

TAX INCREMENT DISTRICT NO. 8
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2016 by and between EP Development, Inc., a Wisconsin corporation (the "Developer"), the CITY OF APPLETON, a Wisconsin municipal corporation (the "City") and the REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON (the "Authority").

RECITALS

City, Developer, and Authority acknowledge the following:

A. Developer owns or will acquire the parcel of real property located in the City and described on Exhibit A, attached hereto (the "Property"). The Property is comprised of a former industrial site that requires significant infrastructure improvements prior to development.

B. In 2009 the City created Tax Increment District No. 8 (the "District") pursuant to Section 66.1105, Wis. Stat. (the "Tax Increment Law") and approved a plan for the redevelopment of the District (the "District Plan").

C. Subject to obtaining the financial assistance 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 for the District.

D. The City and Authority desire to encourage economic development including the elimination of slum and blight, expand the City's tax base, and create new jobs within the City. The City and Authority find that the 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 Authority and its residents and serve a public purpose in accordance with state and local law.

E. The City has determined that the amount of financial assistance to be provided in this Agreement is the amount necessary to induce redevelopment of the Property, which would not otherwise proceed without the financial assistance set forth in this Agreement.

F. The Authority, pursuant to the action dated _____, has approved this Agreement and authorized the execution of the Agreement by the proper Authority officers on the Authority's behalf.

G. The City, pursuant to Common Council action dated _____, has approved this Agreement and authorized the execution of the Agreement by the proper City officers on the City's behalf.

H. The Developer has approved this Agreement and authorized the execution of this Agreement by the Developer's authorized agents on the Developer's behalf.

ARTICLE 1
PURPOSES - DEFINITIONS

1.1 Purpose of Agreement. The parties have agreed upon a general plan for redevelopment of the Property. The purpose of this Agreement is to formalize and record the understandings and undertakings of the parties and to provide a framework within which the redevelopment of the Property will take place.

1.2 Definitions. The terms listed below shall be defined for the purposes of this Agreement as follows. 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.

1.2.1 **Authority** means the Redevelopment Authority of the City of Appleton.

1.2.2 **City** means the City of Appleton, a Wisconsin Municipal Corporation.

- 1.2.3 **Contribution** means the Tax Increment Revenue payment made to the Developer by the City pursuant to Section 5.4 upon Substantial Completion of Phase I of the Project as depicted on Exhibit C. The Contribution is deemed incurred and payable pursuant to Section 5.4 upon Substantial Completion of Phase I of the Project, notwithstanding that portions of the Project specified in Articles 3, 4 and 5 will be completed following Substantial Completion of Phase I of the Project. “Substantial Completion” means completion of Phase I of the Project evidenced by: (a) issuance by the Project architect of a certificate of substantial completion for the building and improvements, including all exterior building work and base mechanical and HVAC systems; and (b) issuance by the City of a certificate of occupancy.
- 1.2.4 **Development Area** means the sum of all property depicted in Exhibit B, including the Property and certain adjacent public property and rights of way, and constitutes the total boundaries of the Project.
- 1.2.5 **Development Plan** means the Project as generally shown on Exhibit C as improved by the site improvements further described by this Agreement.
- 1.2.6 **Developer** means EP Development, Inc., a Wisconsin corporation.
- 1.2.7 **Project** means the improvements and uses anticipated by the Development Plan and this Agreement for the Development Area, including each Phase of the Project as depicted on Exhibit C and described in Sections 3.3 and 3.4.
- 1.2.8 **Property Base Value** means the equalized value of the Property described on Exhibit A upon the creation of TID #8 in 2009 as certified by the State, which was \$730,000.
- 1.2.9 **Tax Increment Value** means the equalized value above the Property Base Value established for the Property as determined by the City assessor.

1.2.10 **Tax Increment Revenue** means the personal and real property tax revenue (as defined in Section 66.105(2)(i) of the Wisconsin Statutes) generated by the Tax Increment Value of the Project.

1.2.11 **Zoning Code** means Chapter 23 of the Code of Ordinances of the City of Appleton.

ARTICLE 2 DESCRIPTION OF PROJECT

2.1 Development Area. The Development Area depicted on Exhibit B will be redeveloped and improved with site improvements as generally depicted on the attached Exhibit C and described in Sections 3.3 and 3.4.

2.2 The Development Area is zoned R-3 and the Project shall be consistent with that zoning designation under the Zoning Code.

2.3 No basement shall be installed in the filled raceway area identified on Exhibit D.

2.4 The following is a list of known development constraints; however, neither the City nor the Authority guarantee this is a comprehensive list:

2.4.1 There is a fence encroaching on the “Development Area” as indicated on the ALTA Survey prepared by Thomas M. Kromm for the Authority, dated August 2012, and provided by the City to the Developer (the “ALTA Survey”), Item 9a.

2.4.2 There is a section of concrete, asphalt and guardrail along the northern Property boundary (ALTA Survey, Item 9i), which Developer shall remove in conjunction with completion of Phase I of the Project.

2.4.3 The Fox River Navigational Authority has indicated its willingness to negotiate lease terms for its strip of land along the eastern boundary of the Property. The Developer may incorporate redevelopment of the Fox River Navigational Authority property in conjunction with the Development Area.

2.4.4 A monitoring well is located on the Property as indicated on the ALTA Survey, Item 22, and shall remain in place so long as required by the Wisconsin Department of Natural Resources.

