

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Common Council will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA
ADMINISTRATION COMMITTEE
Third Floor Council Chambers
140 Main Street, Menasha
May 21, 2012
6:30 PM
or immediately following Common Council
AGENDA**

- A. CALL TO ORDER
- B. ROLL CALL/EXCUSED ABSENCES
- C. MINUTES TO APPROVE
 - 1. [Administration Committee, 5/7/12](#)
- D. COMMUNICATIONS
 - 1. [CA/HRD Captain, 5/8/12, Local Government Property Insurance – Policy Changes](#)
 - 2. [CA/HRD Captain, 5/17/12, Insurance and Fire Station](#)
- E. ACTION ITEMS
 - 1. [Appeal of Denial of Operator's License – Erin Underwood](#)
 - 2. [Disposition of NMFR Station 36, 901 Airport Road, including,](#)
 - a) [Option to Purchase – FP One LLC – Remove from Table](#)
 - b) [Offer to Purchase – Endter Investment, LLC](#)
 - 3. [O-6-12 An Ordinance Amending Title 8, Chapter 2 of the Code of Ordinances – Weights and Measures \(Introduced by Mayor Merkes\)](#)
 - 4. [O-7-12 An Ordinance Amending Title 7 Chapter 6 of the Code of Ordinances – Restaurant and Retail Food Establishment Licensing \(Introduced by Ald. Klein\)](#)
 - 6. [O-8-12 An Ordinance Amending Title 11, Article C of the Code of Ordinances – Parking Regulations \(Introduced by Ald. Klein\)](#)
- F. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

CITY OF MENASHA
ADMINISTRATION COMMITTEE
Third Floor Council Chambers
140 Main Street, Menasha
May 7, 2012
MINUTES

DRAFT

A. CALL TO ORDER

Meeting called to order by Chairman Klein at 7:30 p.m.

B. ROLL CALL/EXCUSED ABSENCES

PRESENT: Aldermen Taylor, Sevenich, Langdon, Krueger, Zelinski, Englebert, Benner, Klein

ALSO PRESENT: Mayor Merkes, CA/HRD Captain, PC Styka, DPW Radtke, CDD Keil, C/T Stoffel, PRD Tungate, PHD Nett, Jean Wollerman (YMCA), Clerk Galeazzi and the Press.

C. MINUTES TO APPROVE

1. [Administration Committee, 4/17/12](#)

Moved by Ald. Zelinski, seconded by Ald. Englebert to approve minutes.

Motion carried on voice vote.

D. ACTION/DISCUSSION ITEMS

1. [Accept quote of The Post Crescent as the official City newspaper, May 2012-May 2013.](#)

Moved by Ald. Benner, seconded by Ald. Sevenich to recommend to Common Council Quote of the Post Crescent as the official City newspaper.

Motion carried on voice vote.

2. [Proposal from McMahon Engineers/Architects for architectural design modifications to Menasha Senior Center](#)

PHD Nett and Jean Wollerman explained McMahon Engineers proposal for a conceptual design for modifications to the Senior Center. Changes need to be made for safety reasons. It will give more space in the Senior Center. Excess funds from the roofing project can be used for the conceptual design.

Ald. Taylor stated he will abstain from voting on this item as he has a relative employed by McMahon.

Moved by Ald. Langdon, seconded by Ald. Krueger to recommend to Common Council The proposal from McMahon Engineers/Architects for architectural design modifications

Motion carried on roll call 7-0. Ald. Taylor - abstained

3. [Updates to Operator's License Guidelines](#)

PC Styka explained the changes recommended by staff and aldermen for Operator's License.

General discussion ensued on the changes.

Moved by Ald. Taylor, seconded by Ald. Langdon to recommend to Common Council the Updates to Operator's License Guidelines

Motion carried on roll call 8-0.

4. [Motion to Remove from the Table – Option to Purchase from FP One LLC, former NMFR Station 36, 901 Airport Road.](#)

Moved by Ald. Englebert, seconded by Ald. Benner to Remove from the Table, Option to Purchase from FP One LLC, former NMFR Station 36, 901 Airport Road.

Motion failed on roll call 3-5.

Ald. Taylor, Englebert, Benner – yes

Ald. Klein, Sevenich, Langdon, Krueger, Zelinski – no

E. ADJOURNMENT

Moved by Ald. Zelinski, seconded by Ald. Benner to adjourn at 7:51 p.m.

Motion carried on voice vote.

Respectfully submitted by Deborah A. Galeazzi, WCMC, City Clerk



MEMORANDUM

Date: May 8, 2012

To: Administration Committee and Department Heads
From: Pamela A. Captain, City Attorney

RE: Local Government Property Insurance Fund – Policy Changes

The State of Wisconsin has provided notice of policy changes with respect to the Local Government Property Insurance Fund effective with the next renewal period – January 2013. Please let me know if any of these change are a cause for concern such that we should seek additional coverage.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Ted Nickel, Commissioner

Wisconsin.gov

April 27, 2012

Local Government Property Insurance Fund
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 264-8113 • Fax: (608) 264-6220
E-Mail: louie.cornelius@wisconsin.gov
Web Address: oci.wi.gov

NOTICE OF ALTERED POLICY TERMS VALUATION POLICY OCI 41-080 (R01-2012)

City of Menasha
Pamela Captain
140 Main Street
Menasha, WI, 54952

Policy Number: 140411
Renewal Date: 6/12/2013

Dear Insured:

Wisconsin Statute 631.36 provides that policyholders be notified of any significant policy alterations at least 60 days prior to any anniversary (*i.e.*, *renewal*) date if the changes are to become effective on the renewal date. In the event the renewal is sent by first class mail less than 60 days prior to the anniversary date, the policy change becomes effective 60 days after the notice is mailed. As a policyholder, you have the right to cancel coverage without penalty within the prescribed 60 day time period. After 60 days, cancellation may be subject to customary short rate cancellation charges.

This notice is being sent to all policyholders since changes have been incorporated into the Valuation Policy. The Valuation policy provides your property coverage through the Local Government Property Insurance Fund. As you read through the reductions in coverage below please keep in mind that the Fund policy still provides much broader coverage than industry norms in many areas including but not limited to:

- Ordinance or Law
- Surface Water
- Property Off Premises
- Property of others that you are legally or contractually obligated to insure.
- Extra Expense.
- Electronic data processing equipment, software and electronic data.

A brief description of the significant coverage changes are listed below

Policy Changes That Enhance Coverage:

- **911 Systems.** The \$50,000 Specific Limit for 911 systems, fiber optic networks and other similar items will no longer apply. You will only need to indicate whether or not you have the systems present in your buildings. The estimated value for these items will then be added to your building limits shown on the declarations page. Previously it was necessary for you to provide a value on these items in order to have coverage in excess of the \$50,000 limit.
- **Vacancy.** The exclusion for vacant buildings and structures previously applied to any peril that caused a loss. The new policy excludes only the "specified causes of loss" for losses to a vacant building or structure. The most important "specified causes of loss" perils applying to vacancy are fire, lightning, smoke and vandalism. For a definition of "specified causes of loss" refer to your new policy. Any other peril, other than "specified causes of loss", that causes a covered loss to a

vacant building or structure will reduce the claims payment by 15%. A Vacancy Permit endorsement is available for purchase that negates the vacancy exclusion.

- **Elevator Collision.** The mechanical breakdown exclusion was revised so that coverage is provided if an elevator breaks down and causes damage to the building or contents due to the collision of the elevator with the structure.
- **Fire Exception to the Nuclear Exclusion.** An exception is provided for a fire that would otherwise not be covered by the nuclear exclusion.
- **Sewer, Septic System or Sump Pump Back-Up.** Language was added to provide an exception to the exclusions in order to provide sewer, septic system or sump pump back-up contained within a covered building or structure.

Description of Policy Changes That Reduce, or Potentially Reduce, Coverage:

- **Aggregate Deductible.** If you have an aggregate deductible applying to your policy, covered losses that are less than \$500 will not apply to the calculation of the threshold for meeting the policy period aggregate deductible. Previously all covered losses, including those below \$500, were included in determining when you reached the aggregate deductible limit.
- **Fine Arts.** Fine arts, including museum collections and collectibles, will now have Actual Cash Value (depreciated value) rather than replacement cost apply in the event there is a covered loss. A Fine Arts Agreed Value endorsement is available to provide coverage on an agreed value basis.
- **Land or Water.** Land or water is now excluded property to agree with the exclusions in our reinsurance coverage where land and water is excluded. The policy was previously silent on whether there was coverage since land and water also was not mentioned in Section IV – Covered Property. This could be construed to be a reduction in coverage.
- **Pollution Exclusion.** Previously the pollution exclusion only applied to debris removal. The \$10,000 debris removal limit for extraction of pollutants and contaminants from water is now an additional coverage and excluded from debris removal. We also have added a pollution or contaminant exclusion that applies to all losses unless due to one of the “specified causes of loss”. The exclusion now tracks with the pollution exclusion in our reinsurance agreement.
- **Virus Exclusion.** An exclusion has been added for loss arising from a virus, bacterium or other micro-organism unless due to the “specified causes of loss”. The exclusion now tracks with the virus, bacterium and micro-organism exclusion in our reinsurance agreement.
- **Surface Water.** Due to a reduction in the amount of reinsurance available for flood, including surface water, it was necessary for us to reduce the amount of coverage provided under your policy for loss due to surface water to \$1,500,000 per occurrence during a 72 hour event window. This coverage, and the limit, is still substantially broader than the industry norm.
- **Vacancy.** Personal property contained in a vacant building or structure will be excluded. Previously the vacancy exclusion only applied to buildings or structures. Also see the enhanced coverage for vacant property to identify improvements to the vacancy exclusion.
- **Employee Dishonesty.** Previously only embezzlement or theft was listed as excluded for dishonest acts committed by your employees. The exclusion has been expanded to exclude dishonest or criminal acts to make the exclusion track with case law related to employee dishonesty losses. The exclusion does not apply to losses arising out of the “specified causes of loss”, (e.g. vandalism).
- **Culverts.** Culverts located more 100 feet from a covered building are not covered. The policy was previously silent on whether there was coverage for culverts.
- **Anti-concurrent Causation.** Anti-concurrent causation language now applies to certain losses that are excluded in Section VI of the policy. The language applies to exclusions related to nuclear; fungus; virus; flood and surface water; war; and excluded water losses such as those that arise from water pressure below the surface of the ground. Anti-concurrent causation language means that these losses are excluded even if another covered peril contributes to a loss arising from these excluded perils.
- **Suit Against the Fund.** The policy condition related to how long you have to bring a suit against the Fund or request a hearing has been changed to 6 months rather than the current 12 months since action against the Fund may only be pursued through judicial review under Wis. Stat. s.

227.52 commenced within six months of a final determination made by the "Fund". This differs from requirements for private insurers.

- **Proof of Loss.** The Proof of Loss Condition was changed to state that any extension of the 90 day time period allowed for filing a Proof of Loss must be provided to you in writing for the extension to be valid. Previously the extension did not necessarily have to be provided to you in writing for it to be valid.

Description of Other Policy Changes:

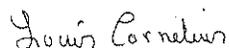
- **Electronic Data Processing Equipment, Software and Electronic Data.** The policy language in this area has been updated to be in line with current terminology. There is no reduction in coverage – only editorial clarifications.
- **Inspection Clause.** An inspection clause was added to Section VIII – Conditions that says that you will allow your property to be surveyed by such entities as the Insurance Services Offices or an appraisal company. The clause also clarifies that these companies do not perform safety inspections and that neither the Fund nor these companies may be sued for failing to notice safety defects. The policy was previously silent in this area.
- **Valuable Records.** Previously Valuable Records coverage included items converted to an electronic format. The coverage for Valuable Records converted to an electronic format is now included in the Electronic Data Processing coverage. Also, some editorial revisions were made to this section to clarify policy intent.
- **Extra Expense and Ordinance or Law Coverage.** Editorial revisions were made to these coverages to clarify intent. There is no reduction in coverage.
- **No Benefit To Bailee.** This new clause was added to Section VIII – Conditions. It simply states that a bailee of any of your covered property will not benefit from their possession of your property since the policy contract is between you and the Fund.
- **Added an Additional Coverage Section X.** Additional coverages that now appear in this section are Fungus, Fine Arts, Surface Water, and Pollutants or Contaminants.
- **Subrogation.** The condition related to subrogation has been modified to clarify when the Fund may honor waiver agreements that existed prior to a policyholder now insured by the Fund.
- **Definitions.** Definitions that changed or are new to Section IX that you should review in your new policy; "computer programs"; "electronic data"; "employees"; "fine arts"; "flood"; "sinkhole collapse"; "specified causes of loss"; "surface water"; and "water damage"

No coverage is provided by this summary nor can it be construed to replace any provisions of your policy. You should read your renewal policy and review your Declarations Page for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, the provisions of the policy shall prevail.

