



City of Appleton

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

Meeting Agenda - Final

Community & Economic Development Committee

Wednesday, February 9, 2022

4:30 PM

Council Chambers, 6th Floor

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

[22-0076](#) CEDC Minutes from 1-12-22

Attachments: [CEDC Minutes 1-12-22.pdf](#)

4. Public Hearings/Apearances

5. Action Items

[22-0077](#) Request to approve the reallocation of Community Development Block Grant (CDBG) funding from Appleton Housing Authority's 2020PY unspent \$42,824.66 to Rebuilding Together Fox Valley's 2021PY subaward agreement for homeowner rehabilitation

Attachments: [Reallocation of 2020 AHA Funds to RTFV Memo to CEDC 2-9-22.pdf](#)

[AHA Reallocation Request 1-4-22.pdf](#)

[Amendment to RTFV SubAgreement 1-25-22.pdf](#)

[22-0078](#) Request to approve the Community Development Block Grant (CDBG)-CV (Coronavirus) Policy as specified in the attached documents

Attachments: [CDBG-CV Policy Approval Memo to CEDC 2-9-22.pdf](#)

[DRAFT CDBG-CV Policy 1-28-22.pdf](#)

[22-0079](#) Resolution #2022-01 - Support for Amending the Articles of Organization and the By-Laws of East Central Wisconsin Regional Planning Commission to modify the Board composition for the Commission

Attachments: [#2022-01_CityofAppletonSupport_ECWRPCResolution.pdf](#)

[ECWRPC_ResolutionAmendingArticlesofOrg+Bylaws_Packet.pdf](#)

[22-0084](#) Request to proceed with the sale of Lot 3 of Northeast Industrial Park Plat No. 4 to Tetz, LLC per the terms of the Option to Purchase Agreement with Valley Tool, Inc. or its assigns dated August 22, 2019 at a purchase price of \$53,850 (\$37,395.83 per acre)

Attachments: [Valley Tool Exercise Option to Purchase Memo to CEDC 2-9-22.pdf](#)
[Request from Valley Tool Exercise Option to Purchase Lot 3 NEIP.pdf](#)
[Recorded Option to Purchase COA and Valley Tool Lot 3 NEIP.pdf](#)

[22-0085](#) 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 Lot 3 of the Northeast Industrial Park Plat No. 4 and then reconvene into open session

[22-0089](#) Request to amend the Development Agreement with Bela Development LLC located at 513 W. College Avenue in Tax Increment Financing District No. 12 to provide the Developer until January 1, 2023 to meet the minimum \$1,700,000 assessed value requirement

Attachments: [Bela DA Extension Memo to CEDC 2-9-22.pdf](#)
[Bela Development 513 W College Recorded Dev Agrmt.pdf](#)

[22-0091](#) Request to approve the Offer to Purchase from Farrell Investments, LLC to purchase Lot 11 of Southpoint Commerce Park Plat No. 1, consisting of approximately 3.25 acres, at a purchase price of \$130,000 (\$40,000 per acre)

Attachments: [Farrell Expansion Offer to Purchase Memo to CEDC 2-9-22.pdf](#)
[Farrell Offer to Purchase 2-3-22.pdf](#)
[SPCP Deed Restrictions.pdf](#)
[Southpoint Commerce Park Map Feb 2022.pdf](#)

[22-0092](#) 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 Lot 11 of the Southpoint Commerce Park Plat No. 1 and then reconvene into open session

6. Information Items

[22-0090](#) American Rescue Plan Act (ARPA) City of Appleton Grants

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

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Meeting Minutes - Final Community & Economic Development Committee

Wednesday, January 12, 2022

4:30 PM

Council Chambers, 6th Floor

1. Call meeting to order

Chair Reed called the meeting to order at 4:30 p.m.

2. Roll call of membership

Present: 5 - Reed, Firkus, Thao, Alfheim and Wolff

Others present:

Kolby Knuth, Bela Development LLC/The 513

3. Approval of minutes from previous meeting

[21-1767](#)

CEDC Minutes from 11-10-21

Attachments: [CEDC Minutes 11-10-21.pdf](#)

**Firkus moved, seconded by Alfheim, that the Minutes be approved. Roll Call.
Motion carried by the following vote:**

Aye: 5 - Reed, Firkus, Thao, Alfheim and Wolff

4. **Public Hearings/Appearances**

5. **Action Items**

[21-1768](#)

Request to approve the Development Agreement (Phase II) with Merge LLC for a mixed-use development located on the southeast corner of W. Washington Street and N. Appleton Street (Tax Id #31-2-0272-00, 31-2-0272-01, and 31-2-0272-02) in Tax Increment Financing District No. 11

Attachments: [Merge Ph II DA Memo to CEDC 1-12-22.pdf](#)

[0871 - Merge - Phase 2 Dev Agrm - 2022-01-05.pdf](#)

Firkus moved, seconded by Alfheim, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 5 - Reed, Firkus, Thao, Alfheim and Wolff

6. Information Items

[21-1769](#)

Annual Updates to the Housing Affordability Report and the Housing Fee Report

Attachments: [StaffMemo_HousingAffordability&FeeReports2020_For01-12-22.pdf](#)
[AppletonHousingAffordabilityReport2020_For01-12-22.pdf](#)
[AppletonHousingFeeReport2020_For01-12-22.pdf](#)

This item was presented.

7. Adjournment

Reed moved, seconded by Wolff, that the meeting be adjourned at 4:39 p.m.

Roll Call. Motion carried by the following vote:

Aye: 5 - Reed, Firkus, Thao, Alfheim and Wolff



MEMORANDUM

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

TO: Community and Economic Development Committee
FROM: Nikki Gerhard, Community Development Specialist
DATE: February 9, 2022
RE: Amendment to Appleton Housing Authority 2020 Allocation

On January 4, 2022, City staff received notification from the Appleton Housing Authority (AHA) seeking to reallocate their remaining balance of \$42,824.66 from the 2020 program year to another agency and eligible activity. This remaining balance was unspent funding originally allocated for the purposes of AHA's First Time Homebuyer Program.

Due to a significant amount of loan payoffs, as well as a vacancy in their Homebuyer Program Manager role for an extensive period, the AHA had originally requested program year extensions, expiring December 31, 2021, in an effort to spend the funds down.

Staff recommends reallocating the balance of \$42,824.66 to Rebuilding Together Fox Valley (RTFV). RTFV's homeowner rehabilitation program is a similar housing activity to AHA's, which has been consistently funded since 2017. Staff of RTFV has expressed interest in these funds, as they have already spent down their 2020 and 2021 allocations (\$200,000 total) and have additional housing projects that could be expedited with this reallocation.

Staff Recommendation:

The reallocation of Appleton Housing Authority's 2020PY \$42,824.66 to Rebuilding Together Fox Valley's 2021PY SubAgreement for homeowner rehabilitation **BE APPROVED**.

The following attachments are provided for additional information for this action item.

Attached Documents:

- 1.) Email from Appleton Housing Authority staff requesting reallocation of unspent balance from 2020PY.
- 2.) Draft amendment to RTFV's 2021PY SubAgreement, increasing their allocation to a total of \$142,824.66.

If you have any questions, please contact me at 832-6469 or nikki.gerhard@appleton.org. Thank you!

Nikki A. Gerhard

From: Aaron Hilbert <AaronH@appletonhousing.org>
Sent: Tuesday, January 4, 2022 4:04 PM
To: Nikki A. Gerhard
Cc: Debra Dillenberg; Karen Harkness; Monica Stage
Subject: RE: 2020 CDBG Extension Expiration

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Nikki,

We are still seeing a very large increase in loan payoffs. We currently have \$64,000 in program income to spend prior to any contract dollars. Additionally, our Homebuyer Program Manager who was still in a probationary status did not work out, and we are currently searching for a replacement.

We would like to request that the remaining \$42,824.66 in 2020 funds be allocated to another agency. We would also like to request an extension of our 2021 funds to 12/31/2022.

Thank You,

Aaron Hilbert

Finance Director
Appleton Housing Authority
925 W. Northland Ave.
Appleton, WI 54914
Ph: (920) 739-6811 x106
Fax: (920) 739-6817
aaronh@appletonhousing.org



From: Nikki A. Gerhard <Nikki.Gerhard@Appleton.org>
Sent: Monday, January 3, 2022 9:17 AM
To: Aaron Hilbert <AaronH@appletonhousing.org>
Cc: Debra Dillenberg <DebraD@appletonhousing.org>; Karen Harkness <Karen.Harkness@Appleton.org>; Monica Stage <Monica.Stage@appleton.org>
Subject: RE: 2020 CDBG Extension Expiration
Importance: High

Good Morning Aaron,

I wanted to reach out and follow up on the 2020 CDBG subagreement, as the requested extension expired on 12/31/2021.

Per my records, it appears that there is an outstanding balance remaining of \$42,824.66. Will you be submitting a payment request for that balance, or will you be needing to seek an additional extension?

Please advise.

Thank you,

Nikki

From: Aaron Hilbert <AaronH@appletonhousing.org>
Sent: Tuesday, July 20, 2021 2:06 PM
To: Nikki A. Gerhard <Nikki.Gerhard@Appleton.org>
Cc: Debra Dillenberg <DebraD@appletonhousing.org>
Subject: RE: 2020 CDBG Extension Expiration

Hi Nikki,

We are very close to hiring a new Homebuyer Program Manger however, due to the current vacancy in this position coupled with the current housing market we will be unable to spend these 2020 funds by 7/31/2021.

We are also seeing an unprecedented number of payoffs this year making spending contract funds very difficult. In June and the first part of July alone we have received \$21,000 in CDBG program income.

We would like to request an extension on these funds through 12/31/21.

We also wanted to inquire as to the possibility of spending our 2020 contract funds prior to the new CDBG program income continuously coming in?

Thank You,

Aaron Hilbert

Finance Director
Appleton Housing Authority
925 W. Northland Ave.
Appleton, WI 54914
Ph: (920) 739-6811 x106
Cell: (920) 205-7126
Fax: (920) 739-6817
aaronh@appletonhousing.org



From: Nikki A. Gerhard <Nikki.Gerhard@Appleton.org>
Sent: Monday, July 19, 2021 9:00 AM
To: Aaron Hilbert <AaronH@appletonhousing.org>
Cc: Debra Dillenberg <DebraD@appletonhousing.org>
Subject: 2020 CDBG Extension Expiration
Importance: High

Good Morning,

Just a friendly reminder that your extension for the 2020 CDBG funds expires on July 31. Please have all payment requests and accomplishment reports submitted shortly thereafter.

If you are in need of additional time, please submit a new extension request, which will be considered for approval.

Thank you!

Nikki

Nikki A. Gerhard

Community Development Specialist

City of Appleton

100 N Appleton Street

Appleton, WI 54911

(920) 832-6469

nikki.gerhard@appleton.org



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**AMENDMENT TO CONTRACT
SUBAWARD AGREEMENT**

THIS AMENDMENT TO CONTRACT is made and entered by the below named parties as follows:

WHEREAS, on or about April 1, 2021, the City of Appleton (“City”) and Rebuilding Together Fox Valley (“RTFV”) entered into a subaward agreement for April 1, 2021, through March 31, 2022, a copy of which is incorporated herein by reference in its entirety (“Contract”); and,

WHEREAS, as of February 17, 2022, the parties to the Agreement mutually agree that it is reasonable to increase the original Contract award amount from \$100,000 to \$142,824.66 and wish to memorialize that increase.; and,

NOW THEREFORE, in consideration of the mutual promises and dependent documents, the undersigned agree:

1. The approved sub-award to the Sub-Grantee in the amount of \$100,000 in the Contract shall be amended to \$142,824.66.
2. All other terms and conditions of the Contract shall remain binding on the City and RTFV.

IN WITNESS WHEREOF, Rebuilding Together Fox Valley and the City of Appleton have executed this Amendment to Contract as of the date the same is signed by the City.

City of Appleton

Rebuilding Together Fox Valley

By: _____
Jacob A. Woodford, Mayor

By: _____
Chip Wood, Executive Director

Date: _____

By: _____
Kami Lynch, City Clerk

By: _____
Anthony D. Saucerman, Finance Director

By: _____
Christopher R. Behrens, City Attorney

Date: _____



MEMORANDUM

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

TO: Community and Economic Development Committee

FROM: Nikki Gerhard, Community Development Specialist

DATE: February 9, 2022

RE: Community Development Block Grant (CDBG)-CV Policy

The Department of Housing and Urban Development (HUD) requires entitlement grantees to outline the following aspects of the local Community Development Block Grant (CDBG)-CV Program: a) elements to which the City of Appleton must adhere in order to comply with federal regulations; b) locally-established guidelines; and c) priorities for subrecipient and City Program activity.

Staff is proposing the [attached] CDBG-CV Policy for approval.

The Policy addresses the following:

- Incorporating reference to CDBG-CV regulations;
- Identification of eligible CDBG-CV activities;
- Elimination of the public service categorical threshold;
- Identification and prevention of duplication of benefits.

If you have any questions, please contact me at 832-6469 or nikki.gerhard@appleton.org. Thank you!



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT-CV



2020-2026 Community Development Block Grant (CDBG)- CV Policy Adopted 02/16/2022

I. PURPOSE

To outline the following aspects of the local Community Development Block Grant (CDBG)-CV Program: a) elements to which the City of Appleton must adhere in order to comply with federal regulations; b) locally-established guidelines; and c) priorities for subrecipient and City Program activity.

II. POLICY

The federal CDBG program was established with the passage of the Housing and Community Development Act of 1974. CDBG funds are distributed to eligible governmental units in two forms:

- (1). Entitlement grants directly to cities and counties, and;
- (2). State grants, which involve annual competitions for non-entitlement communities.

Since 1975, the City of Appleton has received CDBG funds as an entitlement community. The amount of CDBG funds received each year varies based on the appropriation approved by the U.S. Congress and the number of governmental units eligible to participate. While the federal fiscal year operates from October 1 to September 30, the City selected April 1 to March 31 as its CDBG fiscal year. This selection was made as the federal government generally does not release the aforementioned funds until springtime. Federal oversight lies within the U.S. Department of Housing & Urban Development (HUD).

In addition to the regular CDBG requirements, CDBG-CV requires that CDBG-CV funds:

- only assist activities that prevent, prepare for, or respond to Coronavirus,
- do not result in a duplication of benefits, and
- meet underwriting criteria for special economic development activities.

III. FEDERAL REGULATIONS

The citation reference from Title 24 Part 570 – Community Development Block Grants can be found in parentheses next to each heading below. Please view that section for more information on the respective item. This Policy will be revised periodically as required to fulfill related Federal, State, and/or local funding requirements.

The Federal Register Notice 6218-N-01 describes how requirements of the CDBG Program are modified for CDBG-CV grants.

A. Federal Eligibility (24 CFR 570.201)

Primary activities that can be used to prevent, prepare for, and respond to Coronavirus with CDBG-CV funds include:

- (1). Public Service Activities
 - Homeless/Aids Patients
 - Services for Persons with Disabilities
 - Youth Services
 - Domestic Violence Services
 - Crime Awareness/Prevention
 - Tenant/Landlord Counseling
 - Health Services
 - Senior Services
 - Legal Services
 - Substance Abuse Services
 - Employment Training
 - Fair Housing Activities
 - Child Care Services
 - Abused & Neglected Children



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT-CV



- Mental Health Services
 - Subsistence Payments
 - Food Banks
 - Housing Counseling
- (2). Housing-Related Activities
- Rehabilitation (Single/Multi Residential)
 - Direct Homeownership Assistance
 - Public Housing Modernization
 - Rehabilitation Administration
 - Code Enforcement
- (3). Public Improvements & Facilities
- Senior Centers
 - Homeless Facilities (not operating costs)
 - Neighborhood Facilities
 - Parking Facilities
 - Flood & Drainage Facilities
 - Sidewalks
 - Fire Stations/Equipment
 - Removal of Architectural Barriers
 - Facility for Persons with Disabilities
 - Youth Centers/Facilities
 - Parks, Recreational Facilities
 - Solid Waste Disposal Facilities
 - Water/Sewer Improvements
 - Child Care Centers
 - Health Facilities
- (4). Activities to Acquire Real Property
- Acquisition of Property
 - Clearance & Demolition
 - Relocation
 - Disposition
 - Clean-Up of Contaminated Site/Brownfields
- (5). Economic Development Activities
- Rehabilitation (Public or Private)
 - Commercial/Industrial Infrastructure
 - Financial Assistance to For-Profits
 - Micro-Enterprise Assistance
 - Commercial/Industrial Land Acquisition/Disposition
 - Commercial/Industrial Building Acquisition, Construction, Rehabilitation
 - Technical Assistance

Costs Eligible for Reimbursement

- Costs incurred before January 21, 2020, will not be reimbursed without written prior approval from HUD
- Environmental review must be performed, and a Release of Funds must be obtained in accordance with 24 CFR Part 58 prior to committing CDBG-CV funds to reimburse costs.
- Grantees must sign a CDBG-CV agreement with a subrecipient before reimbursing pre-agreement costs.
- Activities that incurred pre-award or pre-agreement costs in a CDBG-CV application before CDBG-CV funds are used to reimburse those costs.



City of Appleton
COMMUNITY DEVELOPMENT BLOCK GRANT-CV



Extension of Emergency Payments

CDBG-CV funds may be used to provide emergency payments for individuals or families impacted by coronavirus for items such as food, clothing, housing (emergency rental or mortgage assistance) or utilities. The maximum period of such payments is extended from three to six consecutive months when used to prevent, prepare for, or respond to coronavirus.

- Emergency payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, gift cards or similar direct income payments.
- Proper documentation must be maintained to ensure that all costs incurred are eligible.
- Public service activities that provide for emergency payments must document, in their policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable

B. Ineligible Activities (24 CFR 570.207)

The following activities may not be assisted with CDBG-CV funds:

- (1). Buildings (or portions thereof) for the General Conduct of Government
- (2). General Government Expenses
- (3). Political Activities
- (4). Float-funded activities

The following activities are not eligible for CDBG-CV funding, but may be allowed under certain circumstances:

- (1). Purchase of Equipment
- (2). Operating/Maintenance Expenses
- (3). New Housing Construction
- (4). Income Payments

C. Special Economic Development Projects (24 CFR 570.203)

CDBG-CV funds may be used for special economic development activities in addition to other activities. Special economic development activities include:

- (1). Acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements
- (2). Assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project
- (3). Economic development services, including, but not limited to, outreach efforts; screening of applicants; reviewing/underwriting applications; preparation of all necessary agreements; management of activities; and the screening, referral, and placement of applicants for employment

D. National Objectives (24 CFR 570.208)

In order to qualify for funding, CV activities must meet one of three CDBG national objectives:

- (1). Low & Moderate Income (LMI) Benefit
 - a. Area Benefit: activities available for the benefit of all the residents in a particular area, where at least 51 percent of those residents are LMI persons.
 - b. Limited Clientele: activities benefiting a specific group (i.e. abused children, elderly persons, battered spouses), at least 51 percent of whom are LMI persons.
 - c. Housing: activities carried out for the purpose of providing or improving permanent



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COMMUNITY DEVELOPMENT BLOCK GRANT-CV



residential structures that, upon completion, will be occupied by LMI households.

- d. Job Creation/Retention: activities designed to create or retain permanent jobs where at least 51 percent of the jobs involve the employment of LMI persons.
- (2). Slum & Blight Removal
- a. Area Basis: activities undertaken to eliminate specific conditions of blight, physical decay, or environmental contamination that are located in a designated area of distress, including acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, or rehabilitation. Rehabilitation must eliminate conditions that are detrimental to public health/safety; acquisition and relocation must be precursors to other activities that eliminate blight.
 - b. Spot Basis: activities undertaken to eliminate specific conditions of blight, physical decay, or environmental contamination at specific sites not located in designated blighted areas, including acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, or rehabilitation. Rehabilitation must eliminate conditions that are detrimental to public health/safety; acquisition and relocation must be precursors to other activities that eliminate blight.
- (3). Urgent Need
- a. Activities designed to alleviate existing conditions of recent origin (18 months) that pose serious threats to the health and welfare of the community; this objective may only be used if the community cannot finance necessary activities with other sources.

E. Categorical Limits

- (1). At least 70 percent of CDBG-CV funds utilized must be expended for LMI benefit; the costs of planning and program administration are excluded from this calculation. (24 CFR 570.200(a)(3))
- (2). The CARES Act eliminates the 15% public services cap for all funds expended on activities to prevent, prepare for, and respond to coronavirus under Section III.B.5(f)(iii) of the FR Notice.
- (3). The amount of CDBG-CV funds obligated for planning and administration activities in each program year may not exceed 20 percent of the total entitlement grant for that program year plus the program income received during that program year. (24 CFR 570.200(g))

F. Program Income (24 CFR 570.426)

The receipt and expenditure of program income that is generated using CDBG-CV funds shall be treated as annual CDBG formula program income.

- CDBG-CV program income will be recorded as annual CDBG formula grant program income in local accounting records.
- Any CDBG-CV program income generated will be receipted in HUD's Integrated Disbursement and Information System (IDIS) as program income to the annual CDBG formula grant program and will be subject to the CDBG timeliness standards.

As defined in 24CFR Part 570.500, program income includes, but is not limited to, the following:

- Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-CV funds;
- Proceeds from the disposition of equipment purchased with CDBG-CV funds;
- Gross income from the use or rental of real or personal property acquired by subrecipients with CDBG-CV funds, less costs incidental to generation of the income;
- Gross income from the use or rental of real property, owned by subrecipients that was constructed or



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improved with CDBG-CV funds, less costs incidental to generation of the income;

- Payments of principal and interest on loans made using CDBG-CV funds, except as provided in 24CFR 570.500(a)(3); and
- Interest earned on program income pending its disposition.

Program income must be tracked in a chart of accounts, using a segregated account for managing sources and uses. By the 15th day of the month following the end of the quarter, the City's Finance Department will review each transaction that generated program income and the subsequent transaction for which program income was applied. The program income will then be entered into the City's Chart of Accounts so that it is reflected in the general ledger, as well as receipting the program income in IDIS so that draws can be made against the balance accordingly. The City maintains the discretion to enter program income more frequently as deemed necessary.

