessor (a "Leasehold Mortgage"); provided, however, that no such Leasehold Mortgage shall be valid or effective until there shall be delivered to Lessor a conformed original or certified copy of the recorded Leasehold Mortgage, containing the name and address of the Leasehold Mortgagee. (For purposes of this Lease, the term "Leasehold Mortgage" shall include a mortgage, deed of trust of any other real property security instrument by which Lessee may encumber, hypothecate or mortgage all or part of Lessee's Leasehold Estate pursuant to the terms hereof.) In no event shall Lessor be obligated to encumber its fee interest in the Premises under any such Leasehold Mortgage.

Section 9.2. Leasehold Mortgagee's Rights. Should Lessee give a valid Leasehold Mortgage on its Leasehold Estate to a Leasehold Mortgagee, it is agreed by and between Lessor and Lessee as follows:

(a) Lessor will mail to the Leasehold Mortgagee a copy of any default notice or other communication from Lessor to Lessee under this Lease at the time of giving such notice or communication to Lessee.

(b) In the event a default under the Leasehold Mortgage shall have occurred, the Leasehold Mortgagee may exercise with respect to the Premises any right, power or remedy under the Leasehold Mortgage which is not in conflict with any of the provisions of this Lease.

(c) No surrender (except a surrender upon the expiration or the Term upon termination by Lessor pursuant and subject to the provisions of this Lease) by Lessee to Lessor of this Lease, or of the Premises, or any part thereof, or of the improvements thereon, or of any interest therein, and no termination or rejection of this Lease by Lessee shall be valid or effective, and neither this Lease nor any of the terms hereof may be amended, modified, changed, rejected or canceled without the prior written consent of the Leasehold Mortgagee.

(d) Notwithstanding any other provisions contained herein, this Lease may be assigned to a Leasehold Mortgagee by an Assignment in lieu of foreclosure of a Leasehold Mortgage or pursuant to a foreclosure sale or pursuant to a power of sale under a Leasehold Mortgage and may be further assigned by the Assignee or purchaser without the prior consent of Lessor, provided the ultimate Assignee assumes the Lessee's obligations under this Lease (including, without limitation, the payment of all Rent and other charges as they become due) and an executed counterpart of such assumption is delivered to Lessor. If the Leasehold Mortgagee shall be the Assignee of this Lease, its liability under such assumption agreement shall be limited to the period of ownership of this Lease, provided that the party to whom this Lease is assigned by the Leasehold Mortgagee shall deliver to Lessor at the time of such assignment a like assumption agreement, but without limitation as to duration of liability.

(e) The provisions of this Section are for the benefit of, and are enforceable by, the Leasehold Mortgagee.

(f) Lessor and Lessee hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provisions which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the Leasehold Mortgage protection provisions contained in this Lease and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage. Lessor and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment shall not in any way affect the Term or Rent under this Lease, nor otherwise in any material respect adversely affect any rights of Lessor under this Lease.

ARTICLE IX USE OF THE PREMISES

Section 10.1. Private Use. Subject to the provisions on Section 10.2 below, Lessor covenants that Lessee may peaceably and quietly enjoy the Premises and may use the Premises for any lawful purpose consistent with the development of the Premises in accordance with Article VI hereof.

Section 10.2. Public Use. During the Term of this Lease, consistent with the terms of the Development Agreement, Lessee shall allow Lessor to operate the ground floor of the Parking Garage to be constructed on the Premises as public parking outside of the normal business hours of Lessee and its invitees, including without limitation, tenants of the office building to be constructed by Lessee. Lessor shall cause its insurance to be primary during all hours of public use of the Premises. All policies of insurance to be carried by Lessor under this Lease shall name Lessee and Lessor as insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Lessee at least thirty (30) days' prior written notice. The insurance shall be with an insurance company authorized to do business in Wisconsin and a copy of the paid-up policy evidencing such insurance or certificates of insurers certifying to the

issuance of such policy shall be delivered to Lessee prior to commencement of the Term and upon renewals not less than thirty (30) days prior to the expiration of such coverage. Such policy shall also provide that no act or default of any person other than Lessee or its agent shall render the policy void as to Lessee or affect Lessee's right to recover thereon.

**ARTICLE X
NOTICES**

Any notice given in connection with this agreement shall be in writing and may be given in any one of the following ways:

- (a) By personal delivery.
- (b) By delivery by an express mail service.
- (c) By mailing via first class United States mail, postage prepaid, addressed to the last known address of the recipient.