The Fund's Advisory Committee, which is comprised of 21 Fund insured members, worked with the Fund in reviewing these changes and has endorsed making the changes noted above except for the change to the surface water coverage. The Oversight Committee made the final determination that, in order to protect the solvency of the Fund, it was necessary that the Fund limit the amount of coverage available for surface water losses. If you have questions about any of the above changes, please contact the undersigned at (608) 264-8113, or email me at louie.cornelius@wisconsin.gov.

Please review this new policy closely when you receive your renewal policy.

Sincerely,



Louie Cornelius
Administrator for Funds and Program Management
Office of the Commissioner of Insurance

RECEIVED MAY 08 2012



MEMORANDUM

Date: May 17, 2012

To: Administration Committee
From: Pamela A. Captain, City Attorney

RE: Insurance and Fire Station

As you are aware on April 10, 2011, the fire station sustained significant storm damage, including structural damage. The initial estimate of the damages totaled approximately \$37,000. The building is insured through the State of Wisconsin Local Government Property Insurance Fund (LGPIF). Due to the amount of claimed damage, LGPIF sent an on-site claims adjuster and on May 7, 2012, indicated that it would be sending its own contractor/appraiser to estimate the damages. To date, they have not made arrangements to come through the building. LGPIF has been inquiring about the City's intentions with respect to the future use of the building. We indicated that the recommendation to City officials was to sell the property (since the fire department was no longer using it), however, no decision had been made.

Please be informed that under LGPIF policy vacant buildings require an endorsement. A building that is not used to conduct customary operations or that is used for storage is considered "vacant" under the policy. We have moved forward with securing an endorsement.

Debbie Galeazzi

From: Erin Underwood [underwooderin88@gmail.com]
Sent: Monday, May 07, 2012 8:23 PM
To: Debbie Galeazzi
Subject: Appeal for the Denial of Alcohol Operators License
Attachments: Appeal for Alcohol OL .docx

Mrs. Debbie Galeazzi,

I am sending this e-mail in regards to the denial of the alcohol operators license that I applied for in December of 2011. I am an employee of Mr. Frogs bar and I was into the city of Menasha Police Department about 3 weeks ago to discuss attending the common council meeting tomorrow, May 7th, in order to appeal this decision. I believe I spoke with you about attending this meeting and was told to write a letter with the reasons why I should not be denied the license. I have attached in this e-mail the letter of appeal. Please let me know if there is anything else that you need from me.

Thank you for your time,

Erin Underwood

City of Menasha

To whom it may concern:

I am writing to request an appeal of the denial of an Alcohol Operators License for the town of Menasha for myself, Erin Underwood. Per a letter received by myself from, Lt. Ronald Bouchard, the application for my Alcohol Operators License was denied because of two underage alcohol convictions in January of 2007 and October of 2008. However I believe that these convictions are not representations of my current abilities to serve as a responsible bartender.

As an employee of Mr. Frogs bar in Menasha I believe that it is important for me to an Alcohol Operators License, as I am a vital part of the business. If I am denied the license, the bar's owner, Luis Morales, will be forced to make continuous and sometimes difficult arrangements in order to insure that a licensed bartender is always on duty. Furthermore, my position as Mr. Frogs bar is a crucial part of my financial wellbeing. I have successfully completed the responsible beverage server course at Fox Valley Technical College and fully understand the importance of responsible service.

I am willing to meet and fulfill any other requirements in order to show that I am committed to upholding the law as a responsible bartender.

Thank you,

Erin Underwood

CITY OF MENASHA
ALCOHOL OPERATORS LICENSE APPLICATION

call
450-9819
works
Thur
night

Establishment of Employment Mr. Frog

SPECIAL EVENT PROVISIONAL (TEMP) REGULAR RENEWAL

Name Underwood Em Beth
Last First Middle

Address 212 Fairway st Combined Woods WI
Street City State/Zip Code

Phone 920 450-9819 Social Security _____

Height _____ Weight _____ Eyes _____ Hair _____ Sex _____ Race _____

Birth Date _____ Age _____ Birthplace Appleton

Scars, Marks, Tattoos Tattoo wrist (L) "Pure Vida"

Drivers License No. _____ State of Issue _____

Expiration Date _____

NOTE: A license may be denied if applicant fails to provide accurate information or if the information is incomplete. Please read this section carefully.

Please explain all yes answers completely on the back of this form!

Do you currently have any criminal charges pending against you? no

Have you ever been convicted of a felony? no

Have you ever been convicted of a misdemeanor? no

Have you ever been convicted of operating a motor vehicle while under the influence of an intoxicant or drug? no

Have you ever been convicted of any law statute or ordinance pertaining to the use or sale of alcohol (including drinking alcohol underage)? yes

Have you ever been convicted of any law, statute or ordinance pertaining to the possession, use or sale illegal drugs? no

I UNDERSTAND THAT THE APPLICATION FEE WILL NOT BE RETURNED IF LICENSE IS DENIED.

SIGNATURE E. U. Date 12/20/11

WITNESS _____ Date _____

Approved _____ Denied Expiration Date _____

Chief of Police [Signature] Date 12/20/11

Comments: 2 Underage Alcohol violations/ convictions last 7 years.

REVOKED FOR VIOLATION: _____



December 30, 2011

Erin B. Underwood
212 Fairway Street
Combined Locks, WI 54113

Ms Erin Underwood,

I have reviewed your application for an Alcohol Operator's License for the City of Menasha, and in doing so it was determined you have two alcohol related convictions arising out of separate incidents within the last seven years on your record. The first conviction was for an Underage Alcohol citation you received in Eau Claire County on December 16, 2006; conviction date was January 17, 2007. The second conviction was for an Underage Alcohol citation you received in Eau Claire County on October 4, 2008; conviction date was November 4, 2008.

Since you have been convicted of two or more offenses within the last seven years that are directly related to the Alcohol Operator's License for which you applied for you do not qualify for a license at this time. See Guideline No. 3, attached.

Based on the above circumstance, you will be denied an Alcohol Operator's License in the City of Menasha. You may appeal this decision by contacting the City of Menasha City Clerk's Office at (920)967-3603 within 30 days of this denial to request an appeal before the Common Counsel. At this appeal you have the right to be represented, heard and allowed to present evidence in favor of granting the license at a hearing held within (45) forty-five days of the filing of such an appeal.

Sincerely,

Lt. Ronald Bouchard
City of Menasha Police
Investigative Services

*4-19-12
Provided Erin
2nd copy of
denial letter.
ERT*



Memorandum

To: Common Council
From: Greg Keil, CDD
Date: May 17, 2012
RE: Reuse/Redevelopment of NMFR Station 36 – 901 Appleton Road

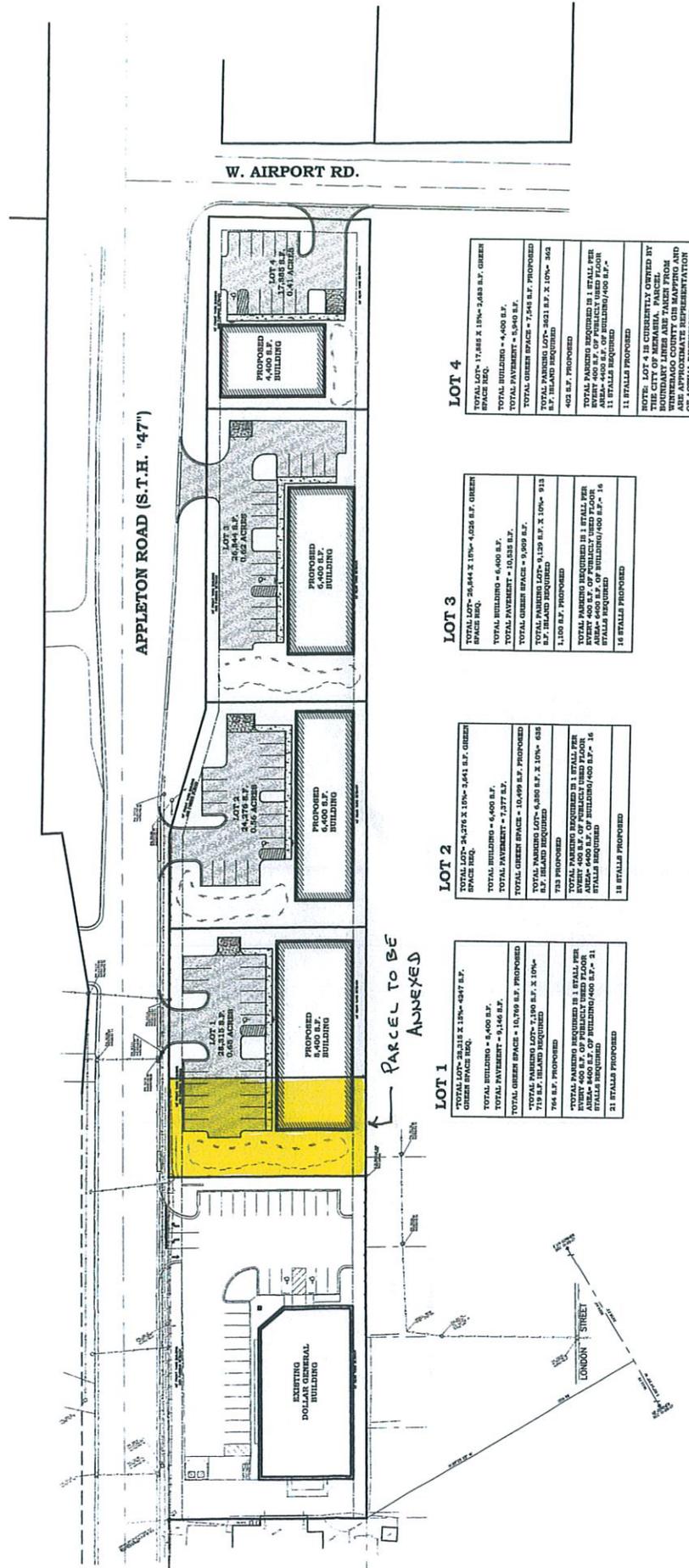
Over the past two months the Administration Committee has had before it an Option to Purchase the former fire station on Airport Road. The option was tabled. There is now on the Administration Committee Agenda an Offer to Purchase by another entity whose intention is to make repairs to the structure and use the building as a contractor's office and shop.

Based on action formerly taken by the Plan Commission (see attached) and Community Development staff's opinion, the reuse of the existing structure is not the highest and best use of the property. Staff's opinion is based on the following considerations:

- The site offers commercial development potential because of its visibility, corner location and is adjacent to STH 47 with average daily traffic counts of approximately 12,000 vehicles.
- The value of a new structure on the parcel would range between \$54/sq. ft. and \$86/sq ft. This would equate to a total value of between \$267,300 and \$425,700 based on the existing building size of 4,950 sq. ft., not including other site improvements.
- Per Menasha Assessor Mark Brown, the value as a contractor's office and shop in the existing building would range between \$15/sq. ft. and \$30.00sq.ft., for a total value of between \$74,250 and \$148,500.
- Based on the above noted range of values, the city would receive between \$4,600 and \$10,200 less in annual tax payments if the existing building is retained.
- Per the developer, retention of the existing building would have an adverse impact on redevelopment of the property owned by FP One, LLC, a copy of whose redevelopment concept plan is attached. This plan concept includes the fire station parcel.
- The development concept proposed by FP One, LLC will result in a petition to the city to annex a 9,750 sq. ft. parcel.

Based on these considerations, and most significantly, the potential for the city to garner an additional \$184,000 to \$408,000 in additional tax revenue over the 40 year life of a new building, **I recommend that the Administration Committee advance the Option to Purchase from FP One, LLC to the Common Council for its approval.**

Other information pertinent to the fire station property is attached.