CDBG-CV regulations require that, at the end of each program year (March 31), the City of Appleton must determine whether there is excess program income on hand, and return any excess to the line of credit.

G. Fair Housing (24 CFR 570.601)

The Secretary of HUD requires that:

- (1). Grantees must administer all activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. (Public Law 90-284)
- (2). Entitlement communities shall conduct an Analysis of Impediments to Fair Housing Choice every five years, take action to overcome the effects of the identified impediments and maintain records reflecting the analysis and related actions taken.

H. Environmental Review Procedures (24 CFR 570.604)

The environmental review procedures outlined in 24 CFR part 58 must be completed for each CDBG-CV subrecipient and City Program activity, as applicable.

I. Faith-Based Activities (24 CFR 570.200)

Religious or faith-based organizations are eligible to participate in the CDBG-CV program. Local government representatives and CDBG-CV program administrators shall not discriminate against an organization on the basis of its religious affiliation.

J. Submission Requirements (24 CFR 570.302)

CDBG-CV entitlement communities must submit the following documents:

- (1). Action Plan → annually
- (2). Consolidated Annual Performance and Evaluation Report (CAPER) → annually
- (3). Consolidated Plan → every three to five years, as chosen by the entitlement community
Creation of these documents must follow HUD requirements for content and citizen participation (see the City of Appleton CDBG Citizen Participation Plan).

K. Location of Activities (24 CFR 570.309)

CDBG-CV funds may be awarded to an activity outside the jurisdiction of the entitlement community only if it can be determined that the activity directly benefits the entitlement community's residents.

Documentation of these benefits must be provided before CDBG-CV funds are awarded for the activity.



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L. Conflict of Interest (24 CFR 570.611)

No persons affiliated with the entitlement community (including subrecipients and City Programs) who exercise or have exercised any responsibilities with respect to CDBG-CV programming, or who are in a position to participate in a decision-making process, may obtain a financial interest or benefit from a CDBG-CV-assisted activity (including subcontracts), either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

M. Duplication of Benefits

As part of the CARES Act and described in FR-6218-N-01 (CDBG-CV Federal Register Notice), HUD must ensure that there are adequate procedures in place to prevent any duplication of benefits as required by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended by section 1210 of the Disaster Recovery Reform Act (DRRA) of 2018.

A duplication of benefits (DOB) occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance. To comply with DOB requirements, grantees are required by the CARES Act to establish and follow procedures to ensure that DOB does not occur. Establishing a process to effectively identify and prevent duplication of benefits is critical for CDBG-CV grantees to effectively manage the multiple active funding streams related to coronavirus response and efficiently target CDBG-CV resources to meet unmet needs within the community.

To prevent the duplication of benefits, policies and procedures include the following components:

- (1). Any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative. This will be documented through a duplication of benefit form or similar clause included in the agreement with the entity. The Grantee will continue to monitor compliance based on risk of duplication of benefits for each activity.
- (2). Evaluation of the need and resources available to meet that need to assess whether the use of CDBG-CV funds will duplicate financial assistance that is already received or is likely to be received (such as insurance proceeds). Current resources available include local, county, state, and federal level and current and anticipated non-governmental assistance from nonprofits or faith-based groups.

Grantee will prioritize CDBG-CV activities that address unmet needs and gaps to reduce the risk of duplication of benefits.

To analyze duplication of benefits, the following steps have been incorporated into the CDBG-CV application process:

- (1). Assess Need: Determine the amount of need (total cost)
- (2). Determine Assistance: Determine the amount of assistance that has or will be provided from all sources to pay for the cost
- (3). Calculate Unmet Need: Determine the amount of assistance already provided compared to the need to determine the maximum CDBG-CV award (unmet need)
- (4). Document analysis: Document calculation and maintain adequate documentation justifying determination of maximum award



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COMMUNITY DEVELOPMENT BLOCK GRANT-CV



IV. LOCAL PROGRAM GUIDELINES

A. Program Oversight

The Community and Economic Development Committee (CEDC) – composed of five aldermen appointed by the Mayor – serves as the jurisdiction for Common Council oversight of the CDBG-CV Program. Local financial oversight lies with the City of Appleton Finance Department. Local administrative/programmatic oversight lies with the City of Appleton Community and Economic Development Department (CEDD).

B. Consolidated Plan Submission

The City of Appleton has elected to submit a Consolidated Plan to HUD every five years. The Citizen Participation Plan provides for and encourages citizens to participate in the development of the Consolidated Plan, which will begin approximately one year before the required submittal date.

C. Definitions

- Subrecipient – an entity charged with implementation of one or more activities funded with Appleton CDBG-CV dollars
 - community partner subrecipient – local agencies awarded CDBG-CV-funding to implement an eligible activity via a competitive application process
 - public services subrecipient – local agencies awarded CDBG-CV-funding to implement an eligible public service activity via a competitive application process
- Adjusted award – the amount of CDBG-CV funds available to City Programs and subrecipients after administration, fair housing, and audit allocations are deducted

D. Local Categorical Limits

The following limits expand upon federal categorical limits associated with the CDBG program:

- (1). At least 70 percent of CDBG-CV funds utilized must be expended for LMI benefit; this excludes planning/CDBG-CV administration activities.
- (2). The CARES Act eliminates the 15% public services cap for all funds expended on activities to prevent, prepare for, and respond to coronavirus under Section III.B.5(f)(iii) of the FR Notice.
- (3). The amount of CDBG-CV funds obligated for planning/CDBG-CV administration activities in each program year may not exceed 20 percent of the total entitlement grant for that year.
- (4). Any single award will not be less than \$10,000.

E. Audit Requirements

Section 2 Part 200 of the Code of Federal Regulations and the State Single Audit Guidelines require major state programs and federal programs to complete a single audit. The necessary amount for fulfilling these requirements will be identified by the Finance Department and the City’s independent auditors. This amount will be deducted from the estimated amount available for the program year and not included in the estimates of the adjusted award.

F. Program Administration

HUD requires entitlement communities to provide for efficient and adequate administration of CDBG-CV programming. Administration costs may only include: salary/fringe, necessary training/travel, supplies and telephone/postage, in addition to fair housing services and audit costs. The necessary amount for fulfilling this requirement will be identified by the Community and Economic Development and Finance Departments. This amount will be deducted from the estimated amount available for the program year and not included in the estimates of the adjusted award.



City of Appleton
COMMUNITY DEVELOPMENT BLOCK GRANT-CV



G. City Allocation Process

The application will include information relating to goals, outputs, budget/financing, detailed activity descriptions, capacity, performance, and tieback to prevent, prepare for, and respond to Coronavirus. CEDD staff, per HUD rules and regulations, will perform an administrative review of each plan to ensure that:

1. Proposed activities are included within the listing of eligible activities (24 CFR 570.201)
2. Proposed activities do not fall within a category of explicitly ineligible activities (24 CFR 570.207)
3. Proposed activities will meet one of the national objectives of the program (24 CFR 570.200)
4. Proposed activities will address priority needs as identified in the Consolidated Plan

During efforts to prevent the spread of infectious disease and mitigate economic impacts caused by infectious disease, the community partner subrecipient allocation process will be waived. Upon completion of the administrative review, the plans will be presented to the CEDC. CEDC will also review the submitted plans to ensure the proposed activities meet the four standards listed above and allocate adequate funds for each plan. Final approval of allocations and projects will be presented to Common Council, subsequent to the completion of the required public comment period.

H. Subrecipient Agreement

Community partner subrecipients of CDBG-CV funds must enter into a subrecipient agreement with the City of Appleton. This subrecipient agreement serves as a formal contract addressing the various policies outlined in this document, in addition to contract amount/term, reimbursement requests, accomplishment reporting, monitoring, financial management guidelines, conflict of interest, and additional federal standards, including lead-based paint regulations and the Davis Bacon Act.. To ensure all parties understand the requirements of their agreement, a mandatory training session will be held with new subrecipients before funds are released. Technical assistance from staff will be available to all subrecipients throughout the program year.

I. Statement of Work

All subrecipients shall submit a concise Statement of Work that illustrates an implementation plan for their CDBG-CV activity. This Statement, which will be attached to the subrecipient agreement includes: national objective claimed, activity descriptions, intended beneficiaries (number and type), detailed budget and location(s) of program-related activity.

J. Report Submissions

All subrecipients are required to submit a report of their accomplishments with each payment request during the program year when applicable, as well as an Annual Report, which is a comprehensive report covering the agreed upon objectives, activities and expenditures for the entire contract period. If said reports are not attached to payment requests when required, payments will be withheld until the report is submitted.

K. Change of Use

If a subrecipient wishes to utilize CDBG-CV funds for an activity not identified on their original application, they are required to submit a detailed letter to the CEDD explaining the reasoning for and amount of the proposed change and a public comment period may be held per the Citizen Participation Plan.



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT-CV



L. Displacement/Relocation

Due to the potential liability for long-term assistance and burdens placed on affected tenants, the City of Appleton will avoid funding CDBG-CV projects that involve permanent residential displacement or business relocation unless displacement/relocation prove to be the only means available to correct a public health/safety hazard or other critical condition.

M. Procurement

The City of Appleton Procurement Policy applies to all CDBG-CV activities, including both City Programs and subrecipients that involve the purchase of equipment, materials, supplies and/or services. A copy of this policy will be distributed to all subrecipients.

N. Audits

All subrecipients are required to submit one copy of their audited financial statement immediately following the end of their fiscal year during which CDBG-CV funds are received, unless an alternate arrangement has been made with the City of Appleton Finance Department.

O. Disputes

Any dispute concerning a question of fact arising under a subrecipient program or City Program shall be resolved by CEDD staff, who shall relay his/her decision in writing to the subrecipient or City Program, in addition to furnishing a copy to the Mayor and the CEDC. The decision of CEDD staff shall be final and conclusive unless the subrecipient or City Program furnishes a written appeal to the CEDC within ten days of the date of receipt of such copy. The decision of the CEDC in such appeals shall be final and conclusive unless appealed to a court of competent jurisdiction within 30 days of receipt of the CEDC's decision.

P. Unspent Grant Funds

Any uncommitted CDBG-CV funds remaining at the subrecipient agreement will be reprogrammed to another eligible activity. The subrecipient shall submit a carryover request, including both documentation of plans for expending funds and a timeline for the expenditure, to CEDD staff. If any unspent grant funds remain, CEDD staff will meet with the subrecipient to determine if further action needs to be taken to expedite the expenditure of funds.

Q. Termination

If the subrecipient fails to fulfill, in timely and proper manner, its obligations under the Statement of Work, or if they violate any stipulations contained within the subrecipient agreement, the City has the right to terminate funding of their program. Written notice will be delivered at least 30 days before the termination.

R. Examination of Records/Monitoring

The policy of the City of Appleton is to monitor its subrecipients in a manner consistent with the requirements of 24 CFR 570.2, 2 CFR 200.328, and 2 CFR 200.331(d). The subrecipient shall maintain records (including books, documentation and other evidence) pertaining to the costs of carrying out their activity to the extent of detail that will adequately reflect net costs, direct and indirect labor, materials, equipment, supplies/services, and other expenses. Authorized representatives of the City or HUD shall have access to subrecipient and City Program records at reasonable times of the business day for inspection, audit or reproduction. Subrecipients and City Programs must make these records available throughout the program year and four years after it expires. Furthermore, CEDD staff may schedule monitoring visits with the subrecipient to evaluate the progress/performance of the program and provide technical assistance. The



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT-CV



City of Appleton's Grant Administration Procedures manual should be referenced for further guidance on subrecipient tracking and monitoring requirements.

S. Financial Management Systems

Subrecipients must employ financial management systems that are capable of generating regular financial status reports indicating the dollar amount allocated (including budget revisions), amount obligated, and amount expended for each activity. The system must permit the comparison of actual expenditures and revenues against budgeted amounts. The City must be able to isolate/trace every CDBG-CV dollar received.

T. Payment Requests

Community partner subrecipients will submit requests for payment with attached supporting documentation to the CEDD. Payment requests shall be allowed on a reimbursement basis (i.e. only after expenditures have been incurred) and shall be reviewed to ensure the expenditures are in conformity with the use of funds as described in the Statement of Work. If source documentation is deemed inadequate by Staff, all payments will be withheld until all required documents have been submitted. Payment requests received and approved will be processed and a check issued in accordance with the City of Appleton Finance Department weekly pay cycle. All payment requests must contain an original signature.

U. Program Income

The receipt and expenditure of program income that is generated using CDBG-CV funds shall be treated as annual CDBG formula program income.

- CDBG-CV program income will be recorded as annual CDBG formula grant program income in local accounting records.
- Any CDBG-CV program income generated will be receipted in HUD's Integrated Disbursement and Information System (IDIS) as program income to the annual CDBG formula grant program and will be subject to the CDBG timeliness standards.

Anticipated program income must be documented and described in the subrecipient or City Program proposal/application. Furthermore, any and all program income received must be reported to the City of Appleton's Community and Economic Development and Finance Departments, unless otherwise specified in this contract.

V. CDBG-CV Activity Promotion

All subrecipients are required to participate in promotion of the City of Appleton CDBG-CV Program. Expectations will be outlined by staff at the beginning of the program year and may include, but are not limited to:

- Inclusion of the Appleton/CDBG logo in materials/at project sites
- Mentorship of a subrecipient new to the CDBG Program
- Participation in a CDBG Open House to showcase grant activities

Resolution No. 2022-01

**AMENDING THE ARTICLES OF ORGANIZATION AND THE BY-LAWS OF
EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION**

WHEREAS, the City of Appleton is a member of the East Central Wisconsin Regional Planning Commission; and

WHEREAS, the City of Appleton is a local unit of government in Calumet, Outagamie, and Winnebago Counties; and

WHEREAS, the Articles of Organization (“Articles”) and the By-Laws of the East Central Wisconsin Regional Planning Commission (“Commission”) authorize a majority of the counties of the Commission to make certain amendments to the Articles and By-Laws; and

WHEREAS, however, the Articles and By-Laws reserve to the local units of government within the Commission the authority to determine the composition of the Commission; and

WHEREAS, the Commission’s Steering Committee and the Commission are recommending to both the member counties and the local units of government the amendments to the Articles and the By-Laws described below; and

WHEREAS, this Resolution is presented by the East Central Wisconsin Regional Planning Commission to the City of Appleton Common Council.

NOW, THEREFORE, BE IT RESOLVED, that the City of Appleton Common Council does hereby approve the revisions to the By-Laws as more fully set forth in the attached document; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City of Appleton Common Council does hereby recommend that Article III of the Articles describing the composition of the Commission also be amended as more fully set forth in attached document; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that the City Clerk be directed to forward a copy of the signed Resolution to the Executive Director of the East Central Wisconsin Regional Planning Commission.

Adopted this _____ day of February 2022.

Jacob A. Woodford, Mayor

Attest: Kami Lynch, City Clerk

DATE: January 12, 2022

TO: Local Municipalities and Towns in Outagamie County

FROM: Melissa Kraemer Badtke, Executive Director

RE: Recommendations of Amendments to Articles of Organization and By-laws

The East Central Wisconsin Regional Planning Commission (ECWRPC) is a regional planning agency serving Calumet, Fond du Lac, Menominee, Outagamie, Shawano, Waupaca, Waushara, and Winnebago Counties. Regional Planning Commissions were formed by the executive order of the governor under Wis. State Statutes §66.0309. The Wisconsin statutes specify that regional planning commissions are to provide intergovernmental planning and coordination for physical, social and economic development of the region.

The East Central Wisconsin Regional Commission Planning Commission is recommending amendments to the East Central's Articles of Organization and By-laws to remove the Gubernatorial appointments because of the extreme delays in obtaining the Appointments for the Commission Board. The Commission Board made additional changes to the Articles of Organization and the By-laws and both documents were finalized and approved by the Commission Board on April 30, 2021. Outagamie County approved a resolution of support on July 13, 2021.

Enclosed you will find a copy of the revised Articles of Organization and the By-laws for your review. For your convenience we are also enclosing a draft form resolution the Commission is recommending that you approve. The following steps would need to be taken by the local units of government, including the Counties to assist in this process:

1. A majority of the local units of governments (as defined as counties, towns, villages, and cities) would need to approve a resolution amending East Central's Articles of Organization and the By-laws.
2. A copy of the signed resolution will need to be sent Melissa Kraemer Badtke, Executive Director at mbadtke@ecwrpc.org.

If you have any questions, please contact:

Melissa Kraemer Badtke, Executive Director
East Central Wisconsin Regional Planning Commission
Phone: 920-886-6828
Cell Phone: 920-2020-1479
Email: mbadtke@ecwrpc.org

**EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION
COMMISSION COMPOSITION & PROPOSED BYLAWS CHANGES**

Updated: 4/30/2021

COMMISSION BOARD COMPOSITION		
	Current Board Composition	New Bylaws Board Composition as approved 4/30/2021
Number of Commissioners	36	31
CALUMET COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	Mayor of Largest City	Mayor of Largest City
	Governor's Appt.	
Number of Commissioners	4	3
FOND DU LAC COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Executive	County Executive
	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	Council Pres. of Largest City	Council Pres. of Largest City
	Governor's Appt.	
Number of Commissioners	5	4
MENOMINEE COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	Governor's Appt.	County Bd. Appt.
Number of Commissioners	3	3
OUTAGAMIE COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Executive	County Executive
	County Bd. Chair	County Bd. Chair
	Mayor of Largest City	County Bd. Appt.
	County Bd. Appt.	County Bd. Appt.
	County Bd. Appt.	Mayor of Largest City
	Governor's Appt.	
Number of Commissioners	6	5
SHAWANO COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	Governor's Appt.	County Bd. Appt.
Number of Commissioners	3	3
WAUPACA COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	Mayor of Largest City	Mayor of Largest City
	Governor's Appt.	
Number of Commissioners	4	3
WAUSHARA COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	Governor's Appt.	County Bd. Appt.
Number of Commissioners	3	3
WINNEBAGO COUNTY		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representation	County Executive	County Executive
	County Bd. Chair	County Bd. Chair
	County Bd. Appt.	County Bd. Appt.
	County Bd. Appt.	County Bd. Appt.
	Mayor of Largest City	Mayor of Largest City
	Governor's Appt.	
Number of Commissioners	6	5
EX-OFFICIO MEMBERS APPLETON (FOX CITIES) MPO		
	Current Board Composition	New Bylaws Board Composition as approved 1/29/2021
Commission Board Representatives	WisDOT	WisDOT
	Valley Transit	Valley Transit
Number of Commissioners	2	2

RESOLUTION NO. 11-21

**AMENDING THE ARTICLES OF ORGANIZATION AND THE BY-LAWS OF
EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION**

WHEREAS, the Articles of Organization (“Articles”) and the By-Laws authorize a majority of the counties that are members of the Commission to make certain amendments to the Articles and By-Laws; and

WHEREAS, however, the Articles and By-Laws reserve to the local units within the Commission the authority to determine the composition of the Commission; and

WHEREAS, the Commission’s Steering Committee has recommended to the Commission and is recommending to both the member counties and the local units the amendments to the Articles and the By-Laws described below; and

WHEREAS, the Commission’s Steering Committee has reconsidered its prior recommendation and now recommends to the Commission and to the local units, respectively, their approval of the revised set of Articles and By-Laws that are attached to this resolution;

RESOLVED, that the Commission does hereby approve the revisions to the By-Laws as more fully set forth in Exhibit A, which is attached and incorporated by reference; and

FURTHER RESOLVED, that the Commission does hereby recommend that Article III of the Articles describing the composition of the Commission also be amended as more fully set forth in Exhibit B; and

FURTHER RESOLVED, that the Commission’s Executive Director is authorized and directed to present the recommended amendments of the Articles and the By-Laws to both the member counties and the local units consistent with the revisions set forth in Exhibit A and Exhibit B; and

FURTHER RESOLVED, that the Commission’s Executive Director is authorized and directed to take such further action as may be necessary and appropriate to accomplish the intended purposes of this Resolution.

Effective Date: April 30, 2021

Submitted By: Steering Committee

Prepared By: Melissa A. Kraemer Badtke, Executive Director

Martin Farrell

Martin Farrell (May 4, 2021 14:31 CDT)

Martin Farrell, Chair – Fond du Lac Co.

ARTICLES OF ORGANIZATION
OF
EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION
September 27, 1972

**ARTICLES OF ORGANIZATION
OF
EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION**

ARTICLE I - AUTHORIZATION

The provisions of Section 66.945 of the Wis. Stats. authorizes counties, in the form of resolutions, to petition the Governor of the State of Wisconsin to create a regional planning commission within a proposed area. Upon receipt of such petitions and the holding of a public hearing, the governor may create a regional planning commission by Order and designate the areas and boundaries of the commission's jurisdiction.

Pursuant to such statutory provisions the governing bodies of Calumet, Fond du Lac, Green Lake, Marquette, Menominee, Outagamie, Shawano, Waupaca, Waushara, and Winnebago Counties, by resolution, petitioned the Honorable Patrick J. Lucey to form a regional planning commission encompassing the general area of such counties. Thereafter a public hearing on such petitions was duly held at the Winnebago Court House located in the City of Oshkosh, Wisconsin, on the 26th day of June, 1972. Subsequent to the said public hearing, the Honorable Governor Patrick J. Lucey did by an Executive Order dated June 29, 1972, create the Regional Planning Commission and designate that the area of the Commission be comprised of the Counties of Calumet, Fond du Lac, Green Lake, Marquette, Menominee, Outagamie, Shawano, Waupaca, Waushara, and Winnebago.

ARTICLE II - NAME

The said counties comprising the Regional Planning Commission, as designated by the Governor's Executive Order dated June 29, 1972, are all located within the proximity of the East Central area of Wisconsin; and, therefore, the name of the Commission shall be: **EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION.**

ARTICLE III - COMPOSITION OF COMMISSION

The area of the Commission as designated by the Executive Order of the Governor does not include a city of the first class as defined in Wis. Stat. Section 62.05. Therefore, pursuant to the provisions of Wis. Stat. Section 66.0309(3) (b) the membership of the Commission is to be determined by resolutions duly approved by the governing bodies of a majority of the local units within the region, and these units shall have in the aggregate at least half of the population of the region.