Notice by mailing in the first class United States mails as described shall be deemed given upon mailing. All other forms of notice shall be effective upon receipt. Until further notice, notices by mail shall be addressed as follows:

- If to Lessor: City of Menasha
 Attention: Mayor
 140 Main Street
 Menasha, WI 54952

- With a copy to: City Attorney
 City of Menasha
 140 Main Street
 Menasha, WI 54952

- If to Lessee: Menasha Downtown Development, LLC
 Attn: John J. Hogerty II
 1 Neenah Center, Suite 700
 Neenah, WI 54956-3053

**ARTICLE XI
FORCE MAJEURE**

If Lessee is in default under this Lease for any reason and the default is caused by labor disputes, fire or other unavoidable casualties, unusual delay in deliveries, abnormal adverse weather conditions or any other causes beyond the reasonable control of Lessee, Lessee shall be allowed a reasonable extension of time meet its obligations under this Lease to account for the delay caused by any of the named events.

**ARTICLE XII
MISCELLANEOUS**

This Lease is binding upon the Parties and their respective representatives, successors and assigns. This Lease contains the entire agreement between the Parties relating to its subject and shall not be amended or terminated orally. If any provision of this Lease is declared invalid or unenforceable, the remainder of this Lease shall continue in full force and effect. Lessor may waive any default without waiving any subsequent or prior default by Lessee. The interpretation of this Lease shall be governed by the internal laws of the State of Wisconsin, without regard to its conflicts of law principles. The failure of any Party hereto to enforce at any time any provision or breach of this Lease shall not be construed to be a waiver of such provision or breach, nor in any way to affect the validity of this Lease or any part hereof or the right of any Party thereafter to enforce each and every such provision or seek remedy for a subsequent breach. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and/or PDF electronic format signatures on this Assignment shall have the same force and effect as original ink signatures.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first written above.

**LESSOR:
CITY OF MENASHA**

By: _____

By: _____

**LESSEE:
MENASHA DOWNTOWN DEVELOPMENT, LLC**

By: _____
_____, Manager

EXHIBIT A

Legal Description

Part of lots 5, 6, 7, 8, 9, 10 and 11, Block 43, Original Plat of the Town of Menasha and a part of Broad Street Right of Way, located in part of the Southeast of Section 15, Township 20 North, Range 17 East, City of Menasha, Winnebago County, Wisconsin, described as follows:

Commencing at the South Y. comer of Section 15, Township 20 North, Range 17 East; thence S 89°46'12"E along the South line of the Southeast '14 of said Section 15, 1428.10 feet; thence N 00°22'26"E along the East Line of Milwaukee Street and the Southerly extension thereof, 176.24 feet; thence S 89°34'34"E along the East line of Milwaukee Street, 4.00 feet; thence N 00°22'26"E along the East line of Milwaukee Street, 139.91 feet to the Northwest corner of Block 43, Original Plat of the Town of Menasha; thence S 89°35'06"E along the North line of said Block 43, also being the South line of Broad Street, 120.60 feet; thence N 00°34'04"E, 17.79 feet to the point of beginning, (POB) of the parcel to be described; thence S 89°25'56"E, 302.67 feet; thence S 00°34'04"W, 124.67 feet; thence N 89°25'56"W, 302.67 feet; thence N 00°34'04"E, 124.67 feet to the point of beginning.

Containing: 37,732 Square Feet, 0.866 Acres.



Point of Beginning

**Ground Lease For Ramp
For: Menasha Downtown Development, LLC**

Legal Description

A Ground Lease for Parking Ramp, being a part of lots 5,6,7,8,9,10 and 11, Block 43, Original Plat of the Town of Menasha and a part of Broad Street Right of Way, located in part of the Southeast ¼ of Section 15, Township 20 North, Range 17 East, City of Menasha, Winnebago County, Wisconsin, described as follows:

Commencing at the South ¼ corner of Section 15, Township 20 North, Range 17 East; thence S 89°46'12"E along the South line of the Southeast ¼ of said Section 15, 1428.10 feet; thence N 00°22'26"E along the East Line of Milwaukee Street and the Southerly extension thereof, 176.24 feet; thence S 89°34'34"E along the East line of Milwaukee Street, 4.00 feet; thence N 00°22'26"E along the East line of Milwaukee Street, 139.91 feet to the Northwest corner of Block 43, Original Plat of the Town of Menasha; thence S 89°35'06"E along the North line of said Block 43, also being the South line of Broad Street, 120.60 feet; thence N 00°34'04"E, 17.79 feet to the point of beginning, (POB) of the parcel to be described; thence S 89°25'56"E, 302.67 feet; thence S 00°34'04"W, 124.67 feet; thence N 89°25'56"W, 302.67 feet; thence N 00°34'04"E, 124.67 feet to the point of beginning.

