

**PURCHASE AND SALE AGREEMENT**  
**6.59 acre vacant lot located on the Southeast corner**  
**of Evergreen and Lightning Drives in Appleton, Wisconsin**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the 17<sup>TH</sup> day of October, 2019 by and between Luther Group, LLC, a Wisconsin limited liability company, and/or its assigns ("Purchaser"), and Fox Valley Investment Properties, LLC, a Wisconsin limited liability company ("Seller").

**Recitals**

A. The term "Property," as used herein, means:

(1) That 6.59 acre vacant lot located at the Southeast corner of Evergreen and Lightning Drives in Appleton, Wisconsin, with a tax parcel number of 311651051, consisting of (a) the land legally described in **Exhibit A** attached hereto (the "Land"), (b) all fixtures and other improvements located on the Land (the "Improvements") (the Land and the Improvements being sometimes collectively referred to herein as the "Real Property"), (c) all rights, privileges and appurtenances owned by Seller and in any way related to, or used in connection with, the operation of the Real Property;

(2) All right, title and interest of Seller in and to all assignable governmental permits, licenses, certificates and authorizations relating to the use, occupancy or operation of the Real Property (the "Permits").

B. Seller wishes to sell the Property to Purchaser, and Purchaser wishes to purchase the Property from Seller, subject to and upon the terms and conditions set forth herein.

**Agreement**

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

**ARTICLE 1**

**PURCHASE AND SALE OF THE PROPERTY**

1.1 Purchase. Seller agrees to sell, convey and assign the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, subject to and upon the conditions set forth herein.

1.2 Purchase Price. The total purchase price (the "Purchase Price") for the Property shall be one million five hundred seventy-eight thousand eight hundred thirty-two and 00/100 dollars (\$1,578,832.00), based upon 6.59 acres of land at two hundred thirty-nine thousand five hundred eighty and 00/100 dollars (\$239,580.00) per acre, payable as follows:

(a) Deposit. Fifty thousand dollars (\$50,000) (which amount, is hereinafter called the "Deposit") shall be paid by Purchaser to First American Title Insurance Company (the "Title Company"), at the address set forth in Section 12.6, within five (5) business days after the Effective Date. The "Effective Date" shall be the date of mutual execution and delivery of this Agreement by Purchaser and Seller. The latter party to deliver its signed counterpart to the other party shall insert the Effective Date in the first paragraph of this Agreement, and both parties shall conform all other copies of the Agreement. Title Company shall place the Deposit in an insured account, which shall bear interest if elected by Purchaser, who shall bear any set-up costs. Upon expiration of the Inspection Period, if this Agreement has not terminated, the Deposit shall be nonrefundable to Purchaser, except as set forth in this Agreement.

(b) Balance. At the closing of the transaction contemplated by this Agreement ("Closing"), Title Company shall pay the Deposit to Seller in immediately available funds and the balance of the Purchase Price, subject to the prorations and adjustments provided for herein, shall be deposited by Purchaser into escrow with Title Company, to be disbursed by Title Company to Seller.

1.3 Escrow. Title Company, by acceptance of any funds deposited by Purchaser hereunder, agrees to hold such funds and disburse the same only in accordance with the terms and conditions of this Agreement. If Title Company is in doubt as to its duties or liabilities hereunder, it may continue to hold such funds until the parties mutually agree to the disbursement thereof, or until an order or judgment of a court of competent jurisdiction shall determine the rights of the parties hereto. Title Company is a depository only and shall not be liable for any loss, damage or cost including, but not limited to, attorneys' fees, which may be suffered by Seller or Purchaser in connection with Title Company's action or inaction except those caused by Title Company's willful failure to perform its duties hereunder. In no circumstance shall Title Company be responsible or liable for the failure of any financial institution into which any funds deposited with Title Company have been deposited.

## ARTICLE 2

### INVESTIGATION OF THE PROPERTY

2.1 Seller's Deliveries. Seller shall deliver within five (5) business days after the Effective Date, to Purchaser, the following documents relating to the Property provided the same exist and are in Seller's possession and control (collectively, the "Seller's Deliveries"):

(a) Title Commitment. A current title insurance commitment issued by Title Company, including copies of all recorded exceptions to title referred to therein (collectively, the "Title Commitment"), reflecting title to the Property;

(b) Surveys. Any existing ALTA surveys, Plat of Surveys, Certified Survey Maps in relation to the Property in Seller's possession;

(c) Tax Statements. Copies of the most recent tax statements covering the Property (including real property, and rental taxes and special assessments), copies of any

notices with respect to taxes received by Seller since such tax statements were issued, any notices of increased valuation or special assessments in Seller's possession, and any documents relating to tax appeals in Seller's possession;

(d) Permits. Copies of the Permits, if any;

(e) Reports. Copies of any asbestos, lead-based paint, soils, seismic, geologic, drainage, engineering, environmental (Phase I and Phase II), wetland delineation studies, structural, physical condition, appraisal, mold, remediation, aged delinquency, or other reports in Seller's possession relating to the Property;

(f) Leases and Contracts. Copies of all leases or contracts that affect the Property;

(g) Utilities. A list of all utilities servicing the Property; and

(h) Correspondence. Copies of all correspondences and communications with municipalities or utility companies regarding entitlements, zoning, uses and restrictions or utility services to the Property.