The said ten-county area comprising the Commission includes 243 local units of government with a combined population of 474,186 as shown by the last Federal census. A majority or 145 of these local units within the designated region representing a population count of 629,428 have duly adopted the following resolutions as to membership of the Commission: **[Update numbers recited in this paragraph.]**

Section 1. GENERAL: Adhering to the principle of representation based on population, the membership of the Commission shall be created pursuant to the provisions of Wis. Stat. Section 66.0309 (3) (b) determined and allocated among participating counties as follows:

- A. ~~Two elected officials from each member county which comprises the Commission. The Chairperson and the County Executive from each member county within the Commission. If a member county is organized without a County Executive, the County Chairperson shall appoint a member of the County Board to serve as the second elected official from that county.~~
- B. ~~One person, who may be elected official from each participating county, selected by the Governor. One elected official from the largest city, if the member County has a population of 50,000 or more as defined by the U.S. Decennial Census. If the member County does not have a population of 50,000 or more per the U.S. Decennial Census, the member County may appoint a County Supervisor to the Commission Board. -or if no city the largest village, within each member county, appointed by the mayor, council president, or village president, depending on the specific form of government.~~

~~C. In addition to the representation specified in subsections A. and B., above, Counties with a population greater than 50,000 based on the U.S. Decennial Census are entitled to one additional member to the Commission Board for each full unit of 50,000 population that exceeds the 50,000 base number described in subsection B., above. (For purposes of illustration only, a County with a population of 180,000 would be entitled to 2 additional members to the Commission Board under this subsection C.) One (1) additional elected official from each 50,000 unit of population residing within a member county as determined by the last federal decennial census. No additional representation hereunder shall be granted for any fractional part of the required population unit.~~

~~D. One ex-officio representative of the Wisconsin Department of Transportation (WisDOT) may participate on transportation issues, subjects of concern and interest to their geographic areas, or due to noted/recognized expertise. This member must be appointed by WisDOT.~~

~~DE. One ex-officio representative of a public agency that administers or operates major modes of transportation in the Fox Valley metropolitan planning organization area, including representation by providers of public transportation. [Note: This position will be held by the Transit Manager for Valley Transit.]~~

~~**Section 2. SELECTION OF MEMBERSHIP:** The Commission membership as set forth in the preceding Section 1 of this Article shall consist of members to include the following:~~

~~A. The Chairman of the County Board of each participating County and the County Executive, if any, of each participating County shall be members of said Commission.~~

~~B. One member from each participating County shall be appointed by the Governor from a list of six or more persons nominated by the respective County Boards, of which at least four shall be private citizens. In nominating private citizens, the County Board shall give preference to those persons having experience in multi-jurisdictional efforts in one or more of the following~~

~~areas: land use planning, transportation, law, finance, engineering, recreation and natural resources development, social or economic planning.~~

~~C. The remaining elected officials comprising the representation allocated to each participating County under Section 1, Paragraph A, shall be appointed by the Chairman of the County Board or by the County Executive as the Wis. Stats. so provide and subject to confirmation by the County Board. In those counties having additional representation as specified in Section 1, Paragraph C, the first such representative shall be the mayor, or council president in cities with a council-manager plan, of the largest city in the County. All additional representatives shall be either county supervisors, city mayors, aldermen or councilmen, village presidents or board members, town board chairmen or town board supervisors residing within the respective County.~~

Section 32. TERM OF OFFICE: ~~Those Commissioners who are appointed by the County Board Chairman or the County Executive~~ shall serve for a term of two (2) years, or until they cease to hold their public office, whichever comes first. Voting, ex-officio members shall serve continuously at the pleasure of the appointing body.

~~Those Commissioners appointed by the Governor shall serve for a four (4) year term.~~

Section 3. COMMISSION ALTERNATES: Any member of the Commission selected pursuant to Section 1, of this Article may designate, in writing and with the concurrence of the Commission a permanent designee.

Section 4. RESIGNATION: Any Commissioner -who resigns his or her Commission membership or his or her elective office shall submit his or her resignation effective as of the last day in office, and thereafter the vacancy shall be filled by appointment for the unexpired term by the County Board Chairperson (if a county) or the city council or village board.

ARTICLE IV - PURPOSES

The purposes for which the Commission is created are to engage in any lawful activity within the

purposes for which regional planning commissions may be created under Wis. Stat. Section 66.0309.

ARTICLE V - POWERS, FUNCTIONS AND DUTIES

In general, the Regional Planning Commission shall have all of the powers necessary to enable it to perform its functions and promote regional planning.

The functions of the Regional Planning Commission shall be solely advisory to the local governments and local governmental officials comprising the area and shall include but not be limited to the following because of enumeration.

- A. The Commission may conduct all types of research studies, collect and analyze data, prepare maps, charts and tables and conduct all necessary studies for the accomplishment of its other duties.
- B. The Commission may make plans for the physical, social and economic development of the region and may adopt by resolution any plan or the promotion of any plan so prepared as its official recommendation for the development of the region.
- C. The Commission may publicize and advertise its purposes, objectives and findings and may distribute reports thereon.
- D. The Commission may provide advisory services on regional planning problems to the local government units within the region and to other public and private agencies in matters relative to its functions and objectives.
- E. The Commission may act as a coordinating agency for programs and activities of such local units and agencies as the relate to its objectives.
- F. The Commission may accept aid in any form for the purpose of accomplishing regional planning from all governmental agencies whether local, state or federal if the conditions under which such aid is furnished is not incompatible with the provisions of Wis. Stat. Section 66.0309.
- G. The Commission may accept gifts and grants from public or private individuals or agencies if the conditions under which such grants are made are in accordance with the accomplishment

of its objectives.

- H. The Commission shall make an annual report of its activities to the legislative bodies, the local governmental units within the region, and shall submit two copies of such report to the Legislative Reference Bureau.
- I. The Commission shall prepare a comprehensive planning program for the physical development of the region. The Commission may amend, extend or add to the comprehensive planning program or carry any part of such mater into greater detail.
- J. The Commission shall annually on or before October 1, of each year prepare and approve a budget reflecting the cost of its operation and services to the local governmental units within the region.

ARTICLE VI - PROPORTIONATE SHARE OF COSTS

The member counties of the Commission shall provide their proportionate share of the public funds necessary to meet the requirements of the budget in the amount represented by the percentage of their equalized valuation for tax purposes of the land, buildings and other improvements thereon of such local and governmental unit, within the region, to the total such equalized valuation within the region. The amount charged shall be in accordance with the most recent equalized valuation figures published by the Wisconsin Department of Taxation. The requested allocation from and levied upon each member county shall not exceed the statutory limits of a .003% of such equalized value under its jurisdiction within the region.

ARTICLE VII - ADMINISTRATION

The administrative affairs and the rules of procedure of the Regional Planning Commission shall be governed in the manner as provided for in the duly adopted By-laws of the Commission. In compliance with the statutory requirements, the said adopted By-laws shall provide for the election of a chairman and executive committee and an annual meeting of the said Commission.

ARTICLE VIII - WITHDRAWAL

A member county of the Commission may withdraw from the Regional Planning Commission at the end of any fiscal year by a two-thirds (2/3rds) vote of the members elect of its Board of Supervisors taken at least six months prior to the effective date of such withdrawal.

ARTICLE IX - AMENDMENTS

These Articles, except Article III, may be amended by resolutions duly adopted by the Board of Supervisors from a majority of the counties which are members of this Commission. Article III shall be amended only in accordance with resolutions approved by the governing bodies of a majority of local units within the region, and these units shall have in the aggregate at least half of the population of the region.

BY-LAWS
of the
EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION

September 27, 1972
As Amended February 8, 1973
As Amended March 11, 1976
As Amended May 13, 1976
As Amended May 8, 1980
As Amended May 14, 1981
As Amended May 13, 1982
As Amended April 25, 1985
As Amended April 28, 1988
As Amended April 26, 1990
As Amended April 30, 1993
As Amended April 28, 1995
As Amended May 23, 2001
As Amended April 26, 2002
As Amended April 27, 2006
As Amended, April, 25, 2008
As Amended, October 30, 2009
As Amended, April 29, 2011
As Amended, October 26, 2013
As Amended, April 25, 2014
As Amended, July 25, 2014
As Amended, January 30, 2015
As Amended July 26, 2019
As Amended _____, 2021

BY-LAWS
of the
EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION

PREAMBLE

These By-laws, consistent with the statutes of the State of Wisconsin, and the Articles of Organization of the East Central Wisconsin Regional Planning Commission, further define, regulate, and provide rules of procedure for the East Central Wisconsin Regional Planning Commission and those Committees and officers established by and responsible to it, and have been adopted by the Commission for that purpose. Where the word "Commission" appears hereinafter, it shall be construed to mean the East Central Wisconsin Regional Planning Commission. It is the express intent of the Commission and the purpose of these By-laws to advance the regional function of the Commission as provided for by applicable law and to carry on the business of regional metropolitan and non-metropolitan planning and development in all of its ramifications and branches and to render professional and technical services in conjunction therewith.

ARTICLE I - OFFICES

Section 1. The Commission shall establish its offices at such location as it may from time to time, except that such location will be within the East Central Wisconsin Region, which is comprised of the Counties of Calumet, Fond du Lac, Menominee, Outagamie, Shawano, Waupaca, Waushara and Winnebago.

ARTICLE II - POWERS, DUTIES AND RESPONSIBILITIES

Section 1. PURPOSE: The purposes for which the Commission is created are to engage in any lawful activity within the purposes for which regional planning commissions may be created under Section 66.0309 of the Wisconsin Statutes, as amended.

Section 2. POWERS, FUNCTIONS AND RESPONSIBILITIES: In general, the Commission shall have all of the powers necessary to enable it to perform its functions and promote regional planning.

The functions of the Commission shall be solely advisory to the local governments and local governmental officials comprising the area and shall include but not be limited to the following because of enumeration.

- A. The Commission may conduct all types of research studies, collect and analyze data, prepare maps, charts and tables and conduct all necessary studies for the accomplishment of its other duties.

- B. The Commission may make plans for the physical, social and economic development of the region and may adopt by resolution any plan or the portion of any plan so prepared as its official recommendation for the development of the region.
- C. The Commission may publicize and advertise its purposes, objectives and findings and may distribute reports thereon.
- D. The Commission may provide advisory services on regional planning problems to the local government units within the region and to other public and private agencies in matters relative to its functions and objectives.
- E. The Commission may act as a coordinating agency for programs and activities of such local units and agencies as they relate to its objectives.
- F. The Commission may accept aid in any form for the purpose of accomplishing regional planning for all governmental agencies whether local, state or federal if the conditions under which such aid is furnished is not incompatible with the provisions of Section 66.0309 of the Wisconsin Statutes, as amended.
- G. The Commission may accept gifts and grants from public or private individuals, entities or agencies if the conditions under which such grants are made in accordance with the accomplishment of its objectives.
- H. The Commission shall make an annual report of its activities to the legislative bodies of the local governmental units within the region, and shall submit two copies of such report to the Wisconsin Legislative Reference Bureau per Wisconsin State Statutes § 66.0309(8)(b), as amended.
- I. The Commission shall prepare a comprehensive planning program for the physical development of the region and adopt a regional comprehensive plan consistent with Wisconsin State Statutes §66.1001(9) as outlined in the Wisconsin State Statutes §66.0309(9) and §66.0309(10), as amended. The Commission may amend, extend or add to the comprehensive planning program or carry any part of such matter into greater detail.
- J. The Commission shall annually on or before July 31 of each year prepare and approve a preliminary budget reflecting the cost of its operation and services to the participating governmental units within the region. The Commission's final budget shall be approved by or before January 31 of the year following.

ARTICLE III - MEETINGS

Section 1. ANNUAL MEETING: There shall be an annual meeting of the Commission in conjunction with, and following, the April Quarterly Meeting for the appointment of standing committee membership, a presentation of the Commission's Annual Report of its activities and

any other business as may properly come before it.

Section 2. QUARTERLY MEETINGS: In addition to the annual meeting, quarterly meetings of the Commission shall be held on the last Friday of January, April, July and October, except when a different date is designated by the officers. When the agenda of any meeting does not include resolutions for deliberation by the Commission or consideration of said resolutions may be delayed to the next meeting without adversely impacting the work flow of the Commission, the Chairperson may cancel and then reschedule any meeting at their discretion, but may not cancel two consecutive meetings. The election of officers shall be conducted by the Commission at the April quarterly meeting. The levy and draft annual budget shall be adopted by the Commission at the July quarterly meeting. The annual budget and work program (not levy) shall be re-affirmed at the subsequent January meeting.

Section 3. SPECIAL MEETINGS: Special meetings may be called at any time by the Chairperson of the Commission. Special meetings shall also be called by the Chairperson upon written request by three or more members of the Commission.

Section 4. NOTICE OF MEETINGS: The Secretary of the Commission shall send to each and every member of the Commission notice of all meetings quarterly and the annual meeting, not less than five (5) days prior to said meetings and such notice shall state the day, time, place and general purpose of such meeting. Notices for special meetings, as described in Section 3 shall be e-mailed, mailed, or posted not less than three (3) business days prior to said meeting. In no case, shall an agenda, or amended agenda, be e-mailed or posted less than 24 hours in advance of said meeting.

Section 5. QUORUM: The presence at any meetings (including Standing Committees, unless otherwise noted) of a majority (defined as $\geq 50\%$) of the current Commission members, which majority shall also include representation from a majority (defined as $\geq 50\%$) of the member Counties assigned to the Committee, shall be necessary and sufficient to constitute a quorum for the transaction of any business and the election of officers. All matters relating to business shall require an affirmative vote of a simple majority of those members attending a legal meeting (when a quorum is present), unless otherwise noted as a 2/3 vote requirement.

Section 6. PUBLIC MEETINGS: Member County Planning/Zoning Directors and State Legislative Representatives from the region (unless already a member of the Commission), and the Wisconsin Economic Development Corporation, the Department of Natural Resources and other agencies, as may be determined from time to time, shall be notified of all meetings pursuant to Article III, Section 4. Meeting notices shall be e-mailed or mailed to local media, posted on ECWRPC premises, and posted to the Commission's website, www.ecwrpc.org for public viewing.

ARTICLE IV - COMPOSITION OF COMMISSION

Section 1. GENERAL: Adhering to the principle of representation based on population, the membership of the Commission shall be created pursuant to the provisions of § 66.0309 (3) (b) of the Wisconsin Statutes, as amended, determined and allocated among participating counties as follows:

~~A. The Chairperson and the County Executive from each member county within the Commission. If a member county is organized without a County Executive, the County Chairperson shall appoint a member of the County Board to serve as the second elected official from that county. Two elected officials from each member county which comprises the Commission.~~

~~B. One person, who may be an elected official from each participating county, selected by the Governor.~~

~~CB. One elected official from the largest city, if the member County has a population of 50,000 or more as defined by the U.S. Decennial Census. If the member County does not have a population of 50,000 or more per the U.S. Decennial Census, the member County may appoint a County Supervisor to the Commission Board. No additional representation hereunder shall be granted for any fractional part of the required population unit. One elected official from the largest city, or if no city the largest village, within each member county, appointed by the mayor, council president, or village president, depending on the specific form of government.~~

~~C. In addition to the representation specified in subsections A. and B., above, Counties with a population greater than 50,000 based on the U.S. Decennial Census are entitled to one additional member to the Commission Board for each full unit of 50,000 population that exceeds the 50,000 base number described in subsection B., above. (For purposes of illustration only, a County with a population of 180,000 would be entitled to 2 additional members to the Commission Board under this subsection C.)~~

~~D. One ex-officio representative of the Wisconsin Department of Transportation (WisDOT) may participate on transportation issues, subjects of concern and interest to their geographic areas, or due to noted/recognized expertise. This member must be appointed by WisDOT.~~

~~ED. One ex-officio representative of a public agency that administers or operates major modes of transportation in the Fox Valley metropolitan planning organization area, including representation by providers of public transportation. [Note: This position will be held by the Transit Manager for Valley Transit].~~

~~**Section 2. — SELECTION OF MEMBERSHIP:** The Commission membership as set forth in the preceding Section 1 of this Article shall consist of members to include the following:~~

~~A. The Chairman of the County Board of each participating County and the County Executive, if any, of each participating County shall be members of said Commission.~~

~~B. One member from each participating County shall be appointed by the Governor from a list of two (2) or more persons nominated by the respective County Boards,~~

~~of which at least one (1) shall be a private citizens. In nominating private citizens, the County Board shall give preference to those persons having experience in multi-jurisdictional efforts in one or more of the following areas: land use planning, transportation, law, finance, engineering, recreation and natural resources development, social or economic planning. The Commission shall reimburse the member Counties for any costs incurred in seeking/fulfilling this position.~~

~~C. The remaining elected officials comprising the representation allocated to each participating County under Section 1, Paragraph A, shall be appointed by the Chairman of the County Board or by the County Executive as the Wis. Stats. so require or provide and subject to confirmation by the County Board [Note: see determination by Outagamie County Corporation Counsel in letter dated April 27, 2012]. In those counties having additional representation as specified in Section 1, Paragraph C, the first such representation shall be the mayor, or council president in cities with a council manager plan, of the largest city in the County. All additional representatives shall be either county supervisors, city mayors, aldermen or councilmen, village presidents or board members, town board chairman or town board supervisors residing within the respective County.~~

~~D. One ex-officio representative of the Wisconsin Department of Transportation (WisDOT) may participate on transportation issues, subjects of concern and interest to their geographic areas, or due to noted/recognized expertise. This member must be appointed by WisDOT.~~

~~E. One ex-officio representative of a public agency that administers or operates major modes of transportation in the Fox Valley metropolitan planning organization area, including representation by providers of public transportation. [Note: This position will be held by the Transit Manager for Valley Transit].~~

Section-32. TERM OF OFFICE: ~~Those Commissioners who are appointed by the County Board Chairman or the County Executive shall serve for a term of two (2) years, or until they cease to hold their public office, whichever comes first. Those Commissioners appointed by the Governor shall serve for a four (4) year term. Voting, ex-officio members as described in Section 2.D., shall serve continuously at the pleasure of the appointing body.~~

Section-43. COMMISSION ALTERNATES: ~~Any member of the Commission selected pursuant to Section-21, Paragraphs A or C of this aArticle may designate, in writing and with the concurrence of the Commission, a permanent designee representative as an alternate provided the representative meets the provisions of Section 2, Paragraph C of this article. Alternatively, for members serving under the provisions of Section 1., Paragraph C of this article as the first additional representative in counties having a population greater than 50,000, and then only when representing cities with council manager forms of municipal government, the current city manager may be designated as a permanent alternate by action of the member with concurrence by resolution of the council of said community. Such alternate representative may attend all meetings of the Commission or its committees and exercise all voting powers of the member, except when the member is present. Any member of the Commission may designate, in writing, a temporary alternate for any meeting of the Commission or its~~

~~committees, except that an alternate may not be designated for more than two Commission meetings in succession. Temporary alternate representatives may attend all meetings of the Commission or its committees and exercise all voting powers of the member, except when the member is present.~~

Section 54. RESIGNATION: Any Commissioner ~~selected pursuant to Section 2, Paragraph C of this article~~ who resigns his or her Commission membership or his or her elective office shall submit his or her resignation effective as of his-the last day in office, and thereafter the vacancy shall be filled by appointment for the unexpired term by the County Board Chairperson (if a county) or the city council or village board. only, pursuant to Section 2, Paragraph C of this article. ~~Any Commissioner selected pursuant to Section 2, Paragraph B of this article who resigns shall submit his resignation to the Governor with a copy to the County Board Chairman or County Executive, and thereafter the vacancy shall be refilled pursuant to the provisions of Section 2, Paragraph B and Section 3 of this article.~~

ARTICLE V - OFFICERS

Section 1. NUMBER: The officers of the Commission shall be comprised of a Chairperson, Vice-Chairperson, and Secretary-Treasurer, subject to the express condition that the offices of Chairperson and Vice-Chairperson shall never be concurrently held by Commissioners from the same County.

Section 2. ELECTION: The offices of Chairperson and Vice-Chairperson of the Commission shall be selected by ballot as the last order of business at the April quarterly meeting of the Commission, to take office effective as of said date, and they shall hold their terms of office for a period of two years or until their successors have been duly elected and qualified. The Chairperson shall appoint a Nominating Committee for the purpose of nominating Commission members for election as officers, and the Chairperson shall advise the Commission of his or her selection of such a Nominating Committee at the January meeting.

Section 3. REMOVAL: Any of the officers may be removed for cause and may be removed if incapacitated or unable to attend meetings and perform the duties of his office. Removal from office shall require a two-thirds (2/3rds) vote of the Commissioners present, voting at a legal meeting.

Section 4. VACANCIES: Should any office become vacant for any cause, the Commission shall select a successor from among the Commission members who will serve until the next April quarterly meeting of the Commission when the regular elections are held.

Section 5. CHAIRPERSON: The Chairperson of the Commission shall preside, and may vote, at all meetings of the Commission. He or she may present to the Commission such matters as, in his or her judgment, require attention, and he or she shall perform such other duties as are entrusted to the Chairperson by statute or by these By-laws. Subject to any contrary requirements in these By-laws, the Chairperson shall be guided by Robert's Rules of Order in the conduct of meetings. In no event shall any one member serve as Chairperson for more than three consecutive terms. The Chairperson may also act on behalf of the Steering

Committee and/or full Commission in the rare instances that a timely commitment of County levy funds is required in order to take advantage of state or federal grant funding opportunities. In such cases, the Chairperson's may approve such commitments for an amount equal to or less than \$50,000. In all cases, when such action is used, the item shall be placed on the next available Steering Committee agenda for review and follow up action by the Steering Committee as a whole. The Commission Chairperson will be compensated an additional annual net stipend of \$1,000 beginning in 2020, with the first payment to be made in March, 2021 and then annually thereafter.

Section 6. VICE-CHAIRPERSON: The Vice-Chairperson shall preside in the absence of the Chairperson or in the event that the Chairperson is incapacitated or unable to serve, and in the absence or disability of the Chairperson, his or her duties shall be performed by the Vice-Chairperson.

Section 7. SECRETARY-TREASURER: The Executive Director of the Commission shall be designated as the Secretary-Treasurer of the Commission and shall keep and distribute minutes of all meetings of the Commission and shall counter-sign all documents as required to be executed, and shall keep and preserve all resolutions, transactions, findings and determinations of the Commission. In the absence of the Secretary-Treasurer, the Chairperson may name a Deputy Secretary-Treasurer who shall perform the duties of the Secretary-Treasurer at that meeting, or until the office shall have been filled as heretofore provided. The Secretary-Treasurer of the Commission shall keep all the funds of the Commission except those funds held by governmental agencies in trust for the Commission, and shall deposit them in a depository authorized by the Commission, and shall keep an accurate record of all receipts and disbursements. He or she shall be required to supply a bond in the amount of Fifty-Thousand Dollars (\$50,000), the premium for which shall be paid out of the Commission's funds, and he or she shall make all the disbursements under the direction of the Commission.

Section 8. ADDITIONAL OFFICERS: The Commission, at an annual, special or quarterly meeting, may create such additional officers as it may deem in its judgment advisable and prescribe their duties.

ARTICLE VI - MANAGEMENT

Section 1. EXECUTIVE COMMITTEE: The Executive Committee shall be comprised of the entire Commission membership as set forth in Article IV.

Section 2. STANDING COMMITTEES: Appointments to standing committees shall be made by the Chairperson at its Annual Meeting based on recommendations of the Nominating Committee. Such appointments shall not include designation of the committee chairperson and vice-chairperson as such positions are nominated and elected by the Committees themselves.

There shall be Standing Committees and sub-committees including but not limited to the following:

- A. **Steering Committee:** The Steering Committee shall be composed of at least eight (8) members who serve as their respective county board chair or their designee. The Chairperson and Vice-Chairperson positions for the Committee can, but is not required to be, the same as the current Commission Chairperson and Vice-Chairperson positions. The Secretary-Treasurer of the Commission shall be the secretary of the Steering Committee and shall attend all meetings of the Committee, keep a record of the proceedings and perform such other duties as may be designated to him or her by the Committee. The Secretary-Treasurer shall be an ex-officio member of this Committee without voting privileges. The duties of the Committee shall include:
1. Ensure proper coordination and cooperation among the planning committees of the Commission and their respective citizens' or technical advisory committees.
 2. Act in emergency situations with the full power and authority of the Commission taking appropriate action until action is taken at the next Commission meeting, subject only to the limitation of \$50,000 for any expenditure resulting from such action. Refer also to Article V, Section 5 regarding additional Chairperson authorities for the timely approval of County levy commitments for state and federal funding opportunities, and the Commission's Financial Procedures Manual for authorities of the Executive Director.
 3. Keep the Commission advised of pending legislation affecting the Commission, its policies and its programs.
 4. Prepare and submit at the quarterly July meeting a preliminary budget and work program for the purposes of establishing the levy.
 5. Recommend entering into contracts with member governmental units for the provision of staff planning services.
 6. Recommend the employment of auditors to audit the books of the Commission.
 7. Direct the payment of any bills, claims or expenses incurred on behalf of and approved by the Commission.
 8. Recommend the appointment of employees necessary to administer and carry out the functions of the Commission.
 9. Recommend the salaries and wages of all employees of the Commission.
 10. Recommend a per diem compensation, mileage and other expenses to be paid members of the Commission.
 11. Direct and monitor the current planning, information system and administration, and overhead program elements.

- B. Planning Committees:** The composition of the various planning committees shall be determined by the Steering Committee. The general functions of the committees include:
1. Elect a Committee Chairperson and Vice-Chairperson as their first order of business at the first regular Committee meeting following the Annual Meeting. The Steering Committee Chairperson and Vice Chairperson shall generally be the same as the current Commission Chairperson and Vice-Chairperson, but it is not required.
 2. Provide orientation information for new Planning Committee members at the first meeting following the Annual Meeting.
 3. Prepare the annual work program statement of activities for their respective program element(s).
 4. Review detailed study designs for major work elements.
 5. Monitor progress on work activities, review staff drafts of analytical reports and alternative plan and program proposals.
 6. Report, advise and recommend on activities for their respective program element(s) including their responsibilities for elements of the regional comprehensive plan to the full Commission for action.
 7. Review specific project proposals for conformance with adopted plans and policies.
 8. Coordinate activities with those of other committees when necessary and desirable.
 9. Maintain liaison with appropriate citizen and technical advisory committees.

The specific duties of the Planning committees are as follows:

- (a) **Regional Comprehensive Planning Committee:** This committee directs and monitors the regional comprehensive plan and oversees other matters of regional impact.
- (b) **Economic Development Committee:** This Committee directs and monitors the economic development and housing program element and maintains liaison with respective technical advisory committees, including the Comprehensive Economic Development Strategy (CEDS) Committee. The CEDS Committee composition and operational structure is managed through the guidelines adopted by the Commission in Resolution No. 29-09.
- (c) **Transportation Committee:** This committee directs and monitors the transportation program element in accordance with state and federal regulations. Maintains liaison with the Transportation Policy Advisory

Committees and the Transportation Technical Advisory Committee.

- (d) **Open Space and Environmental Management Committee** - This committee directs and monitors the open space and environmental management program element.
- (e) **Community Facilities Committee** – This committee directs and monitors the community facilities program element. The committee has responsibility to act on-behalf of the Commission for sewer service area amendments and reviews.

Section 3. SPECIAL PROJECT COMMITTEES: The Commission may from time to time create special project committees from the Commission membership to perform under delegated authority of the Commission.

Section 4. ADVISORY COMMITTEES: The Commission shall seek the advice and cooperation of interested citizens, public officials and agency administrators. Citizen and Technical Advisory Committees shall be established as the Commission shall deem necessary to effectively carry out the purposes of the organization. The membership of the Citizen and Technical Advisory Committees shall be established in such manner as determined by the Commission.

Section 5. NOMINATING COMMITTEE: The Nominating Committee shall consist of one Commissioner from each County appointed by the Chairperson and approved by the Commission at their January meeting, provided that no officer may serve on the Committee. The nominating Committee shall review the results of an internal survey of Commissioners (developed and sent out by staff) as part of their deliberations on Committee assignments. The Committee may, at its discretion, develop and institute a standard rotation schedule of Committee assignments based on agreed upon criteria.

Section 6. STAFF: The Commission may conduct its operations through a permanent staff hired in a manner that the Steering Committee may determine, or through retention of part-time professional, technical and clerical employees, through consultants or through other personnel that it may deem qualified to assist in its business. The Commission may delegate to the staff and to those persons hired by it those functions that the Commission may determine, but the said Commission will remain solely responsible in all matters.

Section 7. DEPOSITORY: The Commission shall determine a depository for the funds of the Commission and direct the Secretary-Treasurer therein to deposit the funds in such designated depository in such manner so the deposits will not be made inconsistent with Wisconsin Law and which may be subject to review by the Commission as a body. The terms and conditions of the agreements between the depository and the Commission shall be incorporated as a part of the By-laws of the Commission.

Section 8. MEETING PAYMENTS AND EXPENSES: A payment for meetings, mileage, and other expenses shall be paid to Commissioners-by the Commission. All members shall be reimbursed for actual expenses incurred as members of the Commission in attending meetings

and in carrying out the work of the Commission.

ARTICLE VII - CONTRACTS AND EXECUTION OF INSTRUMENTS, CHECKS AND DRAFTS

Section 1. CONTRACTS: The Commission may enter into such contracts which are necessary to carry out the purposes and duties of the Commission and which are not inconsistent with the provisions of the Wisconsin law. The Commission may apply, contract for, receive, and expend for its purposes, any funds, grants, gifts or donations from any local governmental unit, the State of Wisconsin, the Federal Government or any other source.

Section 2. EXECUTION OF INSTRUMENTS: When the execution of any contract, conveyance or other instrument has been authorized without specification of the executing officers, the Chairperson or Vice-Chairperson, and the Secretary-Treasurer may execute the same in the name and behalf of the Commission per the limits expressed in the Financial Procedures Manual. The Commission shall have the power to designate the officers and agents who shall have authority to execute any instrument in behalf of the Commission.

Section 3. CHECKS AND DRAFTS: The Commission may authorize and direct the Secretary-Treasurer to issue such checks, drafts and vouchers as it may deem necessary for the payment of bills and expenses incurred for and on behalf of the Commission. All disbursements made by check drawn on the Commission's depository bank shall be signed by the Secretary-Treasurer. In the Secretary-Treasurer's absence, the Assistant Director may sign checks, drafts, and vouchers. To facilitate prompt payment of small bills and expenses, there is established a petty cash fund of \$100. This petty cash fund is authorized to be placed in the custody of the Secretary-Treasurer, or their designee, who may make payment of claims up to \$100.

ARTICLE VIII - FISCAL YEAR

Section 1. The fiscal year of the Commission shall be the calendar year.

ARTICLE IX - SEAL

Section 1. The Commission shall procure an official seal which shall contain the following legend: "EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION."

ARTICLE X - AMENDMENTS

Section 1. Except as described in Section 2, below, these By-laws may be amended at any quarterly meeting of the Commission. The Secretary-Treasurer shall be sent out to each member of the Commission a copy of the proposed amendment or amendments to the By-laws. This shall be done not less than five (5) days prior to the date of the meeting at which they will be considered. Amendment of these By-laws shall require a majority vote of the Commissioners

present, voting at a legal meeting (when a quorum is present).

Section 2. Article IV, Section 1 hereof shall be amended only in accordance with resolutions approved by the governing bodies of a majority of local units within the Commission, and these units shall have in the aggregate at least half of the population of the region.

ARTICLE XI - COMPLIANCE WITH FEDERAL AND STATE OF WISCONSIN LAW

Section 1. INCONSISTENCIES: In the event that these By-laws, or any provisions herein contained, should in any manner be contrary to or violate of the provisions of Federal or State of Wisconsin Law, the provisions of the Federal or State of Wisconsin Law shall prevail.

ARTICLE XII – METROPOLITAN PLANNING ORGANIZATION FUNCTION & RESPONSIBILITIES

Section 1: PURPOSE: To implement Federal and State level transportation planning requirements as the designated Metropolitan Planning Organization (MPO) for the Fox Cities and Oshkosh Metropolitan Planning Areas (MPAs).

Section 2. OFFICIAL DESIGNATION: The East Central Wisconsin Regional Planning Commission (Commission) through cooperative partnership agreements with the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and the Wisconsin Department of Transportation (WisDOT) is the designated Metropolitan Planning Organization (MPO) for the Appleton (Fox Cities) Transportation Management Area (TMA) and the Oshkosh Metropolitan Planning Area (MPA).

Section 3: URBANIZED AREA BOUNDARY & METROPOLITAN PLANNING AREA: Per the 2010 Decennial Census, the Appleton (Fox Cities) and Oshkosh Urbanized Areas and Metropolitan Planning Areas (MPAs) includes portions of Calumet, Outagamie and Winnebago Counties.

Section 4: MPO POLICY BOARD: The Appleton(Fox Cities) and Oshkosh Metropolitan Planning Organizations (MPOs) are governed by a single MPO Policy Board containing the same representation of elected and appointed representatives as those of the Commission. All functions, responsibilities, and authorities conveyed in these Bylaws, as they pertain to the Commission, are conferred to the MPO Policy Board when exercising such authority on transportation related policy matters or decisions.

Section 5: MPO STAFF: MPO staff is responsible for carrying out the federal transportation planning process in conjunction with its partners. The Commission is the hosting body for the MPO staff. As such, MPO staff are Commission employees.

Section 6: RESPONSIBILTIES MPO POLICY BOARD: In addition all other Bylaw responsibilities afforded to the Commission, the MPO Policy Board is the body that reviews and approves all transportation related activities of the MPO. This includes being a forum for

cooperative decision-making with the following responsibilities:

- A. Approve goals and objectives of the transportation planning process;
- B. Review and approval the Long Range Transportation Plans (LRTPs) and its updates or revisions;
- C. Review and adopt changes in transportation planning concepts;
- D. Review and approve the Unified Planning Work Program (UPWP);
- E. Review and adopt the Transportation Improvement Program (TIP) including project priorities and approve any changes in the priority schedule;
- F. Ensure the efficient and effective use of the Federal Highway Administration (FHWA) Section 112 and the Federal Transit Administration (FTA) Section 5303 planning funds;
- G. Serve as liaison representatives between various governmental units in the study area to obtain optimum cooperation of all governmental units in implementing various elements of the plan;
- H. Ensure citizen participation and transparency within the transportation planning process through proactive policies and procedures.

Section 7: MPO SUBCOMMITTEES & INTERLOCAL AGREEMENTS: The MPO Policy Board shall have the authority to form temporary (or permanent) subcommittees to conduct the following activities in order to carry out MPO Policy Board functions:

- A. To negotiate the terms of possible funding agreements with member agencies;
- B. To investigate how MPO functions might be improved;
- C. To evaluate the MPO Director's performance and make recommendations;
- D. To conduct research and/or fact-finding regarding MPO plans, policies or operations.

All findings, recommendations and/or proposals submitted by MPO subcommittees shall not be binding, but are subject to review and final approval of the MPO Policy Board.

These By-laws were adopted by the Commission on the 27th day of September, 1972, as further amended on the 8th day of February, 1973, the 11th day of March, 1976, the 13th day of May, 1976, the 8th day of May, 1980, the 14th day of May, 1981, the 13th day of May, 1982, the 25th day of April, 1985, the 28th day of April, 1988, the 26th day of April, 1990, 30th day of April, the 28th day of April, 1995 the 23rd day of May, 2001, the 26th day of April, 2002, the 27th day of April, 2006, the 25th day of April, 2008, the 29th day of April, 2011, the 26th day of October, 2013, the 25th day of April, 2014, the 25th day of July, 2014, the 30th day of January, 2015, the 26th day of July, 2019, and the ____ day of _____, 2021.



MEMORANDUM

TO: Community and Economic Development Committee

FROM: Matt Rehbein, Economic Development Specialist

DATE: February 9, 2022

RE: Execute Option to Purchase – Lot 3 Northeast Industrial Park Plat #4,
Valley Tool, Inc. or its assigns

The City of Appleton sold Lots 1 & 2 of Northeast Industrial Park Plat Number 4 to Valley Tool, Inc. on August 28, 2019. The City also entered into an Option to Purchase for Lot 3 of Northeast Industrial Park Plat Number 4 (attached) with Valley Tool, Inc. as approved by Council on July 10, 2019.

Valley Tool, Inc. has constructed an approximately 34,000 sq. ft. facility since originally closing on Lots 1 & 2. We have received written notice that Valley Tool, Inc. would like to exercise their option to purchase Lot 3 under the terms of our agreement dated August 22, 2019. Additionally, Valley Tool, Inc. would like to assign their rights to assign this contract to Tetz, LLC.

Per terms of the option, the purchase price shall be \$53,850.00 which is \$37,395.83 per acre for this 1.44 acre parcel. There are no real estate commissions requested for this transaction.

Staff Recommendation:

The City of Appleton proceed with the sale of Lot 3 of Northeast Industrial Park Plat Number 4 to Tetz, LLC per the terms of the Option to Purchase Agreement dated August 22, 2019 **BE APPROVED.**



3313 E. Goodland Dr. Appleton, WI 54911
800.734.2573 920.734.2573
Fax: 920.734.1749
Email: sales@valleytool.net
Web: www.valleytool.net

February 1, 2022

TO: Matt Rehbein
City of Appleton Community & Economic Development

FROM: Gary Tetzlaff
Tetz LLC

RE: Purchase of Lot Option

Valley Tool, Inc. would like to exercise the option to purchase Lot 3 (Tax Parcel #311536100) in the amount of \$53,850.00 per Document #2170252 dated 9/9/2019.

Valley Tool, Inc. wishes to assign the purchase rights of Lot 3 to Tetz LLC.

Regards,

A handwritten signature in black ink that reads 'Gary Tetzlaff'.

Gary Tetzlaff
CEO/CFO
Valley Tool, Inc.
(920) 427-8703

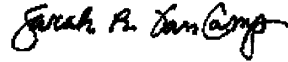
OPTION TO PURCHASE

This document incorporates WB-25 Option to Purchase between Valley Tool, Inc. or its assigns and the City of Appleton attached hereto and incorporated herein.

Legal Description:

Lot three (3) of NORTHEAST INDUSTRIAL PARK PLAT NO. 4, City of Appleton, Outagamie County, Wisconsin.

Document #: **2169008**
Date: **08-26-2019** Time: **12:10 PM**
Pages: **2** Fee: **\$30.00**
County: **OUTAGAMIE COUNTY** State: **WI**



SARAH R VAN CAMP, REGISTER OF DEEDS
This document has been electronically recorded
Returned to: **First American Title Insurance Company (DC)**

Record and return to:
Valley Tool, Inc.
200 S. Washington Street, Suite 200
Green Bay, WI 54301

Tax Key No. 31-1-5361-00

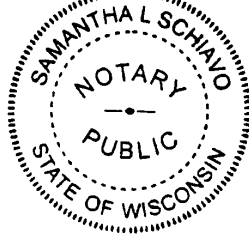
Valley Tool, Inc.

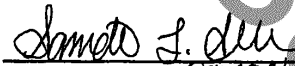
By: 

Gary Tetzlaff, CEO/CFO

State of Wisconsin)
) : ss.
Outagamie County)

Personally came before me on this 22 day of AUGUST, 2019, the above-named Gary Tetzlaff to me known to be the person who executed the foregoing instrument and acknowledge the same.




Printed Name: Samantha L. Schiavo
Notary Public, State of Wisconsin
My commission is/ expires: 10/03/2022

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

City of Appleton

By: [Signature]
Timothy M. Hanna, Mayor

By: [Signature]
Kami Lynch, City Clerk

State of Wisconsin)
 : ss.
Outagamie County)

Personally came before me on this 21 day of August, 2019, the above-named Timothy M. Hanna, Mayor and Kami Lynch, City Clerk to me known to be the persons who executed the foregoing instrument and acknowledge the same.

[Signature]
Printed Name: JAMIE S. GRIESBACH
Notary Public, State of Wisconsin
My commission expires: 11/18/2021



This instrument was drafted by:
Christopher R. Behrens,
Deputy City Attorney
City Law A19-0267

NOT FOR RESALE

Approved by the Wisconsin Real Estate Examining Board
10-1-12 (Optional Use Date) 01-1-13 (Mandatory Use Date)

WB-24 OPTION TO PURCHASE

Page 1 of 7, WB-24

1 LICENSEE DRAFTING THIS OFFER ON August 8, 2019 [DATE] IS (AGENT OF BUYER)

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

3 The Seller (Optionor), City of Appleton, a municipal corporation, hereby grants to

4 the Buyer (Optionee), Valley Tool, Inc. or its assigns,

5 an option to purchase (Option) the Property known as [Street Address] Lot 3, Goodland Drive (Tax Parcel No. 311536100)

6 _____ in the City

7 of Appleton, County of Outagamie, Wisconsin, on the following terms:

8 **DEADLINE FOR GRANT OF OPTION** This Option is void unless a copy of the Option, or separate but identical copies, is/are signed by all

9 Sellers and delivered to Buyer on or before August 26, 2019. (Time is of the Essence).

10 **OPTION TERMS**

11 ■ **INITIAL OPTION TERM:** A nonrefundable option fee of \$ 538.50 will be paid by Buyer to Seller within 7 days

12 of the later of: (i) the granting of this Option, or (ii) the deadline for execution of a lease if line 141 of this Option is checked. This Option may only be

13 exercised if Buyer delivers written notice to Seller no later than midnight August 26, 2020 unless extended below.

14 ■ **EXTENDED OPTION TERM:** The Deadline to exercise this Option shall be extended until midnight See Additional Provisions below, upon

15 payment of \$ See Additional Provisions to Seller on or before See Additional Provisions below, as an option

16 extension fee which shall not be refundable.

17 ■ **EXERCISE:** To exercise this Option, Buyer must sign and deliver (i) the notice at lines 355-361, or (ii) any other written notice which states that

18 Buyer exercises this Option. If the Option is exercised, \$ none of the option fee and \$ none of the

19 option extension fee, if any, shall be a credit against the purchase price at closing.

20 **CAUTION:** If the option fees are to be paid into listing broker's trust account or to a third party, specify in additional provisions at lines 256-268

21 or 326-330 or in a separate agreement attached per line 325.

22 **TERMS OF PURCHASE** If this Option is exercised per the terms of this Option, the following shall be the terms of purchase:

23 ■ **PURCHASE PRICE:** Fifty Three Thousand Eight Hundred Fifty and no/100 Dollars

24 (\$ 53,850.00) will be paid in cash or equivalent at closing unless otherwise provided below.

25 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Option

26 not excluded at lines 28-29, and the following additional items: n/a

27 _____

28 ■ **NOT INCLUDED IN PURCHASE PRICE:** n/a

29 _____

30 **CAUTION:** Identify trade fixtures owned by tenant, if applicable, and Fixtures that are on the Property (see lines 75-82) to be excluded by

31 Seller or which are rented and will continue to be owned by the lessor.

32 **NOTE:** The terms of this Option, not the listing contract or marketing materials, determine what items are included/excluded.

33 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX () ARE PART OF THIS OPTION ONLY IF

34 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OPTION IF MARKED "N/A" OR ARE LEFT BLANK.

35 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a

36 party shall be effective only when accomplished by one of the methods specified at lines 37-54.

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

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

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

40 (2) **Fax:** fax transmission of the document or written notice to the following telephone number:

41 Seller: (_____) Buyer: (_____)

42 (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery

43 service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at

44 line 47 or 48.

45 (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

46 recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line 47 or 48.

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

48 Delivery address for Buyer: 200 S. Washington Street, Suite 200, Green Bay, WI 54301

49 (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line 53 or 54. If this is a

50 consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes,

51 each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and

52 electronic signatures in the transaction, as required by federal law.

53 E-Mail address for Seller (optional): matthew.rehbein@appleton.org; with a copy to: chris.behrman@appleton.org

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

55 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) payment of option fees; (2) payment of extension fees; (3) Seller's grant of this

56 Option; (4) Buyer's exercise of this Option; (5) occupancy; (6) date of closing; **STRIKE AS APPLICABLE** and all other dates and Deadlines in this

57 Option except: _____ . If "Time is of the Essence" applies

58 to a date or Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to a date

59 or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

60 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery

61 to, or Actual Receipt by, all Buyers or Sellers.

62 DEFINITIONS

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

65 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event
66 occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific number
67 of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and any other day designated by the
68 President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific
69 number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24
70 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at
71 midnight of that day.

72 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair
73 the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect
74 the expected normal life of the premises or adversely affect the use of the Property.

75 ■ **FIXTURE:** A "fixture" is an item of property which is physically attached to or so closely associated with land or improvements so as to be
76 treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises,
77 items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs
78 and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central
79 heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings;
80 attached antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground
81 sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and docks/piers on
82 permanent foundations. A "Fixture" does not include trade fixtures owned by tenants of the Property.

83 **CAUTION:** Exclude any Fixtures to be retained by Seller or which are not owned by Seller, such as rented fixtures (e.g., water softener
84 or other water conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 28-29.

85 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 5-7.

86 ■ **PROPERTY DIMENSIONS AND SURVEYS:** Buyer acknowledges that any land, building or room dimensions, or total acreage or building square
87 footage figures, provided to Buyer by Seller or by a broker, may be approximate because of rounding, formulas used or other reasons, unless
88 verified by survey or other means.

89 **CAUTION:** Buyer should verify total square footage formula, total square footage/acreage figures, and land, building or room
90 dimensions, if material.

91 ■ **BUYER'S WALK-THROUGHS:** Within 3 days of the earlier of: (i) the Deadline for Buyer's exercise of this Option; or (ii) the Buyer's exercise of
92 this Option; and again within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer shall have the right to
93 walk through the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and
94 tear and changes approved by Buyer, and that any Defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

95 ■ **PROPERTY DAMAGE BETWEEN EXERCISE OF OPTION AND CLOSING:** Seller shall maintain the Property until the earlier of closing or
96 occupancy of Buyer in materially the same condition as of the date Buyer exercises this Option, except for ordinary wear and tear. If, prior to
97 closing, the Property is damaged in an amount of not more than five percent (5%) of the purchase price, Seller shall be obligated to repair the
98 Property and restore it to the same condition that it was on the day this Option was exercised. No later than closing, Seller shall provide Buyer with
99 lien waivers for all lienable repairs and restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the
100 damage and this Option may be canceled at the option of Buyer. Should Buyer elect to carry out this Option despite such damage, Buyer shall be
101 entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of
102 Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall
103 be held in trust for the sole purpose of restoring the Property.

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

109 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and persons registered with the
110 registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at (608) 240-
111 5830.

170 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Option at lines 256-
171 268 or 328-330 or in an addendum attached per line 325. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all
172 debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent.
173 Occupancy shall be given subject to tenant's rights, if any.

174 **CAUTION: Consider an agreement which addresses responsibility for clearing the Property of personal property and debris, if applicable.**

175 **RENTAL WEATHERIZATION** Unless otherwise agreed, Buyer shall be responsible for compliance with Rental Weatherization Standards (Wis.
176 Admin. Code Ch. SPS 367), if applicable.

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

180 If Buyer defaults, Seller may:
181 (1) sue for specific performance if Buyer has exercised this Option; or
182 (2) terminate the Option and may sue for actual damages.

183 If Seller defaults, Buyer may:
184 (1) sue for specific performance; or
185 (2) terminate the Option and may sue for actual damages.

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

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

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

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

198 **BUYER DUE DILIGENCE** Prior to the granting or exercising of this Option, Buyer may wish to perform certain authorized inspections,
199 investigations and testing of the Property. Buyer shall provide for any specific inspections, investigations or tests Buyer intends to perform as part
200 of Buyer's due diligence items on lines 256-268, 314-321, or 328-330 or attach as an addendum per line 325. In addition, Buyer may need to obtain
201 and review documents relevant to financing approval, appraisals, or perform general due diligence activities for the transaction, including but not
202 limited to: business records, condominium documents, maps or other information, municipal and zoning ordinances, recorded building and use
203 restrictions, covenants and easements of record, as they may prohibit or restrict certain uses and improvements for the Property. Buyer may also
204 need to obtain or verify certain permits, zoning variances, other governmental or private approvals, environmental audits and subsurface tests,
205 required road improvements, utility hook-up and installation costs, or other development related costs and fees, in order to fully determine the
206 feasibility of any proposed or planned development of the Property. Seller agrees to cooperate with Buyer as necessary to complete any due
207 diligence items or any authorized investigations, testing and inspections as provided for in this Option, without cost to Seller, unless otherwise
208 agreed by the Parties in writing.

209 **RECORDING OF OPTION** Buyer (may) ~~(MAY NOT)~~ **STRIKE ONE** record this Option at Buyer's expense.
 210 Buyer (may) (may not) **STRIKE ONE** ("may" if neither is stricken) record a separate instrument evidencing this Option at Buyer's expense. If this
 211 Option or a separate instrument evidencing this Option is to be recorded, insert legal description at lines 258-268 or 325-330 or attach as an
 212 addendum per line 325. If recording, the parties agree to provide authenticated or acknowledged signatures as may be required.
 213 **CAUTION: Failure to record may give persons with subsequent interests in the Property priority over this Option.**

214 **TITLE EVIDENCE**
 215 **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or condominium
 216 deed if Property is a condominium unit, trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other
 217 conveyance as provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements
 218 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and
 219 covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Option, general
 220 taxes levied in the year of closing and _____

221 _____ which constitutes merchantable title for purposes
 222 this transaction. Seller shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the Wisconsin
 223 Real Estate Transfer Fee. The Parties agree that Seller shall not rezone the Property or create any additional liens or encumbrances on title after
 224 Seller grants this Option without Buyer's written consent except for liens and encumbrances that will be removed at closing.

225 **WARNING:** Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain
 226 improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or a use
 227 other than the current use.

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

231 **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) **STRIKE ONE** ("Seller's"
 232 if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance
 233 commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue
 234 the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for
 235 closing (see lines 242-248).

236 **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance
 237 commitment is delivered to Buyer's attorney or Buyer not more than _____ days after Seller grants this Option ("15" if left blank), showing
 238 title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 215-223, subject only to
 239 liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

240 **CAUTION:** Buyer should consider obtaining an update of the title commitment prior to exercising this Option.
 241 **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title within
 242 _____ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have
 243 reasonable time, but not exceeding _____ days ("5" if left blank), from Buyer's delivery of the notice stating title objections, to deliver notice
 244 to Buyer stating Seller's election to remove the objections by the time set for closing. In the event that Seller is unable to remove said objections,
 245 Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive
 246 the objections, Buyer shall deliver written notice of termination and this Option shall be null and void. Providing title evidence acceptable for
 247 closing does not extinguish Seller's obligations to give merchantable title to Buyer.

248 **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior to the date the
 249 Option is exercised shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.
 250 **CAUTION:** Consider a special agreement if area assessments, property owners association assessments, special charges for current
 251 services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are one-time charges or ongoing use fees
 252 for public improvements (other than those resulting in special assessments) relating to curb, gutter, street, sidewalk, municipal water
 253 sanitary and storm water and storm sewer (including all sewer mains and hook-up/connection and interceptor charges), parks, street
 254 lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).

255 **ADDITIONAL PROVISIONS**
 256 _____
 257 _____
 258 _____
 259 _____
 260 _____
 261 _____
 262 _____
 263 _____
 264 _____
 265 _____
 266 _____
 267 _____
 268 _____

269 CONDOMINIUM UNITS

270 **CAUTION:** If this Option involves a condominium unit, Buyer should obtain and review the condominium disclosure documents before
 271 entering into this Option. See lines 198-208)

272 If the Property is a residential condominium unit, Seller must comply with the following:

273 ■ **CONDOMINIUM DISCLOSURE MATERIALS:** Seller agrees to provide Buyer, at Seller's cost, within 10 days of Buyer exercising this Option
 274 but no later than 15 days prior to closing, current and accurate copies of the condominium disclosure materials required by Wis. Stat. § 703.33
 275 The condominium disclosure materials include a copy of the following and any amendments to any of these (except as may be limited for small
 276 condominiums with no more than 12 units per Wis. Stat. § 703.385(1)(b) and (8)): (a) proposed or existing declaration, bylaws and any rules or
 277 regulations, and an index of the contents; (b) proposed or existing articles of incorporation of the association, if it is or is to be incorporated; (c)
 278 proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the
 279 condominium; (d) projected annual operating budget for the condominium including reasonable details concerning the estimated monthly
 280 payments by the purchaser for assessments and other monthly charges; (e) leases to which unit owners or the association will be a party; (f)
 281 general description of any contemplated expansion of condominium including each state of expansion and the maximum number of units that can
 282 be added to the condominium; (g) unit floor plan showing location of common elements and other facilities available to unit owners; (h) the
 283 executive summary.

284 ■ **BUYER RESCISSION RIGHTS:** As provided in Wis Stat. § 703.33(4)(a), Buyer may, within 5 business days of receipt of all the required
 285 disclosure documents, rescind this Option by written notice delivered to Seller. If the disclosure materials are delivered to Buyer and Buyer does
 286 not receive all of the disclosure documents, Buyer may, within 5 business days of Buyer's receipt of the disclosure materials, either rescind this
 287 Option or request any missing documents. Seller has 5 business days following receipt of Buyer's request for missing documents to deliver the
 288 requested documents. Buyer may rescind the sale within 5 business days of the earlier of Buyer's receipt of requested missing documents or the
 289 deadline for Seller's delivery of the documents [Wis. Stat. § 703.33(4)(b)]. The Parties agree that the 5 business days begin upon the earlier
 290 of: (1) Buyer's Actual Receipt of the disclosure materials or requested missing documents or (2) upon the deadline for Seller's delivery
 291 of the documents.

292 **NOTE: BUYER SHOULD READ ALL DOCUMENTS CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE
 293 PROVISIONS OF THE DOCUMENTS BUT ARE PROHIBITED BY LAW FROM GIVING LEGAL ADVICE OR OPINIONS.**

294 ■ **ADDITIONAL CONDOMINIUM ISSUES:** In addition to the disclosure materials required by Wis. Stat. § 703.33, Buyer may wish to consider reviewing
 295 other condominium materials as may be available, such as copies of: the condominium association's financial statements for the last two years, the
 296 minutes of the last 3 Unit owners' meetings, the minutes of condominium board meetings during the 12 months prior to acceptance, information about
 297 contemplated or pending condominium special assessments, the association's certificate of insurance, a statement from the association indicating the
 298 balance of reserve accounts controlled by the association, a statement from the association of the amount of any unpaid assessments on the unit (per Wis.
 299 Stat. § 703.165), any common element inspection reports (e.g. roof, swimming pool, elevator and parking garage inspections, etc.), any pending litigation
 300 involving the association and the declaration, bylaws, budget and/or most recent financial statement of any master association or additional association the
 301 unit may be part of. Not all of these materials may exist or be available from the condominium association.

302 ■ **OPTION FEES NOT A DEPOSIT:** The Parties agree that if this Option is for a residential condominium unit, the option fee and any option extension
 303 fee are not deposits subject to return under Wis. Stat. § 703.33(4)(c).

304 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific authorizations are included in this Option. An "inspection"
 305 is defined as an observation of the Property which does not include an appraisal or testing of the Property, other than testing for leaking carbon
 306 monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A "test" is defined as the taking of
 307 samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials. Seller
 308 agrees to allow Buyer's inspectors, testers, appraisers and qualified third parties reasonable access to the Property upon advance notice,
 309 necessary to perform the activities authorized in this Option. Buyer and licensees may be present at all inspections and testing. Except as
 310 otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property. Buyer agrees to promptly
 311 restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed to with Seller. Buyer
 312 agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections or tests may detect
 313 environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

Property Address: Appleton Northeast Industrial Park, Lot 3, Goodland Drive, Appleton, WI

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314 **AUTHORIZATION FOR APPRAISAL, INSPECTIONS AND TESTS** Buyer is authorized to have the Property appraised by a Wisconsin licensed or certified
315 appraiser and to conduct the following inspections and tests (see lines 304-313) prior to Buyer's exercise of this Option. Any inspection(s) and test(s) shall
316 be performed by a qualified independent inspector or expert, or an independent qualified third party. Inspections and testing shall be conducted pursuant to
317 government or industry protocols and standards, as applicable.

318 List inspections (e.g., home, roof, foundation, septic) here: _____

319 _____

320 List tests (e.g., radon, lead-based paint, well water) here: _____

321 _____

322 Describe additional inspections and tests, if any, at lines 256-263 or 326-330 or attach as an addendum per line 325.

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

325 ADDENDA: The attached _____ is/are made part of this Option.

326 **ADDITIONAL PROVISIONS** The Deadline to exercise this Option shall be subject to two additional one-year extensions (extension one expiring
327 August 26, 2021 and extension two expiring August 26, 2022). Buyer may exercise each extension by paying Seller a non-refundable Option Extension
328 Fee of Five Hundred Thirty Eight and 50/100 Dollars (\$538.50) prior to Option expiring.

329 _____

330 This Option may not be assigned to any other party without prior approval of the Appleton Common Council.

331 **IF GRANTED, THIS OPTION CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS OPTION AND ALL**
332 **ATTACHMENTS CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OPTION BUT ARE**
333 **PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OPTION OR HOW TITLE**
334 **SHOULD BE TAKEN AT CLOSING IF THE OPTION IS EXERCISED. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

335 This Option was drafted by [Licensee and Firm] Deputy City Attorney Christopher R. Behrens on behalf of the City of Appleton

336 _____ on August 8, 2019

337 Buyer Entity Name (if any): Valley Tool, Inc.

338 (x) _____

339 Buyer's/Authorized Signature ▲ Print Name/Title Here ▶ Gary Tetziat, CEO/CFO Date ▲ _____

340 (x) _____

341 Buyer's/Authorized Signature ▲ Print Name/Title Here ▶ _____ Date ▲ _____

342 **SELLER GRANTS THIS OPTION. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OPTION SURVIVE**
343 **CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND**
344 **CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OPTION.**

345 Seller Entity Name (if any): City of Appleton

346 (x) Karen E. Harkness 8/22/19

347 Seller's/Authorized Signature ▲ Print Name/Title Here ▶ Karen Harkness, Director of Comm. and Econ. Development Date ▲ _____

348 (x) _____

349 Seller's/Authorized Signature ▲ Print Name/Title Here ▶ _____ Date ▲ _____

350 This Option was presented to Seller by [Licensee and Firm] _____

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

352 This Option is rejected _____ This Option is countered _____

353 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

354 NOTE: Parties wishing to counter this Option should draft a new Option (WB-24) or draft a Counter-Offer (WB-44) to reference this Option.

355 **NOTICE OF EXERCISE OF OPTION** By signing below and delivering this notice (see lines 35-54) to Seller, Buyer hereby exercises this Option to
356 Purchase.

357 Buyer Entity Name (if any): Valley Tool, Inc.

358 (x) _____

359 Buyer's/Authorized Signature ▲ Print Name/Title Here ▶ _____ Date ▲ _____

360 (x) _____

361 Buyer's/Authorized Signature ▲ Print Name/Title Here ▶ _____ Date ▲ _____



MEMORANDUM

TO: Community and Economic Development Committee

FROM: Karen Harkness, Director of Community & Economic Development
Matt Rehbein, Economic Development Specialist

DATE: February 9, 2022

RE: Development Agreement Amendment Request – 513 W. College Avenue
Bela Development LLC

The City of Appleton entered into a Development Agreement with Bela Development, LLC on December 23, 2019 to support the redevelopment of the property at 513 W. College Avenue.

Per Article IV "Conditions to Payment; Termination of Agreement", the Developer is obliged to create a minimum assessed value of \$1,700,000 by January 1, 2022. The City Assessor has established the value as of January 1, 2022 to be \$1,141,000 which falls below the minimum value stated in the Development Agreement.

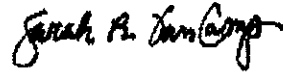
Developer has experienced construction and supply chain disruptions resulting in their anticipated inability to meet the assessed value requirements stated above. In light of that, Developer has requested an additional 12 months, one time extension, to meet the minimum assessed value of \$1,700,000 (January 1, 2023).

Staff Recommendation:

The Development Agreement with Bela Development, LLC be amended to provide Developer until January 1, 2023 to meet the minimum \$1,700,000 assessed value requirement **BE APPROVED.**

**TAX INCREMENT DISTRICT NO. 12
DEVELOPMENT AGREEMENT**

Document #: **2182141**
Date: **01-21-2020** Time: **12:53 PM**
Pages: **15** Fee: **\$30.00**
County: **OUTAGAMIE COUNTY** State: **WI**



SARAH R VAN CAMP, REGISTER OF DEEDS
Returned to: **APPLETON, CITY OF**

Record and return to:

City of Appleton – City Attorney’s Office
100 North Appleton Street
Appleton, WI 54911-4799

15

ENVELOPE

Tax Key Nos: 31-3-1005-00, 31-3-1006-00

TAX INCREMENT DISTRICT NO. 12 DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the 23 day of December, 2019, by and among Bela Development LLC, a Wisconsin limited liability company ("Developer") and the City of Appleton, a Wisconsin municipal corporation (the "City").

RECITALS

Developer and the City acknowledge the following:

A. Developer owns or will acquire the real property located at 513 W. College Avenue (Parcel 31-3-1005-00 and 31-3-1006-00) Appleton, WI more particularly described in Exhibit A, attached hereto (collectively the "Property").

B. The Property is located within the City in Tax Increment District #12 (the "District") which was created in 2017 pursuant to Section 66.1105, Wis. Stats. along with a plan for the redevelopment of the District (the "District Plan") that provides for, among other things, the financial assistance set forth in this Agreement.

C. Subject to obtaining the financial assistance set forth herein, Developer has proposed improvements to the Property to create an approximately 9,700 square foot event space on floors one and two along with approximately 13,860 square feet of office space on levels three and four (the "Project"). All references to the Project include the Property.

D. The City has determined that the Project will spur economic development, expand the City's tax base and create new jobs; that such financial assistance is a Project Cost under the Tax Incremental Law; that the amount of financial assistance provided pursuant to this Agreement is the amount necessary to induce development of the Project; and, that the Project will not proceed without the financial assistance set forth in this Agreement.

E. Subject to obtaining financial assistance as set forth herein, Developer intends to undertake a redevelopment of the property that will increase the value of the Property and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole, consistent with the District Plan. The City finds that this redevelopment of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents and serves a public purpose in accordance with state and local law.

F. The City, pursuant to Common Council Action dated December 18, 2019 has approved this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

G. The Developer has approved this Agreement and authorized the appropriate officers to execute this Agreement on the Developer's behalf.

H. The base value of the Property for purposes of this Agreement, including calculating increment generated by the Project, is \$0.00 The Developer estimates the project will create up to an additional \$ 1,700,000 in incremental value.

I. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and the promises and undertakings set forth herein, the parties mutually agree and covenant as follows:

ARTICLE I UNDERTAKINGS OF THE DEVELOPER

1.1 Developer's Project shall include improvements to, and development of, the Property as set forth in Exhibit B that will result in an increase in the Property's assessed value. All aspects of the Project shall be in accordance with all applicable City zoning and building codes, ordinances and regulations.

1.2 Project Costs shall include, without limitation, costs incurred after approval of this agreement for the construction of improvements (including infrastructure improvements), environmental remediation costs, demolition, interior remodeling and development of the project.

1.3 Developer warrants and represents to the City that but for the assistance provided by the City under Article II, herein, Developer would not be able to proceed with the Project.

1.4 Developer and City acknowledge that several of the specific undertakings of the parties may require approvals from directors, boards or the City Council as applicable. The parties' agreements are conditioned upon the obtaining of all such approvals in the manner required by law. The parties cannot assure that all such approvals will be obtained; however, they agree to use their best good faith efforts to obtain them on a timely basis.

ARTICLE II UNDERTAKINGS OF THE CITY

2.1 The City shall appropriate sufficient funds for the performance of the City's obligations under this Agreement.

2.2 City shall cooperate with Developer throughout the Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

2.3 Subject to all of the terms, covenants and conditions of this Agreement and applicable provisions of law, and as an inducement by the City to Developer to carry out the Project, upon completion of the Project (which shall be defined as issuance of occupancy permits for all floors of the Project (hereafter "completion")) the City will provide payments to Developer solely from future Tax Increments (derived from both real and personal property) to assist with Developer's Project Costs. The City's total payment of Tax Increment Revenue to the Developer shall not exceed the lesser of i) \$306,000 or ii) eighteen percent (18%) of the Tax Increment Value as of January 1, 2022, plus interest thereon (the "Contribution").

The Contribution will be paid to Developer as follows:

2.3.1 As the sole source for payment of the Contribution, the City agrees to pay the Developer an amount equal to ninety percent (90%) of the Tax Increment Revenue attributable to, and actually received from, the Property during the calendar year.

2.3.2 Payments under this Agreement shall be due in annual installments on August 15 of the calendar year following the first tax year after completion of the Project and continuing on each August 15 thereafter for a period of time described in Sec. 4.2

2.3.3 Interest on the Contribution shall begin to accrue upon completion of the Project. The interest rate on the Contribution shall be the lesser of 1) the interest rate paid by the Developer to the primary lender for the Project, as evidenced by the note indicating the loan amount; or, 2) five percent (5%).

2.3.4 The Contribution shall be a special and limited obligation of the City and not a general obligation. Payments shall first apply to accrued interest and then to the principal balance of the Contribution. Unpaid interest in any year shall be added to the principal balance of the Contribution and accrue interest. The City may prepay the Contribution, in its sole discretion, at any time, with no prepayment penalty.

2.4 This Agreement fully evidences the City's obligation to pay the Contribution. No separate instrument will be prepared to evidence the City's obligation to pay the Contribution. The Contribution shall not be included in the computation of the City's statutory debt limitation because the Contribution is limited and conditional and no taxes will be levied or pledged for its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation.

2.5 The City covenants to Developer that until the Contribution plus interest thereon has been paid in full, the City shall not close the District prior to its statutory expiration date.

2.6 The City shall, upon Developer's request, provide to Developer an accounting of the status of the District including, but not limited to, the outstanding principal balance of the Contribution and annual Tax Increments received from the District.

2.7 Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the Contribution, Developer's recovery of the full amount of the Contribution depends on factors including, but not limited to, future mill rates, changes in the assessed value of the Property, the failure of the Property to generate the Tax Increments at the rate expected by Developer, reduction in Tax Increments caused by revenue-sharing, changes in the Tax Increment Law, and other factors beyond the City's and/or Developer's control.

ARTICLE III PAYMENT OF TAXES

3.1 As long as the District is in existence, the Property and all buildings and improvements thereon shall be owned and taxable for real estate tax and special assessment purposes. The City may waive any or all of the restrictions upon execution of a payment in lieu of taxes (PILOT) agreement on a form acceptable to the City.

3.2 Throughout the duration of this agreement, all ad valorem property taxes properly assessed against the Property will be paid timely and in full.

3.3 In the event that any property owned by Developer within the District becomes exempt from ad valorem property taxes during the life of the District, then for the remaining life of the District, the Developer will make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such other property had it not been exempt. If the Developer conveys the Property within the District to any party (related or unrelated), the terms of such sale shall impose as a covenant upon all successor owners of the property the foregoing obligation for payments in lieu of taxes during the life of the District. The City shall be a beneficiary of such covenant and entitled to enforce same against the successor owners.

ARTICLE IV CONDITIONS TO PAYMENT; TERMINATION OF AGREEMENT

4.1 The City shall have no obligation to pay any portion of the Contribution to Developer unless and until all of the following shall have occurred:

4.1.1 The Project's completion.

4.1.2 The Property's total value is greater than or equal to \$1,700,000.

4.2 This Agreement, and the City's obligation to make any further payments of the Contribution, shall terminate when any of the following shall have occurred:

4.2.1 The Contribution is paid in full or August 15, 2039, whichever occurs first.

4.2.2 Developer fails to complete the Project on or before December 31, 2021, subject to extension for Force Majeure.

4.2.3 The Property's assessed value is less than \$1,700,000 by January 1, 2022.

ARTICLE V CONFLICT OF INTEREST

5.1 No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE VI WRITTEN NOTICES

6.1 Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE CITY:

City of Appleton
Community and Economic Development Department
100 North Appleton Street
Appleton, WI 54911-4799
Attention: Director

With a copy to:

City of Appleton
City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799
Attn: City Attorney

FOR DEVELOPER:

Bela Development LLC
805 S. State Street
Appleton, WI 54911

ARTICLE VII
ASSIGNMENT

7.1 No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party.

ARTICLE VIII
NO PARTNERSHIP OR VENTURE

8.1 Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

ARTICLE IX
MISCELLANEOUS

9.1 Under no circumstances shall any officer, official, director, member, manager, commissioner, agent, or employee of City or Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

9.2 The laws of the State of Wisconsin shall govern this Agreement.

9.3 This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

9.4 No modification, alteration, or amendment of this Agreement shall be binding upon any party until such modification, alteration, or amendment is reduced to writing and executed by all parties to this Agreement.

9.5 Any captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions of this Agreement.

9.6 If any provisions of this Agreement shall be held or deemed to be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions of this Agreement or any constitution or statute or rule of public policy, or for any other reason, then such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. To the maximum extent possible, this Agreement shall be construed in a manner consistent with the powers of the City, including but not limited to, the City's powers under the Blight Elimination and Slum Clearance Law and the Tax Increment Law, to achieve its intended purpose. Reference is made to Section 66.1333(17) of the Wisconsin Statutes and Chapter 105, Laws of 1975 § 4, which provide that the Blight Elimination and Slum Clearance Law and the Tax Increment Law should be construed liberally to effectuate their purposes.

[Signatures on following pages]

DEVELOPER:

Bela Development LLC

By: [Signature]
Kolby Knuth, a member

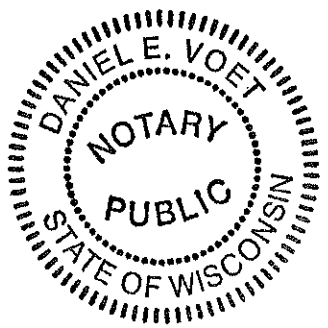
By: [Signature]
Teresa Lingg, a member

By: [Signature]
Sam Schmidt, a member

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this 23rd day of December, 2019, Kolby Knuth, Teresa Lingg and Sam Schmidt, each a member of the LLC, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

[Signature]
Printed Name: Daniel E Voet
Notary Public, State of Wisconsin
My commission is/expires: 10-29-23



SCHEDULE OF EXHIBITS

- A. Legal Description of Property
- B. Proposed Improvements

EXHIBIT A

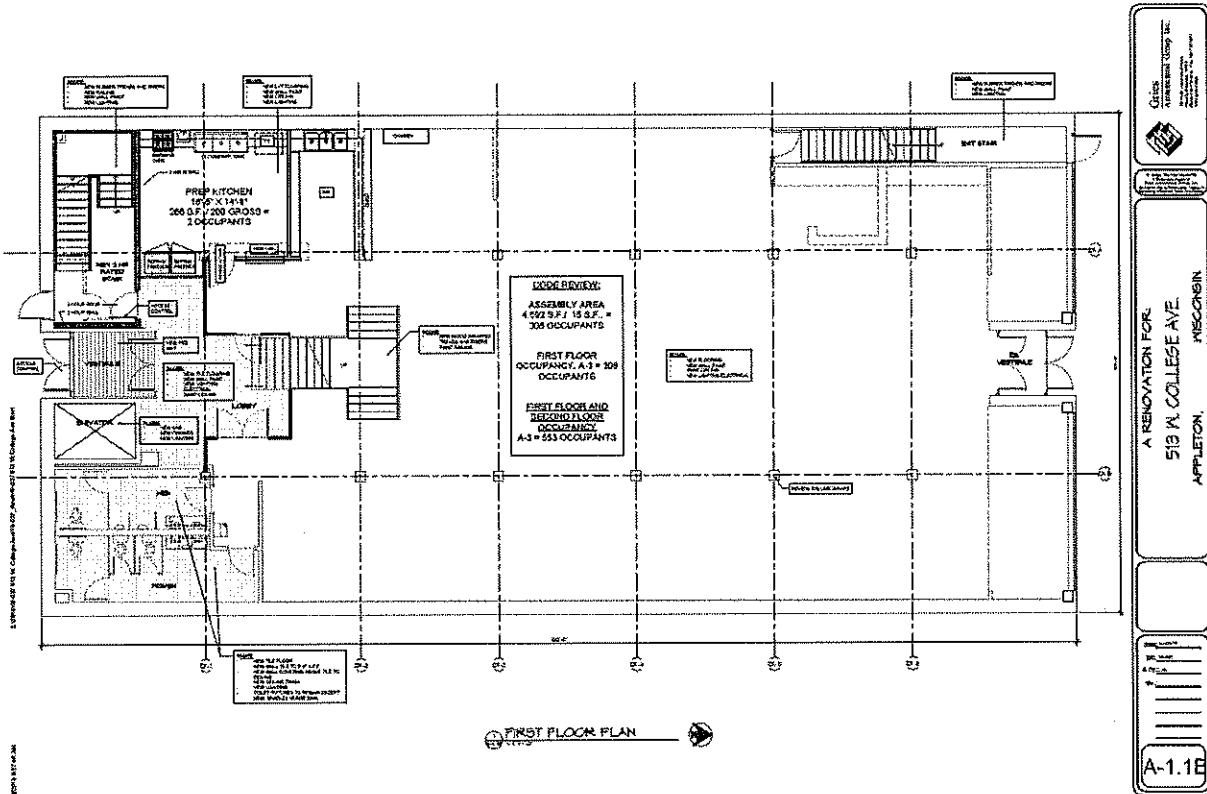
LEGAL DESCRIPTION OF THE PROPERTY

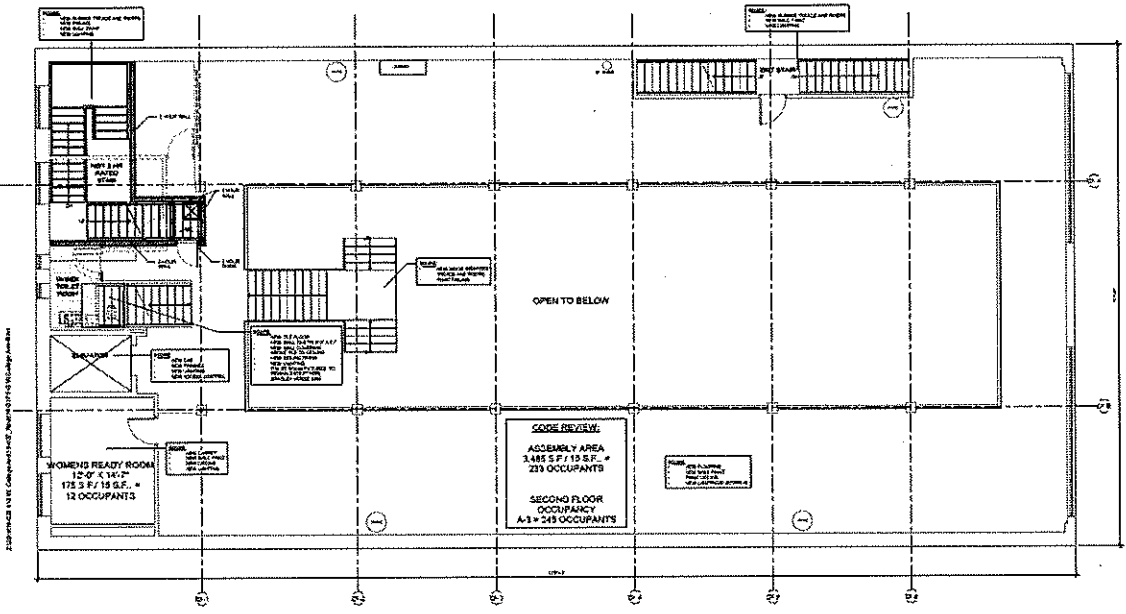
All of Lots Nine (9), Ten (10), and Eleven (11) and the East 11.29 feet of Lot Eight (8), all in Block Fifty-three (53), GRAND CHUTE PLAT, City of Appleton, Outagamie County, Wisconsin, according to the recorded Assessor's Map of said City.

EXHIBIT B

PROPOSED IMPROVEMENTS

The project budget is \$1,938,000 and is depicted as follows (with the understanding that depicted plans are conceptual at the time of this agreement and subject to modification within the scope and spirit of the project):





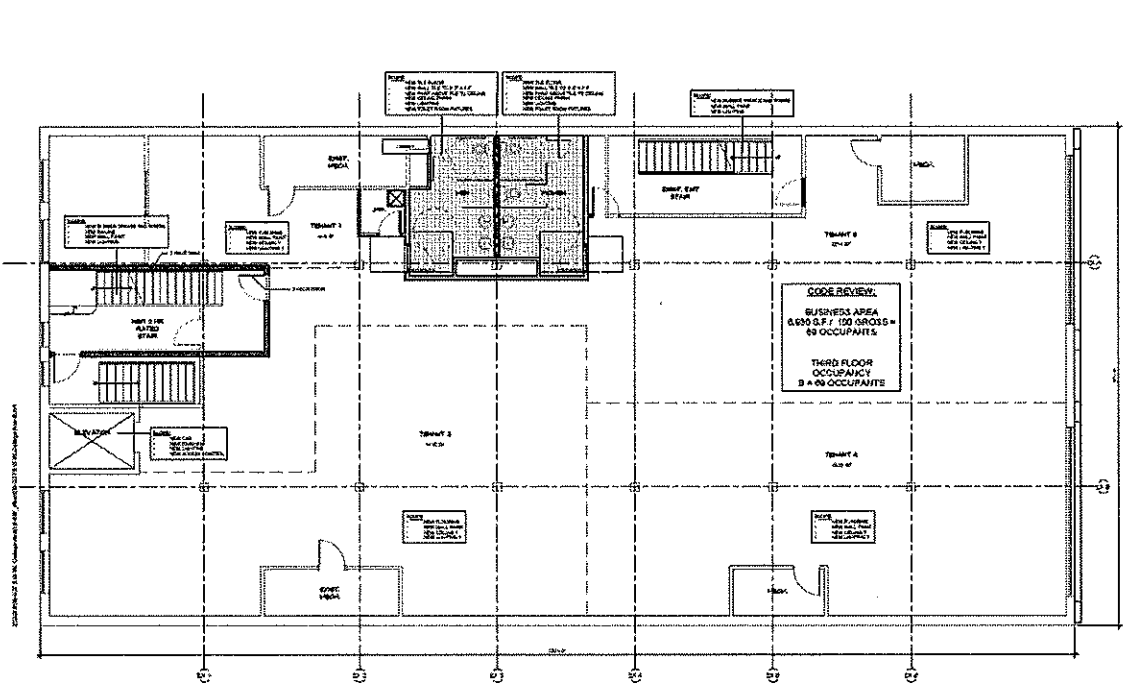
SECOND FLOOR PLAN

QUICK
 WALKWAY SYSTEM INC.
 1000 W. WISCONSIN ST.
 MILWAUKEE, WI 53233
 TEL: 414-224-1111
 FAX: 414-224-1112
 WWW.QUICKWALKWAY.COM

A RENOVATION FOR
 518 N. COLLEGE AVE.
 APPLETON, WISCONSIN

PROJECT NO. _____
 SHEET NO. _____
 DATE _____

A-1.2E



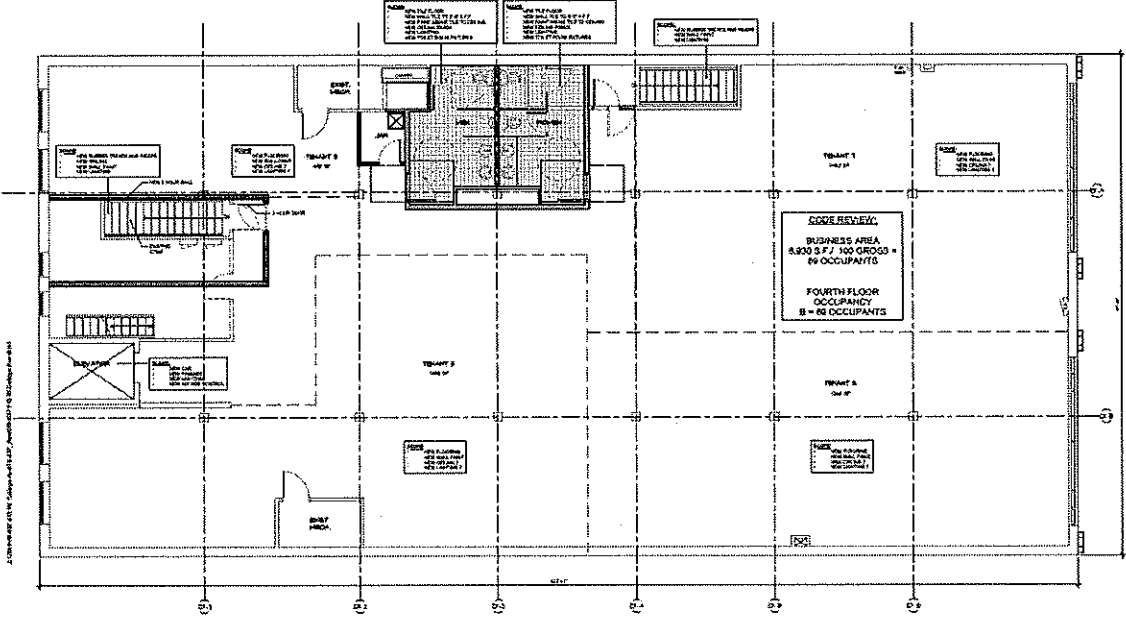
THIRD FLOOR PLAN

City of Appleton
 Planning & Zoning Department
 1000 Lincoln Drive
 Appleton, WI 54912

A RENOVATION FOR:
 515 W. COLLEGE AVE.
 APPLETON, WISCONSIN

SHEET NO. _____
 DATE _____
 DRAWN BY _____
 CHECKED BY _____

A-1.3E



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FOURTH FLOOR PLAN

City of Appleton
 15171.dwg
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A RENOVATION FOR
 515 W. COLLEGE AVE.
 APPLETON, WISCONSIN

A-1.4B



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

MEMORANDUM

TO: Community and Economic Development Committee

FROM: Matt Rehbein, Economic Development Specialist

DATE: February 9, 2022

RE: Offer to Purchase – Lot 11 Southpoint Commerce Park Plat #1,
Farrell Investments, LLC

The City of Appleton has received an Offer to Purchase from Farrell Investments, LLC for Lot 11 of Southpoint Commerce Park Plat Number 1, comprised of approximately 3.25 acres.

The proposed purchase price is \$130,000 which is based on our asking price of \$40,000 per acre.

Farrell Investments, LLC owns the adjacent parcel to the east and would like to expand their building.

Staff Recommendation:

The City of Appleton accept the Offer-To-Purchase for Lot 11 of Southpoint Commerce Park Plat No. 1, comprised of approximately 3.25 acres, from Farrell Investments, LLC at a purchase price of \$130,000 (\$40,000.00 per acre) **BE APPROVED.**

56 ■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the
 57 earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository
 58 institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall
 59 be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according
 60 to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been
 61 delivered to the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the
 62 earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;
 63 (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; (4)
 64 upon authorization granted within this Offer; or (5) any other disbursement required or allowed by law. The Firm may retain
 65 legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the
 66 earnest money any costs and reasonable attorneys' fees, not to exceed \$250, prior to disbursement.

67 ■ **LEGAL RIGHTS/ACTION:** The Firm's disbursement of earnest money does not determine the legal rights of the Parties
 68 in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest
 69 money. At least 30 days prior to disbursement per (1), (4) or (5) above, where the Firm has knowledge that either Party
 70 disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disburse by certified
 71 mail. If Buyer or Seller disagrees with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order
 72 regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of
 73 residential property with one-to-four dwelling units. Buyer and Seller should consider consulting attorneys regarding their
 74 legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good
 75 faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional
 76 Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

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

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

83 **VACANT LAND DISCLOSURE REPORT** Wisconsin law requires owners of real property that does not include any
 84 buildings to provide Buyers with a Vacant Land Disclosure Report. Excluded from this requirement are sales exempt from
 85 the real estate transfer fee and sales by certain court-appointed fiduciaries, for example, personal representatives, who
 86 have never occupied the Property. The form of the Report is found in Wis. Stat. § 709.033. The law provides: "§ 709.02
 87 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of a contract of sale . . . , to
 88 the prospective buyer of the property a completed copy of the report . . . A prospective buyer who does not receive a report
 89 within the 10 days may, within 2 business days after the end of that 10-day period, rescind the contract of sale . . . by
 90 delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if
 91 a Vacant Land Disclosure Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is
 92 submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding
 93 rescission rights.

94 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has
 95 no notice or knowledge of Conditions Affecting the Property or Transaction (lines 101-181) other than those identified in
 96 Seller's Vacant Land Disclosure Report dated N/A , which was received by Buyer prior to Buyer
 97 signing this Offer and that is made a part of this Offer by reference **COMPLETE DATE OR STRIKE AS APPLICABLE**
 98 and Seller to provide any any available studies, investigations, Plat Maps, etc.

99 _____
 100 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE REPORT**

101 "Conditions Affecting the Property or Transaction" are defined to include:

- 102 a. Flooding, standing water, drainage problems, or other water problems on or affecting the Property.
- 103 b. Impact fees or another condition or occurrence that would significantly increase development costs or reduce the value
 104 of the property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.
- 105 c. Brownfields (abandoned, idled, or underused land that may be subject to environmental contamination) or other
 106 contaminated land on the property, or that contaminated soils on the property have been cleaned up under the Petroleum
 107 Environmental Cleanup Fund Act (PECFA), a Wisconsin Department of Natural Resources (DNR) remedial or cleanup
 108 program, the DATCP Agricultural Chemical Cleanup Program, or other similar program.
- 109 d. Subsoil conditions that would significantly increase the cost of development, including, but not limited to, subsurface
 110 foundations or waste material; any type of fill; dumpsites where pesticides, herbicides, fertilizer, or other toxic or hazardous
 111 materials or containers for these materials were disposed of in violation of manufacturer or government guidelines or other
 112 laws regulating such disposal; high groundwater; adverse soil conditions, such as low load-bearing capacity, earth or soil
 113 movement, settling, upheavals, or slides; excessive rocks or rock formations; or other soil problems.
- 114 e. Material violation of an environmental rule or other rule or agreement regulating the use of the Property.
- 115 f. Defects caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in

- 116 soil, or other potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other
117 hazardous or toxic substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission
118 lines located on but not directly serving the Property.
- 119 g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic
120 substances on neighboring properties.
- 121 h. The Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the
122 Property or in a well that serves the Property, including unsafe well water due to contaminants such as coliform, nitrates, or
123 atrazine, or any out-of-service wells or cisterns that are required to be abandoned (see § NR 812.26, Wis. Adm. Code) but
124 that are not closed or abandoned according to applicable regulations.
- 125 i. Defects in any septic system or other private sanitary disposal system on the Property; or any out-of-service septic
126 system serving the Property not closed or abandoned according to applicable regulations.
- 127 j. Underground or aboveground fuel storage tanks presently or previously on the Property for storage of flammable or
128 combustible liquids including, but not limited to, gasoline or heating oil; or Defects in the underground or aboveground fuel
129 storage tanks on or previously located on the Property. Defects in underground or aboveground fuel storage tanks may
130 include items such as abandoned tanks not closed in conformance with applicable local, state, and federal law; leaking;
131 corrosion; or failure to meet operating standards. (The owner, by law, may have to register the tanks with the Department
132 of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use
133 or not. Department regulations may require closure or removal of unused tanks.)
- 134 k. Existing or abandoned manure storage facilities located on the property.
- 135 l. Notice of property tax increases, other than normal annual increases, or pending Property tax reassessment;
136 remodeling that may increase the Property's assessed value; pending special assessments; or Property is within a special
137 purpose district, such as a drainage district, that has authority to impose assessments on the Property.
- 138 m. Proposed, planned, or commenced public improvements or public construction projects that may result in special
139 assessments or that may otherwise materially affect the Property or the present use of the Property; or any land division
140 involving the Property without required state or local permits.
- 141 n. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit
142 and there are common areas associated with the Property that are co-owned with others.
- 143 o. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain,
144 wetland or shoreland zoning area under local, state or federal regulations; or the Property is subject to a mitigation plan
145 required by Wisconsin Department of Natural Resources (DNR) rules related to county shoreland zoning ordinances, that
146 obligates the Property owner to establish or maintain certain measures related to shoreland conditions, enforceable by the
147 county.
- 148 p. Nonconforming uses of the Property (a nonconforming use is a use of land that existed lawfully before the current zoning
149 ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance); conservation
150 easements (a conservation easement is a legal agreement in which a property owner conveys some of the rights associated
151 with ownership of his or her property to an easement holder such as a governmental unit or a qualified nonprofit organization
152 to protect the natural habitat of fish, wildlife, or plants or a similar ecosystem, preserve areas for outdoor recreation or
153 education, or for similar purposes); restrictive covenants or deed restrictions on the Property; or, other than public rights-of-
154 way, nonowners having rights to use part of the Property, including, but not limited to, private rights-of-way and easements
155 other than recorded utility easements.
- 156 q. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment
157 conversion charge; or payment of a use-value assessment conversion charge has been deferred.
- 158 r. All or part of the Property is subject to, enrolled in, or in violation of a farmland preservation agreement, Forest Crop
159 Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program.
- 160 s. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will
161 be transferred with the Property because the dam is owned collectively by a homeowners' association, lake district, or
162 similar group of which the Property owner is a member.
- 163 t. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint
164 driveway) affecting the Property. Encroachments often involve some type of physical object belonging to one person but
165 partially located on or overlapping on land belonging to another; such as, without limitation, fences, houses, garages,
166 driveways, gardens, and landscaping. Encumbrances include, without limitation, a right or claim of another to a portion of
167 the Property or to the use of the Property such as a joint driveway, liens, and licenses.
- 168 u. Government agency, court order, or federal, state, or local regulations requiring repair, alteration or correction of an
169 existing condition.
- 170 v. A pier attached to the Property not in compliance with state or local pier regulations; a written agreement affecting
171 riparian rights related to the Property; or the bed of the abutting navigable waterway is owned by a hydroelectric operator.
- 172 w. Material damage from fire, wind, flood, earthquake, expansive soil, erosion, or landslide.
- 173 x. Significant odor, noise, water diversion, water intrusion, or other irritants emanating from neighboring property.
- 174 y. Significant crop damage from disease, insects, soil contamination, wildlife, or other causes; diseased or dying trees or
175 shrubs; or substantial injuries or disease in livestock on the Property or neighboring property.
- 176 z. Animal, reptile, or other insect infestations; drainage easement or grading problems; excessive sliding; or any other
177 Defect or material condition.

178 aa. Archeological artifacts, mineral rights, orchards, or endangered species, or one or more burial sites on the Property.
179 bb. Owner is a foreign person as defined in the Foreign Investment in Real Property Tax Act in 26 IRC § 1445(f).
180 cc. Other Defects affecting the Property such as any agreements that bind subsequent owners of the property, such as a
181 lease agreement or an extension of credit from an electric cooperative.

182 **GOVERNMENT PROGRAMS:** Seller shall deliver to Buyer, within _____ days ("15" if left blank) after acceptance
183 of this Offer, a list of all federal, state, county, and local conservation, farmland, environmental, or other land use programs,
184 agreements, restrictions, or conservation easements, which apply to any part of the Property (e.g., farmland preservation
185 agreements, farmland preservation or exclusive agricultural zoning, use value assessments, Forest Crop, Managed Forest,
186 Conservation Reserve Program, wetland mitigation, shoreland zoning mitigation plan or comparable programs), along with
187 disclosure of any penalties, fees, withdrawal charges, or payback obligations pending, or currently deferred, if any. This
188 contingency will be deemed satisfied unless Buyer delivers to Seller, within 7 days after the deadline for delivery, a notice
189 terminating this Offer based upon the use restrictions, program requirements, and/or amount of any penalty, fee, charge, or
190 payback obligation.

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

195 **MANAGED FOREST LAND:** If all, or part, of the Property is managed forest land under the Managed Forest Law (MFL)
196 program, this designation will continue after closing. Buyer is advised as follows: The MFL is a landowner incentive
197 program that encourages sustainable forestry on private woodlands by reducing and deferring property taxes. Orders
198 designating lands as managed forest lands remain in effect for 25 or 50 years. When ownership of land enrolled in the
199 MFL program changes, the new owner must sign and file a report of the change of ownership on a form provided by the
200 Department of Natural Resources and pay a fee. By filing this form, the new owner agrees to the associated MFL
201 management plan and the MFL program rules. The DNR Division of Forestry monitors forest management plan
202 compliance. Changes a landowner makes to property that is subject to an order designating it as managed forest land,
203 or to its use, may jeopardize benefits under the program or may cause the property to be withdrawn from the program
204 and may result in the assessment of penalties. For more information call the local DNR forester or visit
205 <https://dnr.wisconsin.gov/topic/forestry>.

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

211 **FARMLAND PRESERVATION:** The early termination of a farmland preservation agreement or removal of land from such
212 an agreement can trigger payment of a conversion fee equal to 3 times the per acre value of the land. Contact the
213 Wisconsin Department of Agriculture, Trade and Consumer Protection Division of Agricultural Resource Management or
214 visit <http://www.datcp.state.wi.us/> for more information.

215 **CONSERVATION RESERVE PROGRAM (CRP):** The CRP encourages farmers, through contracts with the U.S.
216 Department of Agriculture, to stop growing crops on highly erodible or environmentally sensitive land and instead to plant
217 a protective cover of grass or trees. CRP contracts run for 10 to 15 years, and owners receive an annual rent as well as
218 certain incentive payments and cost share assistance for establishing long-term, resource-conserving ground cover.
219 Removing lands from the CRP in breach of a contract can be quite costly. For more information call the state Farm Service
220 Agency office or visit <http://www.fsa.usda.gov/>.

221 **SHORELAND ZONING ORDINANCES:** All counties must adopt uniform shoreland zoning ordinances in compliance with
222 Wis. Admin. Code Chapter NR 115. County shoreland zoning ordinances apply to all unincorporated land within 1,000
223 feet of a navigable lake, pond or flowage or within 300 feet of a navigable river or stream and establish minimum standards
224 for building setbacks and height limits, cutting trees and shrubs, lot sizes, water runoff, impervious surface standards (that
225 may be exceeded if a mitigation plan is adopted and recorded) and repairs to nonconforming structures. Buyers must
226 conform to any existing mitigation plans. For more information call the county zoning office or visit <https://dnr.wi.gov/>.
227 Buyer is advised to check with the applicable city, town or village for additional shoreland zoning or shoreland-wetland
228 zoning restrictions, if any.

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

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

233 **PROPERTY DEVELOPMENT WARNING:** If Buyer contemplates developing Property for a use other than the current use,
234 there are a variety of issues that should be addressed to ensure the development or new use is feasible. Buyer is solely
235 responsible to verify the current zoning allows for the proposed use of the Property at lines 251-255. Municipal and zoning
236 ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses
237 and therefore should be reviewed. Building permits, zoning or zoning variances, Architectural Control Committee approvals,
238 estimates for utility hook-up expenses, special assessments, changes for installation of roads or utilities, environmental
239 audits, subsoil tests, or other development related fees may need to be obtained or verified in order to determine the
240 feasibility of development of, or a particular use for, a property. Optional contingencies that allow Buyer to investigate certain
241 of these issues can be found at lines 244-304 and Buyer may add contingencies as needed in addenda (see line 686).

242 Buyer should review any plans for development or use changes to determine what issues should be addressed in these
243 contingencies.

244 **PROPOSED USE CONTINGENCIES:** This Offer is contingent upon Buyer obtaining, at Buyer's expense, the reports or
245 documentation required by any optional provisions checked on lines 256-281 below. The optional provisions checked on
246 lines 256-281 shall be deemed satisfied unless Buyer, within _____ days ("30" if left blank) after acceptance, delivers: (1)
247 written notice to Seller specifying those optional provisions checked below that cannot be satisfied and (2) written evidence
248 substantiating why each specific provision referred to in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice,
249 this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingency provisions
250 checked at lines 256-281.

251 **Proposed Use:** Buyer is purchasing the Property for the purpose of: Expansion of existing building on neighboring lot (Southpoint
252 Commerce Park, Plat 1, Lot 10) and possible fabrication building

253 _____ **[insert proposed use**
254 **and type or style of building(s), size and proposed building location(s), if a requirement of Buyer's condition to**
255 **purchase, e.g. 1400-1600 sq. ft. three-bedroom single family ranch home in northwest corner of lot].**

256 **ZONING:** Verification of zoning and that the Property's zoning allows Buyer's proposed use described at lines
257 251-255.

258 **SUBSOILS:** Written evidence from a qualified soils expert that the Property is free of any subsoil condition that
259 would make the proposed use described at lines 251-255 impossible or significantly increase the costs of such
260 development.

261 **PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM (POWTS) SUITABILITY:** Written evidence from a
262 certified soils tester that: (a) the soils at the Property locations selected by Buyer, and (b) all other conditions that must
263 be approved, meet the legal requirements in effect on the date of this Offer to obtain a permit for a POWTS for use of
264 the Property as stated on lines 251-255. The POWTS (septic system) allowed by the written evidence must be one of
265 the following POWTS that is approved by the State for use with the type of property identified at lines 251-255 **CHECK**

266 **ALL THAT APPLY:** conventional in-ground; mound; at grade; in-ground pressure distribution; holding
267 tank; other: _____

268 **EASEMENTS AND RESTRICTIONS:** Copies of all public and private easements, covenants and restrictions
269 affecting the Property and a written determination by a qualified independent third party that none of these prohibit or
270 significantly delay or increase the costs of the proposed use or development identified at lines 251-255.

271 **APPROVALS/PERMITS:** Permits, approvals and licenses, as appropriate, or the final discretionary action by the
272 granting authority prior to the issuance of such permits or building permit, approvals and licenses, for the following items
273 related to Buyer's proposed use: _____

274 _____
275 **UTILITIES:** Written verification of the location of the following utility service connections (e.g., on the Property, at
276 the lot line, across the street, etc.) **CHECK AND COMPLETE AS APPLICABLE:**

277 electricity _____; gas _____; sewer _____;

278 water _____; telephone _____; cable _____;

279 other _____

280 **ACCESS TO PROPERTY:** Written verification that there is legal vehicular access to the Property from public
281 roads.

282 **LAND USE APPROVAL/PERMITS:** This Offer is contingent upon (Buyer)(Seller) **STRIKE ONE** ("Buyer" if neither
283 stricken) obtaining the following, including all costs: a **CHECK ALL THAT APPLY** rezoning; conditional use permit;
284 variance; other _____ for the Property for its proposed use described at lines 251-255.

285 Seller agrees to cooperate with Buyer as necessary to satisfy this contingency. Buyer shall deliver, within _____ days of
286 acceptance, written notice to Seller if any item cannot be obtained, in which case this Offer shall be null and void.

287 **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) **STRIKE ONE** ("Seller
288 providing" if neither is stricken) a Map of the Property dated subsequent to the date of acceptance of this Offer prepared by
289 a registered land surveyor, within _____ days ("30" if left blank) after acceptance, at (Buyer's) (Seller's) **STRIKE ONE**
290 ("Seller's" if neither is stricken) expense. The map shall show minimum of _____ acres, maximum of _____
291 acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon the
292 Property, the location of improvements, if any, and: _____

293 _____
294 **STRIKE AND COMPLETE AS APPLICABLE.** Additional map features that may
295 be added include but are not limited to: staking of all corners of the Property; identifying dedicated and apparent streets; lot
296 dimensions; total acreage or square footage; easements or rights-of-way.

297 **CAUTION: Consider the cost and the need for map features before selecting them. Also consider the time required**
298 **to obtain the map when setting the deadline.**

299 This contingency shall be deemed satisfied unless Buyer, within 5 days after the deadline for delivery of said map, delivers
300 to Seller a copy of the map and a written notice which identifies: (1) the significant encroachment; (2) information materially
301 inconsistent with prior representations; or (3) failure to meet requirements stated within this contingency. Upon delivery of
302 Buyer's notice, this Offer shall be null and void. Once the deadline for delivery has passed, if Seller was responsible to

303 provide the map and failed to timely deliver the map to Buyer, Buyer may terminate this Offer if Buyer delivers a written
 304 notice of termination to Seller prior to Buyer's Actual Receipt of said map from Seller.

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

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

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

320 **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 305-319).

321 (1) This Offer is contingent upon a qualified independent inspector conducting an inspection of the Property after the date
 322 on line 1 of this Offer that discloses no Defects.

323 (2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an
 324 inspection of _____

325 _____ (list any Property component(s)
 326 to be separately inspected, e.g., dumpsite, timber quality, invasive species, etc.) that discloses no Defects.

327 (3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided
 328 they occur prior to the Deadline specified at line 333. Inspection(s) shall be performed by a qualified independent
 329 inspector or independent qualified third party.

330 Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

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

333 This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) after acceptance, delivers
 334 to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the
 335 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

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

337 For the purposes of this contingency, Defects do not include structural, mechanical or other conditions the nature and extent
 338 of which Buyer had actual knowledge or written notice before signing this Offer.

339 **NOTE: "Defect" as defined on lines 553-555 means a condition that would have a significant adverse effect on the**
 340 **value of the Property; that would significantly impair the health or safety of future occupants of the Property; or**
 341 **that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life**
 342 **of the premises.**

343 **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure the Defects.

344 If Seller has the right to cure, Seller may satisfy this contingency by:

345 (1) delivering written notice to Buyer within _____ ("10" if left blank) days after Buyer's delivery of the Notice of Defects
 346 stating Seller's election to cure Defects;

347 (2) curing the Defects in a good and workmanlike manner; and

348 (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing.

349 This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and:

350 (1) Seller does not have the right to cure; or

351 (2) Seller has the right to cure but:

352 (a) Seller delivers written notice that Seller will not cure; or

353 (b) Seller does not timely deliver the written notice of election to cure.

354 **IF LINE 355 IS NOT MARKED OR IS MARKED N/A LINES 403-414 APPLY.**

355 **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written
 356 _____ [loan type or specific lender, if any] first mortgage loan commitment as described
 357 below, within _____ days after acceptance of this Offer. The financing selected shall be in an amount of not less than \$
 358 _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial
 359 monthly payments of principal and interest shall not exceed \$ _____. Buyer acknowledges that lender's
 360 required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance
 361 premiums, and private mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees
 362 to pay discount points in an amount not to exceed _____ % ("0" if left blank) of the loan. If Buyer is using multiple loan

363 sources or obtaining a construction loan or land contract financing, describe at lines 650-664 or in an addendum attached
364 per line 686. Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly
365 apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. Seller agrees to allow
366 lender's appraiser access to the Property.

367 ■ **LOAN AMOUNT ADJUSTMENT:** If the purchase price under this Offer is modified, any financed amount, unless otherwise
368 provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments
369 shall be adjusted as necessary to maintain the term and amortization stated above.

370 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 371 or 372.**

371 **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.

372 **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed _____%. The initial interest rate
373 shall be fixed for _____ months, at which time the interest rate may be increased not more than _____% ("2" if
374 left blank) at the first adjustment and by not more than _____% ("1" if left blank) at each subsequent adjustment.
375 The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus _____% ("6" if
376 left blank). Monthly payments of principal and interest may be adjusted to reflect interest changes.

377 ■ **SATISFACTION OF FINANCING COMMITMENT CONTINGENCY:** If Buyer qualifies for the loan described in this Offer
378 or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment.

379 This contingency shall be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment
380 (even if subject to conditions) that is:

381 (1) signed by Buyer; or,

382 (2) accompanied by Buyer's written direction for delivery.

383 Delivery of a loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy
384 this contingency.

385 **CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to
386 provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment
387 Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.**

388 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the Deadline on line 357.
389 Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of
390 written loan commitment from Buyer.

391 ■ **FINANCING COMMITMENT UNAVAILABILITY:** If a financing commitment is not available on the terms stated in this
392 Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall
393 promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of
394 unavailability.

395 **SELLER FINANCING:** Seller shall have 10 days after the earlier of:

396 (1) Buyer delivery of written notice of evidence of unavailability as noted in lines 391-394: or

397 (2) the Deadline for delivery of the loan commitment on line 357,

398 to deliver to Buyer written notice of Seller's decision to (finance this transaction with a note and mortgage under the same
399 terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly.
400 If Seller's notice is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to
401 cooperate with and authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit
402 worthiness for Seller financing.

403 **IF THIS OFFER IS NOT CONTINGENT ON FINANCING COMMITMENT** Within _____ days ("7" if left blank) after
404 acceptance, Buyer shall deliver to Seller either:

405 (1) reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at
406 the time of verification, sufficient funds to close; or

407 (2) _____

408 _____ [Specify documentation Buyer agrees to deliver to Seller].

409 If such written verification or documentation is not delivered, Seller has the right to terminate this Offer by delivering written
410 notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer may or may not obtain
411 mortgage financing but does not need the protection of a financing commitment contingency. Seller agrees to allow Buyer's
412 appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject
413 to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of
414 access for an appraisal constitute a financing commitment contingency.

415 **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised
416 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated
417 subsequent to the date stated on line 1 of this Offer, indicating an appraised value for the Property equal to or greater than
418 the agreed upon purchase price.

419 This contingency shall be deemed satisfied unless Buyer, within _____ days after acceptance, delivers to Seller a copy
420 of the appraisal report indicating an appraised value less than the agreed upon purchase price, and a written notice objecting
421 to the appraised value.

422 ■ **RIGHT TO CURE:** Seller (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.

423 If Seller has the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase
424 price to the value shown on the appraisal report within _____ days ("5" if left blank) after Buyer's delivery of the appraisal

425 report and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated
426 by either party after delivery of Seller's notice, solely to reflect the adjusted purchase price.

427 This Offer shall be null and void if Buyer makes timely delivery of the notice objecting to appraised value and the written
428 appraisal report and:

429 (1) Seller does not have the right to cure; or

430 (2) Seller has the right to cure but:

431 (a) Seller delivers written notice that Seller will not adjust the purchase price; or

432 (b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown on the appraisal
433 report.

434 **NOTE: An executed FHA, VA or USDA Amendatory clause may supersede this contingency.**

435 **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of
436 Buyer's property located at _____

437 no later than _____ (the Deadline). If closing does not occur by the Deadline, this Offer shall
438 become null and void unless Buyer delivers to Seller, on or before the Deadline, reasonable written verification from a
439 financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close
440 or proof of bridge loan financing, along with a written notice waiving this contingency. Delivery of verification or proof of
441 bridge loan shall not extend the closing date for this Offer.

442 **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another
443 offer has been accepted. If Buyer does not deliver to Seller the documentation listed below within _____ hours ("72" if
444 left blank) after Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

445 (1) Written waiver of the Closing of Buyer's Property Contingency if line 435 is marked;

446 (2) Written waiver of _____ (name other contingencies, if any); and

447 _____
448 (3) Any of the following checked below:

449 Proof of bridge loan financing.

450 Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide
451 Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

452 Other: _____

453 _____
454 [insert other requirements, if any (e.g., payment of additional earnest money, etc.)]

455 **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon
456 delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer
457 notice prior to any Deadline, nor is any particular secondary buyer given the right to be made primary ahead of other
458 secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to
459 delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days ("7"
460 if left blank) after acceptance of this Offer. All other Offer Deadlines that run from acceptance shall run from the time this
461 Offer becomes primary.

462 **HOMEOWNERS ASSOCIATION** If this Property is subject to a homeowners association, Buyer is aware the Property may
463 be subject to periodic association fees after closing and one-time fees resulting from transfer of the Property. Any one-time
464 fees resulting from transfer of the Property shall be paid at closing by (Seller) (Buyer) **STRIKE ONE** ("Buyer" if neither is
465 stricken).

466 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:
467 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners or homeowners
468 association assessments, fuel and _____

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

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

471 Real estate taxes shall be prorated at closing based on **CHECK BOX FOR APPLICABLE PRORATION FORMULA:**

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

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

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

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

483 Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on
484 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

485 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall
 486 re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation
 487 and is the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

488 **TITLE EVIDENCE**

489 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed
 490 (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as
 491 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements
 492 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use
 493 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Vacant Land
 494 Disclosure Report and in this Offer, general taxes levied in the year of closing and _____

495 _____
 496 _____ (insert other allowable exceptions from title, if
 497 any) that constitutes merchantable title for purposes of this transaction. Seller, at Seller's cost, shall complete and execute
 498 the documents necessary to record the conveyance and pay the Wisconsin Real Estate Transfer Fee.

499 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements**
 500 **may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates**
 501 **making improvements to Property or a use other than the current use.**

502 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of
 503 the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall
 504 pay all costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's
 505 lender and recording the deed or other conveyance.

506 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)
 507 **STRIKE ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded
 508 after the commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance
 509 policy conditions, exclusions and exceptions, provided the title company will issue the coverage. If a gap endorsement or
 510 equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 516-
 511 523).

512 ■ **DELIVERY OF MERCHANTABLE TITLE:** The required title insurance commitment shall be delivered to Buyer's attorney
 513 or Buyer not more than _____ days after acceptance ("15" if left blank), showing title to the Property as of a date no more
 514 than 15 days before delivery of such title evidence to be merchantable per lines 489-498, subject only to liens which will be
 515 paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

516 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of
 517 objections to title within _____ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In
 518 such event, Seller shall have _____ days ("15" if left blank) from Buyer's delivery of the notice stating title objections, to
 519 deliver notice to Buyer stating Seller's election to remove the objections by the time set for closing. If Seller is unable to
 520 remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the
 521 objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer shall deliver
 522 written notice of termination and this Offer shall be null and void. Providing title evidence acceptable for closing does not
 523 extinguish Seller's obligations to give merchantable title to Buyer.

524 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced
 525 prior to the date stated on line 1 of this Offer shall be paid by Seller no later than closing. All other special assessments
 526 shall be paid by Buyer. "Levied" means the local municipal governing body has adopted and published a final resolution
 527 describing the planned improvements and the assessment of benefits.

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

534 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights
 535 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the
 536 (written) (oral) **STRIKE ONE** lease(s), if any, are N/A

537 _____
 538 _____ Insert additional terms, if any, at lines 650-664 or attach as an addendum per line 686.

539 **DEFINITIONS**

540 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document
 541 or written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice
 542 is electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

543 ■ **BUSINESS DAY:** "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under
 544 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive

545 registered mail or make regular deliveries on that day.

546 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by
547 excluding the day the event occurred and by counting subsequent calendar days. The Deadline expires at Midnight on the
548 last day. Additionally, Deadlines expressed as a specific number of Business Days are calculated in the same manner
549 except that only Business Days are counted while other days are excluded. Deadlines expressed as a specific number of
550 "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by
551 counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific
552 event, such as closing, expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

553 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would
554 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would
555 significantly shorten or adversely affect the expected normal life of the premises.

556 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

557 ■ **PARTY:** "Party" means the Buyer or the Seller; "Parties" refers to both the buyer and the Seller.

558 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-8.

559 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX () are part of
560 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.

561 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land dimensions, or total acreage or square
562 footage figures, provided to Buyer by Seller or by a Firm or its agents, may be approximate because of rounding, formulas
563 used or other reasons, unless verified by survey or other means.

564 **CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land
565 dimensions, if material.**

566 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of
567 the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the
568 transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession
569 data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession
570 information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts,
571 to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this
572 Offer to the seller or seller's agent of another property that Seller intends on purchasing.

573 **MAINTENANCE** Seller shall maintain the Property and all personal property included in the purchase price until the earlier
574 of closing or Buyer's occupancy, in materially the same condition it was in as of the date on line 1 of this Offer, except for
575 ordinary wear and tear.

576 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an
577 amount not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer
578 in writing, and will be obligated to restore the Property to materially the same condition it was in as of the date on line 1 of
579 this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than
580 closing. If the amount of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of
581 the damage and this Offer may be terminated at option of Buyer. Should Buyer elect to carry out this Offer despite such
582 damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit
583 towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed
584 by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring
585 the Property.

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

590 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in
591 this Offer at lines 534-538 or in an addendum attached per line 686, or lines 650-664 if the Property is leased. At time of
592 Buyer's occupancy, Property shall be free of all debris, refuse, and personal property except for personal property belonging
593 to current tenants, or sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

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

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

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

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

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

604 In addition, the Parties may seek any other remedies available in law or equity. The Parties understand that the availability
605 of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party
606 defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above.
607 By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the
608 arbitration agreement.

609 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES**
610 **SHOULD READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL**
611 **EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR**
612 **OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT**
613 **CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

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

617 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons
618 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.doc.wi.gov>
619 or by telephone at (608) 240-5830.

620 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)** Section 1445 of the Internal Revenue Code (IRC)
621 provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the
622 total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA withholding
623 applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign
624 estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property transferred, and the
625 amount of any liability assumed by Buyer.

626 **CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer**
627 **may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed**
628 **upon the Property.**

629 Seller hereby represents that Seller is a non-Foreign Person, unless (1) Seller represents Seller is a Foreign Person in a
630 condition report incorporated in this Offer per lines 94-97, or (2) no later than 10 days after acceptance, Seller delivers
631 notice to Buyer that Seller is a Foreign Person, in which cases the provisions on lines 637-639 apply.

632 **IF SELLER IS A NON-FOREIGN PERSON.** Seller shall, no later than closing, execute and deliver to Buyer, or a qualified
633 substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's
634 non-foreign status in accordance with IRC § 1445. If Seller fails to timely deliver certification of Seller's non-foreign status,
635 Buyer shall: (1) withhold the amount required to be withheld pursuant to IRC § 1445; or, (2) declare Seller in default of this
636 Offer and proceed under lines 601-608.

637 **IF SELLER IS A FOREIGN PERSON.** If Seller has represented that Seller is a Foreign Person, Buyer shall withhold the
638 amount required to be withheld pursuant to IRC § 1445 at closing unless the Parties have amended this Offer regarding
639 amounts to be withheld, any withholding exemption to be applied, or other resolution of this provision.

640 **COMPLIANCE WITH FIRPTA.** Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument,
641 affidavit, or statement needed to comply with FIRPTA, including withholding forms. If withholding is required under IRC
642 §1445, and the net proceeds due Seller are not sufficient to satisfy the withholding required in this transaction, Seller shall
643 deliver to Buyer, at closing, the additional funds necessary to satisfy the applicable withholding requirement. Seller also
644 shall pay to Buyer an amount not to exceed \$1,000 for actual costs associated with the filing and administration of forms,
645 affidavits, and certificates necessary for FIRPTA withholding and any withholding agent fees.

646 **Any representations made by Seller with respect to FIRPTA shall survive the closing and delivery of the deed.**
647 Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption
648 applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding
649 FIRPTA.

650 **ADDITIONAL PROVISIONS/CONTINGENCIES** Acceptance of this Offer is contingent upon approval by the Appleton Common Council.

651 _____
652 _____
653 _____
654 _____
655 _____
656 _____
657 _____
658 _____
659 _____
660 _____
661 _____
662 _____
663 _____
664 _____

665 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and
666 written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines
667 688-683.

668 (1) **Personal**: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at
669 line 670 or 671.

670 Name of Seller's recipient for delivery, if any: _____

671 Name of Buyer's recipient for delivery, if any: _____

672 (2) **Fax**: fax transmission of the document or written notice to the following number:

673 Seller: (_____) _____ Buyer: (_____) _____

674 (3) **Commercial**: depositing the document or written notice, fees prepaid or charged to an account, with a commercial
675 delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address at
676 line 679 or 680.

677 (4) **U.S. Mail**: depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the
678 Party, or to the Party's recipient for delivery, for delivery to the Party's address.

679 Address for Seller: _____

680 Address for Buyer: _____

681 (5) **Email**: electronically transmitting the document or written notice to the email address.

682 Email Address for Seller: City of Appleton c/o Matt Rehbein matthew.rehbein@appleton.org

683 Email Address for Buyer: Farrell Investments, LLC c/o Todd Brown toddb@farrellequipment.com

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

686 **ADDENDA**: The attached Exhibit A _____ is/are made part of this Offer.

687 This Offer was drafted by [Licensee and Firm] Christopher R. Behrens, City Attorney for City of Appleton

688 _____

689 (x) John Saxe JOHN SAXE 2-3-2022
690 Buyer's Signature ▲ Print Name Here ► Date ▲

691 (x) _____
692 Buyer's Signature ▲ Print Name Here ► Date ▲

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

697 (x) _____
698 Seller's Signature ▲ Print Name Here ► Date ▲

699 (x) _____
700 Seller's Signature ▲ Print Name Here ► Date ▲

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

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

703 This Offer is rejected _____ This Offer is countered [See attached counter] _____
704 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

Exhibit B Deed Restrictions

S O U T H  P O I N T

C O M M E R C E P A R K

Appleton's Newest Business Opportunity

DECLARATION OF COVENANTS AND RESTRICTIONS

APPLICABLE TO ALL PROPERTIES SOLD IN
SOUTHPOINT COMMERCE PARK PLATS NO. 1, 2 & 3

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. 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.

2. ***Land Use:***

Restrictions on Use. The Restricted Parcel shall be developed and used solely for the following purpose and for no other purpose:

- 1. Manufacturing;
- 2. Research, development and testing laboratories;
- 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 and provided on premises sales are limited in floor area to no more than (10) percent of the total gross floor area occupied by the permitted or special use;
- 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. *Nuisance Factors and Hazards*

- A. In order to protect the interests of all Tenants, no operation shall be conducted which emits offensive or objectionable noise, vibration, smoke, odors, dust, or gases. Precautions should be taken in all research and other approved operations for radiation, radioactivity, fire, and explosion hazards.
- B. No fuel or chemical in-ground or outdoor storage shall be allowed in the Park.

4. *Building Standards*

- A. Any building erected shall be at least 7,500 square feet in area and have a gross floor area equal to at least 10 percent of the land area.
- B. The maximum ratio of building area (footprint) to total parcel size shall in no event exceed forty (40) percent, exclusive of parking and loading areas. The building footprint, all parking, driveways, and loading areas, when combined, may not exceed seventy (70) percent of the total Parcel size.
- C. Buildings shall be designed by an Architect or Engineer. Complete architectural design must be given to all façades of all buildings with all sides and rear elevations being given architectural treatment compatible with the front elevation of the building.
- D. This Industrial Park encourages a variety of architectural styles. However, it is intended that a basic harmony of architecture prevail among the buildings so that no one structure detract from the attractiveness of the overall development.
- E. The front elevation of the building, any elevation facing a street, and externally visible opaque surfaces shall be a minimum of 75% of materials 1-5 (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). The side and rear building elevations that do not face any street shall be a minimum of 25% of materials (1-5). Exception to this requirement would be limited to (1) expandable building side with prior approval from the Site Plan Review Committee.
 - 1. Brick;
 - 2. Architectural precast concrete panels (surface finish to be painted, stained, or exposed aggregate). When using concrete panels as an exterior surface the architect should be careful to avoid a monolithic or monotonous appearance and the use of various textures, colors and accents will be encouraged.
 - 3. Decorative face concrete block. When using decorative face concrete block as an exterior surface the architect should be careful to avoid a monolithic or monotonous appearance and the use of different types and textures (split face, fluted, scored or striated) to provide variety and relief will be encouraged.

4. Cut stone;
5. Exterior insulation and finish systems (EFIS);
6. Metal panels may be used only in combination with one of the approved materials. Any metal siding proposed for use shall be entirely coated with a color fast, abrasion and corrosion resistant, long life (minimum of 20 years) finish that is resistant to chemicals, withstands temperature extremes, and has a low permeability. Any material utilized to attach the metal siding to the building shall be concealed or the utilization of shadow panels or semi-concealed fastener panels with fasteners painted to match the panels shall be required.
7. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Site Plan Review Committee on a case-by-case basis.

- F. 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.
- G. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- H. The Community Development Committee will approve ancillary structures. 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.

5. ***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. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Community Development Department. 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 may seek an inspection warrant to enter the site and conduct such maintenance and to seek full reimbursement.

6. *Utility Controls*

All utilities lines shall be located underground where feasible except for high voltage lines. In the event high voltage lines are required, rear locations nearest and parallel with rear lot lines shall be encouraged.

7. *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.

1. All truck maneuvering must be confined within the boundaries of the property.
2. All parking, driveways, and loading areas shall be paved.
3. 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. Parking shall be setback a minimum of 6' from the side property line.

Truck loading and receiving areas shall occur in the rear of any buildings or structures on any Lot. Truck loading and receiving areas shall be permitted on the side of such building if sufficient visual screening is installed to screen the dock area from the street.

Truck loading and receiving is normally not permitted in the front of such building unless dictated by the site conditions and only if fully screened from the street. In that event, the Community Development Committee shall review and approve the location of the loading dock. The Community Development Committee may assign this review of plans to the Community Development Department.

8. ***Outdoor Storage:***

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets and adjoining properties with a suitable fence, vegetation, berm, or combination thereof approved by the Site Plan Review Committee. 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. All refuse containers must be enclosed by a fence of solid material such as will provide a suitable visual screen. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. All storage areas shall be paved.

9. ***Roof Mounted Equipment:***

Roof mounted equipment shall be so located and/or screened, and painted to minimize visibility from the street and adjacent owners.

10. ***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. The signs shall not advertise business services. Signs, lighting, etc., are to be indicated on the final site plan submitted to the Site Plan Review Committee for review.

1. Ground signs must be set back a minimum of 10 feet from the right-of-way line and must be of a low profile design subject to approval by the Committee.
2. Signs may not be of unusual size or shape when compared to the improvements situated on the site on which the sign is located.

3. Signs may not be installed above the roofline of a building.
4. Pole signs are prohibited.
5. Signs may not contain or utilize any flashing, blinking, intermittent or moving light as source of illumination.
6. No signs shall be located in or painted on any window.
7. Building signs must comply with the City Sign Code.

11. ***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 to a height not over 4";
 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.

12. ***Site Plan Review:***

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, elevations of all sides of the building, samples of materials proposed for all external surfaces including colors and textures, and an artist's rendering of the project or a scale model to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. Renderings should show adjacent buildings, landscaping, screening, signs etc.

13. ***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, the City has the option to repurchase said property. 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, real estate commission paid at time of original closing, 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. The purchase price shall be computed as in the paragraph above (Failure to Build). Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense. 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.

14. ***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 prior written consent of the Community Development Committee. The Community Development Committee may delegate this approval authority to the Community Development Department. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

15. ***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.

16. ***Variations:***

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

and exclusive judgment, justifies the granting of same.

17. ***Enforcement:***

The Community Development Committee has the responsibility to ensure compliance with the covenants and restrictions through any and all lawful means. 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 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.

18. ***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.

19. ***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.

Southpoint Commerce Park Appleton, Wisconsin

Calumet Street (County Highway KK)

Slate Highway 441

Eisenhower Drive

Legend

- For Sale
- Office
- Offer
- Sold
- Industrial Park Boundary
- Ponds
- City Limits

Retail Center

Office Park

Plank Road (County Highway AP)

Future Pond

Destination Drive (Private)

9-5700-6
Time Warner Cable
Technical Operations Center

9-5712-1
Mike Roberts

9-5712-2
Lot 2
SCP Plat No. 1
1.44 acres
\$40,000/acre

9-5712-12
Lot 12
SCP Plat No. 1
3.60 acres
Office Use
\$45,000/acre

9-5712-13
Mike Roberts
RPG 4

9-5712-3
Flair
Flexible
Packaging

9-5712-11
Lot 11
SCP Plat No. 1
3.25 acres
\$40,000/acre

9-5712-10
Arrow Moving
Systems, Inc

9-5712-9
Lot 9
SCP Plat No. 1
3.28 acres
Office Use
\$45,000/acre

9-5712-14
Lot 14
SCP Plat No. 2
2.16 acres
\$45,000 per acre

9-5712-15
Lot 15
SCP Plat No. 2
4.83 acres
\$40,000/acre

9-5712-4
Appleton
Hydraulic
Components

9-5712-6
Lot 6
SCP Plat No. 1
3.30 acres
\$40,000/acre

9-5712-7
Lot 7
SCP Plat No. 1
3.30 acres
\$40,000/acre

9-5712-8
Lot 8
SCP Plat No. 1
3.34 acres
\$45,000/acre

9-5712-25
Lot 25
SCP Plat No. 2
4.88 acres
\$40,000/acre

9-5712-24
Lot 24
SCP Plat No. 2
2.88 acres
\$40,000/acre

9-5712-16
Lot 16
SCP Plat No. 2
3.69 acres
\$40,000/acre

9-5712-17
Lot 17
SCP Plat No. 2
4.21 acres
\$40,000/acre

9-5712-18
Lot 18
SCP Plat No. 2
4.07 acres
\$40,000/acre

9-5712-19
Lot 19
SCP Plat
No. 2
3.46 acres
\$40,000/acre

9-5712-23
Lot 23
SCP Plat No. 2
2.59 acres
\$40,000/acre

9-5712-22
Lot 22
SCP Plat No. 2
2.59 acres
\$40,000/acre

9-5712-21
Lot 21
SCP Plat No. 2
2.59 acres
\$40,000/acre

9-5712-20
Lot 20
SCP Plat No. 2
14.60 acres
\$40,000/acre

9-5712-26
Lot 26
SCP Plat
No. 3
1.74 acres
\$40,000/acre

9-5712-27
Lot 27
SCP Plat
No. 3
1.69 acres
\$40,000/acre

9-5712-28
Lot 28
SCP Plat
No. 3
1.69 acres
\$40,000/acre

9-5712-29
Lot 29
SCP Plat
No. 3
1.74 acres
\$40,000/acre

9-5712-37
Lot 37
SCP Plat No. 3
2.59 acres
\$40,000/acre

9-5712-36
Lot 36
SCP Plat No. 3
2.59 acres
\$40,000/acre

9-5712-32
Lot 32
SCP Plat
No. 3
1.80 acres
\$40,000/acre

9-5712-31
Lot 31
SCP Plat
No. 3
1.65 acres
\$40,000/acre

9-5712-30
Lot 30
SCP Plat
No. 3
1.65 acres
\$40,000/acre

9-5712-35
Lot 35
SCP Plat No. 3
2.59 acres
\$40,000/acre

9-5712-34
Lot 34
SCP Plat No. 3
2.59 acres
\$40,000/acre

9-5712-33
Lot 33
SCP Plat
No. 3
1.80 acres
\$40,000/acre

Endeavor Drive

Lakeland Drive

Eisenhower Drive

Coop Road

Quest Drive

Alliance Drive

Vantage Drive

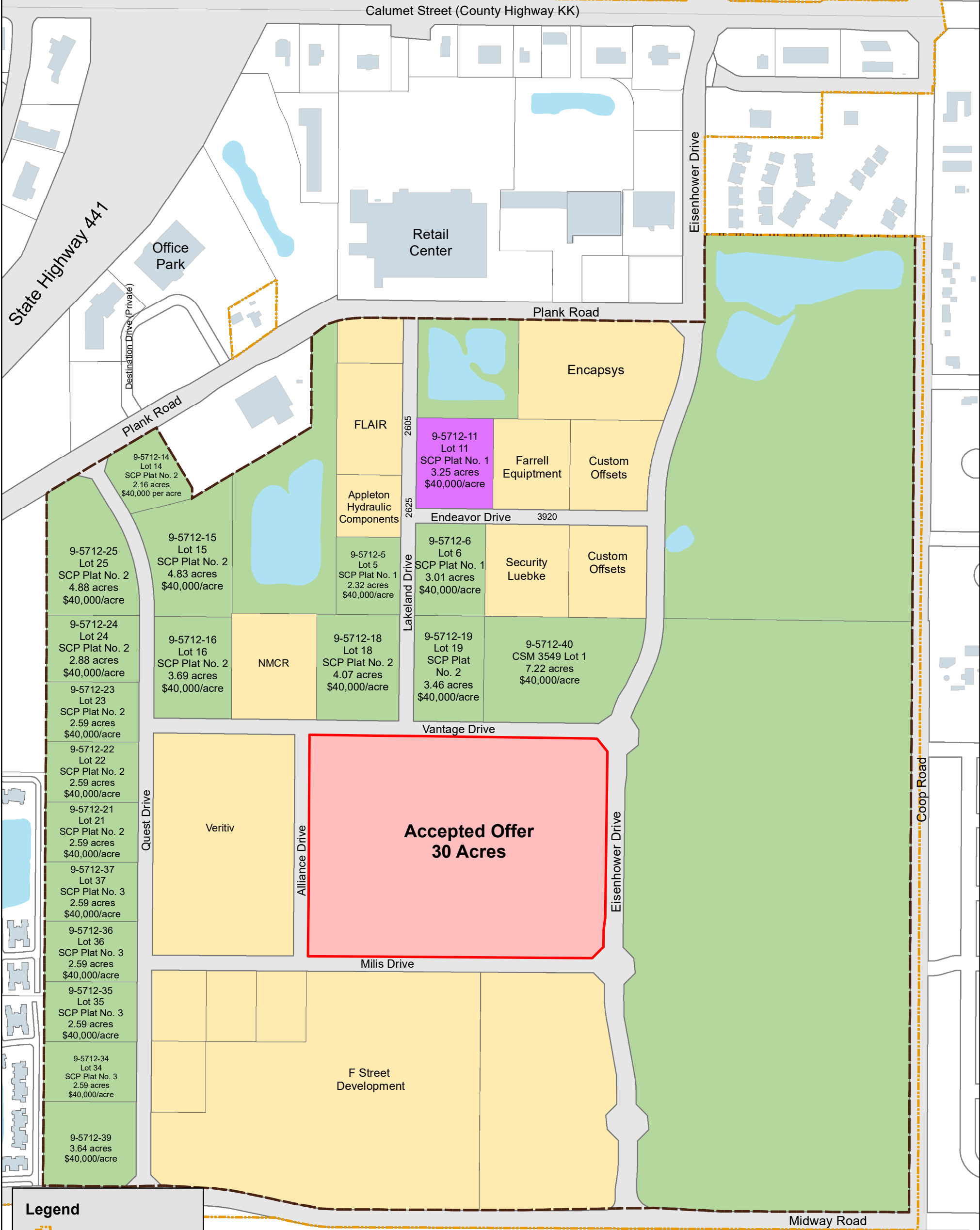
Milis Drive

Officially Mapped Midway Road

Midway Road



Southpoint Commerce Park Appleton, Wisconsin



Legend

- City Limits
- Park Boundary
- Accepted Offer
- For Sale (City Owned)
- Privately Owned Parcels
- Subject Parcel