LOT 1

TOTAL LOT - 28,312 X 150' = 4,247 S.F. GREEN SPACE REQ.
TOTAL BUILDING = 6,400 S.F.
TOTAL PAVEMENT = 9,146 S.F.
TOTAL GREEN SPACE = 10,799 S.F. PROPOSED
TOTAL PARKING LOT - 7,150 S.F. ± 10% S.F. ISLAND REQUIRED
794 S.F. PROPOSED
TOTAL PARKING REQUIRED IN 1 STALL PER EVERY 400 S.F. OF PAVEMENT USED FLOOR AREA - 6400 S.F. OF BUILDING/400 S.F. = 16 STALLS REQUIRED
21 STALLS PROPOSED

LOT 2

TOTAL LOT - 24,276 X 150' = 3,641 S.F. GREEN SPACE REQ.
TOTAL BUILDING = 6,400 S.F.
TOTAL PAVEMENT = 7,277 S.F.
TOTAL GREEN SPACE = 10,699 S.F. PROPOSED
TOTAL PARKING LOT - 6,189 S.F. ± 10% S.F. ISLAND REQUIRED
723 PROPOSED
TOTAL PARKING REQUIRED IN 1 STALL PER EVERY 400 S.F. OF PAVEMENT USED FLOOR AREA - 6400 S.F. OF BUILDING/400 S.F. = 16 STALLS REQUIRED
16 STALLS PROPOSED

LOT 3

TOTAL LOT - 26,944 X 150' = 4,026 S.F. GREEN SPACE REQ.
TOTAL BUILDING = 6,400 S.F.
TOTAL PAVEMENT = 10,018 S.F.
TOTAL GREEN SPACE = 9,809 S.F.
TOTAL PARKING LOT - 9,129 S.F. ± 10% S.F. ISLAND REQUIRED
1,199 S.F. PROPOSED
TOTAL PARKING REQUIRED IN 1 STALL PER EVERY 400 S.F. OF PAVEMENT USED FLOOR AREA - 6400 S.F. OF BUILDING/400 S.F. = 16 STALLS REQUIRED
16 STALLS PROPOSED

LOT 4

TOTAL LOT - 17,285 X 150' = 2,593 S.F. GREEN SPACE REQ.
TOTAL BUILDING = 4,400 S.F.
TOTAL PAVEMENT = 8,949 S.F.
TOTAL GREEN SPACE = 7,245 S.F. PROPOSED
TOTAL PARKING LOT - 2021 S.F. ± 10% S.F. ISLAND REQUIRED
402 S.F. PROPOSED
TOTAL PARKING REQUIRED IN 1 STALL PER EVERY 400 S.F. OF PAVEMENT USED FLOOR AREA - 4400 S.F. OF BUILDING/400 S.F. = 11 STALLS REQUIRED
11 STALLS PROPOSED

NOTES:

*BASIC LOT STANDARDS INCLUDING SETBACKS, GREEN SPACE REQUIREMENTS, AND PARKING STALL REQUIREMENTS ARE TAKEN FROM THE CITY OF MENASHA ZONING CODE.

**PLEASE NOTE THAT THIS PLAN IS STRICTLY CONCEPTUAL IN NATURE. THE PLAN HAS NOT BEEN FORMALLY APPROVED BY THE CITY OF MENASHA AND OTHER GOVERNING BODIES HAVING JURISDICTION OVER THIS PROPERTY. ANY LOT DIVISIONS OTHER THAN SHOWN WILL BE AT THE DISCRETION OF THE CITY OF MENASHA.

CITY OF MENASHA
Plan Commission
Council Chambers, City Hall – 140 Main Street
July 12, 2011
MINUTES

A. CALL TO ORDER

The meeting was called to order at 4:35 p.m. by Mayor Merkes.

B. ROLL CALL/EXCUSED ABSENCES

PLAN COMMISSION MEMBERS PRESENT: Mayor Merkes, Commissioners Homan, Sturm, Schmidt and Cruickshank, DPW Radtke and Ald. Benner

PLAN COMMISSION MEMBERS EXCUSED: None

PLAN COMMISSION MEMBERS ABSENT: None

OTHERS PRESENT: CDD Keil, PP Kester, Bruce Herwig, Tom Larsen, Tony Piette and Lonnie Pichler

C. MINUTES TO APPROVE

1. **Minutes of the June 21, 2011 Plan Commission Meeting**

Motion by Comm. Homan, seconded by Ald. Benner to approve the June 21, 2011 Plan Commission meeting minutes.

The motion carried.

D. PUBLIC COMMENT ON ANY ITEM OF CONCERN ON THIS AGENDA

1. No one spoke.

E. DISCUSSION

1. None

F. ACTION ITEMS

1. **The Ponds of Menasha Preliminary Plat Review**

CDD Keil reviewed the staff comments on the preliminary plat. These related to access easements around the ponds, future sidewalk locations, lot configurations, street names, and right of way widths. Commissioners discussed these items along with other considerations with the consensus being that the developer be requested to review the following considerations prior to the next Plan Commission meeting:

1. Provide connection to parcels to the north via an extension of Lotus Trail. This is to provide a connection to a possible future park site and to maintain a reasonable spacing of street connections.
2. Consider revamping the layout of the NW corner of the plat. This is to minimize impact on the woodlot and increase lot yield (see attached).
3. Add a 15' maintenance easement around the perimeter of the stormwater pond within Outlot 1. The easement should extend from the top of slope.
4. The preferred sidewalk locations are shown in yellow on the attached.
5. Verify that sufficient access exists for maintenance of the pond in Outlot 2. Add a 15' maintenance easement around the perimeter of the pond.

6. Confirm reasoning for changing Whisper Falls Lane to Whisper Falls Drive.
7. Confirm reasoning for widened ROW at Lots 115-117.
8. 15' Trail easement in SW corner of plat should terminate at Snowberry Way
9. Temporary cul de sac needed at western terminus of Villa Way.

Other questions include how the owners abutting Outlot 2 are to be made responsible for their share of the maintenance costs of the pond.

2. **The Ponds of Menasha Variance Request**

This item was held pending the outcome of Item 1, above.

3. **Disposition of Former Neenah-Menasha Fire Rescue Station – 901 Airport Road**

Mayor Merkes reported that NMFR Station 36 was relocated to Manitowoc Road in May, and that the building is no longer needed for that purpose. The building sustained about \$40,000 in damage as a result of the wind storm that occurred in early May. CDD Keil stated it is the staff's opinion that the city's interests would be best served by razing the building and making the site available for other use. The adjoining property owners have been contacted and there may be possibilities of consolidating the properties into a larger development site.

Commissioners discussed:

- Possible alternative uses of the building.
- The relationship of the site to adjoining properties.
- Future use of the site.
- Selling the building as-is.

Ald. Benner made, and DPW Radtke seconded a motion to recommend that the site be cleared and that the lot be marketed for an appropriate use.

The motion carried.

4. **Landscaping Plan Amendment – Exopack – 171 River Street**

CDD Keil reported that a revised landscaping plan is being submitted in response to the revised site plan for the building addition. The original landscaping plan included some off-site areas in the green space calculations, and the actual amount of green space is closer to 3.5 % compared with the 4.8% that was claimed.

Bruce Herwig explained the efforts that have been made to add/improve site landscaping. Existing parking areas would need to be removed to accommodate more green space.

To achieve compliance, either additional green space would need to be added to the site, or the Plan Commission would need to reduce the required percentage of green space.

Commissioners discussed the location of the existing and proposed landscaping and the possibility of adding street trees within the terrace. The fencing/landscaping of an area around the steam line was also discussed.

Motion by Mayor Merkes, seconded by Comm. Homan to approved the revised landscaping plan consisting of a total of approximately 3.3% total green space with the condition that Exopack installs street trees acceptable to the City Forester for the area beginning at the first landscaped island and extending westward to the west end of the building addition.

The motion carried.

5. **Lighting Plan Amendment – Dollar General – Appleton Road**

CDD Keil stated that the lighting plan was held pending provision of a revised photometric plan. Tony Piette explained that the plan had been revised to account for lighting provided by the

existing street lights. The on-site lighting will consist of full cutoff fixtures.

Motion by DPW Radtke, seconded by Comm. Sturm to approve the lighting plan as submitted with the condition that if there are changes in off-site lighting, the owner will need to provide a new lighting plan and install lighting that is compliant with ordinance requirements.

The motion carried.

G. ADJOURNMENT

Motion by Comm. Schmidt, seconded by Comm. Cruickshank to adjourn at 4:57 p.m.

The motion carried.

Minutes respectfully submitted by Greg Keil, CDD.

NMFR Station 36
901 Manitowoc Road
Property Information

Lot Area: Approx. 16,000 Sq. Ft.

Lot Dimensions: Approx. 123' X 130'

Land Value @ \$3.00/Sq. Ft.: \$48,000

Building Demolition Cost: \$15,300

Environmental Assessment Cost: \$18,000

Estimated Cost to Repair Structural Damage: \$37,000

CITY OF MENASHA
FACILITIES ASSESSMENT
PROJECT NO. 2550
EXISTING BUILDING EVALUATION

FIRE STATION NO. 2

ARCHITECTURAL

1. The purpose of this report is to document the building condition and give a general assessment of the structure and building components both interior and exterior and to identify building code and ADA accessibility issues.
2. Building Type/Use
 - a. The Menasha Fire Station No. 2 is a single-story building with a basement, except under the apparatus room. The fire station has three (3) apparatus bays, an office area, eating and sleeping quarters, and toilet facilities on the first floor. The basement has an exercise area, recreation area, storage, and the mechanical room.
 - b. The building was constructed in 1963.
3. Site Description
 - a. The site is located on the corner of Appleton Road (State Highway 47) and Airport Road. The size of the site is 16,000 SF and the building footprint is 4,950 SF. The front of the building faces Airport Road with a setback of 45'.
 - b. There are five (5) paved parking stalls at the front of the building and a concrete drive to the apparatus bays.
4. Evaluation of Structure and Systems
 - a. There are no ADA compliant toilet facilities in the building.
 - b. There is evidence of exterior wall movement in the apparatus room at the northwest corner and at the west exit door.
 - c. There are two (2) stairways serving the basement. The stairway at the southeast corner is an open exterior stairway with no roof. It was noted that there are water leak issues at this location.
 - d. The interior walls and finishes are generally in good serviceable condition. There are areas in the apparatus room that are soiled from diesel exhaust.
5. Recommendations / Improvements
 - a. Provide ADA compliant toilet facilities.
 - b. Repair the areas of wall movement in the apparatus room.
 - c. Identify the water leak source at the southeast stairway and correct the condition.
 - d. Improve the energy efficiency of the exterior walls.
 - e. It was noted that the roof needs to be replaced.

PLUMBING

1. Barrier Free Requirements

- a. None of the plumbing fixtures in the toilet rooms or locker rooms are accessible to the handicapped.
- b. The electric water cooler in the lounge is not barrier free.
- c. There are no handicapped accessible showers.

2. General Maintenance Condition

- a. The condition of the plumbing fixtures was good. There were no indications of faucets dripping and leaks. The fixtures will require constant maintenance and replacement.
- b. The present water distribution piping did not show signs of leaks and external corrosion. The piping was in good condition and was insulated.
- c. The domestic hot water system was in good condition. However, there did appear to be corrosion. There were no insulating unions that separated piping of dissimilar metals.

3. Recommendations and Conclusions

a. Utilities

- 1.) The present sanitary building sewer has capacity for expansion and a new sanitary building sewer would not be required.
 - 2.) The present water supply is not large enough for expansion. Any major additions would require a new water service.
 - 3.) Any major additions would require new storm building sewers. The storm sewer system will have to be re-worked through retention basins to avoid direct discharge to the site.
- b. The plumbing fixtures do not comply with current Water Conservation Standards, but would be acceptable unless major renovations are planned.
 - c. We would recommend a uni-sex barrier free toilet room and a handicapped accessible shower in each locker room.
 - d. The present hot water systems is not energy efficient and does not have capacity for expansion. A new energy efficient hot water system would be required.
 - e. Any renovation to the present kitchen would require a grease separator.

HVAC SYSTEMS

1. Summary

- a. If this facility is to continue to be used, improvements to the Apparatus Room ventilation system should be made.
- b. Although the cast iron furnace itself will last indefinitely, the multizone system has some comfort issues (high summer humidity levels) that are inherent to this type of system. Rather than replacing major components, if they fail in the future, we would recommend replacing the system with individual furnaces.

2. Condition of Existing Systems

- a. ASHRAE lists the life expectancy of air cooled condensing units and gas fired duct furnaces as being 15 years. This equipment is 37 years old and beyond its useful life expectancy.