2.5 Emergency access to the river south of the dam by the City or other authorized governmental or quasi government or judicial entities shall be allowed.

ARTICLE 3
UNDERTAKINGS OF THE DEVELOPER

The Developer agrees that it shall:

3.1 Initiate, or cause to be initiated by third parties, the Project and complete the same in accordance with the Zoning Code and all other applicable City building codes, fire codes, ordinances and regulations. All Project costs expended by Developer or its affiliates or successors in ownership of any portion of the Property, after the November 18, 2015 Authority action, including costs incurred before the date of this Agreement, and which are eligible for funding pursuant to §66.1105 of the Wisconsin Statutes, are referred to as "Developer Costs". Developer Costs shall include, without limitation, costs for the acquisition of land, construction of improvements, including hard and soft construction costs, professional fees, architectural fees, construction period interest, civil engineering fees, general contractor fees, infrastructure improvements, environmental remediation costs, demolition, public parking facilities, and the clearing, grading and construction of the Project, and other costs permitted pursuant to Section 66.1105, Wis. Stat.

3.2 Developer shall acquire from the Authority the Property described in Exhibit A for the purchase price of Eight Hundred Fifty Thousand Dollars (\$850,000).

3.3 Developer shall construct Phase I of the Project on the portion of the Property shown on Exhibit C, comprised of a senior living facility of approximately ninety-nine (99) dwelling units with a projected assessed value of \$15,700,000 upon stabilization. Developer shall construct, or cause to be constructed, Phase II of the Project shown on Exhibit C, comprised of single family homes or

condominiums with a projected assessed value of \$2,100,000. The projected assessed value of Phases 1 & 2 combined is expected to be \$17,800,000. Developer shall use best efforts to construct the final Phase of the Project as market conditions permit, which may include, but not be limited to, market rate, senior, single-family or student housing, mixed-use or commercial components, by December 31, 2019.

3.4 The City recognizes that in the current economic environment, approval of a tax increment district and approval of a development agreement may be necessary prior to the Developer obtaining financing for the Project. The City has approved the creation and amendment of the District, and will approve this Agreement with the contingency that prior to the City incurring any obligation to the Developer pursuant to the terms of this Agreement, the Developer shall:

- 3.4.1 Cooperate with the City to facilitate the City's performance under Article 5.
- 3.4.2 Be responsible for obtaining all required permits.
- 3.4.3 Be solely responsible for complying with the State of Wisconsin's prevailing wage rates if and only to the extent required under State law.
- 3.4.4 Meet with and review documentation (but not provide hard or electronic copies) with the City's finance director and Director of Economic Development indicating Developer has financing to complete each phase (such as a term sheet or commitment from a lender) provided, however, such documentation may not be provided until after this Development Agreement has been approved by the City and the Authority but shall be provided prior to the issuance of a building permit for the relevant phase.

3.5 Developer Costs – Walkway Construction. The Developer shall construct or cause the construction of a public walkway on the Property substantially as depicted in the Development Plan and in accordance with Exhibit E, City Trail Development Requirements. The Developer shall execute an easement

granting the City and the general public access to the walkway. The easement shall describe the walkway in language subject to the mutual approval of the City surveyor and the Developer. The easement shall be located in an area substantially like that shown in Exhibit F, Approximate Location of Trail Easement. Maintenance of said walkway shall be governed by the Trail Maintenance and Operating Plan attached as Exhibit G. The Developer, its affiliates or assignees shall be solely responsible for walkway construction which shall be completed as part of Phase I of the Project. Construction of the walkway shall be in lieu of any parkland dedication or parkland impact fees under Section 17-29 of the City ordinances or Wis. Stat. § 66.0617, and the City agrees that no such fees shall be imposed for any Phase of the Project.

3.6 The Developer agrees that the Property shall not be sold to, leased or used by any party in a manner to permit discrimination or restriction on the basis of race, creed ethnic origin or identity, color, gender, religion, marital status, age (except as allowed as part of a senior housing development), handicap, or national origin and that construction, redevelopment, improvement, and operation of the Project shall be in compliance with all applicable laws, ordinances and regulations relating to any of the foregoing.

ARTICLE 4 UNDERTAKINGS OF THE AUTHORITY

4.1 The Authority shall convey the Property, by warranty deed, to the Developer on a date mutually agreed by the Authority and the Developer.

4.2 Developer shall pay the Authority Eight Hundred Fifty Thousand Dollars (\$850,000) for the Property.

The Developer shall use commercially reasonable efforts to construct improvements on the Property to reach an assessed value of Five Million Dollars (\$5,000,000) by January 1, 2019, to assist the Authority and the City in meeting the Authority's and the City's obligations under Wisconsin Economic Development Corporation (WEDC) Brownfields Grant Contract #20975. The City and the Authority

agree that if, despite Developer's efforts, the Property does not reach an assessed value of Five Million Dollars (\$5,000,000) by January 1, 2019, Developer shall not be liable for the City's or the Authority's obligations under the WEDC Brownfields Grant Contract, but shall work cooperatively with the City and the Authority to secure an extension from WEDC.

4.3 The Authority shall use best efforts to cooperate with Developer to obtain approval for a revised CSM prior to the Developer's purchase of the Property at Developer's request.

ARTICLE 5 UNDERTAKINGS OF THE CITY

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

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

5.3 The City has created and amended the District to support the Project.

5.4 The City will provide payments to the Developer as reimbursement for a portion of the Developer Costs as provided in this Agreement.

5.4.1 Reimbursement of Developer Costs. The City will provide payments to the Developer solely from future Tax Increment Revenue from the Property as a reimbursement for Developer Costs. The City and the Developer agree that there will be no reimbursement for any activities prior to the creation of the District. The Developer shall submit to the City's Director of Finance a summary of Developer Costs on a periodic basis as the development progresses. The City's total payment of Tax Increment Revenue to the Developer shall not exceed the lesser of: i) \$4,267,500; or ii) twenty-five percent (25%) of the Tax Increment Value of Phases 1 & 2, plus interest thereon. The Contribution may be prepaid at any time, but until paid in full, the Tax

Increment Revenue payments will be provided to the Developer as follows: Each year over the life of the District, the City will pay the Developer ninety percent (90%) of the Tax Increment Revenue received by the City with respect to the Project in that year. No payments will be distributed until the property taxes have been paid on the Property.

5.5 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 and any City portion of payments received under a payment in lieu of taxes (PILOT) agreement applicable to the Property through the earlier of: (i) the date on which the Contribution has been paid in full; or (ii) the date the last Tax Increment Revenue is received from the District; (the "Expiration Date"). Interest on the Contribution shall begin to accrue effective on January 1st of the year following the date of this Agreement. The interest rate on the Contribution shall be the lesser of 1) the interest paid by the Developer to any lender for the Project, as evidenced by the note indicating the loan amount; or 2) four percent (4%).

5.6 Payments pursuant to this Agreement shall be made by August 15 each year. The Contribution shall be a special and limited obligation of the City and not a general obligation. Payments shall be applied first to the principal balance of the Contribution and second to accrued interest.

5.7 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 Project, the failure of the Project to generate the Tax Increment Revenue in the amount expected by Developer, or reduction in Tax Increment Revenue caused by changes in the Tax Increment Law to the extent they apply retroactively to this Agreement or the District.

5.8 The City covenants to Developer that:

5.8.1 Until the Contribution plus interest thereon has been paid in full, the City shall not take any action to close the District. Upon the Expiration Date, the City will be entitled to close the District

and no liability shall remain from the City to the Developer upon expiration of the District, except the City's obligation to pay Tax Increment Revenue accrued but not paid prior to the Expiration Date.

5.8.2 The City shall reasonably cooperate with Developer to obtain any necessary amendments to the U.S. Fish and Wildlife permit or any other environmental permits currently affecting the Property or as required to complete the Project and allow the redevelopment of the Property.

ARTICLE 6 TAX STATUS

6.1 As long as the District is in existence, the Project including the land and all buildings and improvements thereon shall be owned and taxable for real estate tax, special assessment purposes and personal property taxes. The City may waive the above restriction upon execution of a payment in lieu of taxes (PILOT) agreement, in a form acceptable to the City, made between the City and the owner or lessee of the applicable portion of the Property.

ARTICLE 7 NO PARTNERSHIP OR VENTURE

7.1 Developer, its affiliates and successors, and their 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 8 CONFLICT OF INTEREST

8.1 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 9
WATER AND WATER RELATED PUBLIC IMPROVEMENTS

9.1 The City represents that water service is sized and available to serve the Property.

9.2 All plans and specifications for the design of the infrastructure and water improvements within the boundaries of the Development Area shall be subject to the approval of the City's department of public works prior to the commencement of construction of such improvements. Such approval shall not be unreasonably withheld.

9.3 In instances where this Agreement, or the ordinances of the City or the rules and regulations of the City do not set forth criteria for particular uses for the water supplied to the Project by the City, the criteria for uses may be proposed by Developer subject to the City's approval utilizing generally accepted criteria, which approval shall not be unreasonably withheld.

ARTICLE 10
SANITARY SEWER

10.1 The City represents that sanitary sewer service is sized and available to serve the Property. Ejector pumps may be required, at Developer cost, based on the elevation of the existing sanitary sewer interceptor.

10.2 Under any of the circumstances set forth herein, the City shall permit the Developer to connect with the City's sanitary sewer system at such reasonably accessible and economically feasible locations as determined by the City.

10.3 The parties agree to cooperate fully in all matters concerning the development of the sanitary sewer system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements.

ARTICLE 11
STORMWATER MANAGEMENT

11.1 The Developer shall follow all applicable State and City stormwater laws, regulations and ordinances. The Developer shall be solely responsible for installing and maintaining all on-site stormwater management practices. Stormwater management within the Development Area shall remain private.

11.2 Prior to the occupancy of any buildings, the Developer shall provide to the City's department of public works an emergency flood plan for the Development Area.

11.3 A portion of the Development Area may be served from an 18-inch storm main in John Street.

ARTICLE 12
WRITTEN NOTICES

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

FOR THE CITY:

City of Appleton
Community Development Department
100 North Appleton Street
Appleton, WI 54911-4799
Attention: Karen E. Harkness

With a copy to:

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

DEVELOPER:

The Alexander Company, Inc.
Attn.: Colin Cassady
345 W. Washington Ave, Suite 301
Madison, WI 53703-3007

AND

IconiCare
Attn: Tom Pientka
901 Deming Way, Suite 102
Madison, WI 53717-1920

With a copy to:

Husch Blackwell LLP
Attn.: Angela Black
PO Box 1379
Madison, WI 53701-1379

ARTICLE 13
ASSIGNMENT

13.1 No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of all other parties except as otherwise provided for in this Agreement. Notwithstanding the foregoing, Developer may assign its rights and obligations under this Agreement, in whole or in part, to a successor owner of any portion of the Property. In addition, Developer may assign its rights under this Agreement to any lender providing financing for any portion of the Project and shall notify the City of any such assignment. The City shall not be bound to any such assignment until it has received written notice, including whether the Agreement has been assigned in whole or in part, the portion of the Property affected and which rights and obligations have been assigned. Developer may assign its rights and obligations hereunder without corresponding assignment of its right to collect the Contribution.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF APPLETON:

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
_____, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2016, Timothy M. Hanna, Mayor and _____, City Clerk, of the City of Appleton respectively, 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.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

James P. Walsh, City Attorney

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON:

By: _____
Karen E. Harkness, Executive Director

ATTEST:

By: _____
Printed Name: _____

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2016, Karen E. Harkness, Executive Director and _____, of the Redevelopment Authority of the City of Appleton respectively, 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.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

Printed Name: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

DEVELOPER:

EP Development, Inc.

By: _____

STATE OF WISCONSIN)
 : ss.
DANE COUNTY)

 Personally came before me this ____ day of _____, 2016,
_____, to me known to be the person who executed the foregoing instrument
and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

SCHEDULE OF EXHIBITS

- A Legal Description of Property
- B Development Area
- C Development Plan
- D No Basement Area
- E City Trail Development Requirements
- F Approximate Location of Trail Easement
- G Trail Maintenance and Operating Agreement

EXHIBIT A

Legal Description of Property

SURVEYOR'S CERTIFICATE: SHEET 2 OF 3

I, Thomas M. Kromm, Wisconsin Registered Land Surveyor, certify that I have surveyed, combined, divided and or mapped under the direction of the City of Appleton, All of Lot 2 of Certified Survey Map No.6661 recorded in Volume 39 of Certified Survey Maps on Page 6661 as document No. 1990892, Part of vacated Alton Court and All of vacated East John Street, Part of Lot Three (3), part of Lot Four (4) and all of Lot Five (5) of Block "C", Lots 1-3 and 7-11 of Block "M" and part of Lots 5 and 6 of Block "M", Lawsburg Plat to the First Ward, all according to the recorded Assessor's Plat of the City of Appleton and being located in the SW 1/4 of Section 25 and also the NW 1/4 of Section 36, Township 21 North, Range 17 East, City of Appleton, Outagamie County, Wisconsin, containing ± 8.1 Acres of land and water(First Ward Canal) and being further described as follows: Commencing at the SW corner of said Section 25; Thence North $89^{\circ}02'51''$ East 686.19 feet along the South line of the SW $\frac{1}{4}$ of said Section 25 to the West line of Lot 4, Block M of Lawsburg Plat; Thence North $00^{\circ}00'34''$ West 372.27 feet along the West line of said Lot 4 to the Northwest corner thereof and also being the Point of Beginning; Thence continue North $00^{\circ}00'34''$ West 101.84 feet along the West line of Lot 3 of said Block M to the Northwest corner of said Lot 3; Thence South $89^{\circ}55'47''$ East 207.21 feet along the South line of John Street; Thence North $89^{\circ}57'41''$ East 118.41 feet along the South line of said John Street; Thence North $00^{\circ}07'39''$ East 60.00 feet along the East line of said John Street; Thence South $89^{\circ}57'41''$ West 118.52 feet along the North line of said John Street to the centerline of vacated Alton Court; Thence North $19^{\circ}31'44''$ East 66.64 feet along the centerline of vacated Alton Court; Thence South $70^{\circ}28'16''$ East 22.00 feet along the Northerly line of the East $\frac{1}{2}$ of vacated Alton Court; Thence North $19^{\circ}31'44''$ East 121.23 feet along the Easterly line of Alton Court; Thence South $66^{\circ}26'47''$ East 74.04 feet; Thence North $48^{\circ}53'38''$ East 39.18 feet; Thence South $57^{\circ}18'17''$ East 60.31 feet; Thence North $63^{\circ}54'32''$ East 22.80 feet; Thence South $57^{\circ}18'17''$ East 47.97 feet to a meander corner which is North $57^{\circ}18'17''$ West 25 feet m/l from the ordinary high water mark of the Fox River; Thence South $22^{\circ}43'30''$ West 19.80 feet along a meander line to a meander corner which is North $57^{\circ}18'17''$ West 30 feet m/l from the ordinary high water mark of the Fox River; Thence South $13^{\circ}00'00''$ West 275.00 feet along a meander line to a meander corner which is North 81° West 24 feet m/l from the ordinary high water mark of the Fox River; Thence South $45^{\circ}00'00''$ West 110.00 feet along a meander line to a meander corner which is North 45° West 45 feet m/l from the ordinary high water mark of the Fox River; Thence South $19^{\circ}28'10''$ East 107.44 feet along a meander line to a meander corner which is South 35° West 27 feet m/l from the ordinary high water mark of the Fox River; Thence South $52^{\circ}34'30''$ East 97.60 feet along a meander line to a meander corner which is North $52^{\circ}34'30''$ West 30 feet m/l from the ordinary high water mark of the Fox River; Thence South $21^{\circ}21'17''$ West 108.16 feet along a meander line to a meander corner which is North $71^{\circ}40'$ West 32 feet m/l from the ordinary high water mark of the Fox River; Thence South $31^{\circ}30'48''$ West 144.13 feet (recorded as 144.41 feet) along a meander line to the end of said meander line; Thence North $89^{\circ}29'08''$ East 42.92 feet to an existing $\frac{3}{4}''$ rebar located at the Northwesterly corner of granite (concrete) steps to the dam access; Thence South $76^{\circ}33'25''$ East 5.04 feet (recorded as 4.91 feet) along the face of said steps to the Westerly edge of a 1.00 foot wide concrete retaining wall; Thence North $17^{\circ}41'41''$ East 197.71 feet along the Westerly edge of said concrete retaining wall; Thence South $72^{\circ}18'19''$ East 1.00 feet along the edge of said concrete retaining wall; Thence South $17^{\circ}41'41''$ West 197.64 feet along the Easterly edge of said concrete retaining wall; Thence North $76^{\circ}33'25''$ West 6.04 feet along the face of said steps to an existing $\frac{3}{4}''$ rebar; Thence South $89^{\circ}29'08''$ West 80.70 feet; Thence South $02^{\circ}14'20''$ East 57.37 feet; Thence South $89^{\circ}42'11''$ West 25.00 feet; Thence South $26^{\circ}02'22''$ West 93.21 feet; Thence South $16^{\circ}49'50''$ West 167.48 feet; Thence South $37^{\circ}56'51''$ West 73.49 feet; Thence South $50^{\circ}03'56''$ West 56.02 feet; Thence South $62^{\circ}44'10''$ West 59.82 feet; Thence South $81^{\circ}03'24''$ West 97.05 feet; Thence North $79^{\circ}29'29''$ West 24.71 feet (recorded as 24.75 feet) to the West line of said Block "M"; Thence North $00^{\circ}03'50''$ East 308.21 feet along the West line of said Block "M"; Thence North $89^{\circ}07'52''$ East 5.30 feet; Thence North $19^{\circ}19'59''$

East 31.96 feet; Thence North 89°07'52" East 120.88 feet along the South line of said Lot 4 to the Southeast corner thereof; Thence North 09°08'09" East 569.70 feet (recorded as 569.95 feet) to the Southeast corner of Lot 3 of said Block "M"; Thence North 89°55'47" West 167.16 feet along the South line of said Lot 3 to the Point of Beginning. Including all those lands between the afore described meander line and the Fox River. Excluding the 1' x 197.7' m/l concrete retaining/breakwater wall owned by the USA. Subject to all easements and restrictions of record. That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the City of Appleton subdivision ordinance in surveying, dividing, combining and or mapping the same. That this map is a correct representation of all exterior boundaries of the land surveyed and the combination or division thereof.

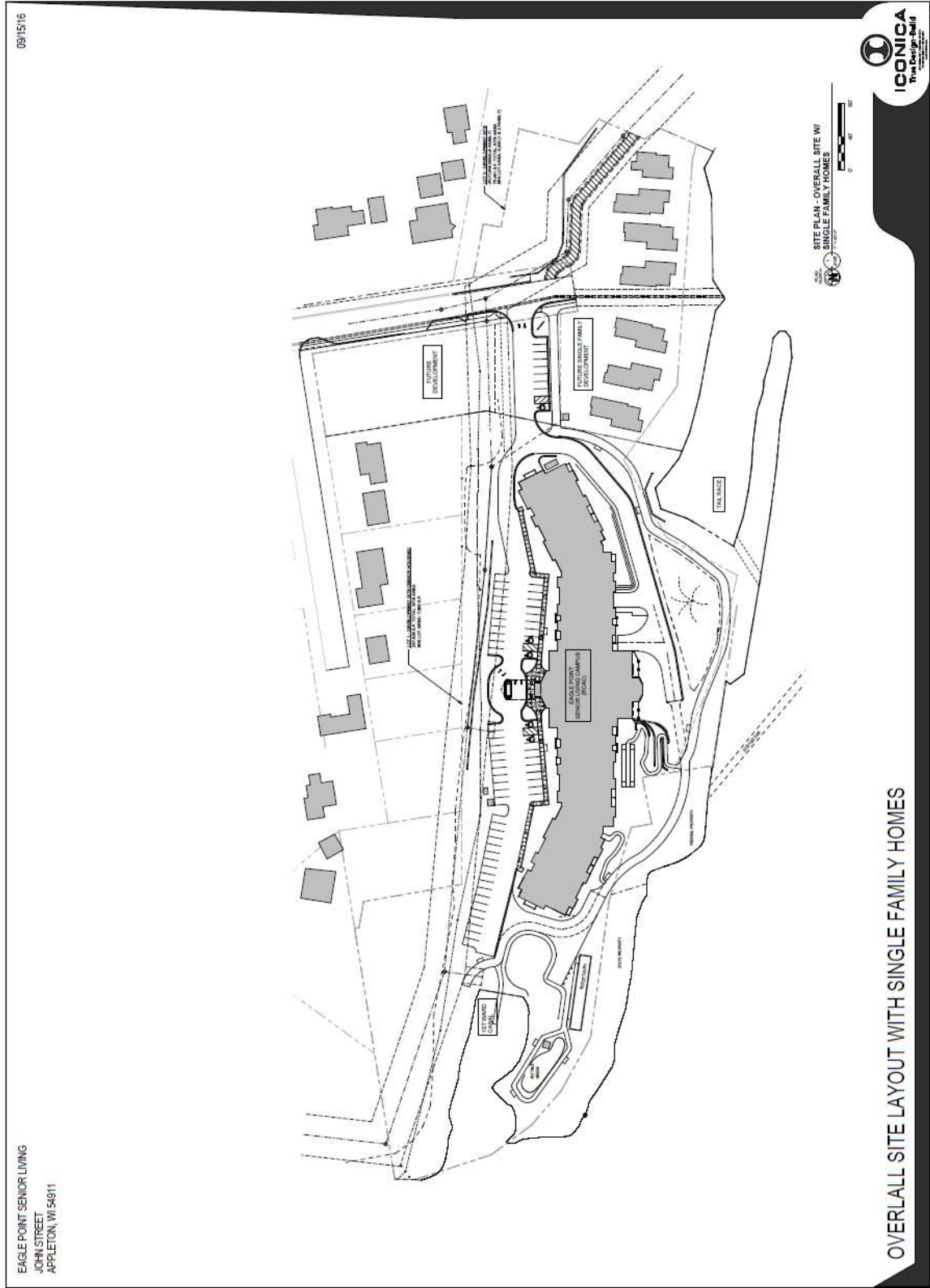
Dated this _____ day of _____, 2013.