To the extent not listed above, Seller shall deliver to Purchaser any documents and materials relating to the Property requested by Purchaser from time to time that are in Seller's possession or control. Upon Seller's delivery of the last document required under Section 2.1(a) through Section 2.1(h), Seller shall deliver a notice to Purchaser confirming the same ("Seller's Notice").

## 2.2 Purchaser's Investigations.

(a) Purchaser shall have until 11:59 p.m. Central Time on the date that is two hundred seventy (270) days after the date of Seller's Notice (the "Inspection Period"), to investigate and evaluate the Property and all matters relevant to its acquisition, use, ownership and operation. If this Agreement is not terminated by the expiration of the Inspection Period the Purchaser's right to investigate the Property shall continue until Closing or until this Agreement is terminated in accordance with the terms hereof (other than Section 2.2(c)). Purchaser's right of investigation shall include, without limitation, the right to have made, at Purchaser's expense, any studies, wetland delineations, soil borings and soil compaction tests, inspections, surveys, appraisals or environmental Phase I or Phase II assessments of the Property as Purchaser may deem necessary or appropriate; provided, however, that all inspections shall occur during normal business hours, and Purchaser shall not conduct or allow any physically intrusive testing of, on or under the Property without first obtaining Seller's written consent as to the timing and scope of work to be performed. Seller agrees to cooperate reasonably with any such investigations, inspections or studies made by or at Purchaser's direction so long as such cooperation is at no expense to Seller. Seller agrees to cooperate with Purchaser in Purchaser's attempts to obtain its municipal entitlements. Seller agrees to execute any reasonable requested documents that enable Purchaser to obtain its municipal entitlements. Purchaser may obtain a survey (the "Survey") of the Real Property, at Purchaser's sole cost and expense. The Inspection Period may be extended by two (2) separate thirty (30) day periods by Purchaser providing written notice to Seller prior to the expiration of the Inspection Period

or the previous extension thereof, and submitting to the Title Company an additional twenty-five thousand dollars (\$25,000) for each extension (each, an "Extension Deposit") within five (5) business days of said notice. Said Extension Deposits shall be non-refundable to Purchaser, but shall be applicable toward the Purchase Price.

(b) If Purchaser timely delivers the Approval Notice in accordance with Section 2.2(c), Purchaser shall be deemed to have elected to proceed, taking title subject to the Permitted Exceptions. "Permitted Exceptions," as used herein, shall be those matters reflected in the Survey and the last pro forma title policy received by Purchaser from Title Company prior to the expiration of the Inspection Period, or if no pro forma is then received by Purchaser, the last Title Commitment or preliminary title report received by Purchaser prior to the expiration of the Inspection Period (as applicable, the "Last Report") other than (i) delinquent taxes or assessments, (ii) any deed of trust, mortgage or other lien or monetary encumbrance affecting the Property or any part thereof, (iii) any lien, encumbrance or other matter affecting title to the Property that was created or consented to by Seller after the Effective Date without Purchaser's written consent, and (iv) any title matter or survey matter objected to by Purchaser in writing during the Inspection Period and corrected, or to be corrected prior to the expiration of the Inspection Period by Seller (items (i), (ii), (iii) and (iv) are referred to herein collectively as the "Mandatory Cure Items"). Notwithstanding the foregoing, Seller shall not be deemed to have elected to cure or remove any items (except monetary liens and encumbrances) arising under or through Seller unless consented to in a written notice to Purchaser. In addition, Seller shall not be deemed in default of this Agreement if Seller acts in good faith to cure any items which Seller agreed to cure in the aforementioned written notice. Upon such failure of Seller to cure such items, Purchaser may elect by written notice to Seller, no later than five (5) days prior to the Closing Date, to a) waive such items, which shall be deemed Permitted Exceptions, and proceed to Closing, or b) terminate the Agreement and receive a return of the Deposit upon which this Agreement shall be of no further force and affect.

(c) If, on or before the expiration of the first two hundred ten (210) days after the Inspection Period, Purchaser gives Seller written notice setting forth Purchaser's dissatisfaction with the Property for any reason, and states in such notice Purchaser's election to terminate, then this Agreement shall terminate in which case the Deposit shall be returned to Purchaser without the need for any further approval from Seller and both parties shall be relieved from any further liability hereunder except for those obligations which expressly survive termination of this Agreement (the "Surviving Obligations"). If said notice of dissatisfaction is provided after the first two hundred ten (210) days of the Inspection Period but before the expiration of the Inspection Period, then twenty-five thousand dollars (\$25,000) of the Deposit shall become non-refundable to Purchaser. If prior to the expiration of the Inspection Period, Purchaser delivers to Seller a written notice stating Purchaser's approval of the Property (the "Approval Notice"), then this Agreement shall remain in full force and effect in accordance with its terms, except as set forth in this Agreement, and Purchaser's rights of inspection as described herein shall continue until the Closing Date. If the Purchaser gives neither a notice of dissatisfaction nor an Approval Notice prior to the expiration of the Inspection Period, it shall automatically act as a notice of dissatisfaction and this Agreement shall terminate in which case twenty-five thousand dollars (\$25,000) of the Deposit shall be returned to Purchaser without the need for any

further approval from Seller and both parties shall be relieved from any further liability hereunder except for the Surviving Obligations. Notwithstanding any of the above, the Purchaser shall, within ninety (90) days of the commencement of the Inspection Period, provide written notice to Seller as to whether it shall proceed or terminate the Agreement with said notice, for any reason whatsoever, in the sole and absolute discretion of the Purchaser. If the notice provided terminates this Agreement, then this Agreement will terminate in which case the Deposit shall be returned to the Purchaser without the need for any further approval from Seller and both parties shall be relieved from any further liability hereunder except for the Surviving Obligations. If the notice provided by Purchaser is to proceed with this Agreement, then the Inspection Period shall continue as contemplated herein. However, Purchaser must, at least, terminate this Agreement or an Agreement to purchase a vacant 6.12 acre lot located at the Northeast corner of Evergreen and Lightning Drives in Appleton, Wisconsin that this Purchaser also has pending.

2.3 Indemnity. Purchaser agrees to indemnify, defend and hold harmless Seller from any and all claims, demands, liabilities, losses, damages, liens, costs and expenses asserted against Seller or the Property arising out of or resulting from Purchaser's investigations of the Property prior to Closing and to pay Seller all costs and expenses, including reasonable attorneys' fees and expenses, incurred in defending any such matter; provided, however, that this indemnity shall not extend to and in no event shall Purchaser be liable to Seller for (a) any release or discovery of any pre-existing hazardous substances arising from the conduct of any investigation or testing of the Property or for any diminution in the market value of the Property resulting from the information disclosed by any such investigation or tests, (b) for any negligence or misconduct of Seller or any agent, contractor or employee of Seller, or (c) any pre-existing condition or violation on or about the Property. The provisions of this Section 2.3 shall survive any termination of this Agreement.

### ARTICLE 3

#### SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants as of the Effective Date and as of the Closing Date and covenants to Purchaser as follows:

3.1 Authority. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Wisconsin. Seller owns the Property and has the full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement. All requisite action has been taken by Seller in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

3.2 Consents; Binding Obligations. No third party approval or consent is required for Seller to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

3.3 No Bankruptcy Proceedings. To Seller's Actual Knowledge, no bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, is

pending or threatened against Seller, and to Seller's Actual Knowledge, Seller has no intention of filing or commencing any such action or proceeding.

3.4 FIRPTA. Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

3.5 Litigation. There are no actions, suits, litigation or proceedings pending, or to Seller's Actual Knowledge threatened, affecting the Property, or affecting the right, power or authority of Seller to enter into and perform this Agreement in accordance with its terms, or which question the validity or enforceability of this Agreement or any action taken or to be taken by Seller under this Agreement.

3.6 Condemnation. Seller has no Actual Knowledge, and has received no notice from any governmental authorities, that proceedings for the condemnation of any portion of the Property are pending.

3.7 Rights and Options. Seller has not granted, and to Seller's Actual Knowledge there exist no, recorded or unrecorded options to purchase or rights of first refusal or first offer on the Property or any portion thereof.

3.8 No Violations. To Seller's Actual Knowledge, the Property has been and is presently used and operated in compliance in all material respects with, and in no material way violates, any applicable statute, law, regulation, rule, ordinance, order or permit of any kind whatsoever affecting the Property or any part thereof, any Permitted Exception or any covenants, restrictions and declarations, guidelines or other requirements of any homeowners' or community associations affecting the Property. Seller has received no notices from any governmental authority of zoning, building, environmental protection, clean air, pollution, fire, health code or other violations with respect to the Property, or violations pertaining to the use and occupancy of the Property, including, without limitation, discrimination on any prohibited basis, that have not been corrected.

3.9 Financing Statements. As of the Closing Date, no portion of the Property will be affected by any financing statements granted by Seller.

3.10 Covenants. As of the Closing Date, Seller shall have performed the covenants in Sections 5.1 and 5.2 in accordance with the terms thereof.

3.11 Insurance Notices. Seller has not received any notice from any insurance company which has issued a policy with respect to any portion of the Property, or by any board of fire underwriters of zoning, building, fire, or health code violations in respect to the Property.

3.12 Leasing Commissions. As of the Closing, no brokerage or leasing commissions or other compensation will be due or payable to anyone with respect to or on account of any current or prior leases that may have existed.

3.13 Service Contracts. There is no agreement, in writing or otherwise, between Seller and any other person or persons for service, supply, maintenance, management or the operation of

the Property or any portion of the business conducted thereon, which is not cancelable upon not more than thirty (30) days' notice without payment of any penalty or premium.

3.14 Hazardous Waste. To Seller's Actual Knowledge, except as disclosed in any environmental or engineering reports or studies delivered by Seller to Purchaser pursuant to Section 2.1(e), (a) the Property has not at any time been used for the purposes of storing, manufacturing, releasing or dumping Hazardous Materials (as hereinafter defined), and there are no Hazardous Materials located at, on or under the Property, except for normal quantities of Hazardous Materials utilized in connection with the normal maintenance and operation of the Property in compliance with all Environmental Laws (as hereinafter defined) and so-called household Hazardous Materials utilized by tenants of the Property, and (b) no underground storage tanks, pipelines or clarifiers have been or are located on the Property. As used in this Agreement, "Hazardous Materials" shall mean any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, gasoline and any other petroleum products (including crude oil or any fraction thereof), polychlorinated biphenyls and urea-formaldehyde insulation. As used in this Agreement, "Environmental Law" shall mean any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or to releases or threatened releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as now or hereafter in effect.

3.15 Soils. Seller has no Actual Knowledge of any negative sub-soil conditions or other defects in the Property except such defects as are disclosed in any engineering reports or studies delivered by Seller to Purchaser pursuant to Section 2.1(e).

3.16 Omissions. All representations and warranties made by Seller in this Agreement, and all information contained in any statement, document or certificate furnished to Purchaser in connection with this transaction are, to Seller's Actual Knowledge, free from any untrue statement of material fact and do not, to Seller's Actual Knowledge, omit to state any material facts necessary to make the statements contained herein or therein not misleading.

3.17 Deliveries. The copies of any documents furnished to Purchaser in connection with this transaction are, to Seller's Actual Knowledge, true and complete copies of the documents they purport to be.

3.18 Changed Circumstances. If any of the representations and warranties in this Agreement were false when made by Seller, the same shall constitute a default by Seller hereunder, and Purchaser may pursue the remedy it elects under Section 11.1. If any of the representations and warranties in this Agreement were, to Seller's Actual Knowledge, true when made but become false, whether through a change in Seller's Actual Knowledge or a change in circumstances (but excluding any Seller breach of Section 5.1(e)), unless Seller elects to cause and does cause the representation or warranty to again become true or correct prior to Closing, Purchaser may elect, as its sole and exclusive remedy hereunder, at law or in equity, to either (a)

terminate this Agreement at or prior to the Closing (in which case the Deposit shall be returned to Purchaser and both parties shall be relieved of any further obligations hereunder except for the Surviving Obligations) or (b) waive any objection to the representation or warranty to the extent it has become false and to proceed with the Closing. If Seller becomes aware of any act or circumstances which would change or render incorrect, in any material respect, any representation or warranty made by Seller under this Agreement, Seller will give prompt written notice of such changed fact or circumstance to Purchaser.

3.19 Survival. Each of the representations and warranties contained in this Article 3 are acknowledged by Seller to be material and to be relied upon by Purchaser in proceeding with this transaction, and shall survive the Closing. Seller shall indemnify, defend and hold Purchaser, its shareholders, directors, officers, employees, agents, successors and assigns harmless from and against any claim, loss, liability or expense, including reasonable attorneys' fees, that arise out of or result from the breach by Seller of any of the foregoing representations or warranties.

3.20 Third Party Claims. Seller shall indemnify Purchaser against, defend and hold Purchaser harmless from any and all loss, damage, liability or expense, including court costs and reasonable attorneys' fees, which Purchaser may reasonably incur or sustain either prior to or following the Closing Date by reason of or in connection with any and all obligations, liabilities, claims or demands by third parties, whether direct, contingent or consequential, and no matter how arising, either (a) in any way related to or arising from any act, conduct, omission, contract, agreement or commitment of Seller or (b) arising from loss or damage to third parties that occurs during the period of ownership of Seller and its affiliates and in any way relates to or arises from the construction, completion, sale, use or occupancy of the Property. This Section 3.20 shall survive Closing.

3.21 Tenants. There are no current tenants of the Property and none shall exist as of the Closing. There are no leases that affect the Property.

3.22 Actual Knowledge. As used in this Agreement, the phrase "to Seller's Actual Knowledge" or words of similar import shall mean the actual knowledge of John Pfefferle.

## ARTICLE 4

### PURCHASER'S REPRESENTATIONS AND WARRANTIES

4.1 Purchaser's Representations. Purchaser represents and warrants to Seller as follows:

(a) Authority. Purchaser has the full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement. All requisite action has been taken by Purchaser in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(b) Consents; Binding Obligations. No third party approval or consent is required for Purchaser to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by



Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

(c) Omissions. All representations and warranties made by Purchaser in this Agreement, and all information contained in any statement, document or certificate furnished to Seller in connection with this transaction, are to Purchaser's Actual Knowledge, free from any untrue statement of material fact and do not, to Purchaser's Actual Knowledge, omit to state any material facts necessary to make the statements contained herein or therein not misleading.

4.2 Survival. Each of the representations and warranties contained in this Article 4 are acknowledged by Purchaser to be material and to be relied upon by Seller in proceeding with this transaction, and shall survive the Closing. Purchaser shall indemnify, defend and hold Seller, its shareholders, directors, officers, employees, agents, successors and assigns harmless from and against any claim, loss, liability or expense, including reasonable attorneys' fees, that, arise out of or result from the breach by Purchaser of any of the foregoing representations or warranties.

4.3 No Other Representations. With the sole exception of the representations set forth in this Article 4, this Agreement is made without representation or warranty of any kind by Purchaser.

4.4 Third Party Claims. Purchaser shall indemnify Seller against, defend and hold Seller harmless from any and all loss, damage, liability or expense, including court costs and reasonable attorneys' fees, which Seller may reasonably incur or sustain either prior to or following the Closing Date by reason of or in connection with any and all obligations, liabilities, claims or demands by third parties, whether direct, contingent or consequential, and no matter how arising, either (a) in any way related to or arising from any act, conduct, omission, contract, agreement or commitment of Purchaser, or (b) arising from loss or damage to third parties that occurs during the period of ownership of Purchaser and its affiliates and in any way relates to or arises from the construction, completion, sale, use or occupancy of the Property. This Section 4.4 shall survive Closing.

4.5 Actual Knowledge. As used in this Agreement, the phrase to "Purchaser's Actual Knowledge" or words of similar import shall mean the actual knowledge of Jason Luther.

## ARTICLE 5

### PURCHASER'S AND SELLER'S UNDERTAKINGS PENDING CLOSING

5.1 Operation of Property. Seller covenants with Purchaser that, so long as this Agreement remains in effect:

(a) From and after the Effective Date, Seller will operate, maintain, and manage the Property in a normal businesslike manner and consistent with its current practices, maintaining present services, and will perform when due all of its obligations with respect to the Property, including without limitation its obligations under the Permitted Exceptions, and any mortgages affecting the Property.

(b) Seller shall not enter into any tenant leases, or any contracts or other new amendments or agreements which will survive the Closing or otherwise affect the use, operation or enjoyment of the Property after the Closing without Purchaser's prior written consent.

(c) Seller will maintain the current insurance coverage insuring the Property in effect at the time of execution of this Agreement and will maintain in effect such policies, up to and including the Closing Date.

(d) After the Effective Date, Seller shall not create or consent to the creation of any lien, encumbrance or other matter affecting title to the Property without Purchaser's prior written consent.

(e) Seller shall not knowingly take, or fail to take, any action which will or would cause any of the representations or warranties in this Agreement to become untrue or be violated without Purchaser's prior written consent.

(f) In the event that there exist any off-record fines or penalties for governmental violations caused by, through or under Seller for which Seller has received a written notice from a governmental authority prior to Closing, Seller shall cause the same to be paid in full.

(g) Seller shall promptly inform Purchaser in writing of any material event that adversely affects the ownership, use, occupancy, operation or maintenance of the Property.

## ARTICLE 6

### CONDITIONS TO CLOSING

6.1 Performance of Obligations. Unless waived by the party entitled to the benefit thereof, the obligations of either party to close under this Agreement shall be subject to the satisfaction of the conditions that all representations and warranties of the other party contained in this Agreement shall be true and correct as of the Closing and that the other party shall have performed all covenants, agreements and obligations required to be performed by it under this Agreement.

6.2 Title Policy. It shall be a condition to Purchaser's obligation to close under this Agreement that Title Company shall have agreed to issue to Purchaser a 2006 ALTA extended form owner's policy of title insurance, insuring title to the Real Property in Purchaser in the amount of the Purchase Price, subject only to the Permitted Exceptions and including such endorsements and other appurtenant insured parcels as are reflected in the Last Report or as Seller has agreed to provide pursuant to the terms hereof (the "Title Policy").

6.3 Walk Through. Purchaser shall have the right to inspect the Property within five (5) business days prior to Closing to verify that the Property is in substantially the same condition as of the Effective Date. At Closing, Seller shall remove all personal property from the Property.

## ARTICLE 7

### CLOSING

7.1 Date of Closing. The closing of the purchase (the "Closing") shall take place in the offices of Title Company, or at such other place as the parties shall mutually agree. The time and date of Closing (the "Closing Date") shall be at 11:00 a.m. on the date that is fifteen (15) business days after the expiration or waiver of the Inspection Period, or such other date as shall be agreed upon by Seller and Purchaser.

7.2 Deliveries. At Closing, the following shall occur through Title Company's escrow:

(a) Seller shall execute and deliver to Purchaser a duly executed and acknowledged special warranty deed (the "Deed"), conveying to Purchaser the Real Property, subject only to the Permitted Exceptions.

(b) Seller and Purchaser shall execute and deliver two duplicate originals of a General Assignment, in the form attached hereto as **Exhibit B**, pursuant to which Seller shall assign to Purchaser, and Purchaser shall assume the Permits.

(c) Seller shall execute and deliver to Purchaser and Title Company an affidavit that evidences that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(d) Seller shall execute and deliver to Title Company such financial information, affidavits and agreements concerning parties in possession, mechanics' liens, gap coverage and other title matters as may be reasonably required by Title Company in order to issue the Title Policy.

(e) Seller and Purchaser shall execute and deliver any applicable transfer tax, transfer declarations, ownership information or other disclosure forms or reports required under the laws of the State of Wisconsin.

(f) To the extent the same are in Seller's possession or control, Seller shall deliver to Purchaser the original certificates, licenses and permits necessary for the ownership of the Property.

(g) Seller and Purchaser shall execute and deliver settlement statements to reflect the credits, prorations and adjustments contemplated by or specifically provided for in this Agreement.

(h) Purchaser shall pay to Seller the Purchase Price as provided in Section 1.2 hereof, subject to the adjustments described in Article 8 hereof.

(i) Seller shall deliver possession of the Property to Purchaser, without being subject to any tenant leases.

(j) Seller shall deliver to Title Company all payments and documents required to remove the Mandatory Cure Items of record and enable Title Company to issue the Title Policy.

(k) Seller and Purchaser agree to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement.

## ARTICLE 8

### ADJUSTMENTS AND PRORATIONS

8.1 Closing Adjustments. The cash due at Closing pursuant to Section 1.2(b) hereof shall be subject to adjustment as of the Closing Date in accordance with the following provisions:

(a) Taxes. Real property taxes on the Property shall be prorated as of 12:01 a.m. on the Closing Date based on the most recent tax information available from the county assessor's office.

(b) Assessments. If, at the time of the Closing, the Property or any part thereof shall be or shall have been affected by an assessment or assessments levied or imposed for improvements of a capital nature, then, for the purposes of this Agreement, all unpaid installments of any such special assessment, including those which are to become due and payable after the Closing, shall be deemed to be due and payable and shall be paid and discharged by Seller at or prior to the Closing.

(c) Insurance. No insurance policies of Seller are to be transferred to Purchaser, and no apportionment of the premiums therefor shall be made. Purchaser acknowledges that it shall be responsible for securing its own insurance for the Property.

(d) Closing Costs. Seller shall pay the cost of recording any instruments required to discharge any liens or encumbrances against the Property, all commissions payable to the Brokers (as hereinafter defined), the premium for the Title Policy up to the Purchase Price and the gap endorsement, other than the cost of Purchaser required endorsements thereto and the marginal cost to increase to extended coverage, all Wisconsin transfer tax return fees and excise taxes on the transfer of the Real Property, and one-half (1/2) of the cost of any closing or escrow fee charged by Title Company. Purchaser shall pay the cost of recording the Deed, the cost of any endorsements to the Title Policy and the marginal cost to increase to extended coverage, and one-half (1/2) of the cost of any closing or escrow fee charged by Title Company. Each party shall pay its own attorneys' fees. All other closing costs, except for the costs of Purchaser's inspection activities, shall be paid by Seller.

## ARTICLE 9

### CASUALTY

9.1 Notice and Estimate of Casualty. In the event that any of the Real Property should be damaged by any casualty prior to Closing, Seller shall promptly give Purchaser written notice of such occurrence, and as soon thereafter as practicable shall provide Purchaser with the average ("Repair Average") of the insurance estimate, if the carrier acknowledges coverage, and an estimate made by an architect, engineer or contractor selected by Seller and reasonably acceptable to Purchaser of the cost and amount of time required to repair such damage, together with supporting documents. The Closing Date shall become the later of the date set forth in Section 7.1 and twenty (20) days after Purchaser's receipt of such estimate. If Purchaser does not terminate this Agreement pursuant to Section 9.3, then Purchaser shall be given an opportunity to review and approve any construction contract which Seller proposes to enter into to have such damage repaired and Purchaser shall not unreasonably withhold or delay such approval.

9.2 Minor Damage. If the Repair Average is less than one hundred thousand dollars (\$100,000), then Seller shall promptly contract for and commence the repairs and complete so much thereof as may be accomplished prior to the Closing Date. If such repairs are not completed on or before the Closing Date, the Closing shall take place as scheduled and, at Closing, Seller shall assign to Purchaser so much of the insurance proceeds resulting from such damage as have not then been expended for repairs, Purchaser shall receive a credit against the Purchase Price in the amount of any portion of the loss that is uninsured and the deductible under Seller's insurance policy (as applicable), and Seller will assign to Purchaser, and Purchaser will assume, the rights and obligations under the construction contract pursuant to which such repairs are being completed. Purchaser shall also receive the portion of lost rent insurance proceeds applicable to the period after Closing.

9.3 Major Damage. If the Repair Average is one hundred thousand dollars (\$100,000) or more because of said casualty then Purchaser may elect to terminate this Agreement upon notice to Seller within fifteen (15) days after Purchaser's receipt of the estimate, in which event the Deposit shall be returned to Purchaser and both parties shall be relieved of any further obligations hereunder except for the Surviving Obligations; however, if Purchaser does not elect to so terminate this Agreement, then this Agreement shall remain in full force and effect and the parties shall proceed in accordance with Section 9.2 above.

## ARTICLE 10

### CONDEMNATION

10.1 Notice of Condemnation. If prior to Closing, Seller learns of any actual or threatened taking in condemnation or by eminent domain (or a sale in lieu thereof) of all or any portion of the Real Property, Seller will notify Purchaser promptly thereof.

10.2 Termination. Other than with respect to an "Immaterial Taking" (as defined below), any actual or threatened taking or condemnation for any public or quasi-public purpose or use by any competent authority in appropriate proceedings or by any right of eminent domain of all

or any part of the Real Property between the date of this Agreement and the Closing Date because of such condemnation, shall, at Purchaser's option, cause a termination of this Agreement. The Closing Date shall become the later of the date set forth in Section 7.1 and twenty (20) days after Purchaser's receipt of Seller's notice given under Section 10.1. The election to terminate provided hereby must be exercised by Purchaser (or will be deemed to have been waived) by notice to Seller to that effect given within 15 days following Purchaser's receipt of Seller's notice pursuant to Section 10.1 above. Upon delivery of such termination notice, the Deposit shall be returned to Purchaser and both parties shall be relieved of any further obligations hereunder except for the Surviving Obligations. If Purchaser shall not elect to so terminate this Agreement, or in the event of an Immaterial Taking, Seller shall be relieved of all obligations under this Agreement with respect to the portion of the Real Property so taken or condemned, but Purchaser will be entitled to receive all proceeds of any such taking or condemnation, and Seller agrees that it will not make any adjustment or settlement of any such taking or condemnation proceeding without Purchaser's consent and will take at Closing all action necessary to assign its entire interest in such award to Purchaser. Any taking or condemnation for any public or quasi-public purpose or use which does not affect access, reduce parking or take any part of the Improvements shall be deemed an "Immaterial Taking."

## ARTICLE 11

### REMEDIES

11.1 Breach by Seller. Time is of the essence of Seller's obligations hereunder. If Seller fails to perform any of its obligations hereunder, or breaches any representation or warranty hereunder and such failure to perform or breach continues uncured for three (3) business days after Seller receives notice thereof from Purchaser, Purchaser shall have the right to exercise all of its legal and equitable remedies, including, without limitation, specific performance and, either alone and in conjunction with specific performance, the right to claim damages for breach of contract.

11.2 Breach by Purchaser. Time is of the essence of Purchaser's obligations hereunder. If Purchaser fails to perform any of its obligations hereunder or breaches any representation or warranty hereunder and such failure to perform or breach continues uncured for three (3) business days after Purchaser receives notice thereof from Seller, Seller shall have the right to exercise all of its legal and equitable remedies, including without limitation, specific performance and, either alone and in conjunction with specific performance, the right to claim damages for breach of contract.

11.3 Breach of Provisions Surviving Closing. The provisions of Section 11.1 and 11.2 notwithstanding, either party shall be entitled, in addition to any other remedies available under this Agreement, to seek damages for the breach by the other party of any of its representations, warranties, indemnities or covenants hereunder that expressly survive Closing, subject to the other limitations hereof.

11.4 Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the prevailing party in such suit shall be entitled to recover, in addition to all other remedies or damages, its reasonable attorneys' fees and expenses. The provisions of this Section 11.4 shall survive any termination of this Agreement.

## ARTICLE 12

### MISCELLANEOUS

12.1 Brokers. Seller and Purchaser represent to each other that NAI Pfefferle and CBRE (“Brokers”) have represented the parties in connection with the transaction contemplated hereby. Brokers shall be paid their respective commissions (on a 50%-50% split) by Seller pursuant to separate agreements at the Closing. With the exception of the Brokers, Seller and Purchaser each represent and warrant to the other that it has not negotiated or dealt with any real estate broker, salesperson or agent in connection with the making of this Agreement or the transaction contemplated hereby, or incurred any liability for the payment of any brokerage fee, commission or compensation to any such broker, salesperson or agent. Seller and Purchaser agree to save and hold each other, and their respective shareholders, directors, officers, employees, agents, successors and assigns, free, clear and harmless from any claim, cost or expense, including reasonable attorneys’ fees, for or in connection with any breach of the representation and warranty made by each respective party in this Section and any claim for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein. The provisions of this Section 12.1 shall survive any termination of this Agreement.

12.2 Entire Agreement. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property and supersedes all prior understandings and agreements between the parties, including without limitation the letter of intent between the parties. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as herein set forth.

12.3 Survival. All of the parties’ representations, warranties, covenants and agreements hereunder, to the extent not fully performed or discharged by or through Closing, shall be deemed not merged into any instrument delivered at Closing and shall remain fully enforceable thereafter, subject to any limitations specifically set forth herein.

12.4 Dates. If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or federal or State holiday, then such date shall be automatically extended to the next succeeding weekday that is not a federal or State holiday. In the event that a deadline in this Agreement is calculated by a number of months from a reference date, the deadline shall occur on the same numerical date of the month as the reference date, except that, in the event that there exists no such date in the month that would otherwise contain the deadline, the deadline shall be the first business day of the following month.

12.5 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

12.6 Notices. All notices, demands or other communications required or permitted to be given hereunder (each a “Notice” for the purposes of this Section) shall be in writing, unless oral

notice is expressly permitted in the applicable Section. Any and all written Notices shall be deemed to have been duly delivered upon transmission by email to the applicable address(es) set forth below. Notwithstanding the foregoing, (a) if the Notice is a termination, default or change of address Notice or the Approval Notice, such Notice must be additionally delivered within two (2) business days by either personal delivery or overnight delivery with Federal Express or a similar overnight courier service (unless such additional delivery is waived by the receiving party) to the applicable address(es) set forth below (each an "Alternative Delivery Method"), and (b) if no email address is provided below for a party, any and all written Notices to such party shall be deemed to have been duly delivered upon receipt by an Alternative Delivery Method or refusal following an Alternative Delivery Method attempt in accordance with this Section.

If to Purchaser:

Luther Group, LLC  
c/o Jason Luther  
780 Elm Grove Road, Suite 120  
Elm Grove, Wisconsin 53122  
Telephone No.: (414) 979-1001  
Email: [jluther@luthergrp.com](mailto:jluther@luthergrp.com)

with a copy to:

Walden & Schuster, S.C.  
707 W. Moreland Blvd. Suite 9  
Waukesha, WI 53188  
Attention: James R. Walden, Jr.  
Telephone No.: (262) 547-5517  
Email: [jwalden@waldenlaw.net](mailto:jwalden@waldenlaw.net)

If to Seller:

Fox Valley Investment Properties, LLC  
c/o John Pfefferle  
200 E. WASHINGTON ST., STE 2A  
APPLETON, WI 54911  
Telephone No.: 920-560-5071  
Email: [JOHNPF@naipfefferle.com](mailto:JOHNPF@naipfefferle.com)



If to Title Company:

First American Title Insurance Company  
833 E. Michigan Street, Suite 250  
Milwaukee, Wisconsin 53202  
Attention: Brandon Schulta  
Telephone No.: (414) 639-5090  
Email: bschulta@firstam.com

Any telephone numbers provided above are provided for convenience only, and oral communications shall in no event constitute notice hereunder. Any address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section. Notices executed and delivered by the law firms identified above on behalf of their respective clients shall constitute valid notices hereunder.

12.7 Headings. The paragraph headings which appear in some of the Sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

12.8 Construction. The parties acknowledge that they have reviewed and revised this Agreement, and their counsel has done or has had the opportunity to do the same, and agree that the common rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.9 Confidentiality. Each party shall hold in strict confidence all documents and information concerning the other and its business and properties and if the transaction contemplated hereby should not close, such confidence shall be maintained, and all such documents and information (in written form) shall immediately thereafter be returned to the party originally furnishing the same. No public disclosure, either written or oral, of the existence or terms of this Agreement shall be made by either Purchaser or Seller without the consent of the other. The foregoing provision shall not, however, be construed to prohibit any party from making any disclosures to any governmental authority which it is required to make by law or to prohibit any party from disclosing to its investors, lenders, escrow officers, title insurer, accountants, consultants, attorneys and other parties involved in completing the purchase and sale of the Property such terms of this transaction as are customarily disclosed to them in connection with similar acquisitions. The provisions of this Section 12.9 shall survive any termination of this Agreement.

12.10 Assignment. Purchaser may assign this Agreement to an entity upon written notice to Seller. In the event of an assignment by Purchaser, the Purchaser representations in Section 4.1 shall be automatically modified to reflect the type and state of organization of the assignee as stated in the written assignment from the original Purchaser to the assignee.

12.11 Section 1031 Exchange. Purchaser and Seller agree that, at either party's election, this transaction shall be structured as an exchange of like-kind properties under Section 1031 of the Internal Revenue Code and the regulations and proposed regulations thereunder. The party so

electing shall be known as the “Electing Party,” and the other party shall be known as the “Non-Electing Party.” The parties agree that if either party wishes to make such election, it must notify the other party thereof at least 10 days prior to the Closing Date. If the Electing Party so elects, the Non-Electing Party shall cooperate with the Electing Party; it being understood, however, that the Non-Electing Party shall not be required to take title to any other property as part of the Section 1031 exchange or alter the Closing Date. The Electing Party shall in all events be responsible for all costs and expenses related to the Section 1031 exchange and shall indemnify, defend and hold harmless the Non-Electing Party from and against any and all liability, claims, damages and expenses (including reasonable attorneys’ fees and costs but excluding any attorneys’ fees and expenses incurred by the Non-Electing Party in connection with its review of the documents reasonably necessary to effect the Electing Party’s exchange) actually incurred by the Non-Electing Party and arising out of such Section 1031 exchange.

12.12 Successors and Assigns. Subject to Section 12.10 and Section 12.11 hereof, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

12.13 No Recording. Neither Seller nor Purchaser shall record this Agreement or any memorandum hereof in the real property records of the county in which the Real Property is located.

12.14 Counterparts; Delivery. This Agreement may be executed in counterparts, a complete set of which shall be deemed a single instrument. Executed signature pages sent by telecopy or email PDF shall be effective for purposes of executing and delivering this Agreement.

12.15 Third Party Beneficiaries. Except as expressly stated herein, if at all, there are no third party beneficiaries to this Agreement.

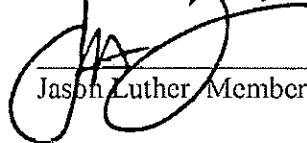
12.16 Severability. In the event that any provision hereof is determined to be void, illegal, invalid, or unenforceable, such provision shall be substituted with a provision that is valid and enforceable that is as similar as possible to the original provision or, if the same is not possible, the provision shall be severed from the remainder of the Agreement, which shall remain in full force and effect.

*[remainder of page left blank; signatures follow]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date(s) set forth below, but effective as of the Effective Date.

**PURCHASER:**

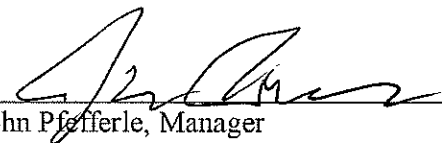
LUTHER GROUP, LLC:

  
\_\_\_\_\_  
Jason Luther, Member

Date: October \_\_\_\_\_, 2019

**SELLER:**

FOX VALLEY INVESTMENT PROPERTIES, LLC:

  
\_\_\_\_\_  
John Pfefferle, Manager

Date: October 17<sup>TH</sup>, 2019

**EXHIBIT A**

**LEGAL DESCRIPTION**

(Seller to insert legal description here)

6.59 acre vacant lot at the Southeast corner of Evergreen and Lightning Drives, Appleton, WI  
Tax Key No. 311651051

## EXHIBIT B

### GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT (this "Assignment") is made as of \_\_\_\_\_, 2018, by and between Fox Valley Investment Properties, LLC, a Wisconsin limited liability company, ("Assignor"), and Luther Group, LLC, a Wisconsin limited liability company ("Assignee").

#### Recitals

This Assignment is made with respect to the following facts:

A. Assignor and Assignee are parties to a certain Purchase and Sale Agreement dated October \_\_\_\_\_, 2019 (as amended, the "Purchase Contract").

B. Pursuant to the Purchase Contract, Assignor has this date conveyed to Assignee the real property legally described in Exhibit A attached hereto (the "Real Property").

C. Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee all of Assignor's right, title and interest in and to certain other rights and other matters more fully described below.

#### Assignment

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby transfers, grants, conveys and assigns to Assignee, to the extent assignable, all of Assignor's right, title and interest in and to the following:

(a) Any and all governmental permits, licenses, certificates of occupancy, other certificates and authorizations relating to the use, occupancy or operation of the Real Property; and

(b) Any and all other rights, privileges and appurtenances owned by Assignor and in any way related to, or used in connection with, the operation of the Real Property.

2. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed a duplicate original.

*[remainder of page blank; signatures follow]*

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

**ASSIGNOR:**

FOX VALLEY INVESTMENT PROPERTIES, LLC:

\_\_\_\_\_  
John Pfefferle, Manager

**ASSIGNEE:**

LUTHER GROUP, LLC:

\_\_\_\_\_  
Jason Luther, Member