- b. Little can go wrong with a cast iron furnace. Refractory tiles need to be replaced periodically and the cast iron heating sections need to have their joints caulked to prevent air leakage. The gas burner, a standard component, has an expected life of 15 years.

3. Code and Operational Issues

- a. A review of the original HVAC plans indicates that the systems were originally designed to provide airflow and outdoor air ventilation rates that will meet today's codes. A qualified Testing and Balancing Contractor should be hired to measure and adjust all systems to assure that code required outdoor air and exhaust ventilation rates are in fact being maintained.

4. Recommendations

- a. The present gravity ventilators that exhaust the Apparatus room should be converted to power exhaust.
- b. The gas fired make-up air units in the Apparatus room air presently being cycled from room thermostats. When the units are off, no make-up air is being brought in, regardless of CO levels. A carbon monoxide sensing system should be installed that will allow the system to function whenever CO levels rise.
- c. A vehicle exhaust system, similar to Plymovent, should be installed to directly exhaust diesel fumes from the apparatus tailpipes.
- d. Summer humidity is difficult to control with a multizone system. During the summer, the "hot deck" becomes a mixture of return air and humid outdoor air that bypasses the cooling coil. If the present condensing unit or gas burner were to fail, we would recommend investigating replacing the present system with four single zone high efficiency gas fired furnaces with air cooled condensing units.

ELECTRICAL

1. Wiring Devices

a. Recommendations

- 1.) Change standard receptacles in the apparatus area to be GFI type.
- 2.) Provide GFI receptacles in the bathroom areas for cleaning purposes.
- 3.) Provide six additional receptacles in the dayroom area to eliminate the use of power strips. Circuit these six receptacles among two 20 amp circuits.
- 4.) Kitchen: Replace existing outlets with GFI protected outlets and also provide two additional receptacles connected to a 20 amp circuits due to the limited number of receptacles in the kitchen area.
- 5.) Locker room receptacle: Change receptacle to be GFI protected.
- 6.) Change standard receptacles in basement area to GFI type.

2. Panelboards

a. Recommendations

- 1.) The minimum of 3' of clearance in front of the panels is not obtained, since you have to stand on the cover of the sump pump to work on the electrical gear. This existing electrical gear should be relocated to accommodate the clearance as indicated in the NEC section 110-26.

3. Interior Lighting Fixtures

a. Recommendations:

- 1.) Replace the existing T12 fluorescent lighting with newer energy efficient T8 type.
- 2.) Provide wire guards on light fixtures in the apparatus bay.
- 3.) Map light: Provide a fluorescent light over this map to provide for brighter light quality.
- 4.) Replace the existing light fixtures in the sleeping area with new.
- 5.) The exit lights should be changed from incandescent and fluorescent type to more energy efficient LED type. Manufacturers indicate that the LED of this type of fixture will last 10-20 years.
- 6.) Exercise area: Change the incandescent lighting to fluorescent lighting.

P:/Proj./2550/Design/Feas/Rp51jw18

CITY OF MENASHA
FACILITIES ASSESSMENT
PROJECT NO. 2550
EXISTING BUILDING EVALUATION

DEPARTMENT INTERVIEWS - FIRE DEPARTMENT

Purpose: Develop a space needs program of square feet required for each department and each space within the department. Obtain general staff input and comments.

Representatives: Patrick O'Brien, Fire Chief
Steve DeLeeuw, Deputy Chief

Discussion / Notes:

- Issues at station #2:
 - Additional space is needed in the kitchen and dining/recreation areas.
 - The dormitory is larger than needed.
 - A conference room would be desirable; the office area is small.
 - The apparatus room should be expanded to the west.
- A new vehicle exhaust system is planned to be installed at each station.
- The department is responsible for their own building maintenance.
- It was suggested that property for a future station should be acquired as early as possible.
- The department does provide First Responders. The department does not provide EMS (Emergency Medical Service). This is provided by Gold Cross.

FACILITIES ASSESSMENT FOR
 CITY OF MENASHA
 MENASHA, WISCONSIN
 PROJECT NO. 2550

Bray Associates Architects, Inc.
 Sheboygan, Wisconsin

March 7, 2002 / Revised March 14, 2002

FIRE STATION #2 - Square Footage Assessment

Area	Existing SF	Proposed SF	Comments
First Floor			
Vestibule	65	65	
Office	160	160	
Toilet	20	80	
Kitchen	80	120	
Dining / Day Room	385	400	
Dormitory	715	600	
Lockers	390	390	
Toilet	100	100	
Shower	60	60	
Mud Shower	25	25	
Apparatus	2,385	2,385	
Subtotal	4,385	4,385	

Area	Existing SF	Proposed SF	Comments
Basement			
Storage / Exercise	570	570	
Boiler	390	390	
Recreation / Storage	805	805	
City Files	390	390	
Subtotal	2,155	2,155	

Total Net Square Feet 6,540 6,540

Existing Gross Square Feet 7,425 7,425

Grossing Factor for Proposed (1.15)

Note: Interior insulation was added in living areas.

Option #4 - Health Department

Remodel at Public Protection - Apparatus Room	Total \$	396,000.00
Fire Department Relocates		

Option #5 - Senior Center

Update / Remodel	\$	256,000.00
Addition		<u>252,000.00</u>
Total \$		508,000.00

Option #6 - Memorial Building

Update	\$	473,000.00
Addition		<u>326,000.00</u>
Total \$		799,000.00

Option #7 - Fire Station #2

Update / Remodel	Total \$	246,000.00
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Option #8 - Public Protection - Police / Fire

Update / Remodel	\$	1,378,000.00
Additions		<u>567,000.00</u>
Total \$		1,945,000.00

Option #9 - Public Protection - Police

Update / Remodel (less area for Health)	Total \$	1,375,000.00
Fire Department Relocates		

Option #10 - Public Protection - Police

Update / Remodel (less area for Health)	\$	958,000.00
Addition		<u>513,000.00</u>
Fire Department Relocates	Total \$	1,471,000.00

WB-24 OPTION TO PURCHASE

1 Attorney
2 **BROKER DRAFTING THIS OPTION ON** April 10, 2012 [DATE] IS AGENT OF (SELLER)(BUYER)(DUAL AGENT) **[STRIKE TWO]**
3 The Seller, City of Menasha, Wisconsin, hereby grants to Buyer,
4 FP One, LLC, an option to purchase (Option) the Property
5 known as [Street Address] 901 Airport Road in the
6 City of Menasha, County of Winnebago, Wisconsin,
7 (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:
8 **DEADLINE FOR GRANT OF OPTION** This Option is void unless a copy of the Option which has been signed by or on behalf of
9 all Owners is delivered to Buyer on or before May 15, 2012 (Time is of the Essence).
10 **OPTION TERMS** An option fee of \$ 1,000.00 will be paid by Buyer within 10 days of the granting of this Option, and
11 shall not be refundable if the Option is not exercised. If the Option is exercised, \$ 1,000.00 of the option fee shall be a credit
12 against the purchase price at closing. This Option may only be exercised by delivering written notice to Seller no later than
13 midnight [see Addendum]. Buyer may sign and deliver the notice at lines 247-248, or may deliver any other written notice
14 which specifically indicates an intent to exercise this Option. This Option shall be extended until _____, upon
15 payment of \$ _____ in cash or equivalent to Seller on or before _____, as an option extension
16 fee which shall not be refundable if this Option is not exercised. If this Option is exercised, \$ _____ of the option extension
17 fee shall be a credit against the purchase price at closing. The option fee and option extension fee shall be (paid directly to Seller)
18 (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]
27
28 ■ ITEMS NOT INCLUDED IN THE PURCHASE PRICE: the existing structures located on the Property
29
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
32 agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use
33 restrictions and covenants, general taxes levied in the year of closing and no other exceptions recorded and
34 servicing the Property (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]**
50) **[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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224

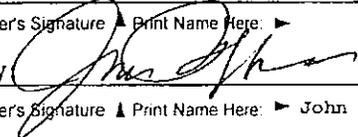
225 **ADDENDA** The attached _____ Addendum _____ is/are made part of this Option.

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 04/10/2012 [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  4/10/12

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 a Phase I environmental audit report, as described below, indicating that no hazardous conditions exist on the Property, as also described below.

Notwithstanding the foregoing, the Seller shall have the option to terminate this Option to Purchase effective after six months, rather than one year, by delivering written notice of termination to Buyer no later than five months following Seller's above certification to Buyer. If the Seller exercises the option to terminate this Option to Purchase after six months, the Option Fee provided by Buyer shall be returned to Buyer along with the notice of early termination.

2. Environmental Audit. The environmental audit report 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, within 21 days of the Buyer's receipt of a copy of the Assessment, the Buyer may elect to terminate this Option and the Option Fee shall be returned to Buyer within five (5) business days of the Seller's receipt of Buyer's notice terminating the Option.

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. If, despite its reasonable efforts, the Seller is unable to obtain the rezoning, the Buyer shall have no obligation to conclude this transaction, may elect to declare this Option to Purchase null and void and the Option Fee shall be promptly returned to Buyer.

2. 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 geotechnical 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.

3. 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:

Seller: gkeil@ci.menasha.wi.us

Buyer: tplatt@pfefferle.biz

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 a Phase I environmental audit report, as described below, indicating that no hazardous conditions exist on the Property, as also described below.

~~Deleted: and Phase II~~

~~Deleted: s~~

Notwithstanding the foregoing, the Seller shall have the option to terminate this Option to Purchase effective after six months, rather than one year, by delivering written notice of termination to Buyer no later than five months following Seller's above certification to Buyer. If the Seller exercises the option to terminate this Option to Purchase after six months, the Option Fee provided by Buyer shall be returned to Buyer along with the notice of early termination.

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

~~Deleted: s~~

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, within 21 days of the Buyer's receipt of a copy of the Assessment, the Buyer may elect to terminate this Option and the Option Fee shall be returned to Buyer within five (5) business days of the Seller's receipt of Buyer's notice terminating the Option.

~~Deleted: 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~~

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. If, despite its reasonable efforts, the Seller is unable to obtain the rezoning, the Buyer shall have no obligation to conclude this transaction, may elect to declare this Option to Purchase null and void and the Option Fee shall be promptly returned to Buyer.

2. 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 geotechnical 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.

3. 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:

Seller: gkeil@ci.menasha.wi.us

Buyer: tplatt@pfefferle.biz

Deleted: 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. §

Deleted: 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. §

Deleted: 3

Deleted: 4

Approved by the Wisconsin Department of Regulation and Licensing
4-1-00 (Optional Use Date)
9-1-00 (Mandatory Use Date)

WB-15 COMMERCIAL OFFER TO PURCHASE

1 ~~BROKER DRAFTING THIS OFFER ON~~ _____ DATE IS AGENT OF SELLER, AGENT OF BUYER, (DUAL AGENT) ~~(STRIKE TWO)~~

2 **GENERAL PROVISIONS** The Buyer, Endter Investments, LLC or assigns
3 offers to purchase the Property known as [Street Address] 901 Airport Road, a/k/a City of Menasha Fire Station #2 in the
4 City Menasha of Menasha, County of Winnebago, Wisconsin, (Insert additional
5 description, if any, at lines 293 - 297 or attach as an addendum per line 298), on the following terms:

6 ■ PURCHASE PRICE: Eighty Thousand and 00/100 Dollars
7 _____ Dollars (\$ 80,000.00)

8 ■ EARNEST MONEY OF \$ 00.00 accompanies this Offer and earnest money of \$ \$5,000.00
9 will be paid within 30 days of acceptance.

10 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.

11 ■ ADDITIONAL ITEMS INCLUDED IN PURCHASE PRICE: Seller shall include in the purchase price and transfer, free and clear of encum-
12 brances, all fixtures, as defined at lines 117 - 120 and as may be on the Property on the date of this Offer, unless excluded at lines 15 - 16, and
13 the following additional items: _____

15 ■ ITEMS NOT INCLUDED IN THE PURCHASE PRICE: **CAUTION: Address rented fixtures or trade fixtures owned by tenants, if
16 applicable.**

17 All personal property included in purchase price will be transferred by bill of sale or _____

18 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed an identical copy of the Offer, including signatures on separate
19 but identical copies of the Offer. **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term
20 deadlines running from acceptance provide adequate time for both binding acceptance and performance.**

21 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before
22 May 30, 2012. **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**

23 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices
24 to a Party shall be effective only when accomplished by one of the methods specified at lines 25 - 34.

25 (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 com-
26 mercial delivery service, addressed either to the Party, or to the Party's recipient for delivery designated at lines 28 or 30 (if any), for delivery to
27 the Party's delivery address at lines 29 or 31.

28 Seller's recipient for delivery (optional): Mayor Don Merkes

29 Seller's delivery address: City of Menasha City Hall, 140 Main Street, Menasha, WI

30 Buyer's recipient for delivery (optional): Chris Endter with a copy to Andrew Rossmessl, 800 N. Lynndale Drive, Appleton, WI

31 Buyer's delivery address: 1190 Goss Avenue, Menasha, WI

32 (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 28 or 30.

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

34 Buyer: (_____) Seller: (_____)

35 **LEASED PROPERTY** If Property is currently leased and lease(s) extends beyond closing, Seller shall assign Seller's rights under said lease(s)
36 and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written)(oral) **(STRIKE ONE)** lease(s), if any,
37 are Seller represents that there are no leases affecting the subject property.

38 **RENTAL WEATHERIZATION** This transaction (is) (is not) **(STRIKE ONE)** exempt from State of Wisconsin Rental Weatherization Standards
39 (Wisconsin Administrative Code, Comm 67). If not exempt, (Buyer) (Seller) **(STRIKE ONE)** will be responsible for compliance, including all costs.
40 If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at closing.

41 **PLACE OF CLOSING** This transaction is to be closed at the place designated by Buyer's mortgagee or Evans Title Company
42 _____ no later than July 30, 2012 unless another date or place is agreed to in writing.

43 **CLOSING PRORATIONS** The following items shall be prorated at closing: real estate taxes, rents, water and sewer use charges, garbage pick-
44 up and other private and municipal charges, property owner's association assessments, fuel, payments under governmental agricultural programs
45 and _____. Any income, taxes or expenses shall accrue to Seller and be prorated through
46 the day prior to closing. Net general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, if known,
47 otherwise on the net general real estate taxes for the preceding year) (_____)

48 _____). **(STRIKE AND COMPLETE AS APPLICABLE)** **CAUTION: If Property has not been fully assessed for
49 tax purposes (for example, recent land division or completed/pending reassessment) or if proration on the basis of net general real
50 estate taxes is not acceptable (for example, changing mill rate), insert estimated annual tax or other basis for proration.**

51 **PROPERTY CONDITION PROVISIONS**

52 ■ **PROPERTY CONDITION REPRESENTATIONS:** Seller represents to Buyer that as of the date of acceptance Seller has no notice or
53 knowledge of conditions affecting the Property or transaction other than those identified in Seller's Real Estate Condition Report
54 dated _____, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer by reference

55 **(COMPLETE DATE OR STRIKE AS APPLICABLE)** and _____

56 _____ **(INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT)**

57 ■ A "condition affecting the Property or transaction" is defined as follows:

- 58 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property or the
59 present use of the Property;
- 60 (b) government agency or court order requiring repair, alteration or correction of any existing condition;
- 61 (c) completed or pending reassessment of the Property for property tax purposes;
- 62 (d) structural inadequacies which if not repaired will significantly shorten the expected normal life of the Property;
- 63 (e) any land division involving the Property, for which required state or local approvals were not obtained;
- 64 (f) construction or remodeling on the Property for which required state or local approvals were not obtained;
- 65 (g) any portion of the Property being in a 100 year floodplain, a wetland or shoreland zoning area under local, state or federal regulations;
- 66 (h) that a structure on the Property is designated as a historic building or that any part of the Property is in a historic district;
- 67 (i) material violations of environmental laws or other laws or agreements regulating the use of the Property;
- 68 (j) conditions constituting a significant health or safety hazard for occupants of the Property;
- 69 (k) underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not limited to gasoline
70 and heating oil, which are currently or which were previously located on the Property; **NOTE: The Wisconsin Administrative Code contains**
71 **registration and operation rules for such underground storage tanks.**
- 72 (l) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;
- 73 (m) material levels of hazardous substances located on Property or previous storage of material amounts of hazardous substances on Property;
- 74 (n) other conditions or occurrences which would significantly reduce the value of the Property to a reasonable person with knowledge of the
75 nature and scope of the condition or occurrence.

76 ■ **PROPERTY DIMENSIONS AND SURVEYS:** Buyer and Seller acknowledge that any Property, building or room dimensions, or total acreage
77 or building square footage figures, provided to Buyer or Seller may be approximate because of rounding or other reasons, unless verified by
78 survey or other means. Buyer also acknowledges that there are various formulas used to calculate total square footage of buildings and that total
79 square footage figures will vary dependent upon the formula used. **CAUTION: Buyer should verify total square footage formula, Property,**
80 **building or room dimensions, and total acreage or square footage figures, if material to Buyer's decision to purchase.**

81 ■ **INSPECTIONS:** Seller agrees to allow Buyer's inspectors reasonable access to the Property upon reasonable notice if the inspections are
82 reasonably necessary to satisfy the contingencies in this Offer. Buyer agrees to promptly provide copies of all such inspection reports to Seller, and
83 to listing broker if Property is listed. Furthermore, Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections are
84 completed, unless otherwise agreed with Seller. An "inspection" is defined as an observation of the Property which does not include testing of the
85 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized.

86 ■ **TESTING:** Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property. A
87 "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other
88 analysis of these materials. If Buyer requires testing, testing contingencies must be specifically provided for at lines 293 - 297 or in an addendum
89 per line 298. Note: Any contingency authorizing such tests should specify the areas of the Property to be tested, the purpose of the test, (e.g., to
90 determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency (e.g.,
91 Buyer's obligation to return the Property to its original condition). Seller acknowledges that certain inspections or tests may detect environmental
92 pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

93 ■ **PRE-CLOSING INSPECTION:** At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer shall have the right
94 to inspect the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and
95 tear and changes approved by Buyer, and that any defects Seller has elected to cure have been repaired in a good and workmanlike manner.

96 ■ **ENVIRONMENTAL SITE ASSESSMENT:** An "environmental site assessment" (also known as a "Phase I Site Assessment") (see lines 279 to
97 283) may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a
98 search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and
99 recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property;
100 (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine
101 if the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment includ-
102 ing the National Priorities List, the Department of Natural Resources' (DNR) registry of Abandoned Landfills, the DNR's Registry of Leaking
103 Underground Storage Tanks, the DNR's most recent remedial response site evaluation report (including the Inventory of Sites and Facilities Which
104 May Cause or Threaten to Cause Environmental Pollution). Any "environmental site assessment" performed under this Offer shall comply with
105 generally recognized industry standards (e.g. current American Society of Testing and Materials "Standards for Environmental Site Assessments for
106 Commercial Real Estate"), and state and federal guidelines, as applicable. **CAUTION: Unless otherwise agreed an**
107 **"environmental site assessment" does not include subsurface testing of the soil or groundwater or other testing of the Property for**
108 **environmental pollution.**

109 ■ **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING:** Seller shall maintain the Property until the earlier of closing or occupancy
110 of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the
111 Property is damaged in an amount of not more than five per cent (5%) of the selling price, Seller shall be obligated to repair the Property and
112 restore it to the same condition that it was on the day of this Offer. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writ-
113 ing of the damage and this Offer may be canceled at the option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer
114 shall be entitled to the insurance proceeds relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of
115 Seller's deductible on such policy. However, if this sale is financed by a land contract or a mortgage to Seller, the insurance proceeds shall be
116 held in trust for the sole purpose of restoring the Property.

117 ■ **FIXTURES** A "Fixture" is an item of property which is physically attached to or so closely associated with land and improvements so as to be
118 treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the Property, items
119 specifically adapted to the Property, and items customarily treated as fixtures. A "fixture" does not include trade fixtures owned by tenants of the
120 Property. See Lines 11 to 17.

121 ■ **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 293 -
122 297 or in an addendum per line 298. Occupancy shall be given subject to tenant's rights, if any.

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

129 PROPERTY ADDRESS: 901 Airport Road, Menasha, WI [page 3 of 5, WB-15]

130 OPTIONAL FINANCING CONTINGENCY: THE CONTINGENCY AT LINES 132 THROUGH 160 IS A PART OF THIS OFFER IF MARKED, SUCH
131 AS WITH AN "X," AT LINE 132. IT IS NOT PART OF THIS OFFER IF IT IS MARKED N/A OR LEFT BLANK.

132 FINANCING CONTINGENCY: This Offer is contingent upon Buyer being able to obtain: **CHECK APPLICABLE FINANCING BELOW**

133 land contract financing from Seller at closing as further described at lines 136 to 153 and 161 to 168.

134 a conventional **INSERT LOAN PROGRAM** (fixed) (adjustable) **STRIKE ONE** rate first mort-
135 gage loan commitment as further described at lines 136 to 149 and 154 to 178, within 30 days of acceptance of this Offer.

136 The financing selected shall be in an amount of not less than \$ 80,000.00 for a term of not less than 20 years, amortized
137 over not less than 20 years. If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall be
138 adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to main-
139 tain the term and amortization stated above.

140 IF FINANCING IS FIXED RATE the annual rate of interest shall not exceed 5% % and monthly payments of principal and interest shall
141 not exceed \$ N/A.

142 IF FINANCING IS ADJUSTABLE RATE the initial annual interest rate shall not exceed _____ % . The initial interest rate shall be fixed for
143 _____ months, at which time the interest rate may be increased not more than _____ % per year. The maximum interest rate during the
144 mortgage term shall not exceed _____ % . Initial monthly payments of principal and interest shall not exceed \$ _____. Monthly
145 payments of principal and interest may be adjusted to reflect interest changes.

146 MONTHLY PAYMENTS MAY ALSO INCLUDE 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private
147 mortgage insurance premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay a loan fee in an amount not
148 to exceed _____ % of the loan. (Loan fee refers to discount points and/or loan origination fee, but DOES NOT include Buyer's other closing
149 costs.) Note: Unless otherwise agreed, Buyer's delivery of any document labeled a loan commitment will satisfy this contingency.

150 IF FINANCING IS BY LAND CONTRACT \$ _____ shall be paid at closing (in addition to earnest money), interest rate following payment
151 default shall be _____ %, the default period shall be _____ days for payments and _____ days for performance of any other
152 obligations. Interest shall be calculated on a prepaid basis. Any amount may be prepaid on principal without penalty at any time. Buyer under-
153 stands that if the term of the land contract is shorter than the amortization period a balloon payment will be due at the end of the term.

154 LOAN COMMITMENT: Buyer agrees to pay all customary financing costs (including closing fees), to apply for financing promptly, and to provide
155 evidence of application promptly upon request by Seller. If Buyer qualifies for the financing described in this Offer or other financing acceptable
156 to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline for loan commitment at line 135.
157 Buyer's delivery of a copy of any written loan commitment (even if subject to conditions) shall satisfy the Buyer's financing contingency
158 unless accompanied by a notice of unacceptability. CAUTION: BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER
159 SHOULD NOT DELIVER A LOAN COMMITMENT TO SELLER WITHOUT BUYER'S PRIOR APPROVAL OR UNLESS ACCOMPANIED BY A
160 NOTICE OF UNACCEPTABILITY.

161 LAND CONTRACT: If this Offer provides for a land contract both Parties agree to execute a State Bar of Wisconsin Form 11 Land Contract, the
162 terms of which are incorporated into this Offer by reference. Prior to execution of the land contract Seller shall provide the same evidence of mer-
163 chantable title as required above and written proof, at or before execution, that the total underlying indebtedness, if any, is not in excess of the pro-
164 posed balance of the land contract, that the payments on the land contract are sufficient to meet all of the obligations of Seller on the underlying
165 indebtedness, and that all creditors whose consent is required have consented to the land contract sale. Seller may terminate this Offer if creditor
166 approval cannot be obtained. Seller may terminate this Offer if Buyer does not provide a written credit report which indicates that Buyer is credit
167 worthy based upon reasonable underwriting standards within 15 days of acceptance. Buyer shall pay all costs of obtaining creditor approval and
168 the credit report. Seller shall be responsible for preparation and the expense of preparation of all closing documentation, including the land contract.