Wisconsin Registered Land Surveyor, Thomas M. Kromm

This Certified Survey Map is contained fully within tax parcel 31-1-0765-01, 31-1-0732-00 and 31-1-0772-00. This Certified Survey Map is contained within the property described in the following recorded instruments: Doc. No.1967538, Doc.No.1995379 and less Doc. No.1995372.

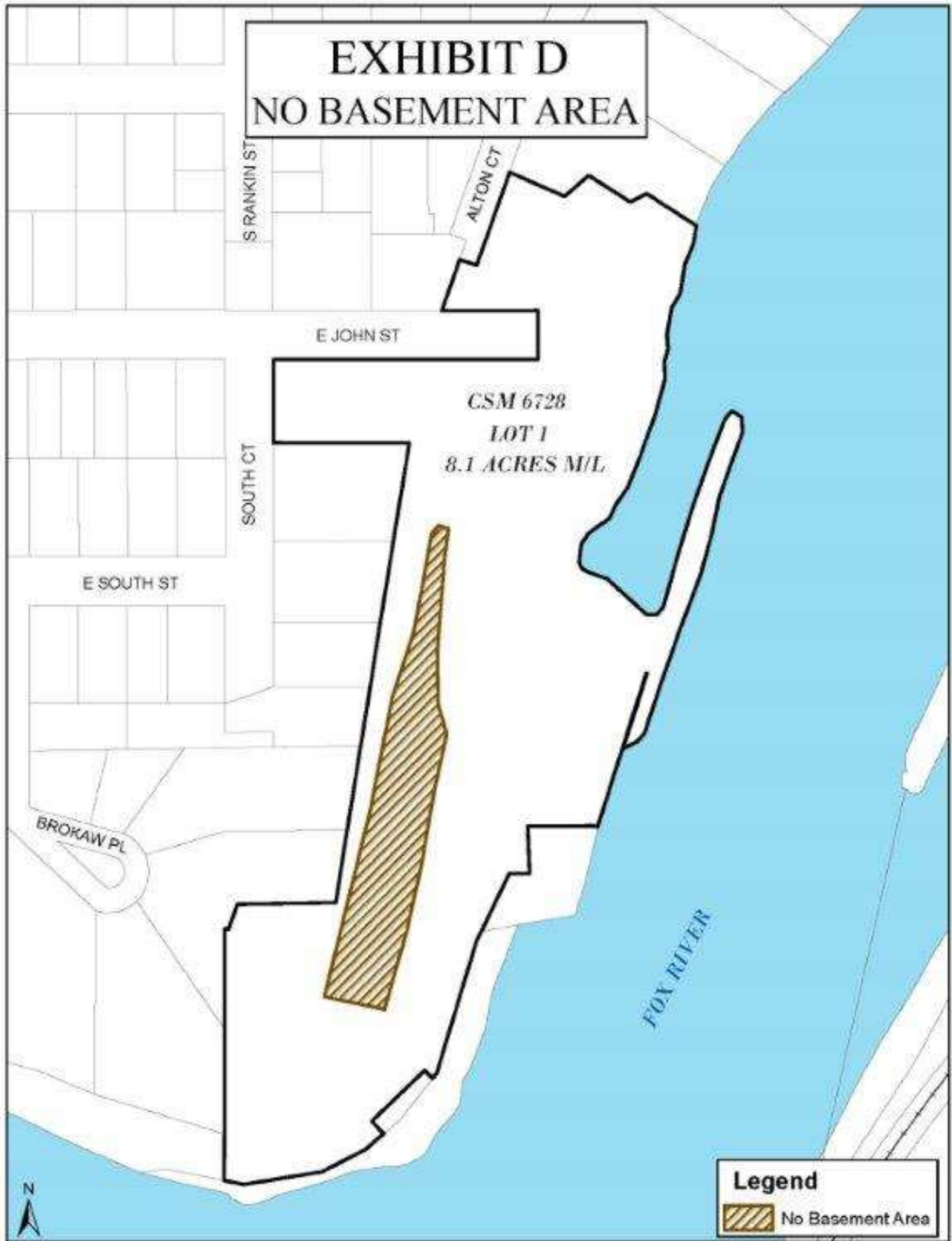


EXHIBIT C



13085841.1

City of Appleton – Redevelopment Authority of the City of Appleton – Eagle Point Partners, LLC
Development Agreement





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

PARKS, RECREATION & FACILITIES MANAGEMENT

Parks & Recreation
100 North Appleton Street
Appleton, Wisconsin 54911-4799
(920) 832-5905 / FAX (920) 832-5950
www.appleton.org

EXHIBIT E

CITY TRAIL DEVELOPMENT REQUIREMENTS

Permanent Easement/Private Property

1. Easement. City shall be granted a permanent easement to the trail, as defined in the City of Appleton Trail Maintenance and Operations Plan ("Plan"), and the entire trail system on the property as exhibited in the Site Plan.
2. Maintenance. Developer shall maintain the easement area including trail maintenance, mowing, garbage removal, and removal of snow and ice as described in the Plan.
3. Construction.
 - a. The trail must be constructed using asphalt, which must be a minimum of three (3) inches thick.
 - b. The base of the trail must have a minimum of eight (8) inches of compacted gravel material.
 - c. The minimum width of the base must be twelve (12) feet.
 - d. Width of the paved/poured trail must be a minimum of ten (10) feet.
 - e. Developer to install lighting along the trail including separate metering. Lighting shall be provided utilizing bollards and/or lighting poles spaced as submitted to the City on August 3, 2016, and for staff review on September 9, 2016. City approval will be granted upon completion of staff review of the Site Plan Resubmittal dated September 9, 2016, or any subsequent Resubmittals as necessary to obtain final City approval based upon staff review, which shall not be unreasonably withheld.
4. Vehicles. Maintenance and emergency vehicles may use the trail for the purposes of building, maintaining and responding to emergencies on the easement area.
5. Design. Developer to install the trail utilizing the design specified in this Development Requirements and per drawings resubmitted for staff review on September 9, 2016. City approval will be granted upon completion of staff review of the Site Plan Resubmittal dated September 9, 2016, or any subsequent Resubmittals as necessary to obtain final City approval based upon staff review, which shall not be unreasonably withheld.

Exhibit G

CITY OF APPLETON TRAIL MAINTENANCE AND OPERATING PLAN Permanent Easement/Private Property

The purpose of this Trail Maintenance Plan (“*Plan*”) is to clarify the duties and responsibilities of Owner and the City regarding the trail located on the Owner’s property.

DEFINITIONS

For the purposes of this Plan, the following terms shall have the following meanings except where the context clearly indicates a different meaning:

- City:** The City of Appleton, a Wisconsin municipal corporation with a business address of 100 North Appleton Street, Appleton, WI 54911. A responsibility that must be completed by the City in accordance with this Plan may be done by an employee or authorized agent of the City.
- City Code:** The Municipal Code of the City of Appleton.
- Defect:** A problem with the trail or a portion thereof that may cause a safety concern or hazard to a person using the trail.
- Fixture:** Real property permanently located on the trail that is owned and maintained by the City, and may include benches, light fixtures and waste receptacles. City ownership of any Owner-installed fixtures shall be evidenced by a bill of sale from the Owner to the City.
- Owner:** The person(s) or entity that owns the property containing the trail. A responsibility that must be completed by the Owner in accordance with this Plan may instead be done by an employee or authorized agent of the Owner.
- Trail:** A paved path with a permanent easement to the City that is located on the Owner’s property and designated a trail pursuant to City Code, Chapter 13, and subject to the rules and regulations thereof.

TRAIL MAINTENANCE

1.0 Owner’s Responsibility

- 1.1 Trail Maintenance. The Owner is responsible for the following trail maintenance:

- 1.1.1 Snow and Ice Removal. The Owner must ensure snow and ice is removed from the trail, including plowing the trail within thirty-six (36) hours of the cessation of a snowfall and immediately treating the trail with sand, salt or other substance to prevent it from being slippery after the accumulation of ice.
- 1.1.2 Vegetation.
 - 1.1.2.1 Encroaching Vegetation. The Owner must ensure a minimum of four (4) foot clearance from the paved edge of the trail at all times from encroaching vegetation, including grass, weeds, brush and tree limbs.
 - 1.1.2.2 Grass. The Owner must mow the grass located within the easement area of the trail and must comply with the grass height limits per Sec. 12-58(c) of the City Code.
- 1.2 Inspection. The Owner must routinely inspect the trail for garbage, debris, obstructions, necessary repairs and defects.
 - 1.2.1 Garbage and Debris. The Owner must ensure the immediate and proper disposal of any garbage and debris found on the trail.
 - 1.2.2 Obstructions. The Owner must remove obstructions to or on the trail if the obstruction falls within Sec. 1.1.2.1 above, or if it is within the Owner's reasonable ability to remove the obstruction, otherwise the Owner must notify the City within twenty-four (24) hours of becoming aware of the obstruction whereupon the City shall be responsible for the removal of the obstruction.
 - 1.2.3 Defects. The Owner must immediately notify the City upon becoming aware of a defect.
 - 1.2.4 Repairs. The Owner must notify the City within three (3) business days of learning of the need to repair or replace a fixture or the need to repair the trail where the repair does not rise to the level of being a defect.
- 1.3 Claims. In the event the Owner becomes aware of an incident involving personal injury and/or property damage occurring on the trail, the Owner must notify the City within five (5) business days of becoming aware of the incident.

2.0 City's Responsibility

- 2.1 Trail Maintenance. The City is responsible for repairs to the trail, for the repair and/or replacement of fixtures, and for the removal of obstructions to or on the trail that the Owner is unable to remove.
 - 2.1.1 Defects. Upon learning of a defect, the City must inspect the trail as soon as possible and make any necessary repairs, in the City's discretion, as soon as reasonably possible.

- 2.1.2 Repairs/Replacements. Upon learning of the need to repair or replace a fixture, or the need to repair the trail where the repair does not rise to the level of being a defect, the City shall inspect the fixture and/or trail as soon as reasonably possible to determine whether, in the City's discretion, repair or replacement is needed. The City shall make necessary repairs and/or replacements as soon as reasonably possible. City shall not make any replacement of a fixture substantially different from the original fixtures without the authorization of the Owner. Furthermore, City shall not install additional fixtures along Trail without Owner's consent, which shall not be unreasonably withheld.
- 2.1.3 Obstruction. Upon learning of an obstruction to or on the trail, the City shall be responsible for the removal of the obstruction as soon as reasonably possible and for the proper disposal of said obstruction.
- 2.2 Trail Operating Costs. The City shall be responsible for payment of the ongoing electric bills relating to lighting of the trail. Such costs shall be individually metered.
- 2.3 Trail Closure. The City shall be responsible for closing the trail for both planned and unplanned reasons, and must notify the Owner as soon as reasonably possible about a closure.

3.0 Other Terms And Conditions

- 3.1 Governing Law. This Plan is governed by the law of the State of Wisconsin, Outagamie County.
- 3.2 Disputes. Should a dispute arise out of this Plan, the Owner and the City agree to work together for thirty (30) days to try and resolve the dispute. If the dispute is not resolved, the parties agree to mediate the dispute prior to taking any further legal action.
- 3.3 Indemnification. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party and the other party's subsidiaries, affiliated entities, successors, assigns, officers, directors, shareholders, members, managers, employees, attorneys and agents (each an "Indemnified Party") from and against any and all claims, actions, causes of action, liabilities, losses, demands, fines, and penalties, judgments, damages or expenses, including reasonable attorney fees and costs incurred by or on behalf of any Indemnified Party due to, arising out of or relating to any act or omission of the Indemnifying Party under this Plan, except to the extent caused by the negligence or willful misconduct of the Indemnified Party.
- 3.4 Taxes and Assessments. The Owner and the City shall each be independently responsible for tax liabilities and IRS reporting requirements as they relate to this Plan.
- 3.5 Notice. Notices required pursuant to this Plan shall, whenever practicable, be served in person or, alternatively, mailed by Certified Mail with Return Receipt in which case the date of mailing shall be considered the date notice is given.

- 3.6 Amendments. This Plan may be modified at any time upon written agreement between the Owner and the City.
- 3.7 Insurance. The Owner must maintain insurance in accordance with the attached “INSURANCE REQUIREMENTS FOR CITY OF APPLETON ‘SMALL EXPOSURE JOBS.’”

"EXHIBIT B"

**INSURANCE REQUIREMENTS
FOR CITY OF APPLETON
"SMALL EXPOSURE JOBS"**

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

1. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability must limits of:
 - (a) \$1,000,000 general aggregate – per project
 - (b) \$1,000,000 products - completed operations aggregate
 - (c) \$1,000,000 personal injury and advertising injury, and
 - (d) \$1,000,000 each occurrence limit

- B. Claims made form of coverage is not acceptable.

- C. Insurance must include:
 - (a) Premises and Operations Liability
 - (b) Contractual Liability including coverage for the joint negligence of the City of Appleton, it officers, council members, agents, employees, authorized volunteers and the named insured
 - (c) Personal Injury
 - (d) Explosion, collapse and underground coverage
 - (e) Products/Completed Operations
 - (f) The general aggregate must apply separately to this project/location

2. WORKERS COMPENSATION AND EMPLOYERS LIABILITY - If required by Wisconsin State Statute or any Workers Compensation Statutes of a different state.

- A. Must have for Statutory Workers Compensation and Employers Liability limit of:
 - (a) \$100,000 Each Accident
 - (b) \$500,000 Disease Policy Limit
 - (c) \$100,000 Disease - Each Employee

3. ADDITIONAL PROVISIONS

- A. **Additional Insured - On the General Liability Coverage. City of Appleton, and its officers, council members, agents, employees, and authorized volunteers shall be Additional Insureds.**

- B. Endorsement - The Additional Insured Policy endorsement must accompany the Certificate of Insurance.**
- C. Certificates of Insurance - A copy of the Certificate of Insurance must be provided if requested.**
- D. Notice - City of Appleton requires 30 days written notice of cancellation or non-renewal of the insurance coverage.**
- E. The insurance coverage required must be provided by an insurance carrier with the "Best" rating of "A-VII" or better. All carriers shall be admitted carriers in the State of Wisconsin.**