



# City of Appleton

100 North Appleton Street  
Appleton, WI 54911-4799  
www.appleton.org

## Meeting Agenda - Final Community & Economic Development Committee

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Wednesday, June 26, 2019

4:30 PM

Council Chambers, 6th Floor

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1. Call meeting to order
2. Roll call of membership
3. Approval of minutes from previous meeting

[19-0882](#) CEDC Minutes from 6-12-19

**Attachments:** [CEDC Minutes 6-12-19.pdf](#)

#### 4. Public Hearings/Apearances

#### 5. Action Items

[19-0883](#) **\*\*CRITICAL TIMING\*\*** Request to approve the Offer to Purchase from Valley Tool, Inc. or its assigns to purchase Lots 1 and 2 on Goodland Drive in the Northeast Industrial Park Plat No. 4 consisting of approximately 2.92 acres, at a purchase price of \$107,000 (\$36,643.84 per acre) and authorize staff to negotiate and execute an option to purchase for Lot 3 in the Northeast Industrial Park, Plat Number 4 with terms defined in Addendum A (#10)

**Attachments:** [Valley Tool Memo 6-26-19.pdf](#)

[Valley Tool OTP Lots 1 & 2 Goodland Dr 6-18-19.pdf](#)

[Valley Tool Memo 5-15-19.pdf](#)

[Valley Tool - Counter Offer No. 3.pdf](#)

[Valley Tool Memo 4-19-19.pdf](#)

[Valley Tool OTP Lots 1-2-3 Goodland Dr 4-17-19.pdf](#)

[Valley Tool - Counter Offer 1\\_2.pdf](#)

[NEIP Plat No 4 Covenants and Restrictions.pdf](#)

[Map Available Sites NE Bus Park 04182019.pdf](#)

[NEBPUilities.pdf](#)

[19-0884](#) The Community and Economic Development Committee may go into closed session pursuant to State Statute §19.85(1)(e) for the purpose of discussing real estate negotiations regarding the potential sale of Lots 1, 2 and 3 on Goodland Drive in the Northeast Industrial Park Plat No. 4 and then reconvene into open session

[19-0796](#) Resolution #5-R-19: Rededication and Revitalization of Soldier's Square

**Attachments:** [#5-R-19 Solider's Square.pdf](#)

[Reso #5-R-19 Memo to CEDC 6-12-19.pdf](#)

**Legislative History**

6/12/19	Community & Economic Development Committee	held
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**6. Information Items**

**7. Adjournment**

*Notice is hereby given that a quorum of the Common Council may be present during this meeting, although no Council action will be taken.*

*Any questions about items on this meeting are to be directed to Karen Harkness, Director, Community and Economic Development Department at 920-832-6468.*

*Reasonable Accommodations for Persons with Disabilities will be made upon Request and if Feasible.*



# City of Appleton

100 North Appleton Street  
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## Meeting Minutes - Final Community & Economic Development Committee

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Wednesday, June 12, 2019

4:30 PM

Council Chambers, 6th Floor

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1. Call meeting to order

**Meeting called to order at 4:30 p.m.**

2. Roll call of membership

**Present:** 3 - Reed, Alderperson Lobner and Alderperson Van Zeeland

**Excused:** 2 - Coenen and Alderperson Thao

*Others present:*

*Pam Seidl, Fox Cities Convention & Visitors Bureau*

*Mike Faucett, MPM LLC*

*Chris Faucett, MPM LLC*

3. Approval of minutes from previous meeting

[19-0792](#)

CEDC Minutes from 5-22-19

**Attachments:** [CEDC Minutes 5-22-19.pdf](#)

**Alderperson Lobner moved, seconded by Alderperson Van Zeeland, that the Minutes be approved. Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Reed, Alderperson Lobner and Alderperson Van Zeeland

**Excused:** 2 - Coenen and Alderperson Thao

4. Public Hearings/Appearances

[19-0811](#)

Presentation by Executive Director Pam Seidl of the 2018 Fox Cities Convention & Visitors Bureau (CVB) Annual Report and Visitor Spending as well as update on CVB initiatives and branding process

**Attachments:** [FCCVB 2018 Annual Report FINAL 2 single pages.pdf](#)  
[Fox Cities Visitor Spending 2018 Summary.pdf](#)  
[Fox Cities Visitor Spending 2018 Handout.pdf](#)  
[FCCVB National Tourism Week Flyer.pdf](#)  
[FoxCitiesCVB\\_2019Update\\_PowerPoint.pdf](#)

**This Appearance by Pam Seidl was presented.**

[19-0793](#)

2018 Consolidated Annual Performance and Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) Program (Associated with Action Item #19-0794)

**Attachments:** [CAPER 2018 - CEDC Public Hearing Notice.pdf](#)

**This public hearing was held, and no one spoke on the item.**

## 5. Action Items

[19-0794](#)

Request to approve the 2018 Consolidated Annual Performance and Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) Program

**Attachments:** [CAPER memo to CEDC 06-12-19.pdf](#)  
[2018-2019 CAPER Draft for Public Comment.pdf](#)

**Aldersperson Lobner moved, seconded by Aldersperson Van Zeeland, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Reed, Aldersperson Lobner and Aldersperson Van Zeeland

**Excused:** 2 - Coenen and Aldersperson Thao

[19-0796](#)

Resolution #5-R-19: Rededication and Revitalization of Soldier's Square

**Attachments:** [#5-R-19 Solider's Square.pdf](#)  
[Reso #5-R-19 Memo to CEDC 6-12-19.pdf](#)

**Aldersperson Lobner moved, seconded by Aldersperson Van Zeeland, that the Report Action Item be held until the next meeting. Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Reed, Aldersperson Lobner and Aldersperson Van Zeeland

**Excused:** 2 - Coenen and Aldersperson Thao

[19-0819](#)

**\*\*CRITICAL TIMING\*\*** Request to approve the Real Estate Purchase Agreement from Scannell Properties, LLC or its assigns to purchase Lots 26, 27, 28 and 29 in Southpoint Commerce Park Plat 3 and Parcel ID #31-9-5712-00, comprising a total of approximately 30.44 acres, subject to lot size as determined by survey, at a purchase price of \$1,004,520.00 (\$33,000 per acre)

**Attachments:** [Appleton PSA Cover Letter 6.6.19.pdf](#)  
[Scannell Properties LLC OTP Memo to CEDC 6-12-19.pdf](#)  
[Purchase Agreement v2 6.7.2019 Eisenhower Dr. Scannell.pdf](#)  
[SPCP Scannell Properties Map.pdf](#)  
[SPCP Deed Restrictions.pdf](#)

**Alderson Lobner moved, seconded by Reed, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Reed, Alderson Lobner and Alderson Van Zeeland

**Excused:** 2 - Coenen and Alderson Thao

[19-0820](#)

The Community and Economic Development Committee may go into closed session pursuant to State Statute §19.85(1)(e) for the purpose of discussing real estate negotiations regarding the potential sale of Lots 26, 27, 28 and 29 in Southpoint Commerce Park Plat 3 and Parcel ID #31-9-5712-00 and then reconvene into open session

**The Committee did not go into closed session.**

[19-0830](#)

**\*\*CRITICAL TIMING\*\*** Request to approve the Offer to Purchase from Messenger Property Management, LLC (MPM LLC) and/or assignee to purchase Lots 5 and 11 in Southpoint Commerce Park Plat 1, consisting of approximately 2.32 and 3.25 acres respectively, at a purchase price of \$222,800 (\$40,000 per acre) and staff be authorized to negotiate and execute a development or like agreement providing City investment in the project of up to 50% of the land purchase amount (50% of \$222,800 = \$111,400)

**Attachments:** [Messenger Property Management OTP Memo to CEDC 6-12-19.pdf](#)  
[Messenger Property Management OTP Lots 5 & 11.pdf](#)  
[Messenger Property Management OTP Lots 5 & 11 pages 4.5.pdf](#)  
[SPCP Messenger Property Management Map.pdf](#)  
[SPCP Deed Restrictions.pdf](#)

**Alderson Van Zeeland moved, seconded by Alderson Lobner, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Reed, Alderson Lobner and Alderson Van Zeeland

**Excused:** 2 - Coenen and Alderperson Thao

[19-0831](#)

The Community and Economic Development Committee may go into closed session pursuant to State Statute §19.85(1)(e) for the purpose of discussing real estate negotiations regarding the potential sale of Lots 5 and 11 in Southpoint Commerce Park Plat 1 and then reconvene into open session

**The Committee did not go into closed session.**

## 6. Information Items

[19-0795](#)

Late payment of farming rent due to City of Appleton per lease agreement between the City and Vanderlinden Custom Heifer Raising, LLC for land in Southpoint Commerce Park

**Attachments:** [Southpoint Farm Rent Memo to CEDC 6-12-19.pdf](#)  
[ExecutedLeaseAgreement COAandVanderlinden May2015.pdf](#)

**This item was presented and discussed.**

## 7. Adjournment

**Alderson Lobner moved, seconded by Alderson Van Zeeland, that the meeting be adjourned at 5:06 p.m. Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Reed, Alderson Lobner and Alderson Van Zeeland

**Excused:** 2 - Coenen and Alderson Thao



# MEMORANDUM

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"...meeting community needs...enhancing quality of life."

TO: Community & Economic Development Committee (CEDC)

FROM: Matt Rehbein, Economic Development Specialist

DATE: June 26, 2019

RE: Offer to Purchase – Lots 1 & 2 Northeast Industrial Park Plat #4, Valley Tool, Inc. or its assigns

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The City of Appleton received an Offer to Purchase from Valley Tool, Inc. or its assigns for Lots 1 & 2 in the Northeast Industrial Park Plat Number 4, comprised of approximately 2.92 acres on June 18, 2019.

Valley Tool, Inc. anticipates initially constructing a 10,000 square foot warehouse with loading dock and ability to expand to a facility consisting of the warehouse, a 10,000 - 15,000 sq. ft. manufacturing plant with 700-amp electrical capacity, and an office area totaling up to 6,000 sq. ft. Construction is anticipated to be complete by Fall 2019.

The Offer to Purchase is for \$107,000.00, which is \$36,643.84 per acre. The City is currently asking \$40,000 per acre. There are no real estate commissions requested for this transaction.

The remaining terms of this offer are aligned with those previously approved by Council on June 5, 2019 with one exception. This Offer to Purchase is for Lots 1 & 2 only, with an option to purchase Lot 3 within the next 3 years for \$53,850 (\$37,395.83 per acre). The original offer, submitted on April 16, 2019 was for Lots 1, 2 & 3.

**Staff Recommendation:**

The City of Appleton accept the Offer-To-Purchase for Lots 1 & 2 in the Northeast Industrial Park, Plat 4 from Valley Tool, Inc. and authorize staff to negotiate and execute an option to purchase for Lot 3 in the Northeast Industrial Park, Plat Number 4 **BE APPROVED.**

**WB-13 VACANT LAND OFFER TO PURCHASE**

Attorney  
1 **LICENSEE DRAFTING THIS OFFER ON** June 18, 2019 **[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, Valley Tool, Inc. or its assigns

4 \_\_\_\_\_, offers to purchase the Property  
5 known as [Street Address] Lots 1 and 2 (Tax Parcel Nos. 311535900 and 311536000) Goodland Drive  
6 in the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Appleton \_\_\_\_\_, County of \_\_\_\_\_ Outagamie \_\_\_\_\_, 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:** One Hundred Seven Thousand  
9 \_\_\_\_\_ Dollars (\$ 107,000.00).

10 ■ **EARNEST MONEY of \$** \_\_\_\_\_ ~~accompanies this Offer and earnest money of \$ 2,000.00~~  
11 will be mailed, or commercially or personally delivered within \_\_\_\_\_ 7 \_\_\_\_\_ days of acceptance to ~~listing broker or~~  
12 the title company to be used for title commitment.

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: \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_

18 ■ **NOT INCLUDED IN PURCHASE PRICE:** \_\_\_\_\_  
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: M-1

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 \_\_\_\_\_ See Addendum A \_\_\_\_\_ 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): Matthew Rehbein, Economic Development Specialist

41 Buyer's recipient for delivery (optional): Attorney Michael R. Demerath, Hager, Dewick & Zuengler, S.C.

42  (2) **Fax:** fax transmission of the document or written notice to the following telephone number:  
43 Seller: ( \_\_\_\_\_ ) Buyer: ( \_\_\_\_\_ )

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: 100 N. Appleton Street, Appleton, WI, 54911

50 Delivery address for Buyer: 200 South Washington Street, Suite 200, Green Bay, WI 54301

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): matthew\_rehbein@appleton.org

56 E-Mail address for Buyer (optional): mdemerath@hdz-law.com

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 See Addendum A

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

70 **CLOSING** This transaction is to be closed no later than August 15, 2019  
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 N/A

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

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  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 Seller represents and warrants that the Property is~~  
97 ~~not leased~~ Insert additional terms, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525.

98 **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  **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 or  
 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.**

189  
190  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written See Addendum A  
191 [INSERT LOAN PROGRAM OR SOURCE] first mortgage  
192 loan commitment as described below, within \_\_\_\_\_ days of acceptance of this Offer. The financing selected shall be in an  
193 amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_ years, amortized over not less than \_\_\_\_\_ years.  
194 Initial monthly payments of principal and interest shall not exceed \$ \_\_\_\_\_. Monthly payments may  
195 also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance  
196 premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination  
197 fee in an amount not to exceed \_\_\_\_\_ % of the loan. If the purchase price under this Offer is modified, the financed amount,  
198 unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the  
199 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.**

201  **FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_ %.

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

206 If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 458-464 or  
207 526-534 or in an addendum attached per line 525.

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

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

220 **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, Seller may terminate this  
221 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  
222 commitment.

223 **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already  
224 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of  
225 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is  
226 named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this  
227 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  
228 extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain  
229 any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

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

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

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

**DEFINITIONS CONTINUED FROM PAGE 3**

- 245 **DEFINITIONS CONTINUED FROM PAGE 3**
- 246 n. Defects in any septic system or other sanitary disposal system on the Property or out-of-service septic systems not  
247 closed/abandoned according to applicable regulations.
- 248 o. Subsoil conditions which would significantly increase the cost of development including, but not limited to, subsurface  
249 foundations or waste material; organic or non-organic fill; dumpsites where pesticides, herbicides, fertilizer or other toxic  
250 or hazardous materials or containers for these materials were disposed of in violation of manufacturer's or government  
251 guidelines or other laws regulating said disposal; high groundwater; adverse soil conditions (e.g. low load bearing  
252 capacity, earth or soil movement, slides) or excessive rocks or rock formations.
- 253 p. Brownfields (abandoned, idled or under-used land which may be subject to environmental contamination) or other  
254 contaminated land, or soils contamination remediated under PECFA, the Department of Natural Resources (DNR)  
255 Remediation and Redevelopment Program, the Agricultural Chemical Cleanup Program or other similar program.
- 256 q. Lack of legal vehicular access to the Property from public roads.
- 257 r. Homeowners' associations, common areas shared or co-owned with others, zoning violations or nonconforming uses,  
258 conservation easements, restrictive covenants, rights-of-way, easements, easement maintenance agreements, or use of  
259 a part of Property by non-owners, other than recorded utility easements.
- 260 s. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to  
261 impose assessments against the real property located within the district.
- 262 t. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
- 263 u. Property tax increases, other than normal annual increases; completed or pending property tax reassessment of the  
264 Property, or proposed or pending special assessments.
- 265 v. Burial sites, archeological artifacts, mineral rights, orchards or endangered species.
- 266 w. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
- 267 x. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.
- 268 y. Significant odor, noise, water intrusion or other irritants emanating from neighboring property.
- 269 z. Substantial crop damage from disease, insects, soil contamination, wildlife or other causes; diseased trees; or substantial  
270 injuries or disease in livestock on the Property or neighboring properties.
- 271 aa. Existing or abandoned manure storage facilities on the Property.
- 272 bb. Impact fees, or other conditions or occurrences that would significantly increase development costs or reduce the value of  
273 the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.
- 274 cc. The Property is subject to a mitigation plan required by DNR rules related to county shoreland zoning ordinances that  
275 obligates the owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county  
276 (see lines 139-145).
- 277 dd. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion  
278 charge or the payment of a use-value conversion charge has been deferred.
- 279 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding  
280 the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.  
281 Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under  
282 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive  
283 registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the  
284 occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours  
285 per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as  
286 closing, expire at midnight of that day.
- 287 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would  
288 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would  
289 significantly shorten or adversely affect the expected normal life of the premises.
- 290 ■ **FIXTURE:** A "Fixture" is an item of property which is physically attached to or so closely associated with land so as to be  
291 treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage  
292 to the premises, items specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited  
293 to, all: perennial crops; garden bulbs; plants; shrubs and trees and fences; storage buildings on permanent foundations and  
294 docks/piers on permanent foundations.
- 295 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented on lines 18-19.**
- 296 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.
- 297 **PROPERTY DEVELOPMENT WARNING** If Buyer contemplates developing Property for a use other than the current use,  
298 there are a variety of issues which should be addressed to ensure the development or new use is feasible. Municipal and  
299 zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or  
300 uses and therefore should be reviewed. Building permits, zoning variances, Architectural Control Committee approvals,  
301 estimates for utility hook-up expenses, special assessments, changes for installation of roads or utilities, environmental audits,  
302 subsoil tests, or other development related fees may need to be obtained or verified in order to determine the feasibility of  
303 development of, or a particular use for, a property. Optional contingencies which allow Buyer to investigate certain of these  
304 issues can be found at lines 306-350 and Buyer may add contingencies as needed in addenda (see line 525). Buyer should  
305 review any plans for development or use changes to determine what issues should be addressed in these contingencies.

Property Address: Lots 1 and 2, Goodland Drive, Appleton, Wisconsin

306  **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: See Addendum A

307 \_\_\_\_\_  
308 \_\_\_\_\_

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 \_\_\_\_\_ 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  **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 M-1  
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  **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   
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~~  
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: See Addendum A

337 \_\_\_\_\_  
338  **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. \*\*except as noted on Addendum A

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 See Addendum A CHECK ALL THAT APPLY, and delivering  
349 written notice to Seller if the item cannot be obtained, all within \_\_\_\_\_ days of acceptance for the Property for its proposed  
350 use described at lines 306-308. \*\*\* prior to the Closing Date

351  **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  **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: \_\_\_\_\_

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 N/A

424 \_\_\_\_\_  
425 \_\_\_\_\_  
426 \_\_\_\_\_

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 10 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**

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 \_\_\_\_\_  
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 25 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 \_\_\_\_\_ Addendum A \_\_\_\_\_ is/are made part of this Offer.

526 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_  
527 \_\_\_\_\_  
528 \_\_\_\_\_  
529 \_\_\_\_\_  
530 \_\_\_\_\_  
531 \_\_\_\_\_  
532 \_\_\_\_\_  
533 \_\_\_\_\_  
534 \_\_\_\_\_

535 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_ Attorney Michael R. Demerath

536 Hager, Dewick & Zuengler, S.C. on June 18, 2019

537 (x) By: Valley Tool, Inc. \_\_\_\_\_ Gary Tetzlaff \_\_\_\_\_ 6/20/19

538 Buyer's Signature ▲ Print Name Here ▶ Gary Tetzlaff, CEO/CFO Date ▲

539 (x) \_\_\_\_\_  
540 Buyer's Signature ▲ Print Name Here ▶ \_\_\_\_\_ 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.**  
City of Appleton

546 (x) By: \_\_\_\_\_  
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 ▲

ADDENDUM A TO VACANT LAND OFFER TO PURCHASE

SELLER: CITY OF APPLETON

BUYER: VALLEY TOOL, INC.

The following terms and conditions shall be a part of the WB-13 Vacant Land Offer to Purchase (the "Offer") dated June 18, 2019, by and between Valley Tool, Inc. and/or Assigns (collectively, the "Buyer") and City of Appleton (the "Seller") for the real estate located at Lots 1 and 2 on Goodland Drive (Tax Parcel Nos. 311535900 and 311536000), City of Appleton, Outagamie County, Wisconsin (the "Property"). The Offer and this Addendum are hereinafter together referred to as the "Contract." In the event of any conflict between the provisions of this Addendum and the Offer, the provisions of this Addendum shall control.

1. Binding Acceptance Date/Common Council Approval. This Contract is binding upon both parties only if a copy of the accepted Contract is delivered to Buyer on or before July 12, 2019 at 5:00 p.m. CST. The foregoing notwithstanding, this Contract is contingent upon Common Council approval of the terms of the Contract on July 10, 2019.

2. Disclosure Report. Seller shall provide Buyer a completed Seller's Disclosure Report within 10 days of acceptance. Buyer's obligation to close this transaction is contingent upon such Disclosure Report being acceptable to Buyer, in Buyer's sole discretion.

3. Financing Contingency. Buyer's obligation to close this transaction is contingent upon Buyer obtaining, on or prior to the date of expiration of the Closing Date, a written loan commitment for the purchase of and construction on the Property from a lending institution of Buyer's choice in an amount and with such terms and conditions acceptable to Buyer, within Buyer's sole discretion.

4. Proposed Use. Buyer is purchasing the Property for the purpose of initially constructing a 10,000 sq. ft. warehouse with loading dock and the ability to expand to a facility consisting of the warehouse, a 10,000 to 15,000 sq.ft. manufacturing plant with 700-amp electrical capacity, and an office area totaling up to 6,000 sq. ft. Buyer's proposed use of the Property shall be consistent with the development objectives of the City for similarly situated parcels within the same business park, except that, the foregoing notwithstanding, Seller agrees Buyer may put a loading dock and large overhead door facing east towards Zuehlke Drive subject to City staff approval of final site plans and elevations.

5. Governmental Approvals. Buyer's obligation to conclude this transaction is contingent upon Buyer receiving, at Buyer's sole expense (except as set forth below), no later than the Closing Date, from all applicable governmental (including the Seller) entities and agencies, any and all permits, approvals, easements, and licenses necessary or desirable, in Buyer's sole discretion and without any conditions objectionable to Buyer, for Buyer's development and proposed use of the Property, including but not limited to, building permits, site plan approvals, signage approvals, access approvals, rezoning of the Property to a zoning classification which permits Buyer's development and proposed use of the Property, and all other governmental and non-governmental approvals, consents, agreements, licenses, and permits. Seller agrees to assist, at no cost to Buyer, in Buyer's efforts to obtain the foregoing and to take such action as may be reasonably necessary therefor. All costs related to the rezoning of the Property to a zoning classification which permits Buyer's development and proposed use of the Property shall be paid by Seller.

6. Utilities. Seller represents and warrants that electricity, gas, sewer and water are available to the extent and at the location indicated on the attached Exhibit A.

7. Stormwater Detention/Retention Pond. Buyer's obligation to conclude this transaction is contingent upon Buyer purchasing from the City of Appleton all or part of Lot 10 (Tax Parcel No. 311536800), Zuehlke Drive, City of Appleton, Wisconsin, if deemed necessary for Buyer's installation of a stormwater detention/retention pond to address water displacement due to the Buyer's proposed use of the Property. Buyer and Seller agree to work in good faith to facilitate a fair and expeditious sale pursuant to this item, if necessary.

8. Environmental Warranty and Contingency.

A. Warranty. To the best of Seller's knowledge, there have been no acts or omissions committed by Seller or any other party relating to the Property (whether or not such acts or omissions were permitted by Seller) which may have constituted or resulted in the creation of a federal or state common law nuisance (whether or not the nuisance condition was foreseen by Seller) or which did not or may not have complied with federal and state environmental laws; the Property does not contain any asbestos or asbestos containing products; the Property has never been used as a dump or industrial waste disposal area; the Property is in compliance with all federal, state and local (including local sewerage district) laws, rules, regulations, ordinances, codes and orders governing, establishing, limiting or otherwise affecting the discharge or disposal of air pollutants, water pollutants, processed waste water or solid, hazardous or toxic wastes; there are no underground or aboveground storage tanks on the Property; there are no pending or threatened actions or proceedings against Seller or the Property with regard to the foregoing by the local municipality, the local sewerage district, the Wisconsin Dept. of Natural Resources, the U.S. Environmental Protection Agency or any other governmental entity, and there is no basis for any such action or proceeding; no solid or

hazardous waste has been disposed of or stored on the Property during any time that Seller owned the Property, any such wastes having been properly hauled from the Property; and Seller has no notice or knowledge of any solid, toxic or hazardous wastes having ever been disposed of or stored on the Property. Buyer's receipt of any environmental information, reports, audits or assessments of the Property will not reduce, release, discharge or in any way affect Seller's warranties and representations hereunder.

B. Contingency. Buyer's obligation to close this transaction is also contingent upon Buyer obtaining, no later than the Closing Date, at Buyer's expense, a current Phase I environmental audit of the Property by an environmental engineer satisfactory to Buyer, which audit shall indicate that no hazardous condition, material or substance, recognized environmental conditions or any other condition, whether material or immaterial, exist on, in or with respect to the Property, or any real estate adjacent to the Property. If such Phase I environmental report indicates that a Phase II investigation is necessary to ascertain or confirm whether a hazardous material, condition, substance or recognized environmental condition exists on, in or with respect to the Property, Buyer may, at Buyer's expense, perform such Phase II investigation, and the time to satisfy this contingency and the closing of this transaction shall be extended up to an additional sixty (60) days from the date Buyer received the Phase I environmental report.

9. Access and Cooperation. Buyer and Buyer's agents, representatives, and/or contractors shall have until the Closing an irrevocable right and license to enter upon the Property for the purpose of making surveys, inspections and performing any required tests, including any and all soil borings and soil testing, environmental testing, and the like, and for any other purpose reasonably related to Buyer's contemplated purchase, development, and use of the Property. Buyer shall, and shall request of its agents, representatives and contractors to, perform such work in a manner that does not unreasonably cause disturbance to the Property. Buyer shall not permit any liens to attach to the Property by reason of such activities.

10. Option to Purchase - Lot 3. Buyer's obligation to conclude this transaction is contingent upon Seller and Buyer executing, prior to or at Closing, a mutually acceptable Option to Purchase Agreement, whereby Seller shall grant Buyer an option to purchase Lot 3, Goodland Drive (Tax Parcel No. 311536100) located immediately adjacent to the Property for a period of three (3) years from the Closing of the purchase under this Contract. Such Option to Purchase Agreement shall be recorded in the office of the Outagamie County Register of Deeds following Closing, at Buyer's expense. The Option to Purchase Agreement shall include such terms and conditions which are normal and customary for agreements of such nature and shall, among other things, provide that the purchase price under the Option to Purchase shall be Fifty-three Thousand Eight Hundred Fifty Dollars (\$53,850.00) and Buyer shall pay an Option Fee of Five Hundred Thirty-Eight and 50/100 Dollars (\$538.50) per year to maintain the Option to Purchase.

Dated this \_\_\_ day of June, 2019.

**BUYER:**  
**VALLEY TOOL, INC.**

By:   
Gary Tetzlaff, CEO/CFO

Dated this 20 day of June, 2019.

**SELLER:**  
**CITY OF APPLETON**

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

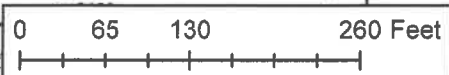
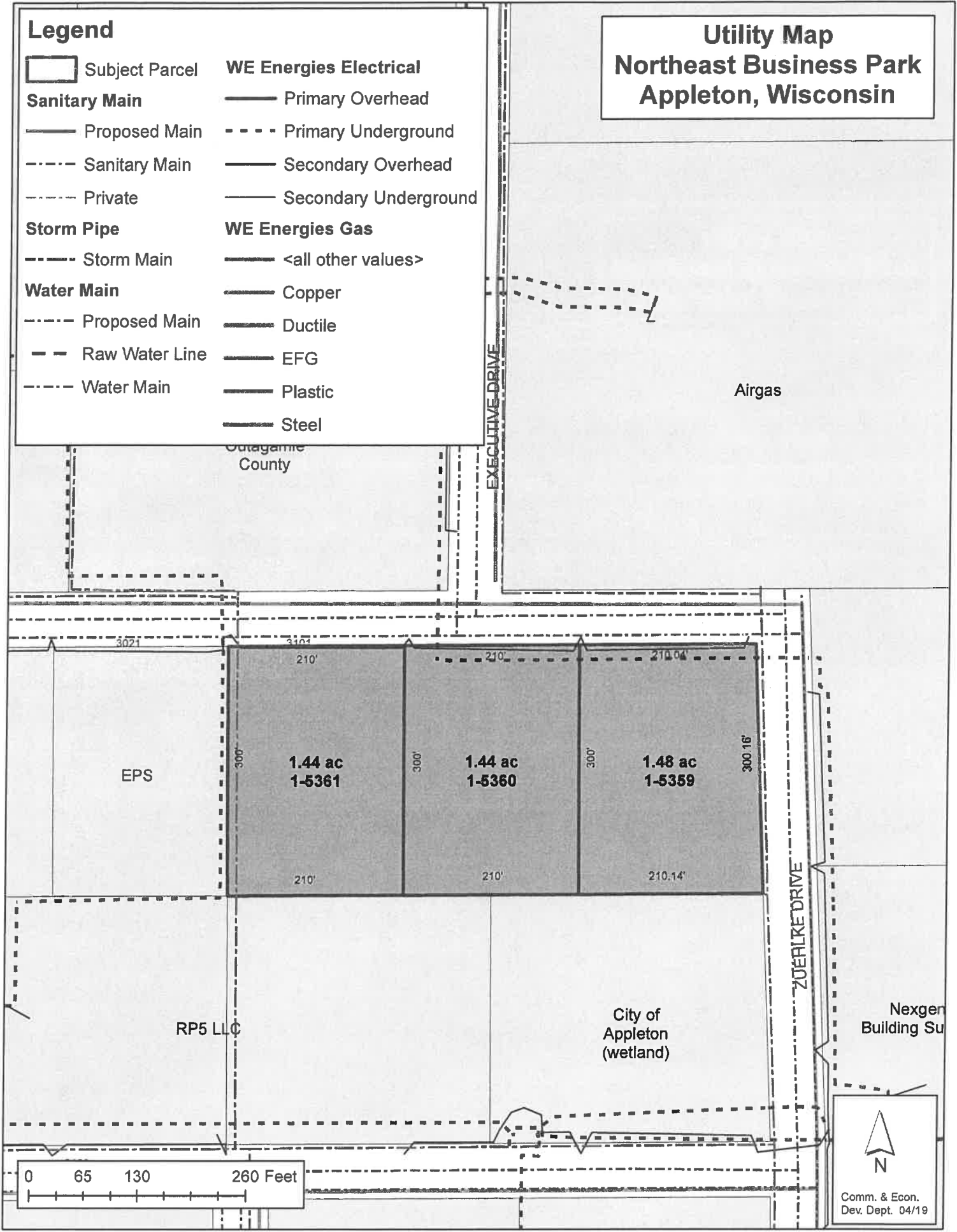
EXHIBIT A

UTILITIES

# Legend

- |  |                |                               |                       |
|--|----------------|-------------------------------|-----------------------|
|  | Subject Parcel | <b>WE Energies Electrical</b> |                       |
|  | Sanitary Main  | <b>WE Energies Gas</b>        |                       |
|  | Proposed Main  |                               | Primary Overhead      |
|  | Sanitary Main  |                               | Primary Underground   |
|  | Private        |                               | Secondary Overhead    |
|  | Storm Pipe     |                               | Secondary Underground |
|  | Storm Main     |                               | Copper                |
|  | Water Main     |                               | Ductile               |
|  | Proposed Main  |                               | EFG                   |
|  | Raw Water Line |                               | Plastic               |
|  | Water Main     |                               | Steel                 |
|  |                |                               | <all other values>    |

## Utility Map Northeast Business Park Appleton, Wisconsin



N
   
 Comm. & Econ.
   
 Dev. Dept. 04/19



# MEMORANDUM

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“...meeting community needs...enhancing quality of life.”

TO: Community & Economic Development Committee (CEDC)

FROM: Matt Rehbein, Economic Development Specialist

DATE: May 15, 2019

RE: Offer to Purchase – Lots 1, 2 & 3 Northeast Industrial Park Plat #4, Valley Tool, Inc. or its assigns

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The City of Appleton received an Offer to Purchase from Valley Tool, Inc. or its assigns for Lots 1, 2 & 3 in the Northeast Industrial Park Plat Number 4, comprised of approximately 4.36 acres on April 16, 2019. Counter Offer #1 was submitted by the City on May 2, 2019, and the City received Counter Offer #2 on May 6, 2019.

Valley Tool, Inc. anticipates initially constructing a 10,000 square foot warehouse with loading dock and ability to expand to a facility consisting of the warehouse, a 10,000 - 15,000 sq. ft. manufacturing plant with 700-amp electrical capacity, and an office area totaling up to 6,000 sq. ft. Construction is anticipated to be complete by Fall 2019.

The Offer to Purchase is for \$160,000.00, which is \$36,697.25 per acre. The City is currently asking \$40,000 per acre. There are no real estate commissions requested for this transaction.

Counter Offer #2 re-affirms the items addressed in Counter Offer #1, adjusts dates for acceptance and closing, and requests a variance to the Deed Restrictions and Covenants to allow a loading dock and overhead door facing east towards Zuehlke Drive.

Staff has not received a site plan or elevation at the time of this memorandum. Based on prior conversations with the buyer, their intent is to build in phases, beginning on the northeast corner of the three lots and expanding to the east in future phases. Having two frontages further limits options for location of docks and doors. It is not unprecedented to have docks facing the road in other parts of the Northeast Industrial Park. Staff believes this is a reasonable request and recommends approval of the variance, with final details of location, screening, landscaping etc. to be approved administratively through the site plan process.

**Staff Recommendation:**

Staff shall submit the attached Counter Offer #3 to the Offer-To-Purchase for Lots 1, 2 & 3 in the Northeast Industrial Park, Plat 4 from Valley Tool, Inc., approving a variance to the Deed Restrictions and Covenants subject to staff approval of final site plans and elevations of east side **BE APPROVED**.



**WB-44 COUNTER-OFFER**

Counter-Offer No. 3 by (~~Buyer~~/Seller) **STRIKE ONE**

**NOTE: Number this Counter-Offer sequentially, e.g. Counter-Offer No. 1 by Seller, Counter-Offer No. 2 by Buyer, etc.**

1 The Offer to Purchase dated 04/16/2019 and signed by Buyer Valley Tool, Inc.  
2 for purchase of real estate at Lots 1, 2, and 3 (Tax Parcel Nos. 311535900, 311536000, 311536100) on Goodland Drive  
3 \_\_\_\_\_ is rejected and the following Counter-Offer is hereby made.

4 **CAUTION: This Counter-Offer does not include the terms or conditions in any other counter-offer or multiple**  
5 **counter-proposal unless incorporated by reference.**

6 All terms and conditions remain the same as stated in the Offer to Purchase except the following: \_\_\_\_\_

7 Line 24 - Seller represents that the Property is zoned M-1.

8 Line 30 - Binding acceptance date is June 6, 2019 at 5:00 P.M. contingent upon Common Council approval of the terms  
9 of the Offer and this Counter-Offer on June 5, 2019.

10 Line 70 - This transaction is to be closed no later than July 1, 2019.

11 Line 315 - Verification that the property is zoned M-1.

12 Line 338-342 are replaced with the following: Seller represents that electricity, gas, sewer and water are available to  
13 the extent and at the location indicated on the attached Exhibit A.

14 \_\_\_\_\_

15 Addendum A

16 Item 1 - Seller's disclosure report to be provided within 10 days of acceptance.

17 Item 3 - Add: Buyer's proposed use of Property shall be consistent with the development objectives of the City for  
18 similarly situated parcels within the same business park, except that, the foregoing notwithstanding, Seller agrees

19 Buyer may put a loading dock and large overhead door facing east towards Zuehlke Drive subject to City staff  
20 approval of final site plans and elevations.

21 Item 5 - Buyer's obligation to conclude this transaction is contingent upon Buyer purchasing from Seller all or part of  
22 Lot 10 (Tax Parcel No. 311536800), Zuehlke Drive, Appleton, Wisconsin if deemed necessary for Buyer's installation

23 of a stormwater detention/retention pond to address water displacement due to the Buyer's proposed use of the  
24 Property. Buyer and Seller agree to work in good faith to facilitate a fair and expeditious sale pursuant to this item,

25 if necessary.

26 \_\_\_\_\_

27 \_\_\_\_\_

28 The attached \_\_\_\_\_ is/are made part of this Counter-Offer.

29 Any warranties, covenants and representations made in this Counter-Offer survive the closing of this transaction.

30 This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the  
31 Party making the Counter-Offer on or before See Line 10 above

32 (Time is of the Essence). Delivery of the accepted Counter-Offer may be made in any manner specified in the Offer to  
33 Purchase, unless otherwise provided in this Counter-Offer.

34 **NOTE: The Party making this Counter-Offer may withdraw the Counter-Offer prior to acceptance and delivery**  
35 **as provided at lines 30-33.**

36 This Counter-Offer was drafted by Deputy City Atty Christopher R. Behrens on 05/16/2019  
37 City of Appleton by: Licensee and Firm ▲ Date ▲

38 (x) \_\_\_\_\_ (x) \_\_\_\_\_  
39 Signature of Party Making Counter-Offer ▲ Date ▲ Signature of Party Accepting Counter-Offer ▲ Date ▲

40 Print name ► Print name ►

41 (x) \_\_\_\_\_ (x) \_\_\_\_\_  
42 Signature of Party Making Counter-Offer ▲ Date ▲ Signature of Party Accepting Counter-Offer ▲ Date ▲

43 Print name ► Print name ►

44 This Counter-Offer was presented by \_\_\_\_\_ on \_\_\_\_\_  
45 Licensee and Firm ▲ Date ▲

46 This Counter-Offer is (rejected)(countered) **STRIKE ONE** (Party's Initials) \_\_\_\_\_ (Party's Initials) \_\_\_\_\_

47 **NOTE: Provisions from a previous Counter-Offer may be included by reproduction of the entire provision or**  
48 **incorporation by reference. Provisions incorporated by reference may be indicated in the subsequent Counter-**  
49 **Offer by specifying the number of the provision or the lines containing the provision. In transactions involving**  
50 **more than one Counter-Offer, the Counter-Offer referred to should be clearly specified.**



# MEMORANDUM

---

"...meeting community needs...enhancing quality of life."

TO: Community & Economic Development Committee (CEDC)

FROM: Matt Rehbein, Economic Development Specialist

DATE: April 19, 2019

RE: Offer to Purchase – Lots 1, 2 & 3 Northeast Industrial Park Plat #4, Valley Tool, Inc. or its assigns

---

The City of Appleton has received an Offer to Purchase from Valley Tool, Inc. or its assigns for Lots 1, 2 & 3 in the Northeast Industrial Park, Plat Number 4, comprised of approximately 4.36 acres.

Valley Tool, Inc. anticipates initially constructing a 10,000 square foot warehouse with loading dock and ability to expand to a facility consisting of the warehouse, a 10,000 - 15,000 sq. ft. manufacturing plant with 700-amp electrical capacity, and an office area totaling up to 6,000 sq. ft. Construction is anticipated to be complete by Fall 2019.

The Offer to Purchase is for \$160,000.00, which is \$36,697.25 per acre. The City is currently asking \$40,000.00 per acre. There are no real estate commissions requested for this transaction.

Staff recommends submitting a Counter Offer to Valley Tool, Inc. (draft attached) to reflect the following terms:

- Line 24 Zoning: Property is zoned M-1 Industrial Park District
- Line 30 Binding Acceptance: Assuming Council approves the Counter Offer on May 1, 2019, Buyer be given until May 3, 2019 at 5:00 p.m. to accept
- Line 315 Property is zoned M-1 Industrial Park District
- Line 338 Utilities: Electricity, gas, sewer and water are located in the street per the attached map

## Addendum A

- 1) Disclosure Report: Seller shall provide a completed Seller's Disclosure Report within 10 days of acceptance.
- 3) Confirmation that the use as outlined in the Offer to Purchase is consistent with the development objectives of the City.
- 5) Buyer and Seller agree to work in good faith to negotiate a sale of all or portion of Lot 10 if deemed necessary for stormwater detention/retention.

## **Staff Recommendation:**

Staff shall submit the attached Counter-Offer to the Offer-To-Purchase for Lots 1, 2 & 3 in the Northeast Industrial Park, Plat 4 from Valley Tool, Inc. **BE APPROVED.**

**WB-13 VACANT LAND OFFER TO PURCHASE**

Attorney Licensee DRAFTING THIS OFFER ON April 16, 2019 [DATE] IS (AGENT OF BUYER)

(AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) ~~STRIKE THOSE NOT APPLICABLE~~

**GENERAL PROVISIONS** The Buyer, Valley Tool, Inc. or its assigns

offers to purchase the Property known as [Street Address] Lots 1, 2 and 3 (Tax Parcel Nos. 311535900, 311536000, 311536100), Goodland Drive in the City of Appleton, County of Outagamie, Wisconsin (Insert additional description, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525), on the following terms:

■ PURCHASE PRICE: One Hundred Sixty Thousand Dollars (\$ 160,000.00).

■ EARNEST MONEY of \$ 2,000.00 accompanies this Offer and earnest money of \$ 2,000.00 will be mailed, or commercially or personally delivered within 7 days of acceptance to listing broker or the title company to be used for title commitment.

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

■ INCLUDED IN PURCHASE PRICE: Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Offer not excluded at lines 18-19, and the following additional items:

\_\_\_\_\_

■ NOT INCLUDED IN PURCHASE PRICE: \_\_\_\_\_

\_\_\_\_\_

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

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

■ ZONING: Seller represents that the Property is zoned: Commercial

**ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.

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

**BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before April 26, 2019 at 5:00 P.M. CST. Seller may keep the Property on the market and accept secondary offers after binding acceptance of this Offer.

**CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**

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

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

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

Seller's recipient for delivery (optional): Matthew Rehbein, Economic Development Specialist

Buyer's recipient for delivery (optional): Michael R. Demerath, Hager, Dewick & Zuengler, S.C.

(2) **Fax:** fax transmission of the document or written notice to the following telephone number:  
Seller: (\_\_\_\_\_) Buyer: (\_\_\_\_\_) \_\_\_\_\_

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

(4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party, 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.

Delivery address for Seller: 100 N. Appleton Street, Appleton, WI, 54911

Delivery address for Buyer: 200 South Washington Street, Suite 200, Green Bay, WI, 54301

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

E-Mail address for Seller (optional): matthew.rehbein@appleton.org

E-Mail address for Buyer (optional): mdemerath@hdz-law.com

**PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller 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 See Addendum A

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

70 **CLOSING** This transaction is to be closed no later than May 31, 2019  
 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 N/A

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  \_\_\_\_\_  
 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  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 Seller represents and warrants that the Property is  
 97 not leased. Insert additional terms, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525.

98  **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  **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 or  
 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)**

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

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

200 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 201 OR 202.**

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

206 If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 458-464 or  
207 526-534 or in an addendum attached per line 525.

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

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

220 **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, Seller may terminate this  
221 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  
222 commitment.

223 **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already  
224 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of  
225 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is  
226 named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this  
227 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  
228 extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain  
229 any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

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

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

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

245 **DEFINITIONS CONTINUED FROM PAGE 3**

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

307  
308  
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 \_\_\_\_\_ 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  **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 Commercial  
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  **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**  
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: See Addendum A

337  
338  **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 to lot line \_\_\_\_\_ ;  
341  gas to lot line \_\_\_\_\_ ;  sewer to lot line \_\_\_\_\_ ;  water to lot line \_\_\_\_\_ ;  
342  telephone to lot line \_\_\_\_\_ ;  cable to lot line \_\_\_\_\_ ;  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. \*\* except as noted on Addendum A

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 See Addendum A **[CHECK ALL THAT APPLY]**, and delivering  
349 written notice to Seller if the item cannot be obtained, all within \_\_\_\_\_ days of acceptance for the Property for its proposed  
350 use described at lines 306-308. \*\*\* prior to the Closing Date

351  **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  **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: \_\_\_\_\_

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 N/A \_\_\_\_\_  
424 \_\_\_\_\_  
425 \_\_\_\_\_  
426 \_\_\_\_\_

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 10 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** \_\_\_\_\_  
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 \_\_\_\_\_

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 25 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 Addendum A is/are made part of this Offer.

526 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_  
527 \_\_\_\_\_  
528 \_\_\_\_\_  
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530 \_\_\_\_\_  
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533 \_\_\_\_\_  
534 \_\_\_\_\_

535 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_ Attorney Michael R. Demerath

536 Hager, Dewick & Zuengler, S.C. on April 16, 2019  
537 Valley Tool, Inc.

537 (x) By: Mary Tetzlaff, CEO/CFO Gary Tetzlaff 4/16/2019  
538 Buyer's Signature ▲ Print Name Here ▶ Gary Tetzlaff, CEO/CFO Date ▲

539 (x) \_\_\_\_\_ Date ▲  
540 Buyer's Signature ▲ Print Name Here ▶ \_\_\_\_\_

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.**

City of Appleton

546 (x) By: \_\_\_\_\_ Date ▲  
547 Seller's Signature ▲ Print Name Here ▶ \_\_\_\_\_

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

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 ▲

ADDENDUM A TO VACANT LAND OFFER TO PURCHASE

SELLER: CITY OF APPLETON

BUYER: VALLEY TOOL, INC.

The following terms and conditions shall be a part of the WB-13 Vacant Land Offer to Purchase (the "Offer") dated April 16, 2019, by and between Valley Tool, Inc. and/or Assigns (collectively, the "Buyer") and City of Appleton (the "Seller") for the real estate located at Lots 1, 2 and 3 on Goodland Drive (Tax Parcel Nos. 311535900, 311536000, and 311536100), City of Appleton, Outagamie County, Wisconsin (the "Property"). The Offer and this Addendum are hereinafter together referred to as the "Contract." In the event of any conflict between the provisions of this Addendum and the Offer, the provisions of this Addendum shall control.

1. Disclosure Report. Seller shall provide Buyer a completed Seller's Disclosure Report within 5 days of acceptance. Buyer's obligation to close this transaction is contingent upon such Disclosure Report being acceptable to Buyer, in Buyer's sole discretion.

2. Financing Contingency. Buyer's obligation to close this transaction is contingent upon Buyer obtaining, on or prior to the date of expiration of the Closing Date, a written loan commitment for the purchase of and construction on the Property from a lending institution of Buyer's choice in an amount and with such terms and conditions acceptable to Buyer, within Buyer's sole discretion.

3. Proposed Use. Buyer is purchasing the Property for the purpose of initially constructing a 10,000 sq. ft. warehouse with loading dock and the ability to expand to a facility consisting of the warehouse, a 10,000 to 15,000 sq.ft. manufacturing plant with 700-amp electrical capacity, and an office area totaling up to 6,000 sq. ft.

4. Governmental Approvals. Buyer's obligation to conclude this transaction is contingent upon Buyer receiving, at Buyer's sole expense (except as set forth below), no later than the Closing Date, from all applicable governmental (including the Seller) entities and agencies, any and all permits, approvals, easements, and licenses necessary or desirable, in Buyer's sole discretion and without any conditions objectionable to Buyer, for Buyer's development and proposed use of the Property, including but not limited to, building permits, site plan approvals, signage approvals, access approvals, rezoning of the Property to a zoning classification which permits Buyer's development and proposed use of the Property, and all other governmental and non-governmental approvals, consents, agreements, licenses, and permits. Seller agrees to assist, at no cost to Buyer, in Buyer's efforts to obtain the foregoing and to take such action as may be reasonably necessary

therefor. All costs related to the rezoning of the Property to a zoning classification which permits Buyer's development and proposed use of the Property shall be paid by Seller.

5. Stormwater Detention/Retention Pond. Buyer's obligation to conclude this transaction is contingent upon Buyer receiving a variance or easement from or entering into another agreement with the City of Appleton for the installation of a stormwater detention/retention pond located on Lot 10 (Tax Parcel No. 311536800), Zuehlke Drive, City of Appleton, Wisconsin, if said pond is or becomes necessary for water displacement due to Buyer's proposed use of the Property.

6. Environmental Warranty and Contingency.

A. Warranty. To the best of Seller's knowledge, there have been no acts or omissions committed by Seller or any other party relating to the Property (whether or not such acts or omissions were permitted by Seller) which may have constituted or resulted in the creation of a federal or state common law nuisance (whether or not the nuisance condition was foreseen by Seller) or which did not or may not have complied with federal and state environmental laws; the Property does not contain any asbestos or asbestos containing products; the Property has never been used as a dump or industrial waste disposal area; the Property is in compliance with all federal, state and local (including local sewerage district) laws, rules, regulations, ordinances, codes and orders governing, establishing, limiting or otherwise affecting the discharge or disposal of air pollutants, water pollutants, processed waste water or solid, hazardous or toxic wastes; there are no underground or aboveground storage tanks on the Property; there are no pending or threatened actions or proceedings against Seller or the Property with regard to the foregoing by the local municipality, the local sewerage district, the Wisconsin Dept. of Natural Resources, the U.S. Environmental Protection Agency or any other governmental entity, and there is no basis for any such action or proceeding; no solid or hazardous waste has been disposed of or stored on the Property during any time that Seller owned the Property, any such wastes having been properly hauled from the Property; and Seller has no notice or knowledge of any solid, toxic or hazardous wastes having ever been disposed of or stored on the Property. Buyer's receipt of any environmental information, reports, audits or assessments of the Property will not reduce, release, discharge or in any way affect Seller's warranties and representations hereunder.

B. Contingency. Buyer's obligation to close this transaction is also contingent upon Buyer obtaining, no later than the Closing Date, at Buyer's expense, a current Phase I environmental audit of the Property by an environmental engineer satisfactory to Buyer, which audit shall indicate that no hazardous condition, material or substance, recognized environmental conditions or any other condition, whether material or immaterial, exist on, in or with respect to the Property, or any real estate adjacent to the Property. If such Phase I environmental

report indicates that a Phase II investigation is necessary to ascertain or confirm whether a hazardous material, condition, substance or recognized environmental condition exists on, in or with respect to the Property, Buyer may, at Buyer's expense, perform such Phase II investigation, and the time to satisfy this contingency and the closing of this transaction shall be extended up to an additional sixty (60) days from the date Buyer received the Phase I environmental report.

7. Access and Cooperation. Buyer and Buyer's agents, representatives, and/or contractors shall have until the closing an irrevocable right and license to enter upon the Property for the purpose of making surveys, inspections and performing any required tests, including any and all soil borings and soil testing, environmental testing, and the like, and for any other purpose reasonably related to Buyer's contemplated purchase, development, and use of the Property. Buyer shall, and shall request of its agents, representatives and contractors to, perform such work in a manner that does not unreasonably cause disturbance to the Property. Buyer shall not permit any liens to attach to the Property by reason of such activities.

Dated this 16th day of April, 2019.

BUYER:  
VALLEY TOOL, INC.

By: *Gary Tetzlaff* CEO/CFO  
Gary Tetzlaff, CEO/CFO

SELLER:  
CITY OF APPLETON

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

**WB-44 COUNTER-OFFER**  
**Counter-Offer No. 1 by (~~Buyer~~/Seller) [STRIKE ONE]**

1 The Offer to Purchase dated 04/16/2019 and signed by Buyer, Valley Tool, Inc. by Gary Tezlaff, CEO/CFO,  
2 for purchase of real estate at Lots 1,2 and 3 (Tax Parcel Nos. 311535900, 311536000, 311536100) on Goodland Drive is  
3 rejected and the following Counter-Offer is hereby made. All terms and conditions remain the same as stated in the Offer to  
4 Purchase except the following: [CAUTION: This Counter-Offer does not include the terms or conditions in any other  
5 counter-offer unless incorporated by reference.]

6 Line 24 - Seller represents that the Property is zoned M-1.  
7 Line 30 - Binding acceptance date is May 3, 2019 at 5:00 p.m. contingent upon Common Council approval of the terms of the Offer and this Counter-Offer on May 1, 2019.  
8 Line 315 - verification that the Property is zoned M-1.  
9 Lines 338-342 are replaced with the following: Seller represents that electricity, gas, sewer and water are available to the extent and at the location indicated on the attached Exhibit A.

10 \_\_\_\_\_  
11 Addendum A  
12 Item 1 - Seller's Disclosure Report to be provided within 10 days of acceptance.  
13 Item 3 - Add: Buyer's proposed use of Property shall be consistent with the development objectives of the City for similarly situated parcels within the same business park.  
14 Item 5 - Buyer's obligation to conclude this transaction is contingent upon Buyer purchasing from Seller all or part of Lot 10 (Tax Parcel No. 311536800), Zuehlke Drive, Appleton, WI  
15 if deemed necessary for Buyer's installation of a stormwater detention/retention pond to address water displacement due to Buyer's proposed use of the Property. Buyer  
16 and Seller agree to work in good faith to facilitate a fair and expeditious sale pursuant to this item, if necessary.

17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
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29 \_\_\_\_\_  
30 \_\_\_\_\_  
31 \_\_\_\_\_

32 ANY WARRANTIES AND REPRESENTATIONS MADE IN THIS COUNTER-OFFER SURVIVE THE CLOSING OF THIS TRANSACTION.  
33 This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the Party making  
34 the Counter-Offer on or before 10 days from date of receipt of this Counter Offer (Time is of the Essence).  
35 Delivery of the accepted Counter-Offer may be made in any manner specified in the Offer to Purchase, unless otherwise provided  
36 in this Counter-Offer. **NOTE: The Party making this Counter-Offer may withdraw the Counter-Offer prior to acceptance and**  
37 **delivery as provided at lines 33 to 36.**

38 This Counter-Offer was drafted by Christopher R. Behrens, Deputy City Attorney on 04-19-2019

39 \_\_\_\_\_ Licensee and Firm ▲ \_\_\_\_\_ Date ▲  
40 \_\_\_\_\_

41 Signature of Party Making Counter-Offer ▲ Date ▲ Signature of Party Making Counter-Offer ▲ Date ▲

42 \_\_\_\_\_

43 Signature of Party Accepting Counter-Offer ▲ Date ▲ Signature of Party Accepting Counter-Offer ▲ Date ▲

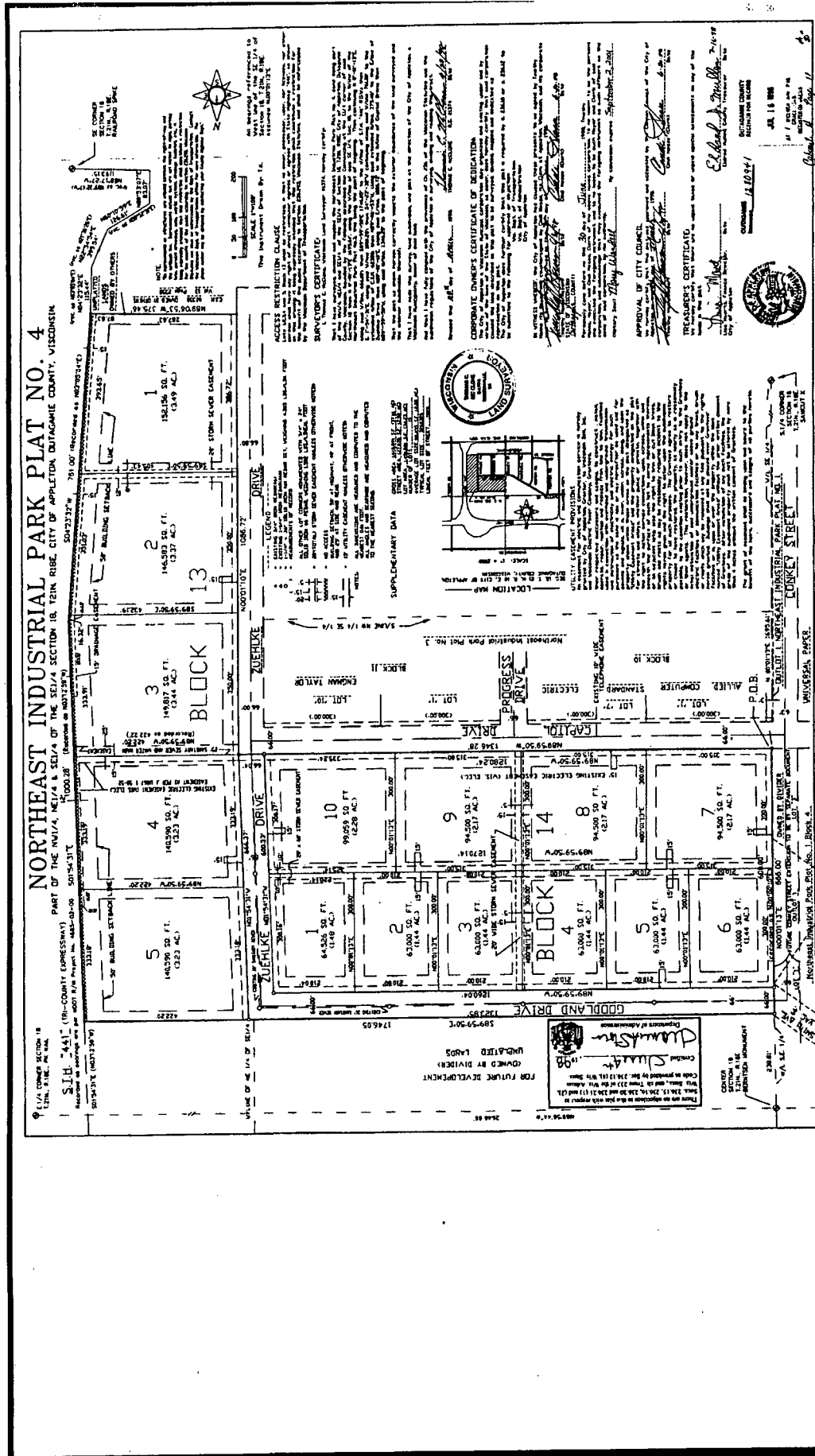
44 This Counter-Offer was presented by \_\_\_\_\_ on \_\_\_\_\_  
45 \_\_\_\_\_ Licensee and Firm ▲ \_\_\_\_\_ Date ▲

46 This Counter-Offer is (~~rejected~~) (~~countered~~) [STRIKE ONE] (Party's Initials) \_\_\_\_\_ (Party's Initials) \_\_\_\_\_

47 Note: Provisions from a previous Counter-Offer may be included by reproduction of the entire provision or incorporation by reference.  
48 Provisions incorporated by reference may be indicated in subsequent Counter-Offer by specifying the number of the provision or the  
49 lines containing the provision. In transactions involving more than one Counter-Offer, the Counter-Offer referred to should be clearly  
50 specified. **NOTE: Number this Counter-Offer sequentially, e.g. Counter-Offer No.1 by Seller, Counter-Offer No.2 by Buyer, etc.**

51 ATTACH THIS COUNTER-OFFER TO THE OFFER TO PURCHASE - INSERT SOCIAL SECURITY NUMBERS OR FEIN





J 19086 1 34

**1215803**

Document Number

**DECLARATION OF COVENANTS  
AND RESTRICTIONS**

Document Title

**OUTAGAME COUNTY  
RECEIVED FOR RECORD**

**JAN 22 1987**

**AT 2 O'CLOCK PM  
GRACE HERB  
REGISTER OF DEEDS**

Recording Area

Name and Return Address  
David M. Sanders, Esq.  
Reinhart, Boerner, et al.  
P.O. Box 92900  
Milwaukee, WI 53202-0900

Parcel Identification Number (PIN)

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## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is dated as of July 19, 1996 by the City of Appleton, a municipal corporation.

### RECITALS

A. The City of Appleton (the "City") conveyed the real estate described on Exhibit A attached hereto (the "Guardian Parcel") to the Guardian Life Insurance Company of America ("Guardian").

B. In connection with the conveyance of the Guardian Parcel, the City granted Guardian an option to purchase two additional parcels of real estate described on Exhibit B (the "Option Parcel") and Exhibit C (the "Restricted Parcel") attached hereto.

C. Guardian has agreed to terminate its option to purchase the Restricted Parcel and in consideration of such termination, the City has agreed to subject the Restricted Parcel to the covenants and restrictions set forth below.

NOW, THEREFORE, the City, pursuant to Resolution of the Common Counsel of the City of Appleton, duly adopted on February 7, 1996, hereby declares that the real property described on Exhibit C attached hereto and defined above as the "Restricted Parcel" is and shall be held, used, transferred, sold and conveyed subject to the following conditions, restrictions and covenants (the "Restrictions"):

1. Restrictions on Use. The Restricted Parcel shall be developed and used solely for commercial office and/or warehouse distribution purposes and for no other purposes.
2. Restrictions on Construction. Any and all improvements constructed on the Restricted Parcel shall be constructed in accordance with City zoning ordinances which permit commercial office and/or warehouse distribution uses, without any variance from the building standards contained in such zoning ordinances.
3. Successors and Assigns; Runs with the Land. The Restrictions shall inure to the benefit of the owner of the Guardian Parcel and the Option Parcel and the holder of an option to purchase any portion of the Option Parcel (collectively the "Benefited Owners") and shall be binding upon the City and its successors in title

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to the Restricted Parcel, it being the intent of the City that the Restrictions shall be "covenants running with the land."

4. Amendment. This Declaration and the Restrictions shall not be modified or amended except in a writing signed by all of the Benefited Owners and the City.

5. No Waiver. No waiver or acquiescence in or consent to any breach of the Restrictions shall be construed as, or constitute a waiver of, acquiescence in or consent to any further or succeeding breach of the Restrictions.

6. Cost of Enforcement. If any Benefited Owner prevails in any action to enforce the Restrictions, such Benefited Owner shall be entitled to recover, as part of its costs, reasonable attorney's fees.

7. Severability. If any of the terms of this Declaration shall, to any extent, be invalid or unenforceable under applicable law, the remaining terms shall not be affected and shall be enforceable to the fullest extent permitted by applicable law.

THE CITY OF APPLETON, a municipal corporation

BY

Richard D. Brown  
Its MAYOR

Attest

Cindi Kasse  
Its CITY CLERK

J 19086 | 37.

State of Wisconsin )  
Outagamie : SS  
Milwaukee County )

This instrument was acknowledged before me on July 25, 1996  
by Richard DeBrox and Cindi Heese, as  
Mayor and City Clerk  
respectively of the City of Appleton.



Mary Wendell  
(  
Notary Public, State of Wisconsin  
My commission MARY WENDELL  
Notary Public, State of Wisconsin  
My commission Expires Sept. 7, 1997

This instrument was drafted by, and after recording should be returned

to:

David M. Sanders, Esq.  
Reinhart, Boerner, Van Deuren,  
Norris & Rieselbach, s.c.  
P.O. Box 92900  
Milwaukee, WI 53202-0900

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Exhibit A

Legal Description of the Guardian Parcel

Part of Lot 1, Block 1, of the Northeast Industrial Park Plat No. 1 and Part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , and the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 18, Township 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin, more fully described as follows:

Commencing at the West  $\frac{1}{4}$  corner of said Section 18; thence South 88 degrees 20 minutes 30 seconds East, along the east-west  $\frac{1}{4}$  line, 40.02 feet to the point of beginning; thence North 06°48'34" East, along the easterly line of Ballard Road (C.T.H. "E"), 303.40 feet; thence South 88 degrees 53 minutes 59 seconds East, along said easterly line, 10.00 feet; thence North 02 degrees 50 minutes 18 seconds East, along said easterly line, 534.03 feet; thence North 38 degrees 49 minutes 31 seconds East, along the easterly line of said Ballard Road and the southerly line of U.S.H. "41", a distance of 114.63 feet; thence North 70 degrees 31 minutes 35 seconds East, along the southerly line of said U.S.H. "41", a distance of 438.44 feet; thence North 79 degrees 34 minutes 57 seconds East, along said southerly line, 203.59 feet; thence North 88 degrees 55 minutes 59 seconds East, along said southerly line, 870.74 feet; thence South 01 degree 07 minutes 42 seconds East, 1393.62 feet to a point on the northerly line of Capitol Drive and the southerly line of Lot 1, Block 1 of the Northeast Industrial Park Plat No. 1; thence North 55 degrees 08 minutes 30 seconds West, along the northerly line of Capitol Drive, 83.27 feet; thence along the arc of a curve to the left, in said northerly line, 627.54 feet, which has a radius of 1083.00 feet, a central angle of 33 degrees 12 minutes 00 seconds, a chord of 618.80 feet that bears North 71 degrees 44 minutes 30 seconds West to a point of tangency on the east-west  $\frac{1}{4}$  line; thence North 88 degrees 20 minutes 30 seconds West, along said east-west  $\frac{1}{4}$  line, 1000.29 feet to the point of beginning.

J 19086 | 39

EXHIBIT B

Legal Description of the Option Parcel

Lots 3 and 4 according to CERTIFIED SURVEY MAP NO. 514 filed in Volume 3 of Certified Survey Maps on Page 514 as Document No. 952763; being a part of Blocks 1, 2, 3 and 4 and vacated street in the Northeast

Industrial Park Plat No. 1 and part of the North West 1/4 of the South West 1/4 and also lands in part of the South 1/2 of the North West 1/4 of Section 18, T21N, R18E, City of Appleton, Outagamie County, Wisconsin, excepting therefrom that portion of said Lot 1 heretofore conveyed to the State of Wisconsin, Department of Transportation by Deed recorded in Jacket 16927 Images 1-2.

J 19086 | 40

EXHIBIT C

Legal Description of the Restricted Parcel

Part of the North West 1/4 and the North East 1/4 of the SOUTH EAST 1/4 of Section 18, T21N, R18E, City of Appleton, Outagamie County, Wisconsin, more fully described as follows: Commencing at the East 1/4 corner of said Section; thence North 89 degrees 56 minutes 44 seconds west, along the East-West 1/4 line, 908.90 feet; thence South 01 degree 54 minutes 31 seconds east, along the West line of the Tri-County Expressway, 903.75 feet; thence north 89 degrees 59 minutes 50 seconds west, 324.05 feet to the point of beginning; thence continuing north 89 degrees 59 minutes 50 seconds west, 1444.17 feet to the East line of the Northeast Industrial Park Plat; thence north 00 degrees 00 minutes 10 seconds east, 904.81 feet to the Northeast corner of said plat and the center of Section 18; thence south 89 degrees 56 minutes 44 seconds east, along the East-West 1/4 line, 1138.49 feet; thence south 29 degrees 57 minutes 19 seconds east, 369.55 feet; thence south 11 degrees 43 minutes 28 seconds east, 596.06 feet to the point of beginning.



**1283748**

Document Number

**DECLARATION OF DEED RESTRICTIONS**

**APPLICABLE TO ALL PROPERTIES SOLD IN THE NORTHEAST INDUSTRIAL PARK PLAT #4**

As recorded on July 16, 1998 in the office of the Register of Deeds, Outagamie County, WI, as Document #1280941, Cabinet H. Page II.

This conveyance is made subject to the following conditions, covenants, and understandings which shall be binding upon the vendee and his/her heirs, successors, and assigns:

**I. Setbacks:**

- A. *From Yard:* No building shall be constructed on the site nearer than forty (40) feet of the right-of-way of any public street or highway. In the case of corner lots, both forty (40) foot setbacks will apply.
- B. *Side and Rear Yards:* Minimum side and rear yards shall be twenty-five (25) feet.
- C. *State Highways:* A fifty (50) foot building setback shall be observed along U.S.H. 41 and U.S.H 441.

**II. Land Use:**

- A. Permitted Uses
  - 1. Manufacturing except for Block 14;
  - 2. Research, development and testing laboratories except for Block 14;
  - 3. Wholesaling, warehousing and distribution;
  - 4. Office operations only if they are an integral part of and a necessary adjunct to a permitted use;
  - 5. Retail sales of products manufactured on site and clearly an accessory use to the primary use of the site except for Block 14;
  - 6. Other land uses may be considered for approval by the Community Development Committee if a determination is made that the project fits the development objectives of the City.

**III. Building Standards**

- A. Any building erected shall be at least 5,000 square feet in area and occupy at least 10 percent of the land area.
- B. Buildings shall be designed by an Architect or Engineer. No side, elevation or facade of a building or structure shall be unexposed to public view; consequently, all sides, elevations, or facades of all buildings and structures shall be visually pleasing and architecturally and aesthetically comparable with the surrounding environment.
- C. The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
  - 1. Brick;

**OUTAGAMIE COUNTY  
RECEIVED FOR RECORD**

**AUG - 5 1998**

**AT 10 O'CLOCK A.M. P.M.  
GRACE HERB  
REGISTER OF DEEDS**

Record and return to:  
City of Appleton  
City Attorney's Office  
100 N. Appleton Street  
Appleton, WI 54911-4799

**ENVELOPE**

6/18/00

Parcel Identification Number (PIN)

2. Architectural precast concrete panels (surface finish to be painted, stained or exposed aggregate);
  3. Decorative concrete block (for no more than 50% of the exterior building wall area);
  4. Cut stone;
  5. Exterior insulation and finish systems such as Drivit or Sunlar;
  6. Wood;
  7. Metal panels (permitted only for building expansion walls);
  8. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Community Development Committee on a case-by-case basis. The Community Development Committee may assign this review of plans to the Economic Development Department.
- D. Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness, and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other buildings and structures in the Park.
- E. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- F. No loading dock shall face the street unless the site configuration is such that it is unavoidable. In that event, the Community Development Committee shall review and approve the location of the loading dock.
- G. Ancillary structures will be approved by the Community Development Committee. Approval may be granted only if such structures are necessary to the principal use of the building site, are in architectural and aesthetic conformance with other buildings or structures on the site, are properly screened, meet all requirements of these covenants and are otherwise satisfactory to the Community Development Committee at its sole discretion.

#### IV. *Landscaping:*

- A. *Landscape Plan:* The landscaping upon any building site or lot shall be carried out in accordance with a detailed landscaping plan which has been reviewed and approved in writing by the City's site plan review committee. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall show all ground cover and mulch areas, landscape and construction materials, and construction details.
- B. *Landscaping Methods:* Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkler systems, fountains, storm run-off retention ponds, reflective ponds, and landscape lighting.
- C. *Plant Material:* Selected plant material should provide for a variety of shade trees, evergreen trees, and shrubs, ornamental trees and shrubs and ground covers. Plant material selection shall take into consideration the following:
1. Disease and insect resistance;
  2. Hardiness to the area;
  3. The ability to provide seasonal interest;
  4. Future maintenance considerations;
  5. Ability of plant material to accomplish its intended purpose in each placement.

D. *Time for Completion:* All landscaping shall be completed within ninety (90) days following occupancy, or as soon thereafter as weather will allow if such period occurs within winter months.

E. *Maintenance:* The owner shall be responsible for maintaining all landscaping as approved on the original plan for his site and adjacent unpaved street rights-of-way. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Department of Planning. Landscaped areas, materials, fixtures, and improvements shall be maintained by the owner of the building site, or by such owner's long-term lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, replacement of dead plantings, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the building site landscaping in a healthy state of growth and visually attractive in appearance.

If the owner or the owner's assigns fail to maintain the landscaping and site per the approved landscaping plan in this section, the City of Appleton or its Agent has the right to enter the site and conduct such maintenance and to seek full reimbursement.

#### V. *Parking, Loading*

Off-street parking and loading areas shall be provided on each building site and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all site occupants and visitors and comply with the City's Zoning Ordinance regarding parking standards. All parking and loading areas shall be paved. Parking shall be permitted within the minimum front yard setback area, however, it shall be located no closer than fifteen (15) feet to the public right-of-way line. An 80 percent screen with a minimum height of 2½' shall be provided for all parking areas adjacent to the street right-of-way.

#### VI. *Outdoor Storage:*

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets with a suitable fence, vegetation, berm, or combination thereof. Screening shall be attractive in appearance and in keeping with the architectural quality of the main structure. Said storage shall be limited to behind the front line of the building on the property, and within the building setback lines. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. Storage of fuel oil or other bulk fluids must be underground. All storage areas shall be paved.

#### VII. *Signs:*

Identification signs shall be permitted to promote only the name and/or trademark of the owner or tenant of the parcel on which the sign is placed. Signs, lighting, etc., are to be indicated on the final site plan submitted to the Community Development Committee for review. Ground signs must be set back 10 feet from the right-of-way line and must be of a low profile design subject to approval by the Committee. Building signs must comply with the City Sign Code.

#### VIII. *Maintenance Responsibilities:*

- A. Each owner shall keep its property, all contiguous street right-of-way to the edge of the pavement, and all drainage and easement areas in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following:
  1. The removal of all litter, trash, refuse, and wastes;
  2. Compliance with the City's noxious weed control ordinance, including the mowing of all grass areas;
  3. The maintenance of exterior lighting, signs, and mechanical facilities;
  4. The keeping of all exterior building surfaces in a cleaned, well-maintained condition;
  5. The maintenance of all drainage ways including the removal of all debris, weeds, and silt.
- B. The owner of any undeveloped lands shall maintain said lands free of rubbish, noxious weeds, and mosquito breeding pond conditions.

**IX. *Site Plan Review:***

Prior to the construction or alteration of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the plans for such building or improvements shall be submitted to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. The plans shall be reviewed within thirty days (30) days after they have been submitted and approval or disapproval given in writing.

**X. *Approval of Plans:***

Before commencing the construction or alterations of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the owner shall first submit its building plans, specifications, site and landscape plans, and an elevation sketch of all improvements to be placed thereon to the Community Development Committee for its written approval. In the event the Committee or its designee shall fail to approve or disapprove in writing such building plans, specifications, site and landscape plans, and elevation sketch within thirty (30) days after they have been submitted to them, such approval will not be required and these covenants and restrictions will be deemed to have been complied with. The Community Development Committee may delegate this review of plans to the Economic Development Department.

**XI. *Repurchase Rights:***

**Failure to Build:** In the event the owner of land purchased from the City of Appleton does not commence construction of a building within one (1) year after the date of purchase, ownership shall revert to the City. The City shall pay the following repurchase price: the sum of the original purchase price and all special assessments which may have been paid by the buyer or levied against the property after the date of purchase minus the sum of any unpaid property taxes, proration of the current years property taxes to date of closing, title insurance policy premium or cost of warranty abstract, and any liens and encumbrances on the property of a definite or ascertainable amount. Further, repurchase price shall be adjusted by the amount equal to the amount of an option fee for that year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

**Resale of Vacant Land:** In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject repurchase of the property unless an extension of time may be mutually agreed upon and set forth in writing. In the event the City does not elect to repurchase the property, the owner may sell the land, but these Declarations of Covenants and Restrictions shall run with the land and be binding on the subsequent owner. The purchase price shall be computed as in Article XII above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

**XII. *Subdivision of Lots:***

After a lot has been purchased, such lot shall not be further subdivided without the written consent of the Community Development Committee. No owner may sell, lease or rent less than all of the lot without the written consent of the Community Development Committee. The Community Development Committee may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

**XIII. *Waiver of Notice:***

All land sold before major assessable improvements are completed in the business park site shall be subject to the purchaser's waiving notice of assessments and hearings, and such waiver shall be part of the negotiations.

**XIV. *Variances:***

Notwithstanding anything contained herein to the contrary, the City of Appleton expressly reserves the right at any time to authorize in writing variances from the strict applications of these covenants and restrictions, or any one or more of them, where the circumstances, in its sole and exclusive judgement, justifies the granting of same.

XV *Right to Enter*

The Community Development Committee shall have the right to enter upon any building site or other lot within the park for the purpose of ascertaining whether the owner of said site or lot is complying with these covenants and restrictions.

XVI. *Enforcement:*

In the event that the owner fails to perform in accordance with these covenants and restrictions, the Common Council, upon recommendation of the Community Development Committee, may take whatever corrective measures it deems appropriate and assess the cost thereof against the property in the same manner as a special assessment or special charge. The Common Council shall give at least thirty (30) days notice to the vendee of any violation and the steps required to correct it prior to taking any action to cure such violation.

XVII. *Invalidation:*

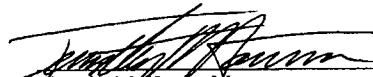

The invalidation of any one of the covenants or restrictions herein set forth or the failure to enforce any of said covenants and restrictions at the time of its violation shall in no way affect any of the other covenants or restrictions nor be deemed a waiver of the right to enforce the same thereafter.

XVIII. *Term:*

Each lot shall be conveyed subject to the covenants and restrictions set forth herein, all of which are to run with the land and shall be binding on all parties and all persons claiming them for a period of thirty (30) years from the date of this Declaration of Covenants and Restrictions is recorded, after which time said covenants and restrictions as are then in force and effect shall be automatically renewed for successive periods of ten (10) years each, unless an instrument terminating such covenants and restrictions is recorded with the Outagamie County Register of Deeds by the Common Council as evidenced by a resolution duly adopted by a majority of all members of the Common Council.

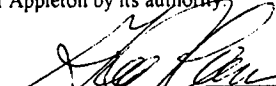
*IN WITNESS WHEREOF*, the said City of Appleton has caused these presents to be signed at Appleton, Wisconsin, this 3rd day of August, 1998.

**CITY OF APPLETON:**

  
\_\_\_\_\_  
Timothy M. Hanna, Mayor  
  
\_\_\_\_\_  
Cindi Hesse, City Clerk

STATE OF WISCONSIN)  
  )ss  
OUTAGAMIE COUNTY)

Personally came before me this 3rd day of August, 1998, the above named Timothy M. Hanna, Mayor, and Cindi Hesse, City Clerk, of the City of Appleton, to me known to be the persons who executed the foregoing instrument as such officials of the City of Appleton by its authority.

  
\_\_\_\_\_  
Greg J. Carman, Notary Public  
State of Wisconsin

My commission is permanent.

This instrument was drafted by Greg J. Carman, City Attorney.

AMENDED  
DECLARATION OF  
DEED RESTRICTIONS .

1373472

Document Number State of Wisconsin

APPLICABLE TO ALL PROPERTIES SOLD IN THE  
NORTHEAST INDUSTRIAL PARK PLAT #4

As recorded on August 5, 1998 in the office of the Register of  
Deeds, Outagamie County, WI, as Document #1283748.

This conveyance is made subject to the following conditions,  
covenants, and understandings which shall be binding upon the  
vendee and his/her heirs, successors, and assigns:

1. **Setbacks:**

- A. **Front Yard:** No building shall be constructed on the site nearer than forty (40) feet of the right-of-way of any public street or highway. In the case of corner lots, both forty (40) foot setbacks will apply.
- B. **Side and Rear Yards:** Minimum side and rear yards shall be twenty-five (25) feet.
- C. **State Highways:** A fifty (50) foot building setback shall be observed along U.S.H. 41 and U.S.H 441.

2. **Land Use:**

A. **Permitted Uses**

- 1. Manufacturing except for Block 14;
- 2. Research, development and testing laboratories except for Block 14;
- 3. Wholesaling, warehousing and distribution;
- 4. Office operations only if they are an integral part of and a necessary adjunct to a permitted use;
- 5. Retail sales of products manufactured on site and clearly an accessory use to the primary use of the site except for Block 14;
- 6. Other land uses may be considered for approval by the Community Development Committee if a determination is made that the project fits the development objectives of the City.

3. **Building Standards**

- A. Any building erected shall be at least 5,000 square feet in area and occupy at least 10 percent of the land area.
- B. Buildings shall be designed by an Architect or Engineer. No side, elevation or facade of a building or structure shall be unexposed to public view; consequently, all sides, elevations, or facades of all buildings and structures shall be visually pleasing and architecturally and aesthetically comparable with the surrounding environment.
- C. The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
  - 1. Brick;
  - 2. Architectural precast concrete panels (surface finish to be painted, stained or exposed aggregate);
  - 3. Decorative concrete block (for no more than 50% of the exterior building wall area);

OUTAGAMIE COUNTY  
RECEIVED FOR RECORD

JUL 18 2000

AT 11 O'CLOCK A.M. P.M.  
JANICE FLENZ  
REGISTER OF DEEDS

Record and Return to:  
City Attorney's Office  
City of Appleton  
100 North Appleton Street  
Appleton, WI 54911-4799

CJ/1800

4. Cut stone;
  5. Exterior insulation and finish systems such as DriVIT or Sunlar;
  6. Wood;
  7. Metal panels (permitted only for building expansion walls);
  8. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Community Development Committee on a case-by-case basis. The Community Development Committee may assign this review of plans to the Economic Development Department.
- D. Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness, and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other buildings and structures in the Park.
- E. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- F. No loading dock shall face the street unless the site configuration is such that it is unavoidable. In that event, the Community Development Committee shall review and approve the location of the loading dock.
- G. Ancillary structures will be approved by the Community Development Committee. Approval may be granted only if such structures are necessary to the principal use of the building site, are in architectural and aesthetic conformance with other buildings or structures on the site, are properly screened, meet all requirements of these covenants and are otherwise satisfactory to the Community Development Committee at its sole discretion.
4. **Landscaping:**
- A. **Landscape Plan:** The landscaping upon any building site or lot shall be carried out in accordance with a detailed landscaping plan which has been reviewed and approved in writing by the City's site plan review committee. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall show all ground cover and mulch areas, landscape and construction materials, and construction details.
- B. **Landscaping Methods:** Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkler systems, fountains, storm run-off retention ponds, reflective ponds, and landscape lighting.
- C. **Plant Material:** Selected plant material should provide for a variety of shade trees, evergreen trees, and shrubs, ornamental trees and shrubs and ground covers. Plant material selection shall take into consideration the following:
1. Disease and insect resistance;
  2. Hardiness to the area;
  3. The ability to provide seasonal interest;
  4. Future maintenance considerations;
  5. Ability of plant material to accomplish its intended purpose in each placement.
- D. **Time for Completion:** All landscaping shall be completed within ninety (90) days following occupancy, or as soon thereafter as weather will allow if such period occurs within winter months.
- E. **Maintenance:** The owner shall be responsible for maintaining all landscaping as approved on the original plan for his site and adjacent unpaved street rights-of-way. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Department of Planning. Landscaped areas, materials, fixtures, and improvements shall be maintained by the owner of the building site, or by such owner's long-term lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, replacement of dead plantings, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the building site landscaping in a healthy state of growth and visually attractive in appearance.

If the owner or the owner's assigns fail to maintain the landscaping and site per the approved landscaping plan in this section, the City of Appleton or its Agent has the right to enter the site and conduct such maintenance and to seek full reimbursement.

5. **Parking, Loading**

Off-street parking and loading areas shall be provided on each building site and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all site occupants and visitors and comply with the City's Zoning Ordinance regarding parking standards. All parking and loading areas shall be paved. Parking shall be permitted within the minimum front yard setback area, however, it shall be located no closer than fifteen (15) feet to the public right-of-way line. An 80 percent screen with a minimum height of 2'-½" shall be provided for all parking areas adjacent to the street right-of-way.

6. **Outdoor Storage:**

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets with a suitable fence, vegetation, berm, or combination thereof. Screening shall be attractive in appearance and in keeping with the architectural quality of the main structure. Said storage shall be limited to behind the front line of the building on the property, and within the building setback lines. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. Storage of fuel oil or other bulk fluids must be underground. All storage areas shall be paved.

7. **Signs:**

Identification signs shall be permitted to promote only the name and/or trademark of the owner or tenant of the parcel on which the sign is placed. Signs, lighting, etc., are to be indicated on the final site plan submitted to the Community Development Committee for review. Ground signs must be set back 10 feet from the right-of-way line and must be of a low profile design subject to approval by the Committee. Building signs must comply with the City Sign Code.

8. **Maintenance Responsibilities:**

A. Each owner shall keep its property, all contiguous street right-of-way to the edge of the pavement, and all drainage and easement areas in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following:

1. The removal of all litter, trash, refuse, and wastes;
2. Compliance with the City's noxious weed control ordinance, including the mowing of all grass areas;
3. The maintenance of exterior lighting, signs, and mechanical facilities;
4. The keeping of all exterior building surfaces in a cleaned, well-maintained condition;
5. The maintenance of all drainage ways including the removal of all debris, weeds, and silt.

B. The owner of any undeveloped lands shall maintain said lands free of rubbish, noxious weeds, and mosquito breeding pond conditions.

9. **Site Plan Review:**

Prior to the construction or alteration of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the plans for such building or improvements shall be submitted to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. The plans shall be reviewed within thirty days (30) days after they have been submitted and approval or disapproval given in writing.

10. **Approval of Plans:**

Before commencing the construction or alterations of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the owner shall first submit its building plans, specifications, site and landscape plans, and an elevation sketch of all improvements to be placed thereon to the Community Development Committee for its written approval. In the event the Committee or its designee shall fail to approve or disapprove in writing such building plans, specifications, site and landscape plans, and elevation sketch within thirty (30) days after they have been submitted to them, such approval will not be required and these covenants and restrictions will be deemed to have been complied with. The Community Development Committee may delegate this review of plans to the Economic Development Department.



11. **Repurchase Rights:**

**Failure to Build:** In the event the owner of land purchased from the City of Appleton does not commence construction of a building within one (1) year after the date of purchase, ownership shall revert to the City. The City shall pay the following repurchase price: the sum of the original purchase price and all special assessments which may have been paid by the buyer or levied against the property after the date of purchase minus the sum of any unpaid property taxes, pro-ration of the current years property taxes to date of closing, title insurance policy premium or cost of warranty abstract, and any liens and encumbrances on the property of a definite or ascertainable amount. Further, repurchase price shall be adjusted by the amount equal to the amount of an option fee for that year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

**Resale of Vacant Land:** In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject repurchase of the property unless an extension of time may be mutually agreed upon and set forth in writing. In the event the City does not elect to repurchase the property, the owner may sell the land, but these Declarations of Covenants and Restrictions shall run with the land and be binding on the subsequent owner. The purchase price shall be computed as in Article 11 above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

12. **Subdivision of Lots:**

After a lot has been purchased, such lot shall not be further subdivided without the written consent of the Community Development Committee. No owner may sell, lease or rent less than all of the lot without the written consent of the Community Development Committee. The Community Development Committee may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

13. **Waiver of Notice:**

All land sold before major assessable improvements are completed in the business park site shall be subject to the purchaser's waiving notice of assessments and hearings, and such waiver shall be part of the negotiations.

14. **Variances:**

Notwithstanding anything contained herein to the contrary, the City of Appleton expressly reserves the right at any time to authorize in writing variances from the strict applications of these covenants and restrictions, or any one or more of them, where the circumstances, in its sole and exclusive judgement, justifies the granting of same.

15. **Right to Enter**

The Community Development Committee shall have the right to enter upon any building site or other lot within the park for the purpose of ascertaining whether the owner of said site or lot is complying with these covenants and restrictions.

16. **Enforcement:**

In the event that the owner fails to perform in accordance with these covenants and restrictions, the Common Council, upon recommendation of the Community Development Committee, may take whatever corrective measures it deems appropriate and assess the cost thereof against the property in the same manner as a special assessment or special charge. The Common Council shall give at least thirty (30) days notice to the vendee of any violation and the steps required to correct it prior to taking any action to cure such violation.

17. **Invalidation:**


The invalidation of any one of the covenants or restrictions herein set forth or the failure to enforce any of said covenants and restrictions at the time of its violation shall in no way affect any of the other covenants or restrictions nor be deemed a waiver of the right to enforce the same thereafter.

18. *Term:*

Each lot shall be conveyed subject to the covenants and restrictions set forth herein, all of which are to run with the land and shall be binding on all parties and all persons claiming them for a period of thirty (30) years from the date of this Declaration of Covenants and Restrictions is recorded, after which time said covenants and restrictions as are then in force and effect shall be automatically renewed for successive periods of ten (10) years each, unless an instrument terminating such covenants and restrictions is recorded with the Outagamie County Register of Deeds by the Common Council as evidenced by a resolution duly adopted by a majority of all members of the Common Council.

IN WITNESS WHEREOF, the said City of Appleton has caused these presents to be signed at Appleton, Wisconsin, this 10<sup>th</sup> day of July, 2000.


CITY OF APPLETON

  
Timothy M. Hanna, Mayor

  
Cynthia I. Hesse, City Clerk

STATE OF WISCONSIN)  
  )ss  
OUTAGAMIE COUNTY)

Personally came before me this 10<sup>th</sup> day of July, 2000, the above named Timothy M. Hanna, Mayor, and Cynthia I. Hesse, City Clerk, of the City of Appleton, to me known to be the persons who executed the foregoing instrument as such officials of the City of Appleton by its authority.

  
James P. Walsh, Notary Public  
State of Wisconsin

My commission is permanent.

This instrument was drafted by James P. Walsh, City Attorney.

1382870

Document Number

RELEASE OF EASEMENT  
PARTIAL - JOINT

WHEREAS, on the 30<sup>th</sup> of June, 1998, The City of Appleton, a Wisconsin Municipal corporation, granted to WISCONSIN ELECTRIC POWER COMPANY and WISCONSIN BELL, INC., d/b/a AMERITECH-WISCONSIN, hereinafter referred to as "grantee," its successors and assigns, certain easement rights, which easement rights are set forth in that certain document recorded in the Office of the Register of Deeds in and for Outagamie County, Wisconsin, on the 16<sup>th</sup> day of July, 1998, in Cabinet H on Page 11, as Document No. 1280941, and

WHEREAS, grantee has been requested and is willing to release the following rights from the force and effect of the aforesaid easement, to-wit:

the Southerly 15 feet of Lot 1, the Northerly 15 feet of Lot 10 and the Southerly 15 feet of the Easterly 105 feet of Lot 2, all located in Block 14, Northeast Industrial Park Plat No. 4, being part of the Northwest 1/4, Northeast 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 18, Township 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin.

NOW, THEREFORE, for and in consideration of the sum of \$1.00, the receipt whereof is hereby acknowledged, said grantee does hereby release, discharge and abandon only those specific easement rights heretofore mentioned in the immediately preceding paragraph. It is expressly understood and agreed that all other easement rights as set forth in the aforesaid document recorded in the Office of the Register of Deeds in and for Outagamie County, Wisconsin, as Document No. 1280941 shall remain in full force and effect.

IN WITNESS WHEREOF, said WISCONSIN ELECTRIC POWER COMPANY has caused these presents to be executed on its behalf by its duly authorized Manager of Property Management this 19<sup>th</sup> day of September, 2000, and said WISCONSIN BELL, INC. d/b/a AMERITECH-WISCONSIN, has caused these presents to be executed on its behalf by its duly authorized R/W Manager, this 28 day of September, 2000.

WISCONSIN ELECTRIC POWER COMPANY

By Michael James  
Michael James, Manager of Property Management

WISCONSIN BELL, INC., d/b/a AMERITECH-WISCONSIN

By Elaine M Fritz  
Elaine M. Fritz, R/W Manager

OUTAGAMIE COUNTY  
RECEIVED FOR RECORD

OCT 13 2000

AT 10 O'CLOCK A.M. P.M.  
JANICE FLENZ  
REGISTER OF DEEDS

RETURN TO:  
City of Appleton, Economic Development  
Attn: Mr. James E. Van Dyke  
100 N. Appleton Street  
Appleton, WI 54911-4799

120

31-1-5359-00, 1-5360-00, 1-5368-00  
(Parcel Identification Number)

STATE OF WISCONSIN)  
: SS  
MILWAUKEE COUNTY)

Personally came before me this 19<sup>th</sup> day of September, 2000, Michael James, Manager of Property Management, of the above named corporation, **WISCONSIN ELECTRIC POWER COMPANY**, known to me to be the person who executed the foregoing instrument and to me known to be such Manager of Property Management of said corporation, and acknowledged that he executed the foregoing instrument as such Manager of Property Management, as the deed of said corporation, by its authority.

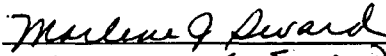
  
Ernest Kretschmann

Notary Public State of Wisconsin

My commission expires June 20, 2004

STATE OF WISCONSIN)  
: SS  
OUTAGAMIE COUNTY)

Personally came before me this 28 day of SEPTEMBER, 2000, Elaine M. Fritz, R/W Manager, of the above named corporation, **WISCONSIN BELL, INC.**, d/b/a **AMERITECH-WISCONSIN**, known to me to be the person who executed the foregoing instrument and to me known to be such R/W Manager, of said corporation, and acknowledged that he executed the foregoing instrument as such R/W Manager, as the deed of said corporation, by its authority.

  
MARLENE J. SWARD

Notary Public State of Wisconsin

My commission expires 6-23-02

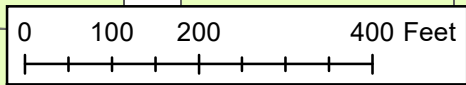
r:\data\as\real estate\releases\000457-appleton.doc

This instrument was drafted by Dawn Neuy on behalf of Wisconsin Electric Power Company, PO Box 2046, Milwaukee, WI 53201.

# Available Sites Northeast Business Park Appleton, Wisconsin

**Legend**
























- Available Site \$40,000/ac.
- Subject Parcels



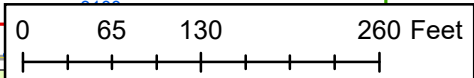
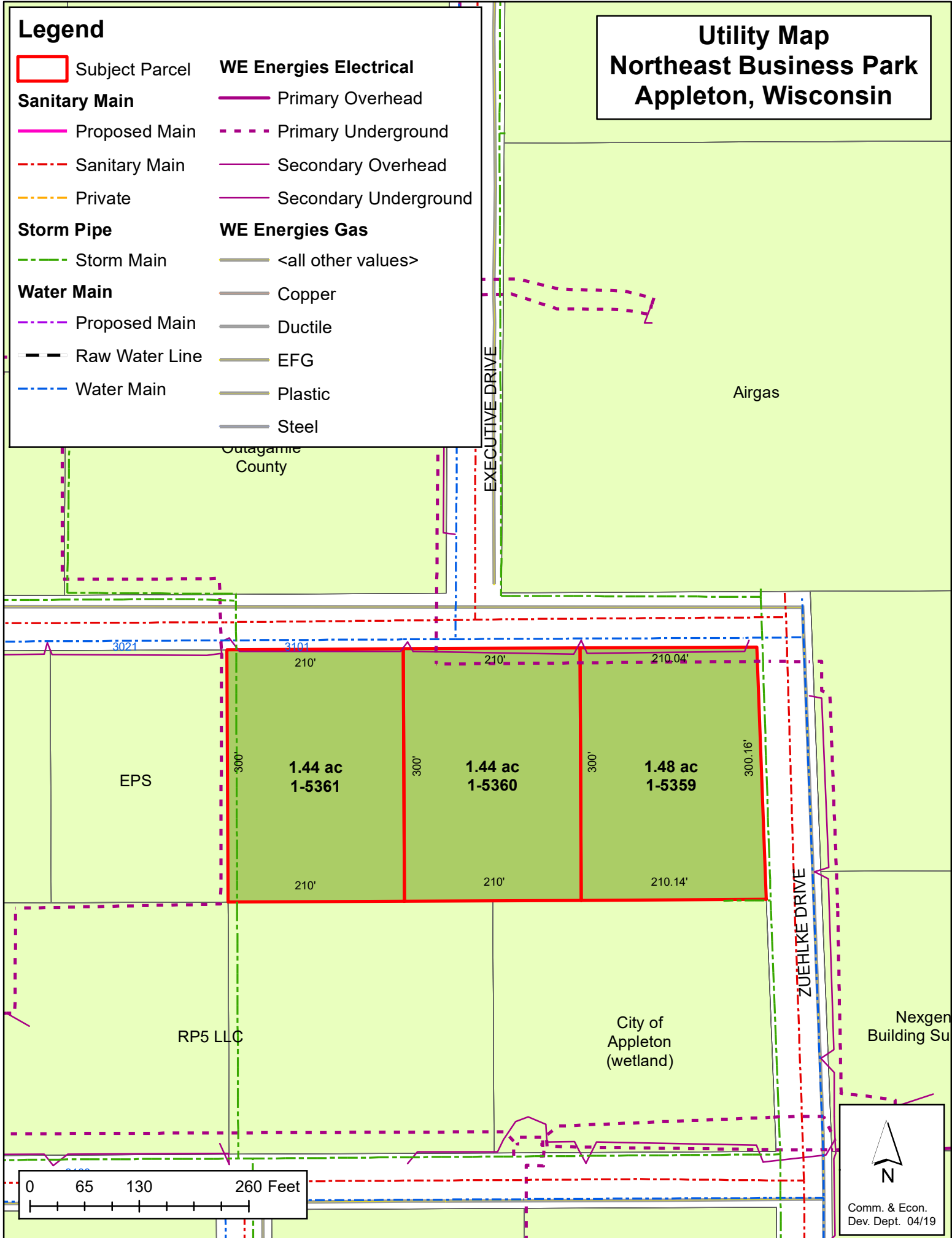
**N**

Comm. & Econ.  
Dev. Dept. 04/19

# Legend

- |  |                      |   |                               |
|--|----------------------|---|-------------------------------|
|  | Subject Parcel       |  | <b>WE Energies Electrical</b> |
|  | <b>Sanitary Main</b> |  | Primary Overhead              |
|  | Proposed Main        |  | Primary Underground           |
|  | Sanitary Main        |  | Secondary Overhead            |
|  | Private              |  | Secondary Underground         |
|  | <b>Storm Pipe</b>    |  | <b>WE Energies Gas</b>        |
|  | Storm Main           |  | <all other values>            |
|  | <b>Water Main</b>    |  | Copper                        |
|  | Proposed Main        |  | Ductile                       |
|  | Raw Water Line       |  | EFG                           |
|  | Water Main           |  | Plastic                       |
|  |                      |  | Steel                         |

# Utility Map Northeast Business Park Appleton, Wisconsin



Comm. & Econ.  
Dev. Dept. 04/19

**Resolution #5-R-19**  
**Rededication & Revitalization of Soldier's Square**

*Submitted by: Alderperson Schultz, District 9 & Alderperson Williams, District 10*  
*Date: May 15, 2019*

Referred To: Community & Economic Development Committee

WHEREAS; Monuments have long been used by civilizations as a way to commemorate a common history and to visualize a shared future and have historically been incorporated into the fabric of civic life through the formation of public spaces which embrace them, and;

WHEREAS; For the bereaved, military comrades, and the public at large, public memorials function as virtual graves for those who often died far from home on foreign soil and serve as permanent reminders of the steep price our nation, and our City, has paid for the preservation of its security and freedoms and the events that have helped shape our common history, and;

WHEREAS; the one-block long plaza roughly 80 feet in width between South Morrison and South Oneida streets, deeded to Appleton in the 1850's by Boston philanthropist Amos Adams Lawrence, the namesake of Lawrence University, holds a deed restriction that it function as a 'Pedestrian Mall', in perpetuity, lest it be returned to the Lawrence family, and;

WHEREAS; Market Street, as it was once known, was renamed in 1911 as 'Soldiers Square,' precipitated by the dedication of a monument created by Italian sculptor Chevalier Gaetano Trentanove and presented by Appleton industrialist A.W. Priest in memory of his brother, James Priest, who died in the Civil War, and;

WHEREAS; In 1915, in response to a national call to honor those who served in the Spanish-American War, the City of Appleton petitioned for and received one of the one thousand "Remember the USS Maine" memorial plaques, cast from the salvaged metals of the infamous warship before it was sunk off the shores of Havana Harbor and dedicating it, along with two Napoleon cannon from the same conflict, on the East end of Soldier's Square, and;

WHEREAS; In 1922, The City Planning Survey recognized the importance of Soldier's Square, its newly established memorial reflection space, as a primary element in its first attempt to create a bold new vision for downtown, featuring an expanded monument boulevard as an anchor to its propose civic centre on the bluff site, and;

WHEREAS; In the late 30's, to make way for parking, the Spanish American War Memorial was relocated to Pierce Park where, subject to vandalism and the scrap drive of 1943 which resulted in the loss of the cannon, has since deteriorated beyond recognition while the Civil War memorial, which remained in Soldier's Square, was largely neglected for over a century, forfeiting its prominence in the public plaza, and;

WHEREAS; More recently, the veterans of the Middle East conflicts, but also including those who served in Viet Nam, Korea and other conflicts over the last half century, have not been formerly recognized in the public commons of Soldier's Square, though deserving of the same recognition and honor afforded all veterans of foreign wars, and;

WHEREAS; Soldier's Square, once provided a place of solace and contemplation, where these memorials were appreciated for their aesthetic and symbolic value beyond their commemorative purpose, complementing the mission of the civic spaces in which they reside by connecting us and causing us to reflect on something larger than ourselves;

WHEREAS; the City of Appleton, presently in the midst of a grand redesign of its downtown core and

bluff sites, including multi-use development proposals adjacent to Soldier's Square, is being afforded a once-in-a-lifetime opportunity to embrace its history and its reverence for our veterans and all who have served since the foundation of the City, by righting this long-standing violation of the spirit of the Amos Lawrence deed restriction and public trust;

NOW THEREFORE, BE IT RESOLVED; That the City of Appleton will commit to an effort to revitalize Soldier's Square and make every attempt to recapture the former function of the space as an open and inviting pedestrian mall and reflection space by rededicating the original boundaries of the pedestrian plaza and public monument square;

BE IT FURTHER RESOLVED; that the City complete both the full restorations of the Civil War Memorial and the Spanish-American War Memorial in the newly revitalized plaza using funds allocated to such restorations in the projected budget for restoration, as well as accommodate the placement of a new 'recent conflicts' memorial at the heart of the plaza to be funded by the citizens of Appleton and a number of local non-profits leading the restoration effort including, but not limited to Sculpture Valley, The Hearthstone Historic House Museum, VFW Post 2778, Desert Veterans of Wisconsin – Fox Valley Chapter, American Legion Post 38 and whomever else rises to assist in this honorable and historic en-deavors.





# MEMORANDUM

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"...meeting community needs...enhancing quality of life."

TO: Community & Economic Development Committee (CEDC)

FROM: Karen Harkness, Director

DATE: June 12, 2019

RE: Resolution #5-R-19: Rededication and Revitalization of Soldier's Square

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Resolution #5-R-19 was introduced by Alderperson Schultz, District #9 and Alderperson Williams, District #10 at the May 15, 2019 Common Council meeting.

**Staff Recommendation:**

Resolution #5-R-19 be referred to staff to complete due diligence.