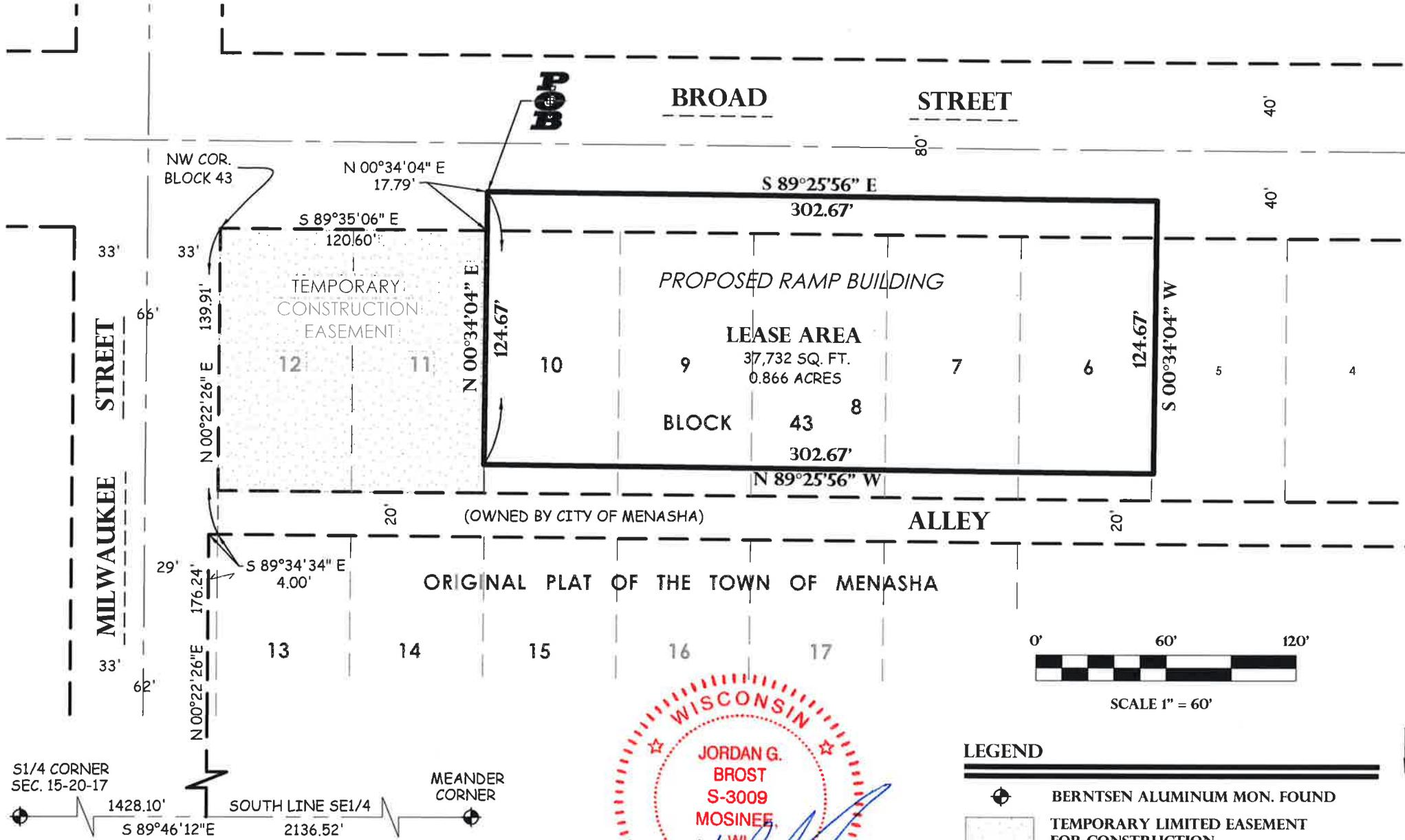
Containing: 37,732 Square Feet, 0.866 Acres.

Dated this 20th day of April, 2015.

**5709 Windy Drive Suite D • STEVENS POINT, WI 54482
PHONE 715-344-9999 • FAX 715-344-9922 • EMAIL INFO@POB.COM**

LEASE EXHIBIT

BEING PART OF LOTS 5, 6, 7, 8, 9, 10 AND 11, BLOCK 43, ORIGINAL PLAT OF THE TOWN OF MENASHA AND PART OF BROAD STREET RIGHT OF WAY, LOCATED IN PART OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 17 EAST, CITY OF MENASHA, WINNEBAGO COUNTY, WISCONSIN.



WISCONSIN
 JORDAN G. BROST
 S-3009
 MOSINEE, WI
 LAND SURVEYOR
 4/20/15

THIS INSTRUMENT WAS DRAFTED BY JORDAN BROST
 AND DRAWN BY JORDAN BROST

FIELD BOOK GB 2 PAGE 33-36
 JOB # 15,401

SHEET 1 OF 1 SHEETS

Civil Engineering
 Land Surveying
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Jordan G. Brost, PLS #3009
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 715.344.9999(PH) 715.344.9922(FX)

POB
 Point of Beginning