



# City of Appleton

100 North Appleton Street  
Appleton, WI 54911-4799  
[www.appleton.org](http://www.appleton.org)

## Meeting Agenda - Final Community & Economic Development Committee

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Wednesday, August 3, 2016

6:00 PM

Council Chambers, 6th Floor

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### SPECIAL

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

[16-1225](#) CEDC Minutes from 7-27-16

**Attachments:** [CEDC Minutes 7-27-16.pdf](#)

### 4. Public Hearings/Apearances

### 5. Action Items

[16-1226](#) Request to waive repurchase rights for Lots 5 & 6, Plat 1, in the Northeast Industrial Park, allowing the transfer from A&V Wisconsin Realty, LLC to Jerry Van Handel and/or assigns (DDS & J, LLC); this waiver is not transferable, survivable, or assignable and the City's repurchase rights would remain on this property

**Attachments:** [Repurchase waiver Lot 5 and 6 NEIP Plat 1.pdf](#)

[NEIP E.pdf](#)

[Atty Sitzmann Ltr & Offer to Purchase Amendment.pdf](#)

[NEIP Map 07292016.pdf](#)

[16-1224](#) Request to approve the Offer to Purchase by Commercial Horizons, Inc. and/or assigns to purchase approximately 7.32 acres of land at the corner of Eisenhower Drive and Plank Road in Southpoint Commerce Park, at a purchase price of \$45,000 per acre (Associated with Action Item #16-1227)

**Attachments:** [Memo on Offer to Purchase in Southpoint Commerce.pdf](#)

[Counter-Offer Lots 12 & 13 Southpoint Commerce Park.pdf](#)

- [16-1227](#) Request to approve the Commercial Horizons/Encapsys Development Agreement in Tax Increment Financing District No. 6 (Associated with Action Item #16-1224)

**Attachments:** [Memo on Development Agreement in Southpoint Commerce.pdf](#)  
[Encapsys Development Agreement 8-3-16.pdf](#)

- [16-1228](#) The Community and Economic Development Committee may go into closed session according to State Statute 19.85(1)(e) for the purpose of discussing real estate negotiations regarding the potential sale of Lots 12 and 13 of Plat 1 in the Southpoint Commerce Park and then reconvene into open session

**6. Information Items**

**7. Adjournment**

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

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

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



# City of Appleton

100 North Appleton Street  
Appleton, WI 54911-4799  
[www.appleton.org](http://www.appleton.org)

## Meeting Minutes - Final Community & Economic Development Committee

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Wednesday, July 27, 2016

5:00 PM

Council Chambers, 6th Floor

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1. Call meeting to order

**Meeting called to order at 5:00 p.m.**

2. Roll call of membership

**Present:** 3 - Coenen, Mann and Reed

**Excused:** 2 - Baranowski and Siebers

*Others present:*  
*Aldersperson Kathy Plank, District #7*  
*Aldersperson Kyle Lobner, District #13*

3. Approval of minutes from previous meeting

[16-1069](#)

CEDC Minutes from 6-22-16

**Attachments:** [CEDC Minutes 6-22-16.pdf](#)

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

**Aye:** 3 - Coenen, Mann and Reed

**Excused:** 2 - Baranowski and Siebers

4. Public Hearings/Appealances

5. Action Items

[16-1170](#)

**\*\*CRITICAL TIMING ISSUE\*\*** Request to approve the reallocation of 2016 Community Development Block Grant (CDBG) funding as described in the attached memorandum

**Attachments:**     [ReAllocation Recs Memo to CEDC.pdf](#)  
                                 [2016 07 21 M. Peterson letter to N. Gerhard re CDBG funding.pdf](#)

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

**Aye:** 3 - Coenen, Mann and Reed

**Excused:** 2 - Baranowski and Siebers

[16-1149](#)

Request to approve the proposed Environmental Review Policy as attached

**Attachments:**     [Memo to CEDC - ER Policy.pdf](#)  
                                 [Environmental Review Policy.pdf](#)

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

**Aye:** 3 - Coenen, Mann and Reed

**Excused:** 2 - Baranowski and Siebers

[16-1070](#)

Request to approve Fox Cities Regional Partnership Economic Development Pledge for 2016

**Attachments:**     [FCRP 2016 Pledge Invoice.pdf](#)  
                                 [FCRP YP Week 2016 Invoice-Receipt.pdf](#)  
                                 [CEDD Marketing & Business Services 2016 Budget.pdf](#)

*Coenen moved, Mann seconded, to amend to only make partial payment of \$9,500 to fulfill the commitment between the City of Appleton and the Fox Cities Regional Partnership, as approved in the 2016 budget, and further, withhold the remaining \$26,500 until an agreed-upon scope of work is identified and fulfilled.*

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

**Aye:** 3 - Coenen, Mann and Reed

**Excused:** 2 - Baranowski and Siebers

## 6. Information Items



[16-1150](#)

Community & Economic Development Department Mid-Year 2016  
Budget Report

**Attachments:** [2016 Mid Year Report Comm Econ Dev Dept.pdf](#)

**This Presentation was presented.**

7. Adjournment

**Mann moved, seconded by Reed, that the meeting be adjourned at 5:38 p.m.**

**Roll Call. Motion carried by the following vote:**

**Aye:** 3 - Coenen, Mann and Reed

**Excused:** 2 - Baranowski and Siebers



# MEMORANDUM

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TO: Community and Economic Development Committee

FROM: Matt Rehbein, Economic Development Specialist

DATE: July 28, 2016

RE: Request to Waive Repurchase Rights for Lots 5 and 6 of Plat 1 in the Northeast Industrial Park

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The City has received a request to waive their repurchase rights per Section 9 of the Deed Restrictions and Covenants (attached) for the above-mentioned lots to allow for the transfer from A&V Wisconsin Realty, LLC to Jerry Van Handel and/or assigns (DDS & J, LLC) (the accepted offer to purchase is attached).

Three (3) parcels of property are part of this sale. The two (2) vacant parcels are 1.14 acres and 1.01 acres, respectively and are being sold in conjunction with the improved property located immediately to the south at 2900 N. Roemer Road. The letter from Attorney Sitzmann dated July 26, 2016 explains that the intent is for A to Z Machine Company, Inc. to utilize the property for expanded operations. A to Z Machine currently occupies two facilities in the Northeast Industrial Park, 2701 E. Winslow Avenue, which was expanded in 2014, and 3035 N. Roemer Road. We are excited to hear of their continued expansion and look forward to supporting their continued success.

## Staff Recommendation:

The Community and Economic Development Committee waive the City's Repurchase Rights for Lots 5 & 6, Plat 1, in the Northeast Industrial Park, allowing the transfer from A&V Wisconsin Realty, LLC to Jerry Van Handel and/or assigns (DDS & J, LLC). This waiver of repurchase rights is not transferable, survivable, or assignable. The City's Repurchase Rights would remain on this property.

## DEED RESTRICTIONS

### APPLICABLE TO ALL PROPERTIES SOLD IN THE NORTHEAST INDUSTRIAL PARK PLAT NO. 1 AND PLAT NO. 2

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

1. ***Setbacks:***

- A. *Front Yard:* No building shall be constructed on the site nearer than forty (40) feet of the right-of-way of any public street or highway. In the case of corner lots, both forty (40) feet setbacks will apply.
- B. *Side and Rear Yards:* Minimum side and rear yards shall be twenty-five (25) feet, provided that adjacent property owners may mutually agree to jointly construct common wall structures thereby eliminating any setback between buildings.
- C. *County Highways:* A fifty-five (55) foot building setback shall be observed along CTH 00.