169 FINANCING UNAVAILABILITY: If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable
170 loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection
171 letter(s) or other evidence of unavailability. Unless a specific loan source is named in the financing contingency, Seller shall then have 10 days to
172 give Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in the financing contingency, and this Offer
173 shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall be null and
174 void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

175 SELLER TERMINATION RIGHTS: If Buyer does not make timely delivery of the loan commitment, Seller may terminate this Offer provided that
176 Seller delivers a written notice of termination to Buyer prior to Seller's actual receipt of a copy of Buyer's written loan commitment.

177 NOTE: IF PURCHASE IS CONDITIONED ON BUYER OBTAINING FINANCING FOR OPERATIONS OR DEVELOPMENT CONSIDER ADDING
178 A CONTINGENCY FOR THAT PURPOSE.

179 **TITLE EVIDENCE**

180 CONVEYANCE OF TITLE: Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or other conveyance as
181 provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them,
182 recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied
183 in the year of closing and _____

184 _____ (provided none of the
185 foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller further agrees to com-
186 plete and execute the documents necessary to record the conveyance. WARNING: If Buyer contemplates improving or developing Property,
187 or a change in use, Buyer may need to address municipal and zoning ordinances, recorded building and use restrictions, covenants
188 and easements which may prohibit some improvements or uses. The need for building permits, zoning variances, environmental audits,

189 *etc., may need to be investigated to determine feasibility of improvements, development or use changes for Property. Contingencies*
 190 *for investigation of these issues may be added to this Offer. See lines 293 to 298.*

191 ■ **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 purchase
 192 price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. **CAUTION: IF TITLE EVIDENCE WILL BE GIVEN**
 193 **BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

194 ■ **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title evidence shall be
 195 acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than 3 business days before clos-
 196 ing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject only to liens
 197 which will be paid out of the proceeds of closing and standard abstract certificate limitations or standard title insurance requirements and excep-
 198 tions, as appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE COMMITMENT PRIOR TO**
 199 **CLOSING, A "GAP ENDORSEMENT" TO THE TITLE COMMITMENT OR AN ESCROW CLOSING.**

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

205 **DELIVERY/RECEIPT** Unless otherwise stated in this Offer, any signed document transmitted by facsimile machine (fax) shall be treated in all man-
 206 ner and respects as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signa-
 207 ture. Personal delivery to, or actual receipt by, any named Buyer or Seller constitutes personal delivery to, or actual receipt by Buyer or Seller.
 208 Once received, a notice cannot be withdrawn by the Party delivering the notice without the consent of the Party receiving the notice. A Party may
 209 not unilaterally reinstate a contingency after a notice of a contingency waiver has been received by the other Party. The delivery/receipt provi-
 210 sions in this Offer may be modified when appropriate (e.g., when mail delivery is not desirable (see lines 25 - 31)). Buyer and Seller author-
 211 ize the agents of Buyer and Seller to distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settle-
 212 ment service providers for the transaction.

213 **DATES AND DEADLINES** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the
 214 event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific num-
 215 ber of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other day designated by the President
 216 such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours"
 217 from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day.
 218 Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

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

221 **If Buyer defaults,** Seller may:

- 222 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
- 223 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) direct Broker to return the
- 224 earnest money and have the option to sue for actual damages.

225 **If Seller defaults,** Buyer may:

- 226 (1) sue for specific performance; or
- 227 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

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

229 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts.
 230 If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing
 231 to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement. NOTE: IF
 232 ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT
 233 CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW
 234 FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT
 235 CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

236 **EARNEST MONEY**

237 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (buyer's agent if Property
 238 is not listed or seller if no broker is involved), until applied to purchase price or otherwise disbursed as provided in the Offer. **CAUTION: Should**
 239 **persons other than a broker hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. If someone other**
 240 **than Buyer makes payment of earnest money, consider a special disbursement agreement.**

241 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor's
 242 depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed
 243 according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement
 244 agreement signed by all Parties to this Offer (Note: Wis. Adm. Code § RL 18.09(1)(b) provides that an offer to purchase is not a written disbursement
 245 agreement pursuant to which the broker may disburse). If the disbursement agreement has not been delivered to broker within 60 days after the date
 246 set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer
 247 or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other
 248 disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and
 249 broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to disbursement.

250 ■ **LEGAL RIGHTS/ACTION:** Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer.
 251 Buyer's or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to disbursement per (1) or (4) above, broker
 252 shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with broker's proposed disbursement, a lawsuit
 253 may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the
 254 sale of residential property with 1-4 dwelling units and certain other earnest money disputes. The Buyer and Seller should consider consulting attor-
 255 neys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith
 256 disbursement of earnest money in accordance with this Offer or applicable Department of Regulation and Licensing regulations concerning earnest
 257 money. See Wis. Adm. Code Ch. RL 18. NOTE: WISCONSIN LICENSE LAW PROHIBITS A BROKER FROM GIVING ADVICE OR OPINIONS CON-
 258 CERNING THE LEGAL RIGHTS OR OBLIGATIONS OF PARTIES TO A TRANSACTION OR THE LEGAL EFFECT OF A SPECIFIC CONTRACT OR
 259 CONVEYANCE. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS REQUIRED.

260 PROPERTY ADDRESS: 901 Airport Road, Menasha, WI [page 5 of 5, WB- 15]

261 TIME IS OF THE ESSENCE "TIME IS OF THE ESSENCE" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy;
262 (4) date of closing; (5) contingency deadlines STRIKE AS APPLICABLE and all other dates and deadlines in this Offer except:
263 . If "Time is of the Essence"
264 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
265 to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

266 DOCUMENT REVIEW CONTINGENCY: This Offer is contingent upon Seller delivering the following documents to Buyer within
267 days of acceptance: CHECK THOSE THAT APPLY

- 268 [] Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.
269 [] A complete inventory of all furniture, fixtures and equipment included in this transaction which is consistent with
270 representations made prior to and in this Offer.
271 [] Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property
272 to be free and clear of all liens, other than liens to be released prior to or at closing.
273 [] Other

275 This contingency shall be deemed satisfied unless Buyer, within days of the earlier of receipt of the final record to be delivered or the dead-
276 line for delivery of the documents, delivers to Seller a written notice indicating that this contingency has not been satisfied. The notice shall iden-
277 tify which document(s) have not been timely delivered or do not meet the standard set forth for the document(s).

278 ENVIRONMENTAL EVALUATION/INSPECTION CONTINGENCY: This Offer is contingent upon: CHECK THOSE THAT APPLY
279 [X] A qualified independent environmental consultant of Buyer's choice conducting an environmental site assessment of the Property (see
280 lines 96 to 108), at (Buyer's)(Seller's) expense STRIKE ONE, which discloses no defects. A defect is defined as a material violation of
281 environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an
282 underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the
283 Property due to future migration from other properties.

284 [X] A qualified independent inspector of Buyer's choice conducting an inspection of the Property and N/A
285 , at (Buyer's)(Seller's) expense STRIKE ONE, which discloses no defects.
286 A defect is defined as a structural, mechanical or other condition that would have a significant adverse effect on the value of the Property; that
287 would significantly impair the health and safety of future occupants of the Property; or that if not repaired, removed or replaced would
288 significantly shorten or have a significantly adverse effect on the expected normal life of the Property.

289 This contingency shall be deemed satisfied unless Buyer, within 30 days of acceptance, delivers to Seller a copy of the environmental site
290 assessment/inspection report(s) and a written notice listing the defect(s) identified in the environmental site assessment/inspection report(s) to
291 which Buyer objects. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before
292 signing the Offer. Buyer agrees to deliver a copy of the report and notice to listing broker, if Property is listed, promptly upon delivery to Seller.

293 ADDITIONAL PROVISIONS/CONTINGENCIES See additional contingencies at Addendum A.

298 [X] ADDENDA: The attached Addendum A is/are made part of this Offer.

299 THIS OFFER, INCLUDING ANY AMENDMENTS TO IT, CONTAINS THE ENTIRE AGREEMENT OF THE BUYER AND SELLER REGARDING
300 THE TRANSACTION. ALL PRIOR NEGOTIATIONS AND DISCUSSIONS HAVE BEEN MERGED INTO THIS OFFER. THIS AGREEMENT
301 BINDS AND INURES TO THE BENEFIT OF THE PARTIES TO THIS OFFER AND THEIR SUCCESSORS IN INTEREST.

302 This Offer was drafted on May 14, 2012 [date] by [Licensee and firm] Andrew J. Rossmeis, Herrling Clark Law Firm Ltd.

303 Buyer's Signature Print Name Here: Chris Endter Social Security No. or FEIN (optional) Date 5/15/12

305 Buyer's Signature Print Name Here: Gilbert Mader Social Security No. or FEIN (optional) Date 5-15-2012

307 EARNEST MONEY RECEIPT Broker acknowledges receipt of earnest money as per line 8 of the above Offer. (See Lines 236 - 259)

308 Broker (By)

309 SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING
310 AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS
311 SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.

312 (X) Seller's Signature Print Name Here: Social Security No. or FEIN (optional) Date

314 (X) Seller's Signature Print Name Here: Social Security No. or FEIN (optional) Date

316 This Offer was presented to Seller by on , at a.m./p.m.

317 THIS OFFER IS REJECTED THIS OFFER IS COUNTERED [See attached counter]
318 Seller Initials Date Seller Initials Date

ADDENDUM A

1. This Offer is contingent upon Buyer receiving a commitment from the City of Menasha and/or the Wisconsin Department of Transportation, as applicable, to maintain ingress and egress to and from the subject property to Airport Road.
2. This Offer is contingent upon the City of Menasha paying the actual cost to repair the roof of the structure located on the subject premises, not to exceed \$20,000.00. Buyer and Seller are aware that Seller received approximately \$39,000.00 in insurance proceeds to repair said roof; Seller may retain any portion of said proceeds not needed to repair the roof and/or any portion of said proceeds in excess of \$20,000.00.
3. This Offer is contingent upon Buyer receiving a commitment from the City of Menasha to allow no less than eight (8) outdoor parking stalls on the subject premises with access to Airport Road.
4. This Offer is contingent upon the City of Menasha rezoning the subject property to C1.
5. This Offer is contingent upon Buyer, at Buyer's expense, obtaining a survey of the subject property demonstrating that all the improvements to the subject property are located within the legal boundaries of the subject property.

ORDINANCE O-6-12
AN ORDINANCE AMENDING TITLE 8, CHAPTER 2 OF CODE OF ORDINANCES –
WEIGHTS AND MEASURES

INTRODUCED BY MAYOR MERKES

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 8, Chapter 2 of the Code of Ordinances of the City of Menasha, Wisconsin as follows:

TITLE 8 – HEALTH AND SANITATION

CHAPTER 2
Weights and Measures

**SEC. 8-2-1 FEDERAL STANDARDS, STATE STATUTES AND ~~RULES~~
ADMINISTRATIVE CODE ADOPTED BY REFERENCE.**

The subsequent federal standards, Wisconsin Statutes, the Sections thereof, and Wisconsin Administrative Rules are adopted by reference and shall be enforced under this Chapter with violations of same subject to penalties set forth in Section 1-1-7.

- (a) Chapter 98, Wisconsin Statutes, "Weights and Measures."
- (b) Chapter ~~AG-53~~ ATCP 90, Wisconsin Administrative Code, "Fair Packaging and Labeling."
- (c) Chapter ~~AG-54~~ ATCP 91, Wisconsin Administrative Code, "~~Method of Sale of Commodities.~~" "Selling Commodities by Weight, Measure or Count."
- (d) Chapter ~~AG-120~~ ATCP 92, Wisconsin Administrative Code, "~~Scales and Scale Pits.~~" "Weights and Measures."
- (e) Chapter ATCP 93, Wisconsin Administrative Code, "Department of Agriculture, Trade and Consumer Protection."
- (f) Chapter ATCP 100, Wisconsin Administrative Code, "Marketing; Trade Practices."
- (g) Chapter ATCP 136, Wisconsin Administrative Code, "Mobile Air Conditioners, Reclaiming or Recycling Refrigerant."
- (~~e~~)(h) ~~NBS NIST~~ Handbook 44, 112, 130, 133, U.S. Department of Commerce, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices."
- (~~f~~) ~~Chapter AG-115, Liquefied Petroleum Gas, HBS Handbook 133.~~

SEC. 8-2-2 DEFINITIONS.

As used in this Chapter, unless the context requires otherwise:

- (a) **WEIGHTS AND MEASUREMENTS.** Weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories used with any

or all such instruments and devices, except meters for the measurement of electricity, gas (natural or manufactured) or water when the same are operated in a public utility system.

- (b) **SELL, SALE, PURCHASE AND SOLD.** Includes barter or exchange, and any offering or exposing for sale or possession with intent to sell or purchase.
- (c) **SEALER AND DEPUTY SEALER.** A Sealer of Weights and Measures in the City of Menasha.
- (d) **WEIGHT.** Net weight when used in reference to a commodity.
- (e) **INCORRECT.** As applied to weights and measures and commodities includes any failure to comply with the requirements of this Chapter or rules issued thereunder.

SEC. 8-2-3 SEALER OF WEIGHTS AND MEASURES.

- (a) **APPOINTMENT.** The Sealer of Weights and Measures shall be appointed by the Mayor with the confirmation of the Common Council. Such person, before entering upon the duties of his office, shall take and subscribe an oath to faithfully perform his duties.
- (b) **SALARY.** The Sealer of Weights and Measures shall receive a salary to be fixed by the Common Council.
- (c) **ENFORCEMENT AUTHORITY.**
 - (1) There is conferred upon the Sealer of Weights and Measures police power. Such Sealer of Weights and Measures shall be provided with a suitable badge or insignia of authority and in the exercise of his functions shall exhibit the same, upon demand, to any person questioning his powers.
 - (2) The Sealer of Weights and Measures may enter and go into or upon any structure or premises, and may stop any person or vehicle for the purpose of enforcing this Chapter. He shall inspect and test any weights or commodities which are sold, purchased or used commercially as often as necessary to secure compliance with this Chapter. The Sealer of Weights and Measures shall approve for use and may seal or mark with appropriate devices such weights and measures as found upon inspection and test to be correct, and shall reject and mark or tag as rejected such weights and measures found to be incorrect, but which in his best judgment are susceptible of satisfactory repair. Weights and measures that have been rejected or condemned may be confiscated and may be destroyed by the Sealer if not corrected as required by the Sealer, or if used or disposed of contrary to this Chapter.
 - (3) The Sealer of Weights and Measures shall have the power to issue stop orders, stop-sale orders, and disposal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-sale orders and disposal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this Chapter he deems it necessary or expedient to issue such orders. No person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-sale order, or disposal order issued under the authority of this Chapter.
 - (4) The Sealer or his designee shall investigate complaints made to him concerning violations of the provision of this Chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this Chapter, and to promote the general objective of

accuracy in the determination and representation of quantity in commercial transactions.

- (d) **REPORT.** The City Sealer shall keep a complete record of the work done as required by law. ~~by him and shall make a quarterly report to the Mayor, which report shall be filed with the City Clerk, and a quarterly report duly sworn to, to the Department, such quarterly reports to cover the three (3) month periods beginning July 1, October 1, January 1, and April 1, respectively, and to be submitted not later than twenty (20) days following the expiration of the period covered by the report.~~
- ~~(e) **BOND.** The City Sealer of Weights and Measures shall forthwith on his appointment execute and file an official bond, approved by the City Attorney, with sureties approved by the appointing power.~~

SEC. 8-2-4 FIELD STANDARDS AND EQUIPMENT; SPECIFICATIONS AND TOLERANCES.

- (a) There shall be supplied by the City such "field standards" and such equipment as may be found necessary to carry out the provisions of this Chapter. The field standards shall be verified by the State of Wisconsin Department of Agriculture, Trade and Consumer Protection – Metrology Lab as required by law. ~~State Department of Agriculture upon their initial receipt and at least once each two (2) years thereafter.~~
- (b) The specifications, tolerances and regulations for commercial weighing and measuring devices issued by the National Bureau of Standards shall apply in this City except as modified by rules issued by the State Department of Trade and Consumer Protection.

SEC. 8-2-5 RESPONSIBILITIES OF EQUIPMENT OWNERS OR USERS.

The owner, operator or user of any commercial weights and measures equipment, devices or associated equipment is responsible for the accuracy and maintenance of same.

- (a) It shall be the duty of every owner, operator or user to notify the Sealer in writing of the acquisition of any commercial weighing device, whether new, rebuilt or used. Said notification shall be accomplished within seventy-two (72) hours of the introduction into use of said device.
- (b) Commercial weights and measures devices regulated by this Chapter shall bear security seals appropriately affixed to any adjustment mechanisms designed to be sealed. The security seals shall bear the mark or imprint of the Sealer, or other weights and measures official, or service person authorized by the Sealer. Said security seal may only be removed to facilitate repairs of devices. Any service person who removes a security seal shall replace it and reseal the device with his own imprint. The Sealer shall be notified of said repairs and removal of the seal within seventy-two (72) hours of removal, or of the introduction of a new, rebuilt or used device per Subsection (a) above so that said device may be re-inspected.

SEC. 8-2-6 BULK DELIVERIES SOLD TO AND DELIVERED BY VEHICLE TO THE ULTIMATE CONSUMER.

All heating oils and motor fuels shall be sold by liquid measure or by net weight. In the case of each delivery of liquid fuel not in package form, and in an amount greater than ten (10) gallons in the case

of sale by liquid measure or one hundred (100) pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser;
- (c) The identity of the type of fuel comprising the delivery;
- (d) The unit price (the price per gallon or per pound, as the case may be) of the fuel delivered;
- (e) In the case of sale by liquid measure, the liquid volume of the delivery, together with the print meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and
- (f) In the case of sale by weight, the net weight of the delivery, together with any scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

SEC. 8-2-7 MOTOR FUEL, HEATING OILS AND OTHER SOLVENTS SALES ON PREMISES OF SELLER.

Every wholesaler, retailer, and every other person selling or distributing motor fuel, heating oil or solvents in the City of Menasha shall keep posted in a conspicuous place at his place of business, and on every pump from which delivery is made, a placard, sign or the like clearly stating the identity of each product dispensed, including the grade, blend or mixture of the product, the net selling price, and the amount of all taxes per gallon. No such placard shall be required on a computer pump whereon the aforementioned information is legibly shown on the face. All motor fuel pumps shall be marked conspicuously to indicate the blend or mixture so contained.

SEC. 8-2-8 PRESUMPTIVE EVIDENCE.

For the purpose of this Chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand or vehicle, in which or from which it is shown that buying or selling is commonly carried on, shall in the absence of evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand, or vehicle.

~~**SEC. 8-2-9 SEALER'S DUTIES AT AUCTIONS.**~~

- ~~(a) It shall be the Sealer's duties, upon instruction from the Mayor, to investigate and verify auction inventories submitted to the Clerk and report to him whether or not the provisions of this Code regarding fraud or deception or fraudulent advertising at an auction are present or are likely to apply to said stock or stocks of merchandise.~~
- ~~(b) The Clerk may direct the City Sealer of Weights and Measures or any other person he may deputize for the duty, to keep an accurate account of the goods sold at said sale each day and the amount realized on said sale. Such person, for that purpose, shall have access to the books and accounts of the auctioneer and shall be entitled to inspect them at all times. He shall then render to the City a daily statement of the sales.~~

SEC. 8-2-10 FEES FOR WEIGHTS AND MEASURES.

- (a) No person, firm or corporation shall operate weights and measures, weighing or measuring devices and systems and accessories relating thereto, which are used commercially within the City of Menasha in determining the weight, measure or count unless licensed pursuant to the provisions of this ordinance. The annual licensing year shall commence July 1 and end June 30 the following year. No license fee shall be refunded if a license or permit is revoked for cause.
- (b) **DEFINITIONS.** Commercial weighing or measuring devices are those used or employed in establishing the size, quantity, extent, area or measurement of quantities, things, produce or articles for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure. [This includes the use of bar code scanning to determine price.](#)
- (c) **APPLICATION.** The application for a weighing or measuring license shall be made in writing on a form provided for such purpose by the City Sealer. Such application shall state the type and number of weighing and measuring devices to be licensed, the business address where the devices are located, the applicant's full name, signature, and post office address and whether such person is an individual, firm, corporation, or partnership. The names and addresses of all officers or partners shall be included.
- (d) **ISSUANCE AND FEES.** The City Sealer shall issue a license to the applicant based on the total number of weighing and measuring devices operated by the applicant if the requirements of this ordinance have been complied with and upon payment to the City the fees required.
- (e) **PERMIT REQUIREMENTS AND FEES.** The application for permit or the request for renewal of permit covered in this Section shall be accompanied with an appropriate fee to be established annually by the Common Council. A list of fees shall be maintained by the City Clerk and the Health Department. Items requiring fees are:
Scales, estimate only scales, point of sale systems, prepack scales, weight, rules/tapes, timing devices, pumps (LMD), vehicle tank and bulk plant meters, scanners, high accuracy scales (pharmaceuticals, jewelers or precious metals) linear (fabric, wire, rope meters), vehicle scales, taximeters, electric pill counters, recycling machines, high speed diesel fuel dispensers, all other non-categorized devices.
- (1) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a permit fee equal to twice the amount of the normal fee if the failure is due to a late payment, insufficient funds or account closed checks, or for any other reason the City has not received the proper payment.
- (2) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a permit fee equal to twice the amount of the normal fee if such establishment opens for business [or installs and uses a new weighing and measuring device for commercial transactions](#) without [submitting the application, submitting fees and having the equipment tested.](#) ~~paying the required fee.~~—The Public Health Director, or designee, may also order such establishment to close until the fee is paid.
- (f) **SPECIAL FEES.** Notwithstanding the provision for the requirement of an annual license for weighing and measuring devices, whenever a special request is made for consultation or the inspection or testing of a non-categorized weighing or measuring device, the actual expenses may be charged to the person or firm receiving the service. Such payment or charge shall be based on the current hourly rate.

- (g) **DISPLAY OF LICENSE.** All persons licensed under the provisions of this ordinance shall immediately post their license upon some conspicuous part of the premises on which the business is conducted and said license shall remain posted for the period the license is in force.
- (h) **SUSPENSION OF LICENSE.** Notwithstanding the other provisions of this ordinance, whenever the City Sealer finds that business on any licensed premises is conducted or managed in such a manner that there are serious or repeated violations of any ordinances or regulations of the City of Menasha, the laws of the State of Wisconsin, or regulations of the National [Institute of Standards and Technology](#) ~~bureau of Standards~~ relating to weights and measure, the City Sealer may without warning, notice or hearing, issue a written notice to the license holder, operator or employee in charge of the licensed premises citing such condition and specifying the corrective action to be taken. If deemed necessary such order shall state that the license is immediately suspended and all weighing and measuring operations are to be discontinued. Any person to whom such an order is issued shall comply immediately but upon written petition to the ~~Common Council~~ [Board of Health](#) shall be afforded a hearing ~~before the Board of Public Works~~ within 20 days of such petition. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension.
- (i) **REVOCATION OF LICENSES.** For serious or repeated violations of any of the requirements of this ordinance, or for interference with the City Sealer in the performance of his/her duties, the City Sealer may permanently revoke the license. Prior to such action, the City Sealer shall notify the license holder in writing, stating the reasons for which the license is subject to revocation, and advising that the license shall be permanently revoked at the end of five (5) days following service of such notice unless a request for a hearing is filed with the ~~Common Council~~ [Board of Health](#) by the license holder within such five (5) day period.
- (j) **TRANSFER OF LICENSES.** No license may be transferred unless otherwise provided for by the ordinances of the City. No license shall be issued to or used by any person acting as agent for or in the employ of another.
- (k) **HEARINGS.** The hearings provided for in this section shall be conducted by the Board of ~~Public Works~~ [Health](#) at a time and place designated by the ~~Committee Chairman~~ [Health Director](#). Based upon the record of such hearing, the City Sealer shall be charged with enforcing the decisions of the Board. A written report of the hearing decision shall be furnished to the license holder by the ~~Committee Chairman~~ [Health Director](#).

SEC. 8-2-~~11~~10 PROHIBITED ACTS; PENALTIES.

- (a) Whoever does any of the following acts shall be in violation of this Chapter and shall be subject to a forfeiture as prescribed in Section 1-1-7.
- (1) Hinders, obstructs or impersonates a sealer or inspector.
 - (2) Uses or has in possession for use in buying or selling any commodity or service, or sells, any incorrect weight or measure.
 - (3) Represents in any manner a false quantity in connection with the purchase of sale, or any advertising thereof, or any commodity, thing or service.
 - (4) Uses or disposes of any rejected weight or measure, or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from a sealer or inspector [working in the State of Wisconsin](#).

- (5) Uses or disposes of any rejected weight or measure or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from the Sealer.
- (6) Uses any weighing or measuring device in determining the quantity of any commodity or service to be sold or purchased without having said device approved and sealed by the Sealer and the proper certificate obtained in accordance with Section 8-2-5.
- (7) Deals in or installs new or used weighing or measuring equipment or represents such equipment to be properly repaired following official rejection, if said equipment is inaccurate on inspection.
- (8) Uses or employs any commercial weighing or measuring device in establishing the size, quantity, extent, area or measurement of quantities, things, produce or articles for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure without first obtaining a license from the City of Menasha. [This section includes the installation and use of price scanning systems used to compute price for commercial transactions.](#)

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this day of , 2012.

Donald Merkes, Mayor

ATTEST: _____
Deborah A. Galeazzi, City Clerk

ORDINANCE O-7-12
AN ORDINANCE AMENDING TITLE 7, CHAPTER 6 OF CODE OF ORDINANCES –
RESTAURANT AND RETAIL FOOD ESTABLISHMENT LICENSING

INTRODUCED BY ALDERMAN KLEIN

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 7, Chapter 6 of the Code of Ordinances of the City of Menasha, Wisconsin as follows:

TITLE 7 – LICENSING AND REGULATION

CHAPTER 6

~~Restaurant and Retail Food Establishment Licensing Food Safety and Recreational Licensing~~

SEC. 7-6-1

LICENSING OF RESTAURANTS AND RETAIL FOOD ESTABLISHMENTS, RESTAURANTS, RECREATIONAL AND FOOD ESTABLISHMENT LICENSING AND REGISTRATION

- (a) **PERMITS OR LICENSES REQUIRED.** Upon the authority and scope of Chapters 97, 101 and 254 of the Wisconsin State Statutes, this regulation adopts by reference Chapters ~~HFS-DHS~~ 172, 175, 178, 195, 196, 197 and 198, ATCP 75 and Comm 26, Wisconsin Food Code (Wisconsin Administrative Code Annex) ~~–Wisconsin Food Code and the FDA Food Code 2009 edition, and the most current edition of the FDA Food Code and Appendices.~~
- (b) **PUBLIC EATING AND DRINKING ESTABLISHMENT, FOOD ESTABLISHMENTS AND RECREATIONAL ESTABLISHMENTS**
- (1) No person shall conduct a business of or operate a ~~public eating and drinking food or recreational~~ establishment ~~or retail food establishment~~ without obtaining a license therefor from the Health Department.
- (2) ~~"Public eating and drinking establishment" shall mean any premises as defined by Wisconsin Administrative Code, Section HFS 196.03, and shall also mean any restaurant, coffee shop, cafeteria, caterer, luncheonette, tavern, sandwich stand and all other catering and drinking establishments as well as kitchens and other places where food or drink is prepared, served or sold to the public for human consumption.~~ Food Establishment shall mean an operation that stores, prepares, serves, vends, sells or otherwise provides food for human consumption. Food establishment includes restaurants, mobile restaurants, temporary restaurants, taverns, vending and retail food establishments as defined in s. 254 Stats.
- (3) ~~"Retail food establishment" shall mean a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing. "Retail food establishment" does not include a restaurant or other establishment holding a permit under s. 50.51, to the extent that the activities of the establishment are covered by that permit.~~ Recreational Establishment includes all swimming pools and basins covered by

Wisconsin Administrative Code DHS 172, Tattoo and body piercing establishments as cited by Wisconsin Administrative Code DHS 173, Hotels and Motels as cited by Wisconsin Administrative Code DHS 195, Bed and Breakfast establishments as cited by Wisconsin Administrative Code DHS 197, Recreational and Educational Camps as cited by Wisconsin Administrative Code DHS 175, and Campgrounds as cited under Wisconsin Administrative Code DHS 178.

(c) **APPLICATION FOR ~~PERMIT~~LICENSES**

- (1) Applications for a ~~permit~~ license shall be made upon such forms supplied and prescribed by the Health Department.
- (2) Prior to approval of an application for a ~~permit~~ license, the Health Department shall inspect the ~~facility or retail~~ food establishment or ~~eating and drinking establishment~~ Recreational establishment to determine compliance with ~~the requirements of~~ this regulation.
- (3) The fee for ~~permit~~ License required by this regulation shall be payable before the issuance of a ~~permit~~ License and annually before July 1 of each year. An additional penalty fee shall be required whenever the annual renewal fee is not paid prior to July 1 of each year.
- (4) A pre-inspection fee shall be collected at the time of application from an operator of a new public facility or recreational establishment ~~and eating and drinking or food~~ establishment or a new operator of an existing public facility or recreational establishment and ~~eating and drinking food~~ establishment. ~~This pre-inspection fee shall also apply to retail food establishments.~~

(d) **PERMIT REGISTRATION AND LICENSE ISSUANCE AND REQUIREMENTS.**

- (1) Permit License Issuance
 - a. No person shall operate a food an eating and drinking establishment, ~~or a~~ public facility or recreational establishment covered in this regulation within the City of Menasha who does not have a valid ~~permit~~ license issued by the Health Department, unless otherwise exempted in this regulation.
 - b. A license issued by the Wisconsin Department of Health Services, Wisconsin Department of Agriculture, Trade and Consumer Protection or one of their agents for a Mobile Restaurant or Mobile Retail Food establishment shall be honored and considered in compliance with 7-6-1(d)(1)(a). However, no person shall operate a Mobile Restaurant or Mobile Retail Food establishment within the City of Menasha who is not registered with the Health Department on such form supplied and prescribed by the Health Department.
 - c. Only a person who complies with the requirements of this regulation shall be entitled to receive or retain such a ~~permit~~ license.
 - ~~ed.~~ Permits-Licenses are not non-transferable unless between members of the immediate family of the current license holder.
 - ~~de.~~ A valid ~~permit~~ license shall be posted in plain public view in every ~~public facility and/or public~~ food and recreational establishment as required in this Ordinance.
- (2) Permit License Requirements. The Menasha Common Council shall establish all ~~pre-inspection fees and permit fees for all public~~ related to licensing facilities and/or establishments ~~covered by this ordinance. Facilities and establishments requiring permits covered in this regulation are listed below:~~
 - ~~a. Public indoor and outdoor swimming pools each are subject to an annual permit fee (HFS 172).~~
 - ~~b. restaurants are subject to an annual permit fee (HFS 196).~~
 - ~~c. Mobile home parks are subject to an annual permit fee [ADM 65, 85.5(3)].~~
 - ~~d. Eating and drinking establishments are subject to an annual fee.~~
 - ~~e. Hotels, motels and tourist rooming houses are subject to an annual permit fee (HFS 195).~~
 - ~~f. Bed and breakfast establishments are subject to an annual permit fee (HFS 197)~~

- ~~g. Vending machine operations shall be licensed and fees shall be issued, assessed and collected by the State of Wisconsin under the Wisconsin Administrative Code (HFS 198).~~
- ~~h. Mobile restaurants are subject to an annual permit fee.~~
- ~~i. Retail food establishments are subject to an annual permit fee unless specifically exempted by s. 97.30(1)(c) Wis. Stats.~~
- ~~j. Temporary non-profit, non-licensed food stands are subject to an annual fee (up to three events per year).~~
- ~~k. Recreational and educational camps are subject to an annual permit fee established by the Director of Public Health and approved by the Common Council (HFS 175).~~
- ~~l. Campgrounds are subject to an annual permit fee established by the Director of Public Health and approved by the Common Council (HFS 178).~~

(e3) INSPECTIONS.

~~(1a)~~ Inspection Frequency. An inspection of public facilities and establishments and ~~eating and drinking food~~ establishments shall be performed at least once per year. All ~~eating and drinking food~~ establishments shall be assigned a risk category based on the FDA Food Code 2009 Annex 5 – Table 1. Additional inspections over and above the one annual inspection shall be based on the risk category for each establishment. All category ~~2, 3~~ and ~~3-4~~ establishments shall receive at least two inspections per year.

~~(2b)~~ Report of Inspections. Whenever an inspection of a facility or establishment is made, the findings shall be recorded on an inspection report form. The inspection report form shall summarize the requirements of this regulation. A copy of the completed inspection report form shall be furnished to the holder of the ~~permit~~ License, or his/her agent in charge of the facility or establishment, at the conclusion of the inspection.

~~(3c)~~ Correction of Violations. The completed inspection report form shall specify a reasonable period of time for the correction of the violations found. ~~Inspector shall make every reasonable attempt to have risk factor violations corrected during the inspection.~~ Correction of the violations shall be accomplished within the period specified.

~~(4d)~~ Access. Representatives of the Department, after proper identification, shall be permitted to enter any facility or establishment at any reasonable time for the purpose of determining compliance with this regulation.

~~(5e)~~ Hours of Inspection. Inspections shall be made during the regular operating hours of the establishment and primarily during the regular office hours of the Health Department (8:00 AM – 4:00 PM Monday – Friday), unless circumstances necessitate conducting an inspection at a time other than normal Health Department operating hours. In the case of temporary ~~permit~~ licenses, an inspection will be made coinciding with the hours of operation, i.e., the Sanitarian will be available for an evening or weekend inspection to determine compliance with the regulations.

~~(f4)~~ **PERMIT LICENSE DENIAL.** ~~Permit~~ License issued under this Section may be denied by the Health Officer upon annual application for renewal for continued violations of this Code of the applicable provisions of ~~Wisconsin Administrative Codes or Wisconsin Statutes. Permits may also be denied until~~ payment of re-inspection fees issued in the prior license year ~~are received~~.

~~(g5)~~ **REINSTATEMENT OF PERMIT LICENSE.** The ~~permittee~~ licensee of any establishment addressed in this Section whose ~~permit~~ license has been suspended may, at any time, make application for the reinstatement of the ~~permit~~ license within three (3) business days of the receipt of a written application accompanied by a written statement signed by the applicant

to the effect that all violations have been corrected. The Health Officer, or his/her designee, shall make a re-inspection to determine whether all violations have been corrected and if the findings of the inspection indicate compliance, the ~~permit~~ license may be reinstated.

- (h6) ~~PERMIT~~ LICENSE REVOCATION. ~~Permit~~Licenses issued under this Section may be revoked after an opportunity for hearing by the Health Officer. The Health Officer may determine that ~~permit~~ license revocation is necessary if a ~~permit~~ license is suspended twice in any two (2) year period or if the health violations are of a nature as to have caused serious injury or illness to persons.
- (i7) APPEAL. Whenever a ~~permit~~ license is suspended or revoked, the person to which the ~~permit~~ license was issued shall be afforded the opportunity of a hearing before the Common Council within fifteen (15) days of the receipt of a written request for such hearing, unless both parties agree to a later date. Opportunity for a hearing before the Common Council will be provided if the written request is submitted by the person issued the ~~permit~~ license and received by the Department within ten (10) days of the suspension or revocation.
- (j8) ~~PERMIT~~ REQUIREMENTS AND FEES. The application for ~~permit~~ license or the request for renewal of ~~permit~~ license or registration covered in this Section shall be accompanied with an appropriate fee to be established ~~annually~~ by the Common Council. A list of fees shall be maintained by the City Clerk and the Health Department.
 - (1a) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a ~~permit~~ fee equal to twice the amount of the normal fee if the failure is due to a late payment, insufficient funds or account closed checks, or for any other reason the City has not received the proper payment.
 - (2b) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a ~~permit~~ fee equal to twice the amount of the normal fee if such establishment opens for business without paying the required fee. The Public Health Director, or designee, may also order such establishment to close until the fee is paid.

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this day of , 2012.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk

ORDINANCE O-8-12
AN ORDINANCE AMENDING SECTION 10, ARTICLE OF MUNICIPAL CODE –
PARKING REGULATIONS

INTRODUCED BY ALDERMAN KLEIN

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 10, Article C of the Code of Ordinances of the City of Menasha, Wisconsin by creating SEC. 10-1-22 (e) as follows:

Title 10 – Motor Vehicles and Traffic

ARTICLE C

Parking Regulations

SEC. 10-1-22 STOPPING OR PARKING PROHIBITED IN CERTAIN SPECIFIED PLACES.

(e) **MOBILE RESTAURANT PARKING RESTRICTION.** No person shall park or leave standing upon any street or highway within the City limits any mobile restaurant whether temporarily or otherwise, within 75 feet, along a street line, of a business, Sectors 44, 45 and 72, North American Industry Classification System.

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this day of , 2012.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk