

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
June 4, 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, 5/21/12](#)

D. ACTION/DISCUSSION ITEMS

1. [Appeal of Denial of Operator's License – Angela Lynn Castellion](#)
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 – Remove from Table](#)
 - c) [Offer to Purchase – FP One LLC](#)
3. [Development Agreement between City of Menasha and CR Structures Group Inc.](#)
4. [O-9-12 An Ordinance Amending Section 7-1-1 and Section 7-1-6 of the Code of Ordinances Licensing of Dog, Cat or Ferret and Regulation of Animals \(Introduced by Ald. Krueger\)](#)
5. [Changes to Section 2-4-6 Parks and Recreation Board \(Ald. Krueger\)](#)

E. 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 21, 2012

DRAFT

A. CALL TO ORDER

Meeting called to order by Chairman Klein at 8:00 p.m.

B. ROLL CALL/EXCUSED ABSENCES

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

ALSO PRESENT: Mayor Merkes, CA/HRD Captain, PC Styka, DPW Radtke, CDD Keil, C/T Stoffel, PRD Tungate, Sanitarian Drew, Clerk Galeazzi and the Press.

C. MINUTES TO APPROVE

1. [Administration Committee, 5/7/12](#)

Move by Ald. Zelinski, seconded by Ald. Benner to approve minutes.

Motion carried on voice vote.

D. COMMUNICATIONS

1. [CA/HRD Captain, 5/8/12, Local Government Property Insurance – Policy Changes](#)

CA/HRD Captain explained insurance policy changes effective January 2013.

2. [CA/HRD Captain, 5/17/12, Insurance and Fire Station](#)

CA/HRD Captain gave an update on the status of the insurance claim with Local Government Property Insurance Fund on the fire station at 901 Airport Road.

General discussion ensued on the status and use of the property.

E. ACTION ITEMS

1. [Appeal of Denial of Operator's License – Erin Underwood](#)

Moved by Ald. Taylor, seconded by Ald. Englebert to approve the appeal of Erin Underwood for the denial of Operator's License as she would have been issued an Operator's License under the new guidelines.

Motion carried on roll call 8-0.

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](#)

CA/HRD Captain stated she has reviewed the Offer to Purchase from Endter Investment and has some concerns about the offer.

Moved by Ald. Sevenich, seconded by Ald. Taylor to remove from the table, Option to Purchase from FP One LLC.

Motion carried on roll call 7-1. Ald. Klein-no

General discussion ensued on the two proposals for the property.

Moved by Ald. Benner, seconded by Ald. Englebert to table the item.

Motion carried on roll call 8-0.

3. [O-6-12 An Ordinance Amending Title 8, Chapter 2 of the Code of Ordinances – Weights and Measures \(Introduced by Mayor Merkes\)](#)

Sanitarian Drew and CA/HRD Captain explained the changes to the ordinance. Some of the changes are due to changes in the Wisconsin Administrative Code.

Moved by Ald. Sevenich, seconded by Ald. Krueger to recommend O-6-12 to Common Council

Motion carried on roll call 8-0.

4. [O-7-12 An Ordinance Amending Title 7 Chapter 6 of the Code of Ordinances – Restaurant and Retail Food Establishment Licensing \(Introduced by Ald. Klein\)](#)

Sanitarian Drew and CA/HRD Captain reviewed the changes to the ordinance. Mobile restaurants would be required to register with the Health Department.

Moved by Ald. Langdon, seconded by Ald. Sevenich to recommend O-7-12 to Common Council.

Motion carried on roll call 8-0.

5. [O-8-12 An Ordinance Amending Title 11, Article C of the Code of Ordinances – Parking Regulations \(Introduced by Ald. Klein\)](#)

General discussion ensued on where mobile restaurants can park in the business district.

Moved by Ald. Langdon, seconded by Ald. Krueger to recommend O-8-12 to Common Council.

Motion carried on roll call 8-0.

F. ADJOURNMENT

Move by Ald. Langdon, seconded by Ald. Taylor to adjourn at 8:56 p.m.

Motion carried on voice vote.

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



To: Members of the Administration Committee
From: Chief Tim Styka
Date: May 30th, 2012
RE: Bartender License Appeal, Angela Castellion

Due to the changes in the "Guidelines for Operator License" that the Common Council has recently approved I have been asked to clarify which rules the denial for this application was made under. In a review of the application and letter of denial, Ms. Castellion was denied under the previous rules. However, the circumstances of her denial would still prohibit her from obtaining a license under the new guidelines as well.

05/08/2012

Angela Lynn Castellion
1550 Acorn Court #6
Menasha, WI 54952
(920) 277-9008

Dear:

Lt. Ron Bouchard

In response to your letter of denial for me to hold an Operator's License in the City of Menasha, I am appealing your decision based on several reasons, one being the information you provided is inaccurate.

According to your letter you state I have been "Convicted" of 2 or more offenses on **Separate Incidents**.

Count 1/2: On July 9th 2009 I was convicted for a hit & run as well as resisting/obstructing an officer. These convictions **are not separate incidents** so would count as one. I want you to know as far as I recall the resisting/obstructing an officer was due to an called me after I had taken sleeping medication and apparently I said I was not driving. I had no other contact with police without my attorney telling me to.

From July 9th 2008-June 26th 2011--The night I was punched in the face by Don Verkuylen (who you arrested for battery 8 months prior to June 26th 2011.) I was in an extremely abusive relationship.

I am not using this as an excuse but rather the underlying issue as to why I made poor choices during my time with him. Regardless of this:

Count 3: The incident you have on my "conviction" list is false, I was never convicted of anything, damage to property was dismissed for a reason. I left Don in April 2011 moving all the way to Fl to get away from him; this night was a day after I flew home for a visit.

I have been following the same stipulations I was given by the sheriff that evening (June 26th 2011) as I was given on the DPA with the exception of getting a Domestic Assessment, that I've completed at the Harbor House with Christina Romatowski in which she made it clear I am a domestic abuse survivor of Don Verkuylen, (who she stated was a poster child of an abuser) The assessor's recommendation to the court is that I go to therapy for domestic abuse. I begin that on May 15th 2012. The other added stipulation was 20 hours of community service in which I begin today at 4 PM at Goodwill on Appleton road. After following all their stipulations for 11 months, I would think you'd believe I can finish the 3 ½ that are left.

Again there was a dispute between the DA & Judge about convicting me and the judge chose Not to convict me unless I do not follow through with the stipulations I was given.

From my knowledge a person is innocent unless proven guilty which would remove this from your list.

Count four: Convicted of not reporting an accident: this incident took place at Oktoberfest, there was no damage to either vehicle, it was a "bump" pulling out of a parking spot, (I was not even certain the vehicles touched) I had no reason not to report it had I thought there was indeed "an accident" I would have left a note with my name/number, I had my license, insurance, was pregnant, and sober. The owner of the other vehicle did not even report this nor did they contact my insurance company to make a claim, some kids did & a police officer showed up at my house a week later. If this is part of your guideline, okay but it would only count as 2.

I currently have a Operator's License I applied for & was granted January of this year in another county, I also held one in Little Chute 08-10, and held one in the Town of Menasha some years ago. Therefore if I am allowed 2 convictions in your guidelines, (according to your letter) I only have 2 and should be granted a license in the city of Menasha.

If you have any requests for a letter or phone number relating to this appeal from anyone that would help with your decision to these incidents I would be happy to provide that to you. I am a good person who got manipulated, extremely abused and isolated by a bad guy who brought out the worst out of me, I am trying to put my life back together & finding work near my apartment is very difficult considering I had to sell my car to get home from Florida. I sincerely hope you go over the incidents you included in the denial and understand the first two are related and the domestic is still open, there is no conviction, not to mention I am the victim in this incident.

Thank You

Angela Lynn Castellion



Date: April 27, 2012

To: Angela L Castellion
1550 Acorn Ct #6
Menasha, WI 54952

Re: City of Menasha Alcohol Operators License Application

Mrs. Angela Castellion

I have reviewed your application for an alcohol operator's license in the City of Menasha and in doing so, it was discovered that there were several convictions within the last 7 years that would render you unqualified for an operator's license within the City of Menasha under our current City of Menasha policy guidelines for an operators license.

The convictions are as follows:

On July 9, 2009 you were arrested for hit and run injury and found guilty of this offense on December 14, 2009 in Calumet County.

On June 9, 2009 you were arrested for resisting/obstructing an officer which you were also found guilty of on December 14, 2009 in Calumet County.

On June 26, 2011 you were arrested for domestic disorderly conduct and criminal damage to property, subsequently you were convicted of the domestic disorderly conduct on December 5, 2011 and the criminal damage to property was dismissed and you entered into a no contest plea with a deferred prosecution agreement.

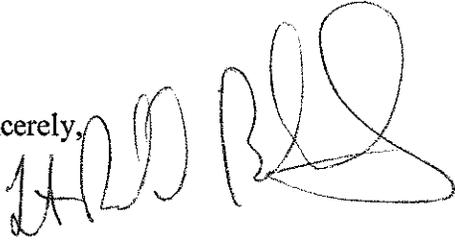
On September 24, 2011 you were arrested in the City of Appleton for failure to notify police of an accident subsequently you plead no contest to this charge on December 9, 2011.

Since you have been convicted of 2 or more offenses on separate incidents within the last 7 years which are directly related to the license for which you applied for under Menasha City guideline #2 you do not qualified for an operator's license.

Based on these circumstances I will be denying your application for an alcohol operator's license in the City of Menasha.

I would like to further advise you that you may appeal this decision, by contacting the Menasha City Clerk's Office at (920)967-3603 within 30 days of this denial to request an appeal before the common council. At this appeal you have the right to be represented and to be heard and to present evidence in favor of granting the license and to rebut the evidence presented in opposition to the granting of this license at a hearing held within 45 days of the filing of such appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Bouchard". The signature is written in a cursive style with large, looped letters.

Lt. Ron Bouchard
Investigative Services
Menasha Police Department

CITY OF MENASHA
ALCOHOL OPERATORS LICENSE APPLICATION

Establishment of Employment Q-Mart
SPECIAL EVENT PROVISIONAL (TEMP) REGULAR RENEWAL

Name Castellion Angela L
Last First Middle

Address 1550 Acorn Court #6 Menasha WI 54952
City State/Zip Code

Phone 920277-9008 Social Security _____

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

Birth Date _____ Age _____ Birthplace _____

Scars, Marks, Tattoos _____
Drivers License No. _____ State of Issue WI
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? DPA/calumot etc
Have you ever been convicted of a felony? No
Have you ever been convicted of a misdemeanor? yes
Have you ever been convicted of operating a motor vehicle while under the influence of an intoxicant or drug? yes
Have you ever been convicted of any law statute or ordinance pertaining to the use or sale of alcohol (including drinking alcohol underage)? No
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 Angela Castellion Date 4/25/12

WITNESS _____ Date _____

Approved _____ Denied X Expiration Date _____
Chief of Police [Signature] Date 4/24/12
Comments: _____

REVOKED FOR VIOLATION: _____



Memorandum

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

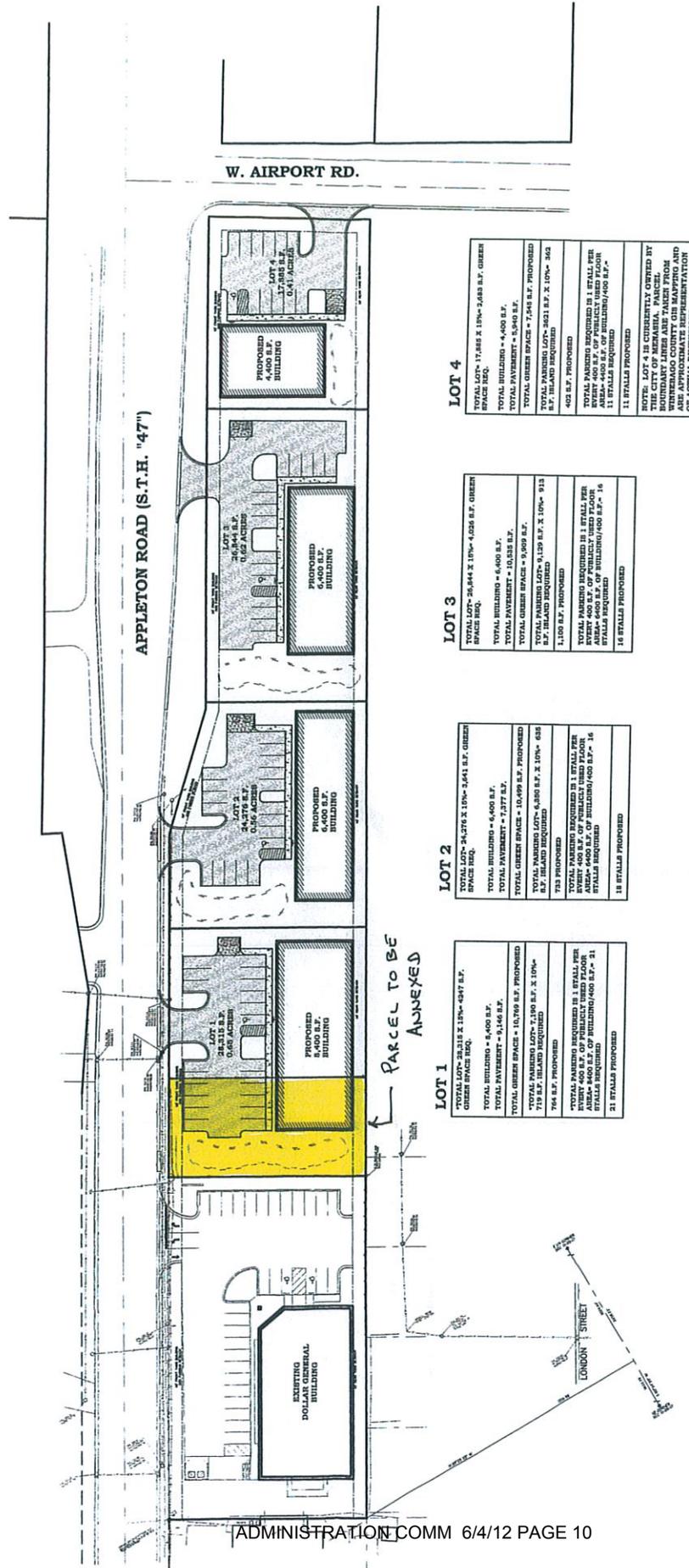
Over the past two months the Administration Committee has had before it an Option to Purchase the former fire station on Airport Road. The option was tabled. There is now on the Administration Committee Agenda an Offer to Purchase by another entity whose intention is to make repairs to the structure 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 = 2,100 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 100' = 2,428 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 = 6,100 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 100' = 2,694 S.F. GREEN SPACE REQ.
TOTAL BUILDING = 6,400 S.F.
TOTAL PAVEMENT = 10,018 S.F.
TOTAL GREEN SPACE = 9,989 S.F.
TOTAL PARKING LOT = 9,129 S.F. ± 10% S.F. ISLAND REQUIRED
1,109 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 100' = 1,729 S.F. GREEN SPACE REQ.
TOTAL BUILDING = 4,400 S.F.
TOTAL PAVEMENT = 8,949 S.F.
TOTAL GREEN SPACE = 7,545 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

NOTE: LOT 1 IS CURRENTLY OWNED BY THE CITY OF MENASHA. BOUNDARY LINES ARE TAKEN FROM THE CITY OF MENASHA GIS MAPPING AND ARE APPROXIMATE TO THE BEST OF OUR KNOWLEDGE AND REPRESENTATION OF ACTUAL DIMENSIONS.

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 THOSE SHOWN ARE NOT TO BE CONSIDERED.

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

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.

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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 ^{recorded} 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 servicing the Property

34 _____ (provided none

35 of the foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller

36 further agrees to complete and execute the documents necessary to record the conveyance.

37 **PLACE OF CLOSING** This transaction is to be closed at the place designated by Buyer's mortgagee or Evans Title Companies

38 _____ within 60 days after the exercise of the Option, unless another date or place is agreed to in writing.

39 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Option

40 (lines 218-224 or in an addendum per line 225). Occupancy shall be given subject to tenant's rights, if any. Caution: Consider

41 an agreement which addresses responsibility for clearing the Property of personal property and debris, if applicable.

42 **LEASED PROPERTY** ~~If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under the~~

43 ~~lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) **[STRIKE ONE]**~~

44 ~~lease(s), if any, are The Property will not be subject to any leases at closing~~

45 **CLOSING PRORATIONS** The following items shall be prorated at closing: real estate taxes, rents, private and municipal charges,

46 property owner's association assessments, fuel and N/A

47 _____ . Any income, taxes or expenses shall accrue to Seller, and be prorated, through the day prior to closing. Net

48 general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, if known, otherwise on the net

49 general real estate taxes for the preceding year) (N/A _____) **[STRIKE AND COMPLETE AS APPLICABLE]**

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.

**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: _____

14 _____

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 Rossmieisl, 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).

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

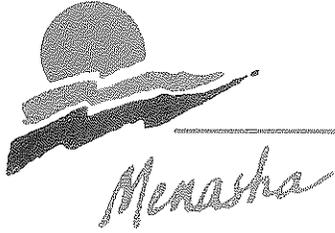
314 (X) Seller's Signature Print Name Here: Social Security No. or FEIN (optional) Date

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.



Memorandum

To: Administration Committee
From: Greg Keil, CDD *CK*
Date: May 31, 2012
RE: Disposition of NMFR Station 36, 901 Airport Road

Please note that the Option to Purchase by FP One, LLC has been supplanted by an Offer to Purchase. The Original Offer to Purchase from Endter Investments, LLC is also included with this agenda item. I also became aware of errors in the Property Information sheet that was distributed with this agenda item at the May 21 Administration Committee meeting. The correct information is shown on the attached.

NMFR Station 36
901 Manitowoc Road
Property Information
(Revised 5/31/12)

Lot Area: Approx. 16,000 Sq. Ft.
Lot Dimensions: Approx. 123' X 130'
Land Value @ \$3.00 Sq. Ft.

Building Demolition Cost:	\$15,300
Environmental Assessment Cost:	1,800
Asbestos Abatement: Approx.	<u>5,000</u>
Total:	\$22,100

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

Please note the following corrections have been made to the Property Information that was distributed for the May 17, 2012 Administration Committee meeting:

- *The cost of the Environmental Assessment is \$1,800, not \$18,000*
- *The cost for Asbestos Abatement was omitted, that cost is now listed at approx. \$5,000*

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~~XXXXXXXXXXXXXXXXXXXX DATE IS (AGENT OF SELLER, AGENT OF BUYER, DUAL AGENT) ~~STRIKE TAX~~

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: _____

14 _____

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 Rossmeissl, 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: [page 2 of 5, WB-15]
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
94 right 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 sig-
 207 nature. 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 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 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 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. Rossmeisst, Herrling Clark Law Firm Ltd.

303 Buyer's Signature Print Name Here: Chris Endter Social Security No. or FEIN (optional) Date 3/15/12

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

314 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.



MEMORANDUM

Date: May 18, 2012

To: Administration Committee and the Mayor

From: Pamela A. ^{PAC} Captain, City Attorney

RE: Endter Investments, LLC & Fire Station #2

I have reviewed the Commercial Offer to Purchase the 901 Airport Road property (f/n/a Fire Station #2), dated May 15, 2012, submitted by Endter Investments, LLC (Endter).

RECOMMENDATION: My recommendation is to not accept the offer to purchase as submitted.

The recommendation not to accept the offer to purchase as submitted is based on the following list of concerns:

1. Lines 51 through 75 should be deleted. Under this provision Endter is proposing that the City make representations about the condition of the property. By law, the City is not required to provide a property condition report. As a matter of practice, it is not advisable that the City take on legal responsibilities associated with making representations or warranties.
2. Lines 278 through 292 should be modified.
 - a. Under the first part of this provision Endter is proposing that it choose a consultant to conduct an environmental site assessment at the expense of the City. It is not unusual that a Seller performs a Phase I environmental study at its expense. However, the Seller should choose the consultant or there should be a limit as to the cost of the assessment.
 - b. Under the second part of this provision Endter is proposing that it choose an inspector to look for defects, including structural and mechanical components at the expense of the City. It is unusual that a Seller pays for an inspector to inspect the property for defects. This is usually an expense of the Buyer. Should the City decide to pay for this expense, at the very least the City should choose the inspector or there should be a limit as to the cost of the inspection.
 - c. The City is already aware that there is asbestos contained in the building. This defect has been disclosed and should not be a basis which would allow Buyer an opportunity to back out of an accepted offer to purchase.

- d. Other defects such as the HVAC system, the roof and structural wind damage and water damage to the carpet, underlayment and basement are also known defects which should not be a basis which would allow Buyer an opportunity to back out of an accepted offer to purchase.
 - e. Rather than having a contract contingency, Endter can bring its own inspector now, before entering into any offer to purchase with the City, to see if it really wants to purchase the property.
3. ADDENDUM A.
- a. There should be clarifying language that contingencies 1, 3 and 4, which are legislative processes, do not contractually obligate the City to satisfy the contingencies.
 - b. As to paragraph 2, it is unclear as to whether it is expected that the roof repairs will be done before closing and by whom (either Buyer or Seller).
 - c. If the City chooses to address the roof damage, I suggest that it be modified to indicate a specific dollar amount (such as \$20,000 or other lesser amount) as a credit on the purchase price to Buyer at closing in consideration of costs Buyer may incur in repairing the roof of the structure. Also, I suggest that it specifically indicate that Seller will not be responsible for nor make any repairs.
 - d. There is also an incorrect statement in paragraph 2. The City has not "received" \$39,000 in insurance proceeds for damage to the fire station.
4. Line 293 - 297. It should be added that the Buyer has had an opportunity to inspect the property before entering into this Offer to Purchase and has satisfied itself as to knowledge about the condition of the property. Also, Seller makes no warranties or representations about the condition of the property and is selling the property "as is."

Additionally, the following items are brought to your attention:

1. Line 2. Strike the word "assigns." Endter is proposing that it have the ability to assign its rights under the offer to purchase to someone else. If this is left in there should be additional language that the City needs to approve the assignment and that both Endter and its assignee will be bound by the terms of the offer to purchase.
2. Line 22. A binding acceptance date of May 30 is too short.
3. Line 136. The Buyer is proposing to be able to finance the entire purchase price. It is not likely that this contingency will be met.
4. Line 194. Endter is proposing that the City pay for and provide title insurance. Buyer's lender will require title insurance. This is generally Seller's expense, but it can be negotiated. As a governmental entity that has owned the property for many years, it is my opinion that title insurance is an extra unnecessary expense.



Memorandum

To: Administration Committee
From: Greg Keil, CDD *CK*
Date: May 31, 2012
RE: Disposition of NMFR Station 36, 901 Airport Road

Please note that the Option to Purchase by FP One, LLC has been supplanted by an Offer to Purchase. The Original Offer to Purchase from Endter Investments, LLC is also included with this agenda item. I also became aware of errors in the Property Information sheet that was distributed with this agenda item at the May 21 Administration Committee meeting. The correct information is shown on the attached.

NMFR Station 36
901 Manitowoc Road
Property Information
(Revised 5/31/12)

Lot Area: Approx. 16,000 Sq. Ft.
Lot Dimensions: Approx. 123' X 130'
Land Value @ \$3.00 Sq. Ft.

Building Demolition Cost:	\$15,300
Environmental Assessment Cost:	1,800
Asbestos Abatement: Approx.	<u>5,000</u>
Total:	\$22,100

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

Please note the following corrections have been made to the Property Information that was distributed for the May 17, 2012 Administration Committee meeting:

- *The cost of the Environmental Assessment is \$1,800, not \$18,000*
- *The cost for Asbestos Abatement was omitted, that cost is now listed at approx. \$5,000*

WB-13 VACANT LAND OFFER TO PURCHASE

Attorney

1 LICENSEE DRAFTING THIS OFFER ON May 30, 2012 [DATE] IS (AGENT OF BUYER)
2 (~~AGENT OF SELLER/LISTING BROKER~~) (~~AGENT OF BUYER AND SELLER~~) **STRIKE THOSE NOT APPLICABLE**

3 **GENERAL PROVISIONS** The Buyer, FP One, LLC
4 _____, offers to purchase the Property

5 known as [Street Address] 901 Airport Road
6 in the City of Menasha, County of Winnebago, Wisconsin (Insert
7 additional description, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525), on the following terms:

8 ■ **PURCHASE PRICE:** Seventy-Five Thousand
9 _____ Dollars (\$ 75,000.00).

10 ■ **EARNEST MONEY** of \$ 1,000.00 accompanies this Offer and earnest money of \$ _____
11 will be mailed, or commercially or personally delivered within 10 days of acceptance to listing broker or
12 Pfefferle Companies, Inc.

13 ■ **THE BALANCE OF PURCHASE PRICE** will be paid in cash or equivalent at closing unless otherwise provided below.
14 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on the
15 date of this Offer not excluded at lines 18-19, and the following additional items: None

16 _____
17 _____

18 ■ **NOT INCLUDED IN PURCHASE PRICE:** the existing structures located on the Property
19 _____

20 **CAUTION: Identify Fixtures that are on the Property (see lines 290-294) to be excluded by Seller or which are rented**
21 **and will continue to be owned by the lessor.**

22 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are**
23 **included/excluded. Annual crops are not part of the purchase price unless otherwise agreed.**

24 ■ **ZONING:** Seller represents that the Property is zoned: R-1 [see Addendum]
25 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical

26 copies of the Offer.
27 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines**
28 **running from acceptance provide adequate time for both binding acceptance and performance.**

29 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on
30 or before June 1, 2012. Seller may keep the Property on the

31 market and accept secondary offers after binding acceptance of this Offer.
32 **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**

33 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX () ARE PART OF THIS
34 OFFER ONLY IF THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A"
35 OR ARE LEFT BLANK.

36 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and
37 written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 38-56.

38 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if
39 named at line 40 or 41.

40 Seller's recipient for delivery (optional): Greg Keil, Director, Community Development
41 Buyer's recipient for delivery (optional): Todd Platt

42 (2) **Fax:** fax transmission of the document or written notice to the following telephone number:
43 Seller: (920) 967-5272 Buyer: (920) 730-4286

44 (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a
45 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 40 or 41, for
46 delivery to the Party's delivery address at line 49 or 50.

47 (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party,
48 or to the Party's recipient for delivery if named at line 40 or 41, for delivery to the Party's delivery address at line 49 or 50.

49 Delivery address for Seller: 140 Main Street, Menasha, WI 54952
50 Delivery address for Buyer: Pfefferle Companies, 200 E. Washington Ste. 2A, Appleton, WI 54911

51 (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line
52 55 or 56. If this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for
53 personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically,
54 to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.

55 E-Mail address for Seller (optional): gkeil@ci.menasha.wi.us
56 E-Mail address for Buyer (optional): tplatt@pfefferle.biz

57 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller
58 constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

59 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this
 60 Offer at lines 458-464 or 526-534 or in an addendum attached per line 525. At time of Buyer's occupancy, Property shall be
 61 free of all debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left
 62 with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

63 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no
 64 notice or knowledge of Conditions Affecting the Property or Transaction (lines 163-187 and 246-278) other than those
 65 identified in the Seller's disclosure report dated _____, which was received by Buyer prior to
 66 Buyer signing this Offer and which is made a part of this Offer by reference **COMPLETE DATE OR STRIKE AS APPLICABLE**
 67 and _____

68 _____
 69 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE REPORT**

70 **CLOSING** This transaction is to be closed no later than _____ [see Addendum]
 71 _____ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

72 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:
 73 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association
 74 assessments, fuel and _____ none

75 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

76 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

77 Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

78 The net general real estate taxes for the preceding year, or the current year if available (Net general real estate
 79 taxes are defined as general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE
 80 APPLIES IF NO BOX IS CHECKED)

81 Current assessment times current mill rate (current means as of the date of closing)

82 Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior
 83 year, or current year if known, multiplied by current mill rate (current means as of the date of closing)

84 n/a

85 **CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be**
 86 **substantially different than the amount used for proration especially in transactions involving new construction,**
 87 **extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor**
 88 **regarding possible tax changes.**

89 n/a Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on
 90 the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5
 91 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall
 92 re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation
 93 and is the responsibility of the Parties to complete, not the responsibility of the real estate brokers in this transaction.

94 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights
 95 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the
 96 (written) (oral) ~~STRIKE ONE~~ lease(s), if any, are The Property will not be subject to any leases at
 97 closing. Insert additional terms, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525.

98 n/a **GOVERNMENT PROGRAMS:** Seller shall deliver to Buyer, within _____ days of acceptance of this Offer, a list of all
 99 federal, state, county, and local conservation, farmland, environmental, or other land use programs, agreements, restrictions,
 100 or conservation easements, which apply to any part of the Property (e.g., farmland preservation agreements, farmland
 101 preservation or exclusive agricultural zoning, use value assessments, Forest Crop, Managed Forest, Conservation Reserve
 102 Program, Wetland mitigation, shoreland zoning mitigation plan or comparable programs), along with disclosure of any
 103 penalties, fees, withdrawal charges, or payback obligations pending, or currently deferred, if any. This contingency will be
 104 deemed satisfied unless Buyer delivers to Seller, within seven (7) days of Buyer's Actual Receipt of said list and disclosure, or
 105 the deadline for delivery, whichever is earlier, a notice terminating this Offer based upon the use restrictions, program
 106 requirements, and/or amount of any penalty, fee, charge, or payback obligation.

107 **CAUTION: If Buyer does not terminate this Offer, Buyer is hereby agreeing that Buyer will continue in such programs,**
 108 **as may apply, and Buyer agrees to reimburse Seller should Buyer fail to continue any such program such that Seller**
 109 **incurs any costs, penalties, damages, or fees that are imposed because the program is not continued after sale. The**
 110 **Parties agree this provision survives closing.**

111 n/a **MANAGED FOREST LAND:** All, or part, of the Property is managed forest land under the Managed Forest Law (MFL).
 112 This designation will continue after closing. Buyer is advised as follows: The MFL is a landowner incentive program that
 113 encourages sustainable forestry on private woodlands by reducing and deferring property taxes. Orders designating lands as
 114 managed forest lands remain in effect for 25 or 50 years. When ownership of land enrolled in the MFL program changes, the
 115 new owner must sign and file a report of the change of ownership on a form provided by the Department of Natural Resources
 116 and pay a fee. By filing this form, the new owner agrees to the associated MFL management plan and the MFL program rules.
 117 The DNR Division of Forestry monitors forest management plan compliance. Changes you make to property that is subject to
 118 an order designating it as managed forest land, or to its use, may jeopardize your benefits under the program or may cause
 119 the property to be withdrawn from the program and may result in the assessment of penalties. For more information call the
 120 local DNR forester or visit <http://www.dnr.state.wi.us>.

121 **FENCES:** Wis. Stat. § 90.03 requires the owners of adjoining properties to keep and maintain legal fences in equal shares
 122 where one or both of the properties is used and occupied for farming or grazing purposes.

123 **CAUTION: Consider an agreement addressing responsibility for fences if Property or adjoining land is used and**
 124 **occupied for farming or grazing purposes.**

125 **USE VALUE ASSESSMENTS:** The use value assessment system values agricultural land based on the income that would be
 126 generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a
 127 non-agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. To obtain more
 128 information about the use value law or conversion charge, contact the Wisconsin Department of Revenue's Equalization
 129 Section or visit <http://www.revenue.wi.gov/>.

130 **FARMLAND PRESERVATION:** Rezoning a property zoned farmland preservation to another use or the early termination of a
 131 farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to
 132 3 times the class 1 "use value" of the land. Contact the Wisconsin Department of Agriculture, Trade and Consumer Protection
 133 Division of Agricultural Resource Management or visit <http://www.datcp.state.wi.us/> for more information.

134 **CONSERVATION RESERVE PROGRAM (CRP):** The CRP encourages farmers, through contracts with the U.S. Department
 135 of Agriculture, to stop growing crops on highly erodible or environmentally sensitive land and instead to plant a protective
 136 cover of grass or trees. CRP contracts run for 10 to 15 years, and owners receive an annual rent plus one-half of the cost of
 137 establishing permanent ground cover. Removing lands from the CRP in breach of a contract can be quite costly. For more
 138 information call the state Farm Service Agency office or visit <http://www.fsa.usda.gov/>.

139 **SHORELAND ZONING ORDINANCES:** All counties must adopt shoreland zoning ordinances that meet or are more
 140 restrictive than Wis. Admin. Code Chapter NR 115. County shoreland zoning ordinances apply to all unincorporated land
 141 within 1,000 feet of a navigable lake, pond or flowage or within 300 feet of a navigable river or stream and establish minimum
 142 standards for building setbacks and height limits, cutting trees and shrubs, lot sizes, water runoff, impervious surface
 143 standards (that may be exceeded only if a mitigation plan is adopted) and repairs to nonconforming structures. Buyers must
 144 conform to any existing mitigation plans. For more information call the county zoning office or visit <http://www.dnr.state.wi.us/>.
 145 Buyer is advised to check with the applicable city, town or village for additional shoreland zoning restrictions, if any.

146 **BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or
 147 Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change
 148 in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects
 149 Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

150 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** Seller shall maintain the Property until the earlier of
 151 closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary
 152 wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price,
 153 Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later
 154 than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If the damage shall exceed
 155 such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer.
 156 Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any,
 157 relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on
 158 such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall
 159 be held in trust for the sole purpose of restoring the Property.

160 **DEFINITIONS**

161 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document of
 162 written notice physically in the Party's possession, regardless of the method of delivery.

163 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are
 164 defined to include:

- 165 a. Proposed, planned or commenced public improvements or public construction projects which may result in special
 166 assessments or otherwise materially affect the Property or the present use of the Property.
- 167 b. Government agency or court order requiring repair, alteration or correction of any existing condition.
- 168 c. Land division or subdivision for which required state or local approvals were not obtained.
- 169 d. A portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations.
- 170 e. A portion of the Property being subject to, or in violation of, a farmland preservation agreement or in a certified farmland
 171 preservation zoning district (see lines 130-133), or enrolled in, or in violation of, a Forest Crop, Managed Forest (see lines
 172 111-120), Conservation Reserve (see lines 134-138), or comparable program.
- 173 f. Boundary or lot disputes, encroachments or encumbrances, a joint driveway or violation of fence laws (Wis. Stat. ch. 90)
 174 (where one or both of the properties is used and occupied for farming or grazing).
- 175 g. Material violations of environmental rules or other rules or agreements regulating the use of the Property.
- 176 h. Conditions constituting a significant health risk or safety hazard for occupants of the Property.
- 177 i. Underground storage tanks presently or previously on the Property for storage of flammable or combustible liquids,
 178 including, but not limited to, gasoline and heating oil.
- 179 j. A Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, pesticides, herbicides,
 180 fertilizer, radon, radium in water supplies, lead or arsenic in soil, or other potentially hazardous or toxic substances on the
 181 premises.
- 182 k. Production of methamphetamine (meth) or other hazardous or toxic substances on the Property.
- 183 l. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the
 184 Property.
- 185 m. Defects in any well, including unsafe well water due to contaminants such as coliform, nitrates and atrazine, and out-of-
 186 service wells and cisterns required to be abandoned (Wis. Admin. Code § NR 812.26) but that are not closed/abandoned
 187 according to applicable regulations.

188 **(Definitions Continued on page 5)**

IF LINE 190 IS NOT MARKED OR IS MARKED N/A, LINES 230-236 APPLY.

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FINANCING CONTINGENCY: This Offer is contingent upon Buyer being able to obtain a written _____ [INSERT LOAN PROGRAM OR SOURCE] first mortgage loan commitment as described below, within _____ days of acceptance of this Offer. The financing selected shall be in an amount of not less than \$_____ for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and interest shall not exceed \$_____. Monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination fee in an amount not to exceed _____ % of the loan. If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 201 or 202.

- FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____ %.
- ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed _____ %. The initial interest rate shall be fixed for _____ months, at which time the interest rate may be increased not more than _____ % per year. The maximum interest rate during the mortgage term shall not exceed _____ %. Monthly payments of principal and interest may be adjusted to reflect interest changes.

If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 458-464 or 526-534 or in an addendum attached per line 525.

BUYER'S LOAN COMMITMENT: Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 192. **Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy the Buyer's financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.**

CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

SELLER TERMINATION RIGHTS: If Buyer does not make timely delivery of said commitment, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan commitment.

FINANCING UNAVAILABILITY: If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in this Offer and this Offer 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 void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

IF THIS OFFER IS NOT CONTINGENT ON FINANCING: Within 7 days of acceptance, a financial institution or third party in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

APPRAISAL CONTINGENCY: This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date of this Offer indicating an appraised value for the Property equal to or greater than the agreed upon purchase price. This contingency shall be deemed satisfied unless Buyer, within _____ days of acceptance, delivers to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon purchase price, accompanied by a written notice of termination.

CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether deadlines provide adequate time for performance.

DEFINITIONS CONTINUED FROM PAGE 3

- 245 n. Defects in any septic system or other sanitary disposal system on the Property or out-of-service septic systems not
 246 closed/abandoned according to applicable regulations.
- 247 o. Subsoil conditions which would significantly increase the cost of development including, but not limited to, subsurface
 248 foundations or waste material; organic or non-organic fill; dumpsites where pesticides, herbicides, fertilizer or other toxic
 249 or hazardous materials or containers for these materials were disposed of in violation of manufacturer's or government
 250 guidelines or other laws regulating said disposal; high groundwater; adverse soil conditions (e.g. low load bearing
 251 capacity, earth or soil movement, slides) or excessive rocks or rock formations.
- 252 p. Brownfields (abandoned, idled or under-used land which may be subject to environmental contamination) or other
 253 contaminated land, or soils contamination remediated under PECFA, the Department of Natural Resources (DNR)
 254 Remediation and Redevelopment Program, the Agricultural Chemical Cleanup Program or other similar program.
- 255 q. Lack of legal vehicular access to the Property from public roads.
- 256 r. Homeowners' associations, common areas shared or co-owned with others, zoning violations or nonconforming uses,
 257 conservation easements, restrictive covenants, rights-of-way, easements, easement maintenance agreements, or use of
 258 a part of Property by non-owners, other than recorded utility easements.
- 259 s. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to
 260 impose assessments against the real property located within the district.
- 261 t. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
- 262 u. Property tax increases, other than normal annual increases; completed or pending property tax reassessment of the
 263 Property, or proposed or pending special assessments.
- 264 v. Burial sites, archeological artifacts, mineral rights, orchards or endangered species.
- 265 w. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
- 266 x. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.
- 267 y. Significant odor, noise, water intrusion or other irritants emanating from neighboring property.
- 268 z. Substantial crop damage from disease, insects, soil contamination, wildlife or other causes; diseased trees; or substantial
 269 injuries or disease in livestock on the Property or neighboring properties.
- 270 aa. Existing or abandoned manure storage facilities on the Property.
- 271 bb. Impact fees, or other conditions or occurrences that would significantly increase development costs or reduce the value of
 272 the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.
- 273 cc. The Property is subject to a mitigation plan required by DNR rules related to county shoreland zoning ordinances that
 274 obligates the owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county
 275 (see lines 139-145).
- 276 dd. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion
 277 charge or the payment of a use-value conversion charge has been deferred.
- 278 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding
 279 the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.
 280 Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under
 281 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive
 282 registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the
 283 occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours
 284 per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as
 285 closing, expire at midnight of that day.
- 286 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property, that would
 287 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would
 288 significantly shorten or adversely affect the expected normal life of the premises.
- 289 ■ **FIXTURE:** A "Fixture" is an item of property which is physically attached to or so closely associated with land so as to be
 290 treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage
 291 to the premises, items specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited
 292 to, all: perennial crops; garden bulbs; plants; shrubs and trees and fences; storage buildings on permanent foundations and
 293 docks/piers on permanent foundations.
- 294 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented on lines 18-19.**
- 295 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.
- 296 **PROPERTY DEVELOPMENT WARNING** If Buyer contemplates developing Property for a use other than the current use,
 297 there are a variety of issues which should be addressed to ensure the development or new use is feasible. Municipal and
 298 zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or
 299 uses and therefore should be reviewed. Building permits, zoning variances, Architectural Control Committee approvals,
 300 estimates for utility hook-up expenses, special assessments, changes for installation of roads or utilities, environmental audits,
 301 subsoil tests, or other development related fees may need to be obtained or verified in order to determine the feasibility of
 302 development of, or a particular use for, a property. Optional contingencies which allow Buyer to investigate certain of these
 303 issues can be found at lines 306-350 and Buyer may add contingencies as needed in addenda (see line 525). Buyer should
 304 review any plans for development or use changes to determine what issues should be addressed in these contingencies.

306 **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: redevelopment for
307 commercial purposes consistent with the Concept Plan attached as Exhibit B including
308 adjacent land owned by Buyer south of Property

309 [insert proposed use and type and size of building, if applicable; e.g. three bedroom single family home]. The optional
310 provisions checked on lines 314-345 shall be deemed satisfied unless Buyer, within 60 days of acceptance, delivers
311 written notice to Seller specifying those items which cannot be satisfied and written evidence substantiating why each specific
312 item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice, this Offer shall be null and void. Seller
313 agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 314-350.

314 n/a **ZONING CLASSIFICATION CONFIRMATION:** This Offer is contingent upon Buyer obtaining, at ~~(Buyer's)~~ (Seller's)
315 **[STRIKE ONE]** ("Buyer's" if neither is stricken) expense, verification that the Property is zoned _____
316 _____ and that the Property's zoning allows the Buyer's proposed use described at lines 306-308.

317 **SUBSOILS:** This offer is contingent upon Buyer obtaining, at ~~(Buyer's)~~ (Seller's) **[STRIKE ONE]** ("Buyer's" if neither
318 is stricken) expense, written evidence from a qualified soils expert that the Property is free of any subsoil condition which
319 would make the proposed use described at lines 306-308 impossible or significantly increase the costs of such
320 development.

321 n/a **PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM (POWTS) SUITABILITY:** This Offer is contingent
322 upon Buyer obtaining, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Buyer's" if neither is stricken) expense, written evidence from
323 a certified soils tester that (a) the soils at the Property locations selected by Buyer, and (b) all other conditions that must
324 be approved, meet the legal requirements in effect on the date of this Offer to obtain a permit for a POWTS for use of the
325 Property as stated on lines 306-308. The POWTS (septic system) allowed by the written evidence must be one of
326 the following POWTS that is approved by the State for use with the type of property identified at lines 306-308 **[CHECK]**

327 **[ALL THAT APPLY]:** conventional in-ground; mound; at grade; in-ground pressure distribution; holding tank;
328 other: _____

329 **EASEMENTS AND RESTRICTIONS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **[STRIKE ONE]**
330 **[ONE]** ("Buyer's" if neither is stricken) expense, copies of all public and private easements, covenants and restrictions
331 affecting the Property and a written determination by a qualified independent third party that none of these prohibit or
332 significantly delay or increase the costs of the proposed use or development identified at lines 306-308.

333 **APPROVALS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) ~~(Seller's)~~ **[STRIKE ONE]** ("Buyer's" if
334 neither is stricken) expense, permits, approvals and licenses, as appropriate, or the final discretionary action by the
335 granting authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's
336 proposed use: and such access as shown on attached Exhibit B

337
338 n/a **UTILITIES:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Buyer's" if neither
339 is stricken) expense, written verification of the following utility connections at the listed locations (e.g., on the Property, at
340 the lot line, across the street, etc.) **[CHECK AND COMPLETE AS APPLICABLE]:** electricity _____;
341 gas _____; sewer _____; water _____;
342 telephone _____; cable _____; other _____

343 **ACCESS TO PROPERTY:** This Offer is contingent upon Buyer obtaining, at (Buyer's) ~~(Seller's)~~ **[STRIKE ONE]**
344 ("Buyer's" if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public
345 roads.

346 **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at ~~(Buyer's)~~ (Seller's) **[STRIKE ONE]** ("Buyer's" if
347 neither is stricken) expense, a rezoning; conditional use permit; license; variance; building permit;
348 occupancy permit; other _____ **[CHECK ALL THAT APPLY]**, and delivering
349 written notice to Seller if the item cannot be obtained, all within 60 days of acceptance for the Property for its proposed
350 use described at lines 306-308.

351 n/a **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) **[STRIKE ONE]** ("Seller
352 providing" if neither is stricken) a Map of the Property dated subsequent to the date of acceptance of this Offer prepared by a
353 registered land surveyor, within _____ days of acceptance, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Seller's" if neither is stricken)
354 expense. The map shall show minimum of _____ acres, maximum of _____ acres, the legal description of the
355 Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements,
356 if any, and:

357 **[STRIKE AND COMPLETE AS APPLICABLE]** Additional map features which may be added include, but are not limited to:
358 staking of all corners of the Property; identifying dedicated and apparent streets; lot dimensions; total acreage or square
359 footage; easements or rights-of-way. **CAUTION: Consider the cost and the need for map features before selecting them.**

360 **Also consider the time required to obtain the map when setting the deadline.** This contingency shall be deemed satisfied
361 unless Buyer, within five days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for delivery of said map,
362 delivers to Seller a copy of the map and a written notice which identifies: (1) the significant encroachment; (2) information
363 materially inconsistent with prior representations; or (3) failure to meet requirements stated within this contingency.
364 Upon delivery of Buyer's notice, this Offer shall be null and void.

365 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land dimensions, total square footage, acreage
366 figures, or allocation of acreage information, provided to Buyer by Seller or by a broker, may be approximate because of
367 rounding, formulas used or other reasons, unless verified by survey or other means.

368 **CAUTION: Buyer should verify land dimensions, total square footage/acreage figures and allocation of acreage**
369 **information if material to Buyer's decision to purchase.**

370 **EARNEST MONEY**

371 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker
372 (Buyer's agent if Property is not listed or Seller's account if no broker is involved), until applied to the purchase price or
373 otherwise disbursed as provided in the Offer.

374 **CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the**
375 **Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special**
376 **disbursement agreement.**

377 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after
378 clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money.
379 At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest
380 money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said
381 disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse
382 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;
383 (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)
384 any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an
385 interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to
386 exceed \$250, prior to disbursement.

387 ■ **LEGAL RIGHTS/ACTION:** Broker's disbursement of earnest money does not determine the legal rights of the Parties in
388 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to
389 disbursement per (1) or (4) above, broker shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or
390 Seller disagree with broker's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement.
391 Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4
392 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their
393 legal rights under this Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith
394 disbursement of earnest money in accordance with this Offer or applicable Department of Regulation and Licensing
395 regulations concerning earnest money. See Wis. Admin. Code Ch. RL 18.

396 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the
397 Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as
398 defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple
399 listing service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information
400 and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers
401 researching comparable sales, market conditions and listings, upon inquiry.

402 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons
403 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at
404 <http://www.widocoffenders.org> or by telephone at (608) 240-5830.

405 n/a **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery
406 of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior
407 to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers.
408 Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice
409 that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days after acceptance of this Offer. All
410 other Offer deadlines which are run from acceptance shall run from the time this Offer becomes primary.

411 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3)
412 occupancy; (4) date of closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this
413 Offer except: n/a

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

417 **TITLE EVIDENCE**

418 **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed
419 (or trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as
420 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements
421 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use
422 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's disclosure report and
423 in this Offer, general taxes levied in the year of closing and no other exceptions

_____ / records
_____ serving the Property

427 which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents
428 necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

429 **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the
430 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all
431 costs of providing title evidence to Buyer. Buyer shall pay all costs of providing title evidence required by Buyer's lender.

432 **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's) (Buyer's) **STRIKE**
433 **ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the
434 effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy,
435 exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap
436 coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 442-449).

437 **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title
438 insurance commitment is delivered to Buyer's attorney or Buyer not more than 15 days after acceptance ("15" if left blank),
439 showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per
440 lines 418-427, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements
441 and exceptions, as appropriate.

442 **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of
443 objections to title within 15 days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In
444 such event, Seller shall have a reasonable time, but not exceeding 5 days ("5" if left blank) from Buyer's delivery of the
445 notice stating title objections, to deliver notice to Buyer stating Seller's election to remove the objections by the time set for
446 closing. In the event that Seller is unable to remove said objections, Buyer may deliver to Seller written notice waiving the
447 objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer shall deliver
448 written notice of termination and this Offer shall be null and void. Providing title evidence acceptable for closing does not
449 extinguish Seller's obligations to give merchantable title to Buyer.

450 **SPECIAL ASSESSMENTS:** Special assessments, if any, levied or for work actually commenced prior to the date of this
451 Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.

452 **CAUTION: Consider a special agreement if area assessments, property owners association assessments, special**
453 **charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are**
454 **one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments)**
455 **relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all**
456 **sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact**
457 **fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).**

458 **ADDITIONAL PROVISIONS/CONTINGENCIES** [see additional terms included on Addendum]

459 _____
460 _____
461 _____
462 _____
463 _____
464 _____

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

468 If Buyer defaults, Seller may:

469 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
470 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for
471 actual damages.

472 If Seller defaults, Buyer may:

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

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

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

480 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD**
481 **READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS**
482 **OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL**
483 **RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE**
484 **CONSULTED IF LEGAL ADVICE IS NEEDED.**

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

488 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of
489 this Offer. An "inspection" is defined as an observation of the Property which does not include an appraisal or testing of the
490 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source,
491 which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building
492 materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors,
493 testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in
494 this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's
495 authorization for inspections does not authorize Buyer to conduct testing of the Property.

496 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the**
497 **test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other**
498 **material terms of the contingency.**

499 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed
500 unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller.
501 Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported
502 to the Wisconsin Department of Natural Resources.

503 **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 488-502). This Offer
504 is contingent upon a qualified independent inspector(s) conducting an inspection(s), of the Property which discloses no
505 Defects. This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing
506 an inspection of [see Addendum]

507 (list any Property feature(s) to be separately inspected, e.g., dumpsite, etc.) which discloses no Defects. Buyer shall order the
508 inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a
509 written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 513.
510 Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

511 **CAUTION: Buyer should provide sufficient time for the primary inspection and/or any specialized inspection(s), as
512 well as any follow-up inspection(s).**

513 This contingency shall be deemed satisfied unless Buyer, within 60 days of acceptance, delivers to Seller a copy of the written
514 inspection report(s) and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

515 **CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**

516 For the purposes of this contingency, Defects (see lines 287-289) do not include conditions the nature and extent of which the
517 Buyer had actual knowledge or written notice before signing this Offer.

518 **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If
519 Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of
520 Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects, (2) curing the Defects in a good and
521 workmanlike manner and (3) delivering to Buyer a written report detailing the work done within 3 days prior to closing. This
522 Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1)
523 Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure
524 or (b) Seller does not timely deliver the written notice of election to cure.

525 **ADDENDA:** The attached Exhibits A & B is/are made part of this Offer.

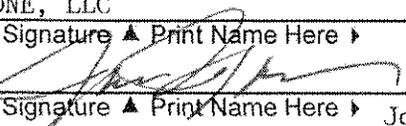
526 **ADDITIONAL PROVISIONS/CONTINGENCIES** [see Addendum]

527 _____
528 _____
529 _____
530 _____
531 _____
532 _____
533 _____
534 _____

535 This Offer was drafted by [Licensee and Firm] Atty. Richard J. Knight

536 _____ on _____

537 (x) FP ONE, LLC
538 Buyer's Signature ▲ Print Name Here ▶ Date ▲

539 (x) By:  5-30-12
540 Buyer's Signature ▲ Print Name Here ▶ John Pfefferle, Manager Date ▲

541 **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.

542 _____ Broker (By) _____

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

546 (x) _____
547 Seller's Signature ▲ Print Name Here ▶ Date ▲

548 (x) _____
549 Seller's Signature ▲ Print Name Here ▶ Date ▲

550 This Offer was presented to Seller by [Licensee and Firm] _____

551 _____ on _____ at _____ a.m./p.m.

552 This Offer is rejected _____ This Offer is countered [See attached counter] _____
553 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

**EXHIBIT A TO WB-13 VACANT LAND
OFFER TO PURCHASE DATED MAY 30, 2012
PROPERTY: 901 Airport Road, Menasha
BUYER: FP One, LLC**

The terms of the printed WB-13 Vacant Land Offer to Purchase are modified and supplemented as follows:

1. Line 24. 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 Offer to Purchase null and void and all earnest money shall be promptly returned to Buyer.

2. Line 70. The closing shall take place within twenty (20) days 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.

3. Environmental Audit. The environmental audit report to be provided by the Seller is 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 Offer and all earnest money shall be returned to Buyer within five (5) business days of the Seller's receipt of Buyer's notice terminating the Offer.

4. Line 506. The Buyer may 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.

5. Line 527. 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 acceptance.

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MENASHA
AND
CR STRUCTURES GROUP INCORPORATED

THIS AGREEMENT is entered into this _____ day of May, 2012, by and between the City of Menasha (the "City") and CR Structures Group Incorporated (CR Structures).

WHEREAS, the City has determined that the development of a residential subdivision on Property commonly known as Bowe Property (the "Property"), City of Menasha Parcel #7-00734-00 and Calumet County Parcel #010-0000-0000000-0-201807-00-420C, located at W7011 Manitowoc Road, is desirable for the City; and

WHEREAS, CR Structures has agreed to development of the Property within the City;

WHEREAS, A concept plan for the development is attached as Exhibit A

NOW, THEREFORE, the parties mutually agree as follows:

1. CR Structures will be allowed to develop the Property in phases and will develop the Property in as timely a manner as possible.
2. It is acknowledged that development of the Property requires a zoning classification of R2A. The City will initiate R2A zoning for Parcel B.
3. The City will cooperate with CR Structures in the platting and development of residential lots on the Property.
4. CR Structures may install all infrastructure, so long as the City has the authority to inspect such infrastructure during construction.
5. The City will pay to CR Structures the actual cost of infrastructure within 30 days of the receipt of any billing for such infrastructure. The cost of the infrastructure will not exceed that price which the City would have paid had it installed the infrastructure. CR Structures shall advise the City as to the firm cost within 90 days after installation of the infrastructure.
6. The City will levy a special assessment for infrastructure which shall be due and payable at the time of the sale of that lot, or pursuant to the City's deferred special assessment policy.
7. At the City's request, CR Structures will cause the owner of Parcel A to sign a Notice of Intent to Circulate an Annexation Petition and Petition for Annexation for Parcel A which will provide a zoning classification of R2A for the property designated Parcel A. Such notices and petitions may include additional non-consenting property as allowed by State law and inter-municipal agreement between the City and the Town of Harrison.
8. The City acknowledges that certain variance (including street width and cul du sac radii) from the subdivision ordinance are required to enable the development of the Property. The City will not unreasonably withhold approval of such variances.

9. CR Structures obligations under this Agreement are contingent on the following:
- a. R2A zoning classification designation for Parcel A in the Annexation Ordinance.
 - b. R2A zoning classification for Parcel B.
 - c. Levy of a special assessment over the benefited properties for the cost of the infrastructure using the city's deferred assessment policy estimated to be approximately \$118,000.
 - d. Approval of certain variances (including street width and cul du sac radii).
10. The City will facilitate all approval processes necessary to effectuate the intent of this Agreement.
11. The parties agree that this Agreement constitutes the complete agreement of the parties. Any amendments to this Agreement shall not become effective until agreed to in writing by all parties to this Agreement.

CITY OF MENASHA

By: _____
Don Merkes, Mayor

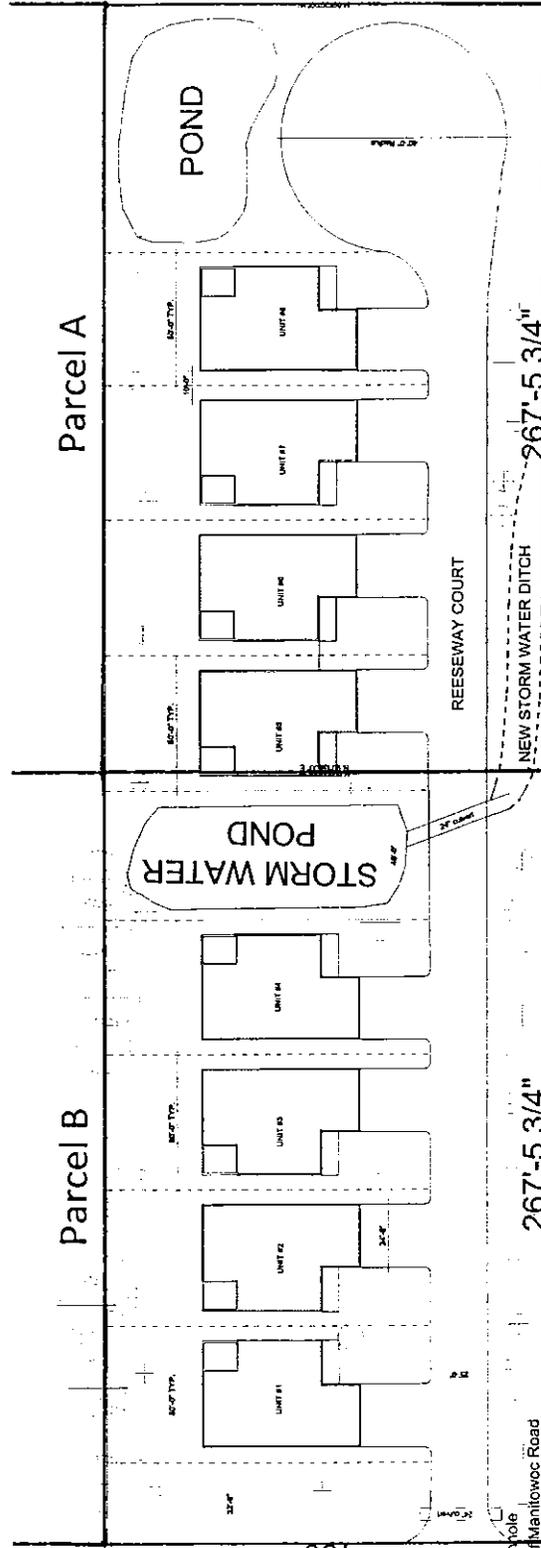
Attest:

Deborah A. Galeazzi, City Clerk

CR STRUCTURES GROUP INCORPORATED

By Chad D. Reichelt, President

Exhibit A



MANITOWOC ROAD
 Existing Manhole
 North Side of Manitowoc Road
 63
 ADMINISTRATION COMM 6/4/12 PA

CR Structures Group Inc.
 The Bungalows at Reeseway
 Preliminary Site Plan
 Date: 05-15-2012
 Scale: 1" = 40'
 C.D.R. AI

ORDINANCE O-9-12

AN ORDINANCE AMENDING SECTION 7-1-1 AND SECTION 7-1-6 OF THE CODE OF ORDINANCES

(Licensing of Dog, Cat or Ferret and Regulation of Animals)

INTRODUCED BY ALDERMAN KRUEGER

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

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

Title 7 – Licensing and Regulation

CHAPTER 1

Licensing of Dog, Cat or Ferret and Regulation of Animals

SEC. 7-1-1 DOG, CAT OR FERRET LICENSE REQUIRED; DEFINITIONS.

(13) "Kennel" shall be an establishment when or whereupon five (5) or more dogs and/or cats are kept for breeding, selling or sporting purposes, owned, boarded, groomed, sheltered, protected, bred or offered for sale or any other merchandising. Before a kennel license may be applied for, the applicant must apply for a conditional special use permit; and unless such permit is granted, such kennel license will not be granted.

SEC. 7-1-6 RESTRICTIONS ON KEEPING OF DOGS, CATS, FOWL AND OTHER ANIMALS.

(e) LIMITATIONS ON NUMBER OF DOGS AND CATS. The total combination number of dogs and cats per dwelling unit shall be limited to four (4). If such dwelling unit or family unit decides to have more than four (4) but no more than twelve (12) and does not decide to have a kennel license, in that event he or they must have the consent in writing of eighty percent (80%) of the residents over eighteen (18) years of age within two hundred (200) feet of the property line of the premises of the pets. The petition shall state the number of dogs and cats which shall be on the premises and shall be valid for two (2) license periods after the date of expiration. The petition shall be presented to the Common council for approval. A dwelling unit that has obtained a previous exemption under this paragraph allowing more than four (4) but no more than twelve (12) dogs and cats shall retain its exemption for only the listed dogs and cats named on the original petition for the life of the animal or until applicant's ownership ceases, whichever occurs first. The petition shall list the dogs or cats by name, specific breed and license number.

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

SEC. 2-4-6 PARKS AND RECREATION BOARD.

Definitions:

Parks - All established park areas or open space within the city and its park system that is open to the general public and fall under Park and Recreation jurisdiction

Marina - All property within any security fencing surrounding boat slips. In absence of a security fence the docking slips comprise a marina.

(a) **APPOINTMENTS.** The Parks and Recreation Board shall consist of seven (7) persons appointed by the Mayor and confirmed by the Common Council. Each Board member shall hold such office for a term of three (3) years, said terms to end September 30 in the year of expiration. Six (6) of the members shall be citizen members and one (1) member shall be an Alderman annually selected at the Council's organizational meeting. All members, including the Chairperson, shall have voting privileges.

(b) **COMPENSATION; OATHS.** Board members shall receive such compensation as shall be determined by the Council from time to time. Members shall take an official oath as prescribed by Sec. 19.01, Wis. Stats., to be filed with the City Clerk.

(c) **OFFICERS.** The Board shall annually elect one (1) member as chairperson.

(d) **PROCEDURE.** Four (4) members shall constitute a quorum. The Chairperson, or acting Chairperson, shall be considered in determining a quorum. Action shall be by a majority of those present and voting. The Board shall adopt rules of procedure for governing the conduct of its meetings.

(e) **POWERS AND DUTIES.** The Board shall have all the powers conferred by law upon parks and recreation commissions and shall be chargeable with all the duties so required such as ~~recommend~~ recommendations to the Common Council, oversee work, and oversee funds of all parks, playgrounds, and recreational activities as part of properties within the City. The Parks and Recreation Board is specifically empowered and directed:

(1) To ~~govern~~, manage, control, improve and care for all public parks located within, or partly within and partly without, the corporate limits of the City and secure the quiet, Updated:

7/20/2011

orderly and suitable use and enjoyment thereof by the general public people; also to adopt rules and regulations to promote these purposes.

(2) To acquire in the name of the City for park purposes by gift, purchase, devise, bequest or condemnation, either absolutely or in trust, money, real or personal property, or any incorporeal right or privilege, provided gifts to the City of money or other property, real or personal, either absolutely or in trust, for park purposes shall be accepted only after they have been recommended by the Board to the Common Council and approved by said Common Council by resolution.

(3) ~~To recommend~~ Mandatory recommendations to the Council and the Planning Commission include the buying, leasing, selling, changing or removing accessibility to or transferring of lands in the name of the City for park or marina purposes within or without the City, as well as the leasing of buildings, lands and boat slips within the Menasha Marina.

(4) To execute every trust imposed upon the use of property or property rights by the deed, testament or other conveyance transferring the title of such property to the City for park purpose.

(5) To have the powers necessary and convenient for the effective and efficient management, ~~control~~, supervision and operation of the City park system and recreation programs, and the maintenance of the Menasha Marina, subject to budgetary approval by the Common Council.

(6) To have management jurisdiction of parks, swimming pool and playgrounds throughout the City and assume full responsibility for the equipping, developing and maintaining the physical facilities and existing boundaries of the park system.

(7) To establish such rules and regulations to promote the quiet, orderly and suitable use of the City parks, playgrounds, and the Menasha Marina as the Board shall deem necessary.

(8) To establish rules and regulations, including user fees as deemed necessary as approved by the Council and desirable for the proper use, care and operation of parks, park facilities, recreation programs, Menasha Marina and other activities under their control, provided however that such rules and regulations do not conflict with the laws of the State of Wisconsin, the powers of the Common Council or this Code of Ordinances.

(9) To have maintenance jurisdiction of the Menasha Marina and assume full responsibility for the equipping, developing improving and maintaining the current physical facilities of the Marina.

~~(10) And such other and further duties as may be necessary for the proper carrying out of the purposes of said Board.~~

(11) The expansion, contraction or elimination of public land boundaries, or general public accessibility to public lands must be recommended to, and approved by the Common Council through resolution.

(12) Nothing in Sec. 2-4-6 affects the statutory or ordinance authority of the Common Council or Planning Commission.

(f) **PUBLIC RECREATION PROGRAM.** The City Parks and Recreation Board shall determine the recreational needs and shall have jurisdiction over the public recreation program of the City and shall be empowered to:

(1) Establish park rules and program policies.

(2) Cooperate and coordinate with public school activities.

(3) Cooperate with any private recreational activities.

(4) Approve any schedules of all recreational activities in public parks and school buildings.

(g) **RECORD.** The Parks and Recreation Board shall keep a written record of its proceedings to include all actions taken, a copy of which shall be filed with the City Clerk.

(h) **FINANCE.**

recreation programs, Menasha Marina and equipment, summer or seasonal employees, etc. Said annual budget request shall contain estimates as to revenues to be derived from recreation programs or activities as well as estimated expenditures for operating the parks and recreation system and the Menasha Marina.

(2) Deposits. All revenues and income from the operation of park and recreation programs shall be deposited with the City Treasurer as general revenue of the City or to be applied to Tax Incremental Financing debt if otherwise required by law.

(3) Monetary Contributions. All moneys donated to the City specifically for park or recreation use shall be deposited in City accounts as a non-lapsing fund or reserve for such specific use.

(1) Budget. The Board shall assist in preparing an annual budget for submission to the Common Council, which budget shall reflect the Board's recommendations as to maintenance or acquisition of City parks, open spaces, park and related facilities, Updated: 7/20/2011



MEMORANDUM

Date: May 31, 2012

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

RE: Ordinance Drafting and Proposed Changes to SEC. 2-4-6 (Park and Recreation Board)

The main source of legal authority for Cities is found in the Wisconsin Statutes. Chapter 27 of the Wisconsin Statutes governs parks. City park board powers are set forth in §27.08, Wis. Stats. Menasha city code currently is consistent with the state statute in the powers that have been granted to the Parks and Recreation Board. SEC. 2-4-6(e), provides, "The Board shall have all the powers conferred by law upon parks and recreation commissions . . ."

I am recommending that the proposed changes to SEC. 2-4-6 not be adopted since some of the changes are superfluous and other changes ambiguous or duplicative. Additionally, I am unable to discern what the proposed changes are meant to accomplish. Finally, some of the changes conflict with the state statute and therefore cause confusion.

Please be informed that I did not write nor was I consulted with regard to these proposed changes to city ordinance SEC 2-4-6. SEC. 2-3-4(b)(1) of the Code of Ordinances indicates that one of the major duties and responsibilities of the city attorney is to draft ordinances. It is not advisable to have a non-lawyer draft ordinances or ordinance changes. Ordinances are adopted by the common council, but should be written by an attorney especially since in the event that an ordinance is challenged it will be interpreted by a court. The usual process is for an alderman, the Mayor, a board, committee or the common council to tell its attorney what it wants to accomplish and then the attorney will provide a draft ordinance. There is a process of discussion that generally occurs between the attorney and the governmental body in order to determine what the governmental body desires. The attorney should select the appropriate language in order to accomplish the desires of the governmental body while meeting the legal requirements of statutory construction.

If the Administration Committee desires to recommend changes to SEC. 2-4-6 I request that it express what outcome it wants so that I can draft changes consistent with what it wants to accomplish.