2. ***Land Use:***

Uses in the Industrial Park shall be limited to manufacturing, warehousing or wholesale distribution activities, and administrative offices directly related thereto. Commercial and service uses shall not be permitted.

3. ***Construction and Materials:***

- A. Any building erected shall be of masonry construction or enameled steel or the equivalent thereof.

4. ***Landscaping:***

The front yard area of the site shall be graded, landscaped, and planted with trees, shrubs, ground cover, and appropriate natural landscaping materials. Landscaping shall relate to buildings and paved surfaces as to scale, massing, size, shape, and color. At the time of planting, vegetation shall be of sufficient size as to noticeably enhance the site (i.e., whips are inappropriate as primary landscaping elements). Existing trees shall be preserved whenever possible and may be substituted for part of the required landscaping. Plant material shall be of hardy quality, preferably native of Wisconsin. Weedy or short-lived trees such as Box Elder, Poplar, American Elm, or Willow shall not be acceptable. Vendee shall be responsible for maintenance of vegetation and replacement of any defective plant material.

5. ***Parking, Outdoor Storage Areas, and Vehicle Access:***

All parking and outdoor storage areas shall be paved. Parking shall be permitted within the minimum front yard setback area, however, it shall be located no closer than fifteen (15) feet to the public right-of-way line. The purchaser agrees to provide off-street parking for employees, clients, and visitors.

6. ***Outdoor Storage:***

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets with a suitable fence, vegetation, berm, or combination thereof. Screening shall be attractive in appearance and in keeping with the architectural quality of the main structure. Said storage shall be limited to behind the front line of the building on the property, and within the building setback lines. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. Storage of fuel oil or other bulk fluids must be underground. Fences, walls, or hedges may not be located closer than fifteen (15) feet to any property line.

7. ***Signs:***

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

8. ***Approval of Plans:***

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

9. ***Repurchase Rights:***

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

**Resale of Vacant Land:** In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject, unless an extension of time may be mutually agreed upon and set forth in writing. The purchase price shall be computed as in the Article above. Conveyance shall be by warranty deed. The seller shall furnish title insurance policy at the seller's expense.

10. ***Reciprocal Switching:***

The vendee shall agree to request what is known as "reciprocal switching" from the railroad spur line constructed on or across any property in the industrial park site.

11. ***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.

12. ***Variances:***

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

13. ***Enforcement:***

In the event that the vendee fails to perform in accordance with these restrictions, the Common Council, upon recommendation of the Community Development Committee, may take whatever corrective measures it deems appropriate and assess the cost thereof against the property in the same manner as a special assessment. 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.

14. ***Invalidation:***

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



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www.sitzmannlaw.com

Christopher G. Sitzmann\*  
Andrew C. Micheletti\*  
Sara K. Micheletti  
\* also licensed in Minnesota

July 26, 2016

Sent Via Email: [matthew.rehbein@appleton.org](mailto:matthew.rehbein@appleton.org)

Mr. Matt Rehbein  
City of Appleton  
100 N. Appleton Street  
Appleton, WI 54911

Re: 2900 North Roemer Road, Appleton, Wisconsin

Dear Mr. Rehbein:

Thank you for your email of July 26, 2016 regarding 2900 North Roemer Road, Appleton, Wisconsin.

Attached hereto please find a copy of the Offer to Purchase, together with an Amendment extending the Closing date. My client, DDS & J, LLC, intends to use the property for expanded operations of the A to Z Machine Company, Inc. machine shop operations.

Please let me know if you need further information prior to August 4, 2016 so the matter can get heard by the CEDC on August 10, 2016. Would you recommend my client be present at the CEDC meeting?

Thank you for your assistance.

Very truly yours;

A handwritten signature in dark ink, appearing to read 'Chris Sitzmann', is written over the typed name.

Christopher G. Sitzmann  
CGS/lb

cc: A to Z Machine Company, Inc. (Sent Via Email: Mr. Eric Bornemann)  
Ms. Karen Harkness (Sent Via Email)  
Mr. Dennis Jochman (Sent Via Email)  
Mr. Stuart Beduhn (Sent Via Email)





57 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge  
 58 of Conditions Affecting the Property or Transaction (lines 181-215) other than those identified in Seller's disclosure report dated \_\_\_\_\_  
 59 and Real Estate Condition Report, if applicable, dated \_\_\_\_\_, which was/were received by Buyer prior to Buyer  
 60 signing this Offer and which is/are made a part of this offer by reference **COMPLETE DATES OR STRIKE AS APPLICABLE** and  
 61 Seller to provide a Real Estate Condition Report to Buyer within 10 days of acceptance.

62 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S).**

63 **CAUTION:** If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. §  
 64 709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real  
 65 estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied  
 66 the Property). Buyer may have rescission rights per Wis. Stat. § 709.05.

67 **CLOSING** This transaction is to be closed no later than July 29, 2016

68 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.  
 69 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes,  
 70 rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and \_\_\_\_\_  
 71 \_\_\_\_\_

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

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

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

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

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

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

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

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

89 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 109-115  
 90 or 277-286 or in an addendum attached per line 479. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all  
 91 debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent.  
 92 Occupancy shall be given subject to tenant's rights, if any.

93 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under said lease(s)  
 94 and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) ~~and~~ **STRIKE ONE** lease(s), if any,  
 95 are to be disclosed to Buyer within 10 days of acceptance.

96 \_\_\_\_\_ . Insert additional terms, if any, at lines 109-115 or 277-286 or attach as an addendum per line 479.

97 ☐ **ESTOPPEL LETTERS:** Seller shall deliver to Buyer no later than \_\_\_\_\_ days before closing, estoppel letters dated within  
 98 \_\_\_\_\_ days before closing, from each non-residential tenant, confirming the lease term, rent installment amounts, amount of security  
 99 deposit, and disclosing any defaults, claims or litigation with regard to the lease or tenancy.

100 **RENTAL WEATHERIZATION** This transaction (is) ~~is not~~ **STRIKE ONE** exempt from Wisconsin Rental Weatherization Standards (Wis. Admin.  
 101 Code Ch. SPS 357). If not exempt, (Buyer) (Seller) **STRIKE ONE** ("Buyer" if neither is stricken) shall be responsible for compliance, including all  
 102 costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at  
 103 closing.

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

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

109 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_  
 110 \_\_\_\_\_  
 111 \_\_\_\_\_  
 112 \_\_\_\_\_  
 113 \_\_\_\_\_  
 114 \_\_\_\_\_  
 115 \_\_\_\_\_

Property Address: 2900 N Roemer Rd, Appleton, WI 54911-8632

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☐ **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: \_\_\_\_\_

\_\_\_\_\_ [Insert proposed use and type and size of building, if applicable; e.g. restaurant/tavern with capacity of 350 and 3 second floor dwelling units]. The optional provisions checked on lines 123-139 shall be deemed satisfied unless Buyer delivers to Seller by the deadline(s) set forth on lines 123-139 written notice specifying those items which cannot be satisfied and written evidence substantiating why each specific item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice, this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 123-139.

☐ **EASEMENTS AND RESTRICTIONS:** This Offer is contingent upon Buyer obtaining, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Buyer's" if neither is stricken) expense, copies of all public and private easements, covenants and restrictions affecting the Property and a written determination by a qualified independent third party that none of these prohibit or significantly delay or increase the costs of the proposed use or development identified at lines 116 to 118.

☐ **APPROVALS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Buyer's" if neither is stricken) expense, all applicable governmental permits, approvals and licenses, as necessary and appropriate, or the final discretionary action by the granting authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's proposed use:

\_\_\_\_\_ or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase the cost of Buyer's proposed use, all within \_\_\_\_\_ days of acceptance of this Offer.

☐ **ACCESS TO PROPERTY:** This Offer is contingent upon Buyer obtaining, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Buyer's" if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public roads.

☐ **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Buyer's" if neither is stricken) expense, a ☐ rezoning; ☐ conditional use permit; ☐ license; ☐ variance; ☐ building permit; ☐ occupancy permit; ☐ other \_\_\_\_\_

**[CHECK ALL THAT APPLY]**, for the Property for its proposed use described at lines 116-118 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase the cost of Buyer's proposed use, all within \_\_\_\_\_ days of acceptance.

☐ **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) **[STRIKE ONE]** ("Seller providing" if neither is stricken) a \_\_\_\_\_ survey (ALTA/ACSM Land Title Survey if survey type is not specified) dated subsequent to the date of acceptance of this Offer and prepared by a registered land surveyor, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's) **[STRIKE ONE]** ("Seller's" if neither is stricken) expense. The map shall show minimum of \_\_\_\_\_ acres, maximum of \_\_\_\_\_ acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements, if any, and: \_\_\_\_\_

\_\_\_\_\_. **[STRIKE AND COMPLETE AS APPLICABLE]** Additional map features which may be added include, but are not limited to: staking of all corners of the Property; identifying dedicated and apparent streets; lot dimensions; total acreage or square footage; utility installations; easements or rights-of-way. Such survey shall be in satisfactory form and accompanied by any required surveyor's certificate sufficient to enable Buyer to obtain removal of the standard survey exception on the title policy.

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

This contingency shall be deemed satisfied unless Buyer, within five (5) days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for delivery of said map, delivers to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information materially inconsistent with prior representations; (3) failure to meet requirements stated within this contingency; or (4) the existence of conditions that would prohibit the Buyer's intended use of the Property described at lines 116-118. Upon delivery of Buyer's notice, this Offer shall be null and void.

☒ **DOCUMENT REVIEW CONTINGENCY:** This Offer is contingent upon Seller delivering the following documents to Buyer within \_\_\_\_\_ days of acceptance: **[CHECK THOSE THAT APPLY; STRIKE AS APPROPRIATE]**

☒ Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.

☐ A complete inventory of all furniture, fixtures, equipment and other personal property included in this transaction which is consistent with representations made prior to and in this Offer.

☒ Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear of all liens, other than liens to be released prior to or at closing.

☐ Rent roll.

☒ Other Seller shall complete the attached environmental questionnaire within 10 days of acceptance of this offer.

Additional items which may be added include, but are not limited to: building, construction or component warranties, previous environmental site assessments, surveys, title commitments and policies, maintenance agreements, other contracts relating to the Property, existing permits and licenses, recent financial operating statements, current and future rental agreements, notices of termination and non-renewal, and assessment notices.

All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (originals and any reproductions) to Seller if this Offer is terminated.

☒ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of the earlier of receipt of the final document to be delivered or the deadline for delivery of the documents, delivers to Seller a written notice indicating that this

contingency has not been satisfied. Such notice shall identify which document(s) have not been timely delivered or do not meet the standard set forth for the document(s). Upon delivery of such notice, this Offer shall be null and void.

**DEFINITIONS**

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

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

- a. Defects in structural components, e.g. roof, foundation, basement or other walls.
- b. Defects in mechanical systems, e.g. HVAC, electrical, plumbing, septic, well, fire safety, security or lighting.
- c. Underground or aboveground storage tanks presently or previously on the Property for storage of flammable or combustible liquids, including but not limited to gasoline and heating oil.
- d. Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, lead paint, asbestos, radon, radium in water supplies, mold, pesticides or other potentially hazardous or toxic substances on the premises.
- e. Production of or spillage of methamphetamine (meth) or other hazardous or toxic substances on the Property.
- f. Zoning or building code violations, any land division involving the Property for which required state or local permits had not been obtained, nonconforming structures or uses, conservation easements, rights-of-way.
- g. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to impose assessments against the real property located within the district.
- h. Proposed, planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property or the present use of the Property.
- i. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
- j. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
- k. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.
- l. Near airports, freeways, railroads or landfills, or significant odor, noise, water intrusion or other irritants emanating from neighboring property.
- m. Portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations.
- n. Property is subject to a mitigation plan required under administrative rules of the Department of Natural Resources related to county shoreland zoning ordinances, which obligates the owner of the Property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county.
- o. Encroachments; easements, other than recorded utility easements; access restrictions; covenants, conditions and restrictions; shared fences, walls, wells, driveways, signage or other shared usages; or leased parking.
- p. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.
- q. Structure on the Property designated as a historic building, any part of the Property located in a historic district, or burial sites or archeological artifacts on the Property.
- r. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion charge or the payment of a use-value conversion charge has been deferred.
- s. All or part of the Property is subject to, enrolled in or in violation of a certified farmland preservation zoning district or a farmland preservation agreement, or a Forest Crop, Managed Forest (see disclosure requirements in Wis. Stat. § 710.12), Conservation Reserve or comparable program.
- t. A pier is attached to the Property that is not in compliance with state or local pier regulations.
- u. Government investigation or private assessment/audit (of environmental matters) conducted.
- v. Other Defects affecting the Property.

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

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

(Definitions Continued on page 6)

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IF LINE 228 IS NOT MARKED OR IS MARKED N/A LINES 264-269 APPLY.

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

237 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 238 OR 239.**

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

243 If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 109-115 or 277-286  
 244 or in an addendum attached per line 479.

245 **NOTE:** If purchase is conditioned on buyer obtaining financing for operations or development consider adding a contingency for that  
 246 purpose.

247 **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to  
 248 provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to  
 249 Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 229. Buyer and Seller agree that  
 250 delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if,  
 251 after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall  
 252 accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.

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

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

258 **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an  
 259 acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of  
 260 lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then have 10 days  
 261 to deliver to Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in this Offer, and this Offer shall remain  
 262 in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer  
 263 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

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

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

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

277 **ADDITIONAL PROVISIONS/CONTINGENCIES:** This Offer is not subject to the sale of other property or  
 278 financing; cash at closing.

279 \_\_\_\_\_  
 280 **Seller shall keep all property grounds mowed and kept clean from debris until the date of closing.**

281 \_\_\_\_\_

282 \_\_\_\_\_

283 \_\_\_\_\_

284 \_\_\_\_\_

285 \_\_\_\_\_

286 \_\_\_\_\_

**DEFINITIONS CONTINUED FROM PAGE 4**

■ **ENVIRONMENTAL SITE ASSESSMENT:** An "Environmental Site Assessment" (also known as a "Phase I Site Assessment") (see lines 379-395) may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property; (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Disposal Sites, the DNR's Contaminated Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standard Practice for Environmental Site Assessments"), and state and federal guidelines, as applicable.

**CAUTION:** Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or other site evaluation at lines 109-115 or 277-286 or attach as an addendum per line 479.

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

**CAUTION:** Exclude Fixtures not owned by Seller such as rented fixtures. See lines 20-22.

■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.

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

**EARNEST MONEY**

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

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

■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to disbursement.

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

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**TITLE EVIDENCE**

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

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

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

■ **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 a 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. Buyer shall pay all costs of providing title evidence required by Buyer's lender.

■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's) (Buyer's) ~~STRIKE ONE~~ ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 365-371).

■ **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer's attorney or Buyer not more than \_\_\_\_\_ days after acceptance ("15" if left blank), showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 341-348, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

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

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

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

☒ **ENVIRONMENTAL EVALUATION CONTINGENCY:** This Offer is contingent upon a qualified independent environmental consultant of Buyer's choice conducting an Environmental Site Assessment of the Property (see lines 288-302), at ~~Buyer's~~ (Seller's) expense ~~STRIKE ONE~~ ("Buyer's" if neither is stricken), which discloses no Defects. For the purpose of this contingency, a Defect (see lines 223-225) is defined to also include a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

■ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within 45 days of acceptance, delivers to Seller a copy of the Environmental Site Assessment report and a written notice listing the Defect(s) identified in the Environmental Site Assessment report to which Buyer objects (Notice of Defects).

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

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

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

399 If Buyer defaults, Seller may:

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

402 If Seller defaults, Buyer may:

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

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

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

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

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

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

419 **CAUTION:** Buyer should verify total square footage or acreage figures and land, building or room dimensions, if material to Buyer's  
 420 decision to purchase.

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

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

434 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons registered with the  
 435 registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at  
 436 (608) 240-5830.

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

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

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



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450 ☒ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 437-449). This Offer is contingent upon  
 451 a qualified independent inspector(s) conducting an inspection(s) of the Property which discloses no Defects. This Offer is further contingent upon  
 452 a qualified independent inspector or qualified independent third party performing an inspection of roof, HVAC equipment, sprinkler system  
 453 and extinguishers, Electrical panels & wiring (list any Property feature(s) to be separately inspected, e.g., dumpsite, etc.) which  
 454 discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections  
 455 recommended in a written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 461.  
 456 Each inspection shall be performed by a qualified independent inspector or qualified independent third party.  
 457 **CAUTION:** Buyer should provide sufficient time for the primary inspection and/or any specialized inspection(s), as well as any follow-up  
 458 inspection(s).  
 459 For the purpose of this contingency, Defects (see lines 223-225) do not include conditions the nature and extent of which Buyer had actual  
 460 knowledge or written notice before signing the Offer.  
 461 ☒ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within 30 days of acceptance,  
 462 delivers to Seller a copy of the inspection report(s) and a written notice listing the Defect(s) identified in the inspection report(s) to which Buyer  
 463 objects (Notice of Defects).  
 464 **CAUTION:** A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.  
 465 ☒ **RIGHT TO CURE:** Seller (shall)(~~shall not~~) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to  
 466 cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating  
 467 Seller's election to cure Defects, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the  
 468 work done within 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written  
 469 inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will  
 470 not cure or (b) Seller does not timely deliver the written notice of election to cure.  
 471 ☐ **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at  
 472 \_\_\_\_\_, no later than \_\_\_\_\_. If Seller accepts a bona fide secondary offer,  
 473 Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property  
 474 Contingency and \_\_\_\_\_  
 475 \_\_\_\_\_  
 476 **[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR**  
 477 **PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)] within \_\_\_\_\_ hours of Buyer's Actual Receipt of said notice, this Offer shall be**  
 478 **null and void.**  
 479 ☒ **ADDENDA:** The attached Environmental Questionnaire is/are made part of this Offer.  
 480 This Offer was drafted by [Licensee and Firm] Stuart Beduhn, Beduhn Properties, LLC  
 481 \_\_\_\_\_ on 06/01/2016  
 482 Buyer Entity Name (if any): \_\_\_\_\_  
 483 (X) [Signature] 6-2-16  
 484 Buyer's/Authorized Signature ▲ Print Name/Title Here ► Jerry Van Handel and/or assigns Date ▲  
 485 (X) \_\_\_\_\_  
 486 Buyer's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲  
 487 ☒ **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.  
 488 \_\_\_\_\_ Broker (By) \_\_\_\_\_  
 489 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING**  
 490 **AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS**  
 491 **SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**  
 492 Seller Entity Name (if any): \_\_\_\_\_  
 493 (X) \_\_\_\_\_  
 494 Seller's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲  
 495 (X) \_\_\_\_\_  
 496 Seller's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲  
 497 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_  
 498 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.  
 499 This Offer is rejected \_\_\_\_\_ This Offer is countered [See attached counter] \_\_\_\_\_  
 500 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲



**WB-44 COUNTER-OFFER**

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

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

The Offer to Purchase dated 06/01/2016 and signed by Buyer Jerry Van Handel and/or assigns  
for purchase of real estate at 2200 N. Rosser Road (tax parcels #311530200, #311530100, #311530000)

is rejected and the following Counter-Offer is hereby made.  
CAUTION: This Counter-Offer does not include the terms or conditions in any other counter-offer or multiple counter-proposal unless incorporated by reference.

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

1. Purchase Price to be \$860,000.00

2. Earnest money to be \$10,000.00

3. Real Estate Disclosure Report provided to Buyer on 6/6/2016.

4. Environmental Site Assessment (lines 379-385) shall be at Buyer's expense.

The attached \_\_\_\_\_ is/are made part of this Counter-Offer.  
Any warranties, covenants and representations made in this Counter-Offer survive the closing of this transaction.

This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the

Party making the Counter-Offer on or before July 7, 2016 2:30 pm

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

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

This Counter-Offer was drafted by Stuart Beduhn, Beduhn Properties LLC on 07/05/2016

\_\_\_\_\_  
Licenses and Firm ID

(x) [Signature] 7-6-16  
Signature of Party Making Counter-Offer Date

Print name: Jerry Van Handel or assigns

(y) [Signature] 7/7/16  
Signature of Party Accepting Counter-Offer Date

Print name: Brian Ellisius

(x) \_\_\_\_\_  
Signature of Party Making Counter-Offer Date

Print name: \_\_\_\_\_

(y) \_\_\_\_\_  
Signature of Party Accepting Counter-Offer Date

Print name: \_\_\_\_\_

This Counter-Offer was presented by DENNIS J. JOCHMAN, BECHARD INVESTMENTS, INC. on 7/6/16

\_\_\_\_\_  
Licenses and Firm ID

Date

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

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

**WB-40 AMENDMENT TO OFFER TO PURCHASE**

**Caution: Use A WB-40 Amendment If Both Parties Will Be Agreeing To Modify The Terms Of The Offer.  
Use A WB-41 Notice If A Party Is Giving A Notice Which Does Not Require The Other Party's Agreement.**

1 Buyer and Seller agree to amend the Offer dated June 1, 2016, and accepted July 7, 2016, for  
2 the purchase and sale of real estate at 2900 N. Roemer Rd. Tax Parcel No.'s  
3 311530200, 311530100, 311530000

4 ☒ Closing date is changed from July 29, 2016, to on or before August 24, 2016, as follows:  
5 ☐ Purchase price is changed from \$ \_\_\_\_\_ to \$ \_\_\_\_\_  
6 ☐ Occupancy date is changed from \_\_\_\_\_ to \_\_\_\_\_  
7 ☐ Occupancy charge is changed from \$ \_\_\_\_\_ to \$ \_\_\_\_\_  
8 Other: \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
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22 \_\_\_\_\_

23 ALL OTHER TERMS OF THE OFFER TO PURCHASE AND ANY PRIOR AMENDMENTS REMAIN THE SAME.  
24 This Amendment is binding upon Seller and Buyer only if a copy of the accepted Amendment is delivered to the  
25 Party offering the Amendment on or before July 29, 2016 (Time is of the Essence).  
26 Delivery of the accepted Amendment may be made in any manner specified in the Offer to Purchase, unless  
27 Otherwise provided in this Amendment.  
28 NOTE: The Party offering this Amendment may withdraw the offered Amendment prior to acceptance and  
29 delivery as provided at lines 24-27.

30 This Amendment was drafted by Christopher G. Sitzmann, Sitzmann Law Firm Ltd. on 07/26/2016  
31 \_\_\_\_\_  
Licensee and Firm ^ Date ^

32 This Amendment was delivered by \_\_\_\_\_ on \_\_\_\_\_  
33 \_\_\_\_\_  
Licensee and Firm ^ Date ^

34 This Amendment was presented by \_\_\_\_\_ on \_\_\_\_\_  
35 \_\_\_\_\_  
Licensee and Firm ^ Date ^

36 (x) Jerry Van Handel 7-26-16  
37 Buyer's Signature ^ Date ^  
38 Print name ^ DDS & J, LLC by Jerry Van Handel, Member

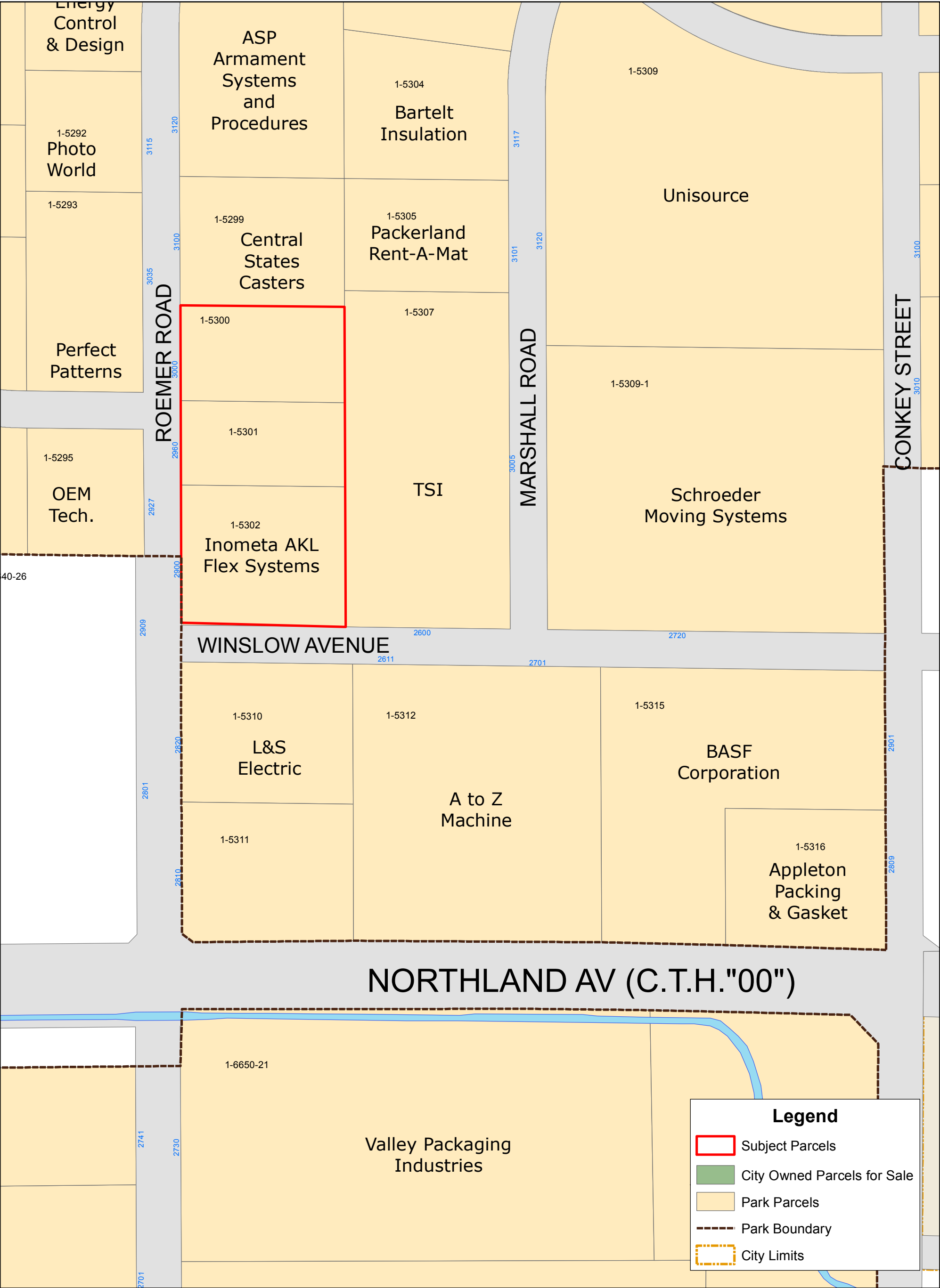
(x) \_\_\_\_\_  
Seller's Signature ^ Date ^  
Print name ^ Drew Elisius

39 (x) \_\_\_\_\_  
40 Buyer's Signature ^ Date ^  
41 Print name ^ \_\_\_\_\_

(x) \_\_\_\_\_  
Seller's Signature ^ Date ^  
Print name ^ \_\_\_\_\_

42 This Amendment was rejected by \_\_\_\_\_ on \_\_\_\_\_  
43 \_\_\_\_\_  
Party Name ^ Date ^

# Northeast Business Park Appleton, Wisconsin



0 300 600 Feet





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

## MEMORANDUM

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TO: Community & Economic Development Committee

FROM: Karen Harkness, Director of Community & Economic Development

DATE: July 29, 2016

RE: Offer to Purchase of Approximately 7.32 Acres in Southpoint Commerce Park

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The City of Appleton has received an Offer to Purchase of approximately 7.32 acres of land comprised of Lots 12 and 13 of Plat 1 at the corner of Eisenhower Drive and Plank Road in Southpoint Commerce Park from Commercial Horizons Inc. and/or assigns.

The Offer to Purchase Lots 12 and 13 are part of the Council action taken on July 6, 2016 directing staff to repurchase Lot 13 per Southpoint Commerce Covenants and Deed Restrictions. This Offer to Purchase is also part of the Development Agreement also listed as action on this agenda.

### **Staff Recommendation:**

The Offer to Purchase by Commercial Horizons, Inc. and/or assigns to purchase 7.32 acres of land, more or less, at the corner of Eisenhower Drive and Plank Road in Southpoint Commerce Park at a purchase price of \$45,000 per acre **BE APPROVED.**

## WB-44 COUNTER-OFFER

Counter-Offer No. 1 by ~~(Buyer/Seller)~~ **STRIKE ONE**

1 The Offer to Purchase dated July 20, 2016 and signed by Buyer Paul A. Klister,  
2 for purchase of real estate at Lots 12 and 13, Southpoint Commerce Park  
3 is rejected and the following Counter-Offer is hereby made. All terms and conditions remain the same as stated in the  
4 Offer to Purchase except the following: [CAUTION: This Counter-Offer does not include the terms or conditions in  
5 any other Counter-Offer unless incorporated by reference.]  
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7

8 See Attached RIDER -- Counter-Offer #1  
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30 Any warranties, covenants and representations made in this Counter-Offer survive the closing of this transaction.  
31 This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the Party  
32 making the Counter-Offer on or before August 5, 2016 (Time is of the  
33 Essence). Delivery of the accepted Counter-Offer may be made in any manner specified in the Offer to Purchase, unless  
34 otherwise provided in this Counter-Offer.

35 **NOTE: The Party making this Counter-Offer may withdraw the Counter-Offer prior to acceptance and delivery as**  
36 **provided at lines 31 to 34.**

37 This Counter-Offer was drafted by Atty. Christopher Behrens City of Appleton on July 29, 2016

38 Karen Harkness, Director Licensee and Firm ▲ Date ▲  
39 7/29/16

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

41 Print name ▶ Karen Harkness, Director of Economic Development Print name ▶

42 [Signature] Date 8/1/16

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

44 Print name ▶ Print name ▶

45 This Counter-Offer was presented by \_\_\_\_\_ on \_\_\_\_\_

46 Licensee and Firm ▲ Date ▲

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

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

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

## **RIDER – Counter-Offer #1**

The terms and conditions of this Rider shall be deemed incorporated into and part of the attached WB-44 Counter-Offer No. 1 submitted by CITY OF APPLETON (“Seller”) to PAUL A. KLISTER and/or assigns (“Buyer”). All terms and conditions remain the same as stated in the Offer to Purchase except the following:

1. PURCHASE PRICE: Purchase price shall be \$45,000 per acre. The Property’s total acreage is approximately 7.32 acres for a total approximate purchase price of \$329,400. Buyer shall have the option, at its expense, to conduct a survey of the Property by a certified surveyor to determine the Property’s total acreage for the purpose of calculating the final purchase price. If Buyer waives the option to conduct a survey, the purchase price shall remain as stated in this section. If Buyer elects to conduct said survey, Seller shall be provided with the results of said survey no less than ten (10) days prior to the scheduled closing for Seller’s review and acceptance.

2. Rider section 4.5.3 Inducements shall be replaced in its entirety by the following:

4.5.3. Inducements. Seller will pay a development investment (the “Investment”) equal to the lesser of: 1) Three Million Seven Hundred Forty Thousand Dollars (\$3,740,000.00); or 2) twenty-two percent (22%) of the total equalized value of the real and personal property comprising the Project as of January 1 of the year in which the Project is first fully assessed. Total equalized value shall be the value of the Project (real and personal property), as determined by the Wisconsin Department of Revenue, less the base value of the Property within the District. The Investment will be paid to Buyer or Buyer’s affiliate in a manner to be set forth in the Development Agreement; provided interest on the investment, at the rate of four percent (4%) per annum, shall begin to accrue as of the date upon which a certificate of occupancy is issued.

3. Rider section 5.2 Lot 13 Repurchase shall be amended, in part, as follows:

“thirty (30) days” shall be struck and replaced with “forty-five (45) days”.



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

1 **LICENSEE DRAFTING THIS OFFER ON** \_\_\_\_\_ **[DATE] IS (AGENT OF BUYER)**  
2 **(AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) ~~STRIKE THOSE NOT APPLICABLE~~**  
3 **GENERAL PROVISIONS** The Buyer, Paul A. Klister and/or assigns  
4 \_\_\_\_\_, offers to purchase the Property  
5 known as [Street Address] Lots 12 and 13, Southpoint Commerce Park  
6 in the City of Appleton, County of Calumet, Wisconsin (Insert  
7 additional description, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525), on the following terms:  
8 ■ **PURCHASE PRICE:** Three Hundred Seven Thousand Three Hundred Fifty  
9 \_\_\_\_\_ Dollars (\$ 307,350.00 ).  
10 ■ **EARNEST MONEY** of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ 10,000  
11 will be mailed, or commercially or personally delivered within five (5) days of acceptance to ~~listing broker or~~  
12 the Title Company identified in Section \_\_\_\_\_ of the attached Rider.  
13 ■ **THE BALANCE OF PURCHASE PRICE** will be paid in cash or equivalent at closing unless otherwise provided below.  
14 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on the  
15 date of this Offer not excluded at lines 18-19, and the following additional items: \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 ■ **NOT INCLUDED IN PURCHASE PRICE:** \_\_\_\_\_  
19 \_\_\_\_\_  
20 **CAUTION: Identify Fixtures that are on the Property (see lines 290-294) to be excluded by Seller or which are rented**  
21 **and will continue to be owned by the lessor.**  
22 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are**  
23 **included/excluded. Annual crops are not part of the purchase price unless otherwise agreed.**  
24 ■ **ZONING:** Seller represents that the Property is zoned: M1  
25 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical  
26 copies of the Offer.  
27 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines**  
28 **running from acceptance provide adequate time for both binding acceptance and performance.**  
29 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on  
30 or before July 29, 2016. Seller may keep the Property on the  
31 market and accept secondary offers after binding acceptance of this Offer.  
32 **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**  
33 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX ( ☐ ) ARE PART OF THIS  
34 OFFER ONLY IF THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A"  
35 OR ARE LEFT BLANK.  
36 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and  
37 written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 38-56.  
38 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if  
39 named at line 40 or 41.  
40 Seller's recipient for delivery (optional): \_\_\_\_\_  
41 Buyer's recipient for delivery (optional): \_\_\_\_\_  
42 ☐ (2) **Fax:** fax transmission of the document or written notice to the following telephone number:  
43 Seller: ( \_\_\_\_\_ ) Buyer: ( \_\_\_\_\_ )  
44 ☐ (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a  
45 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 40 or 41, for  
46 delivery to the Party's delivery address at line 49 or 50.  
47 ☐ (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party,  
48 or to the Party's recipient for delivery if named at line 40 or 41, for delivery to the Party's delivery address at line 49 or 50.  
49 Delivery address for Seller: \_\_\_\_\_  
50 Delivery address for Buyer: \_\_\_\_\_  
51 ☒ (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line  
52 55 or 56. If this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for  
53 personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically  
54 to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.  
55 E-Mail address for Seller (optional): karen.harkness@appleton.org  
56 E-Mail address for Buyer (optional): pklister@commercialhorizons.com  
57 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller  
58 constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

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

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

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

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

72 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:  
73 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association  
74 assessments, fuel and \_\_\_\_\_

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

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

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

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

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

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

84 ☐ \_\_\_\_\_

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

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

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

97 \_\_\_\_\_ Insert additional terms, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525.

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

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

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



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

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

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

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

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

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

**BUYER'S PRE-CLOSING WALK-THROUGH:** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and 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.

**PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING:** Seller shall maintain the Property until the earlier of closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be 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 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 be held in trust for the sole purpose of restoring the Property.

#### **DEFINITIONS**

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

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

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

(Definitions Continued on page 5)



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

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

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

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

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

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

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

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

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

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

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

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

**DEFINITIONS CONTINUED FROM PAGE 3**

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

**PROPERTY DEVELOPMENT WARNING**

297 If Buyer contemplates developing Property for a use other than the current use,  
 298 there are a variety of issues which should be addressed to ensure the development or new use is feasible. Municipal and  
 299 zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or  
 300 uses and therefore should be reviewed. Building permits, zoning variances, Architectural Control Committee approvals,  
 301 estimates for utility hook-up expenses, special assessments, changes for installation of roads or utilities, environmental audits,  
 302 subsoil tests, or other development related fees may need to be obtained or verified in order to determine the feasibility of  
 303 development of, or a particular use for, a property. Optional contingencies which allow Buyer to investigate certain of these  
 304 issues can be found at lines 306-350 and Buyer may add contingencies as needed in addenda (see line 525). Buyer should  
 305 review any plans for development or use changes to determine what issues should be addressed in these contingencies.



306 ☐ **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: \_\_\_\_\_

307 \_\_\_\_\_

308 \_\_\_\_\_

309 [insert proposed use and type and size of building, if applicable; e.g. three bedroom single family home]. The optional

310 provisions checked on lines 314-345 shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers

311 written notice to Seller specifying those items which cannot be satisfied and written evidence substantiating why each specific

312 item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice, this Offer shall be null and void. Seller

313 agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 314-350.

314 ☐ **ZONING CLASSIFICATION CONFIRMATION:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's)

315 **STRIKE ONE** ("Buyer's" if neither is stricken) expense, verification that the Property is zoned \_\_\_\_\_

316 \_\_\_\_\_ and that the Property's zoning allows the Buyer's proposed use described at lines 306-308.

317 ☐ **SUBSOILS:** This offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither

318 is stricken) expense, written evidence from a qualified soils expert that the Property is free of any subsoil condition which

319 would make the proposed use described at lines 306-308 impossible or significantly increase the costs of such

320 development.

321 ☐ **PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM (POWTS) SUITABILITY:** This Offer is contingent

322 upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense, written evidence from

323 a certified soils tester that (a) the soils at the Property locations selected by Buyer, and (b) all other conditions that must

324 be approved, meet the legal requirements in effect on the date of this Offer to obtain a permit for a POWTS for use of the

325 Property as stated on lines 306-308. The POWTS (septic system) allowed by the written evidence must be one of

326 the following POWTS that is approved by the State for use with the type of property identified at lines 306-308 **CHECK**

327 **ALL THAT APPLY:** ☐ conventional in-ground; ☐ mound; ☐ at grade; ☐ in-ground pressure distribution; ☐ holding tank;

328 ☐ other: \_\_\_\_\_

329 ☐ **EASEMENTS AND RESTRICTIONS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE**

330 **ONE** ("Buyer's" if neither is stricken) expense, copies of all public and private easements, covenants and restrictions

331 affecting the Property and a written determination by a qualified independent third party that none of these prohibit or

332 significantly delay or increase the costs of the proposed use or development identified at lines 306-308.

333 ☐ **APPROVALS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if

334 neither is stricken) expense, permits, approvals and licenses, as appropriate, or the final discretionary action by the

335 granting authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's

336 proposed use: \_\_\_\_\_

337 \_\_\_\_\_

338 ☐ **UTILITIES:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither

339 is stricken) expense, written verification of the following utility connections at the listed locations (e.g., on the Property, at

340 the lot line, across the street, etc.) **CHECK AND COMPLETE AS APPLICABLE:** ☐ electricity \_\_\_\_\_;

341 ☐ gas \_\_\_\_\_; ☐ sewer \_\_\_\_\_; ☐ water \_\_\_\_\_;

342 ☐ telephone \_\_\_\_\_; ☐ cable \_\_\_\_\_; ☐ other \_\_\_\_\_

343 ☐ **ACCESS TO PROPERTY:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE**

344 ("Buyer's" if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public

345 roads.

346 ☐ **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if

347 neither is stricken) expense, a ☐ rezoning; ☐ conditional use permit; ☐ license; ☐ variance; ☐ building permit; ☐

348 occupancy permit; ☐ other \_\_\_\_\_ **CHECK ALL THAT APPLY**, and delivering

349 written notice to Seller if the item cannot be obtained, all within \_\_\_\_\_ days of acceptance for the Property for its proposed

350 use described at lines 306-308.

351 ☐ **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) **STRIKE ONE** ("Seller

352 providing" if neither is stricken) a Map of the Property dated subsequent to the date of acceptance of this Offer prepared by a

353 registered land surveyor, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's) **STRIKE ONE** ("Seller's" if neither is stricken)

354 expense. The map shall show minimum of \_\_\_\_\_ acres, maximum of \_\_\_\_\_ acres, the legal description of the

355 Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements,

356 if any, and: \_\_\_\_\_

357 **[STRIKE AND COMPLETE AS APPLICABLE]** Additional map features which may be added include, but are not limited to:

358 staking of all corners of the Property; identifying dedicated and apparent streets; lot dimensions; total acreage or square

359 footage; easements or rights-of-way. **CAUTION: Consider the cost and the need for map features before selecting them.**

360 **Also consider the time required to obtain the map when setting the deadline.** This contingency shall be deemed satisfied

361 unless Buyer, within five days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for delivery of said map,

362 delivers to Seller a copy of the map and a written notice which identifies: (1) the significant encroachment; (2) information

363 materially inconsistent with prior representations; or (3) failure to meet requirements stated within this contingency.

364 Upon delivery of Buyer's notice, this Offer shall be null and void.

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

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

370 **EARNEST MONEY**

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

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

377 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after  
 378 clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money.  
 379 At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest  
 380 money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said  
 381 disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse  
 382 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;  
 383 (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4)  
 384 any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an  
 385 interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to  
 386 exceed \$250, prior to disbursement.

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

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

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



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

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

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

417 **TITLE EVIDENCE**

418 **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed  
419 (or trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as  
420 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements  
421 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
422 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's disclosure report and  
423 in this Offer, general taxes levied in the year of closing and none other  
424 \_\_\_\_\_  
425 \_\_\_\_\_  
426 \_\_\_\_\_

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

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

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

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

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

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

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

458 **ADDITIONAL PROVISIONS/CONTINGENCIES**  
459 \_\_\_\_\_  
460 \_\_\_\_\_  
461 \_\_\_\_\_  
462 \_\_\_\_\_  
463 \_\_\_\_\_  
464 \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

525 ☒ **ADDENDA:** The attached Rider is/are made part of this Offer.

526 **ADDITIONAL PROVISIONS/CONTINGENCIES**

527 \_\_\_\_\_  
528 \_\_\_\_\_  
529 \_\_\_\_\_  
530 \_\_\_\_\_  
531 \_\_\_\_\_  
532 \_\_\_\_\_  
533 \_\_\_\_\_  
534 \_\_\_\_\_

535 This Offer was drafted by [Licensee and Firm] Michael J. Lokensgard, Godfrey & Kahn, S.C.

536 \_\_\_\_\_ on \_\_\_\_\_

537 (x) Paul A. Klister 7/20/16  
538 Buyer's Signature ▲ Print Name Here ► Paul A. Klister Date ▲

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

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

542 \_\_\_\_\_ Broker (by) \_\_\_\_\_

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

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

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

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

551 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

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





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

# MEMORANDUM

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TO: Community & Economic Development Committee

FROM: Karen Harkness, Director of Community & Economic Development

DATE: July 29, 2016

RE: Commercial Horizons/Encapsys Development Agreement

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This Development Agreement supports the construction of Encapsys' world headquarters, including offices, laboratories and a pilot plant.

The building will be at least 37,000 square feet, and the total development costs will not be less than \$17,000,000.

The City has determined that development of this project in Southpoint Commerce Park will spur economic development, expand the City's tax base, and create new jobs. Pursuant to Section 66.1105 Wisconsin Statutes (the "Tax Increment Law"), the City has further determined that financial assistance for this project's cost is covered under the Tax Incremental Law.

The City investment will be the lesser of: 1) Three Million Seven Hundred Forty Thousand Dollars (\$3,740,000.00); or 2) Twenty-two percent (22%) of the total equalized value of the real and personal property comprising the project as of January 1 of the year the project is fully assessed.

Please contact Karen Harkness, Director of Community and Economic Development at 920-832-6408 or email [Karen.harkness@appleton.org](mailto:Karen.harkness@appleton.org) with any questions.

TAX INCREMENT DISTRICT NO. 6  
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and among Encapsys Southpoint, LLC, a Wisconsin limited liability company ("Developer"), Encapsys, LLC, a Delaware limited liability company ("Encapsys") and the CITY OF APPLETON, a Wisconsin municipal corporation (the "City").

RECITALS

Developer, Encapsys and the City acknowledge the following:

A. Developer has been engaged to assist Encapsys in procuring a site, and developing and leasing a new facility which will house Encapsys' world headquarters. The development will include Class "A" office space, laboratories and a pilot plant.

B. Subject to Encapsys' receiving the financial assistance set forth in this Agreement, Encapsys is prepared to enter into a lease to occupy a new building to be constructed by Developer (the "Project") on the real property described on Exhibit A, attached hereto (the "Property"). The Property is located within the City in Tax Increment District #6. All references to the Project include the Property.

C. The City has determined that development of the Project on the Property will spur economic development, expand the City's tax base and create new jobs. Accordingly, the City has created the tax increment district encompassing the Property (the "District") and adopted a project plan (the "Project Plan") that provides for, among other things, the financial assistance set forth in this Agreement, pursuant to Section 66.1105, Wisconsin Statutes (the "Tax Increment Law"). The City has determined that such financial assistance is a Project Cost under the Tax Incremental Law.

D. The City has determined that the amount of financial assistance to be provided under this Agreement is the amount necessary to induce development of the Project. The Project will not proceed without the financial assistance set forth in this Agreement.

E. The City, pursuant to Common Council Action dated \_\_\_\_\_ has approved this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

F. The Developer and Encapsys have approved this Agreement and authorized the appropriate officers to execute this Agreement on the Developer's and Encapsys' behalf.

G. 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.

## AGREEMENTS

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 DEVELOPER AND ENCAPSYS ACTIVITIES

A. Subject to paragraph D, below, Developer shall construct the Project in accordance with all applicable City zoning and building codes, ordinances and regulations. Developer warrants and represents to the City that the Project will contain at least 37,000 square feet of space and that total development costs expended on the Project (inclusive of personal property) will be not less than \$17,000,000.

B. Subject to paragraph D, below, Encapsys shall enter into a lease to occupy the Project for a term of at least ten (10) years (the "Lease").

C. Developer and Encapsys warrant and represent to the City that but for the assistance to be provided by the City under Article II, herein, Encapsys would not enter into the Lease and Developer would not be able to proceed with the Project.

D. Developer, Encapsys and City acknowledge that several of the specific undertakings of the parties will 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 CITY OBLIGATIONS

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

B. 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 Encapsys and Developer to carry out the Project, the City will pay to Encapsys a development investment (the "Investment"). The principal amount of the Investment shall be the lesser of: 1) Three Million Seven Hundred Forty Thousand Dollars (\$3,740,000.00); or 2) twenty-two percent (22%) of the total equalized value of the real and personal property comprising the Project as of January 1 of the year in which the Project is first fully assessed. Total equalized value shall be the value of the Project (real and personal property), as determined by the Wisconsin Department of Revenue, less the base value of the Property within the District.

If the Project is not fully assessable on January 1, 2018, the principal amount of the Investment will be reduced by the difference between the Tax Increments that would have

been generated by the Project if the Project was fully assessed as of January 1, 2018 and the actual Tax Increments generated by the Project based upon the January 1, 2018 assessment.

The Investment will be paid to Encapsys as follows:

1. The City shall pay the Investment to Encapsys in annual installments of principal and interest. Each annual installment shall be equal in amount to one hundred percent (100%) of the Tax Increments attributable to and actually received from the Property during each calendar year. In 2023, the final year of Tax Increment Financing District #6, the City shall pay the remaining principal and interest balance of the Investment in full. No Tax Increments are pledged to the payment of the Investment.

2. The Investment shall be deemed earned as of the date that a Certificate of Occupancy has been issued.

3. Interest on the Investment, at the rate of four percent (4%) per annum, shall begin to accrue as of the date upon which a certificate of occupancy is issued.

4. The City shall make the annual installments of principal and interest on August 15 of each year, with the first installment due on August 15 of the calendar year following the first tax year in which there is a positive Tax Increment.

5. Funds received from each installment shall be applied first to accrued interest and then to principal. All accrued interest that is not fully paid in a given year shall be added to the outstanding principal balance of the Investment.

6. Annual payments of principal and interest shall cease upon the earlier to occur of (a) full payment of the Investment (plus all accrued interest); or (b) termination of this Agreement, as provided herein.

7. The City may prepay the Investment, in its sole discretion, at any time, with no prepayment penalty.

C. This Agreement fully evidences the City's obligation to pay the Investment. No separate instrument will be prepared to separately evidence the City's obligation to pay the Investment. The Investment shall not be included in the computation of the City's statutory debt limitation because the Investment 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.

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

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

### ARTICLE III PAYMENT OF TAXES

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

B. 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 any 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.

C. 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.

### ARTICLE IV NO PARTNERSHIP OR VENTURE

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 V CONFLICT OF INTEREST

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

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: Karen Harkness

With a copy to:

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

FOR DEVELOPER:

Encapsys Southpoint, LLC  
c/o Paul Klister  
Commercial Horizon  
3500 East Destination Drive  
P.O. Box 115  
Appleton, WI 54912-0115

With a copy to:

Bruce T. Block, Esq.  
Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 2100  
Milwaukee, WI 53202

FOR ENCAPSYS:

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With a copy to:

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## ARTICLE VII ASSIGNMENT

No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party. Notwithstanding the foregoing, City consent shall not be required in connection with either of the following: (i) an assignment by Encapsys of its right to receive the Investment to a related entity or to a successor entity that acquires substantially all of the stock or assets of Encapsys and that continues to occupy the Project pursuant to the Lease; or (ii) an assignment by Encapsys of its right to receive the Investment as security to a lender that advances funds to pay for the costs of improvements to the Project. With respect to an assignment under clause (ii) above, in the event of a default under such loan, the City shall make all payments due under the Investment directly to the lender, provided that the requirements of Article VIII are satisfied.

## ARTICLE VIII CONDITIONS TO PAYMENT; TERMINATION OF AGREEMENT

A. The City shall have no obligation to make any payment of the Investment to Encapsys unless and until all of the following shall have occurred:

1. Developer shall have completed the Project in substantial compliance with the requirements of Article I, paragraph A of this Agreement.

2. Encapsys shall have entered into the Lease and provided the City's Director of Community and Economic Development and Director of Finance and the City Attorney with a copy of the fully-executed Lease.

3. Encapsys shall have commenced occupancy of the Project.

B. This Agreement, and the City's obligation to make any further payments of the Investment, shall terminate when either of the following shall have occurred:

1. The Investment, plus all interest thereon, is paid in full.

2. The statutory life of the District expires (provided that the City fulfills its obligation under Article II, paragraph B.1.)

C. The City shall have the option to terminate this Agreement and its obligation to make further payments of the Investment, in its sole discretion by delivering written notice to Encapsys, when either of the following occurs:

1. Encapsys ceases to occupy at least fifty percent (50%) of the occupiable space within the Project for twelve (12) consecutive months.

2. Encapsys assigns the Lease to an unrelated entity that is not a purchaser of substantially all of the stock or assets of Encapsys.

ARTICLE IX  
MISCELLANEOUS

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

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

C. 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.

D. No modifications, 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.

E. 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.

F. 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]



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: \_\_\_\_\_  
Kami L. Lynch, City Clerk

STATE OF WISCONSIN    )  
  : ss.  
OUTAGAMIE COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2016, Timothy M. Hanna, Mayor and Kami L. Lynch, 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.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
James P. Walsh, City Attorney  
J:\Attorney\WORD\jpw\Encapsys\Dev Agrm - City - 07-29-16.doc  
Dated Updated: July 29, 2016  
By: Christopher R. Behrens

DEVELOPER:

Encapsys Southpoint, LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN     )

: ss.

OUTAGAMIE 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.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My commission is/expires: \_\_\_\_\_

ENCAPSYS:

Encapsys, LLC, a Delaware limited liability  
company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN    )

: ss.

OUTAGAMIE 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.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My commission is/expires: \_\_\_\_\_

## SCHEDULE OF EXHIBITS

### A. Legal Description of Property

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT