



City of Appleton

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

Meeting Agenda - Final Community & Economic Development Committee

Tuesday, November 5, 2019

4:30 PM

Council Chambers, 6th Floor

SPECIAL

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

[19-1661](#) CEDC Minutes from 10-23-19

Attachments: [CEDC Minutes 10-23-19.pdf](#)

4. Public Hearings/Appealances

5. Action Items

[19-1662](#) Request to approve 2020-2021PY Community Development Block Grant (CDBG) Community Partner Allocation Recommendations

Attachments: [Alloc Recs Memo to CEDC 11-5-19.pdf](#)

[2020 CDBG Advisory Board Membership.pdf](#)

[CDBG Policy Adopted July 2015.pdf](#)

[2020 CDBG Community Partner & Simple Summary Recommendations.pdf](#)

[2020 CDBG Affordable Housing Project Recommendations.pdf](#)

[2020 CDBG Simple Summary Recommendations.pdf](#)

19-1663

Variance request to the Declaration of Covenants and Restrictions to allow for restaurant use (with or without alcohol) at 2101 East Evergreen Drive (Parcel #31-1-6622-00) in the Northeast Business Park Plat 3

Attachments: [Memo on Variance Request for 2101 E Evergreen Drive NEBP Plat 3.pdf](#)
[Rollie Winter Letter 10-22-19.pdf](#)
[A1.0-Floor Plan Elevations Winters Development.pdf](#)
[R1.0-3D-Renderings Winters Development.pdf](#)
[NEBP Plat 3 Covenants.pdf](#)
[CEDC 09-10-2007.pdf](#)
[Dev Agrmt Gateway of Appleton and Steve Winter June 2005.pdf](#)
[NEBP Plat 3 Map.pdf](#)
[AerialMap_2101EEvergreenDr.pdf](#)

19-1571

Request to amend the Development Agreement with EP Development, Inc. for Eagle Point located at 955 East John Street to incorporate updated Phase II (Eagle Court) at 975 East John Street in Tax Increment Financing District No. 8

Attachments: [Memo Amended DA Eagle Point Phase 2-Eagle Court.pdf](#)
[Eagle Point Development Agreement Amendment 10-28-19 FINAL.pdf](#)
[Eagle Point Development Agreement 3-7-17.pdf](#)
[Eagle Court-A100-SITE PLAN.pdf](#)
[Eagle Court-A201-FIRST FLOOR PLAN.pdf](#)
[Eagle Court-A301-BUILDING ELEVATIONS.pdf](#)
[Eagle Court-A302-BUILDING ELEVATIONS.pdf](#)
[TIF8.pdf](#)

19-1668

Request approval of engineering services for wetland delineation of Southpoint Commerce Park to be performed by R.A. Smith at a cost of \$20,300 with a contingency of \$3,045, for a project total not to exceed \$23,345

Attachments: [Memo on Southpoint Commerce Park Redelineation of Wetlands October 2019.](#)
[RA Smith Proposal Wetland Delineation SPCP October 2019.pdf](#)
[Map of Southpoint Commerce Park with Wetlands October 2019.pdf](#)

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.



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Meeting Minutes - Final Community & Economic Development Committee

Wednesday, October 23, 2019

4:30 PM

Council Chambers, 6th Floor

1. Call meeting to order

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

2. Roll call of membership

Present: 3 - Coenen, Reed and Alderperson Thao

Excused: 2 - Alderperson Lobner and Alderperson Van Zeeland

Others present:

Alderperson Alex Schultz, District #9

Dean Gazza, Director of Parks, Recreation & Facilities Management

John Bunks, Xavier High School

3. Approval of minutes from previous meeting

[19-1568](#)

CEDC Minutes from 10-9-19

Attachments: [CEDC Minutes 10-9-19.pdf](#)

Coenen moved, seconded by Alderperson Thao, that the Minutes be approved.

Roll Call. Motion carried by the following vote:

Aye: 3 - Coenen, Reed and Alderperson Thao

Excused: 2 - Alderperson Lobner and Alderperson Van Zeeland

4. Public Hearings/Appearances

5. Action Items

[19-1569](#)

****CRITICAL TIMING**** Request to accept the Amendment to the Offer to Purchase from Messenger Property Management, LLC (MPM LLC) and/or assignee to purchase only Lot 11 (removing Lot 5) in Southpoint Commerce Park Plat 1, consisting of approximately 3.25 acres, now at a purchase price of \$130,000 (\$40,000 per acre) and staff be authorized to negotiate and execute a development or like agreement providing City investment in the project of up to 50% of the land purchase amount (50% of \$130,000 = \$65,000)

Attachments:

[Messenger Property Management Amendment to OTP Memo to CEDC 10-23-19.pdf](#)

[WB-40 Amendment MPM LLC Lot 11.pdf](#)

[Messenger Property Management OTP Memo to CEDC 6-12-19.pdf](#)

[Messenger Property Management OTP Lots 5 & 11.pdf](#)

[Messenger Property Management OTP Lots 5 & 11 pages 4,5.pdf](#)

[SPCP Messenger Property Management Map.pdf](#)

[SPCP Deed Restrictions.pdf](#)

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

Aye: 3 - Coenen, Reed and Alderperson Thao

Excused: 2 - Alderperson Lobner and Alderperson Van Zeeland

[19-1570](#)

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

The Committee did not go into closed session.

[19-0796](#)

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

Attachments: [#5-R-19 Soldier's Square PROPOSED REVISIONS 9-25-19.pdf](#)
[Reso #5-R-19 Memo to CEDC 9-11-19.pdf](#)
[#5-R-19 Soldier's Square.pdf](#)
[Soldier Square Ramp Deed Restriction Opinion 09-05-2019.pdf](#)
[Reso #5-R-19 Memo to CEDC 6-12-19.pdf](#)
[Original Deed from 1851.pdf](#)
[Historical Newspaper Articles.pdf](#)
[Muni Services Minutes 11-11-08.pdf](#)
[Council Minutes 11-19-08.pdf](#)
[Civil War Monument Condition Report.pdf](#)
[Excerpt from Comp Plan re Soldier Square-YMCA Park Ramp Area.pdf](#)
[1922 Comprehensive Plan.pdf](#)
[Map of Streets-Area in 1922.pdf](#)
[#5-R-19 Soldier's Square AMENDMENT 10-2-2019.pdf](#)

Referred to staff for comment on the amendment and consult with the authors of the resolution to help identify areas in question and clarify language

Coenen moved, seconded by Reed, that the Report Action Item be referred to staff. Roll Call. Motion carried by the following vote:

Aye: 3 - Coenen, Reed and Alderperson Thao

Excused: 2 - Alderperson Lobner and Alderperson Van Zeeland

6. Information Items

7. Adjournment

Coenen moved, seconded by Alderperson Thao, that the meeting be adjourned at 4:54 p.m. Roll Call. Motion carried by the following vote:

Aye: 3 - Coenen, Reed and Alderperson Thao

Excused: 2 - Alderperson Lobner and Alderperson Van Zeeland



MEMORANDUM

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

TO: Community and Economic Development Committee
FROM: Nikki Gerhard, Community Development Specialist
DATE: November 5, 2019
RE: Recommendations for 2020 Community Development Block Grant (CDBG) Funding

Background. The estimated 2020 CDBG award listed in the 2020 City budget was \$577,214. This amount was estimated based on the most recent three years of awards. Staff determined the allocations for the Homeowner Rehabilitation Loan Program, Appleton Housing Authority, and administrative costs. The remaining amount was available for department projects and community partners through a competitive application process. In 2017, Committee and Council approved an allocation to an affordable housing project, that was to be managed internally by staff. Due to several variables, the project was not able to progress as intended; and, therefore, an additional \$200,000 was made available to community partners for an affordable housing project.

Application Information. CDBG applications from City Departments were due to the Community and Economic Development Department on August 30, 2019. One application was submitted and was recently approved for the full request. CDBG applications [from both pools of funding] from community partners for the 2020 program year were due to the Community and Economic Development Department on September 30, 2019.

Nine applications were submitted under the routine annual allocation process. After awards were allocated for City programs, administration, and the City Department project, the amount available to allocate to the community partner applicants was \$301,964.04. Only 15 percent of a grantee's allocation may be used for public service activities, per HUD regulations. In this instance, only a maximum of \$86,582 is projected to be available for public service activities. Because the Appleton Police Department's Summer of Services project fell under the public service category, the remaining balance allowable to community partner applicants was \$14,530.94. The total amount requested by community partner applicants whose activities fell under the public service category was \$34,530.94, while the total amount requested by community partner applicants whose activities did not fall under the public service category was \$525,334. Please refer to the attachments for a specific breakdown of the allocations.

A total of two applications were submitted under the affordable housing project special application process. To be considered eligible, proposed projects must be incorporating “new” additional housing units onto the tax roll, either homeowner or rental. The total amount requested by community partner applicants was \$175,000. Please refer to the attachments for a specific breakdown of the allocations.

Application Review. The CDBG Advisory Board met on October 29, 2019. Members were asked to review the applications and decide upon allocation amounts prior to the meeting. The allocation amounts made by each board member were compiled and discussed at the meeting. Allocation recommendations were agreed upon pursuant to this discussion.

Allocation Approval. The funding allocation recommendations for the Homeowner Rehabilitation Loan Program, Appleton Housing Authority, and administrative costs, as determined by staff, the allocation for the Appleton Police Department, and the allocation recommendations from the CDBG Advisory Board for community partners are presented in the attached table for CEDC approval.

Staff recommends approval of the preliminary allocations, as presented.

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

Attached Documents:

- 1.) 2020PY CDBG Advisory Board membership
- 2.) CDBG Policy
- 3.) 2020PY Community Partner Application Award Recommendations
- 4.) 2020PY Affordable Housing Project Application Award Recommendations
- 5.) 2020PY Simple Summary of Award Recommendations

If you have any questions, please contact me at (920) 832-6469 or nikki.gerhard@appleton.org.
Thank you!

City of Appleton
COMMUNITY DEVELOPMENT BLOCK GRANT

2020 CDBG ADVISORY BOARD

Name	Title	Organization	Contact
Tim Hanna	Mayor	City of Appleton	Tim.hanna@appleton.org
Kyle Lobner	President	Common Council	3920 E Ashbury Dr, 54913 District13@appleton.org
Matthew Reed	Chair	CEDC Committee	District8@appleton.org
Marissa Downs	Chair	ARA	2520 E Applehill Blvd, 54913 marissadowns@gmail.com
Becky Boulanger	Executive Director	FVTC Foundation	PO Box 2277, 54912 boulange@fvtc.edu
Sabrina Williams	Commissioner	City Plan Commission	Sabrina.williamsrobins@tapfin.com



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



Community Development Block Grant (CDBG) Policy Adopted 9/8/2008, Amended 5/24/2010, 10/3/2012, 12/19/2012, 7/15/2015

I. PURPOSE

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

II. POLICY

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

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

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

III. FEDERAL REGULATIONS

The citation reference from Title 24 Part 570 – Community Development Block Grants can be found in parentheses next to each heading below. Please view that section for more information on the respective item.

A. Federal Eligibility (24 CFR 570.201)

CDBG funds may be used for the following basic eligible activities:

- | | |
|-------------------------------------|--|
| (1). Acquisition | (11). Housing Services |
| (2). Disposition | (12). Privately-Owned Utilities |
| (3). Public Facilities/Improvements | (13). Homeownership Assistance |
| (4). Clearance/Remediation | (14). Economic Development Assistance |
| (5). Public Services | (15). Technical Assistance |
| (6). Interim Assistance | (16). Institutions of Higher Education |
| (7). Payment of Non-Federal Share | (17). Rehabilitation/Preservation (24 CFR 570.202) |
| (8). Urban Renewal Completion | (18). Planning (24 CFR 570.205) |
| (9). Relocation | (19). Administration (24 CFR 570.206) |
| (10). Loss of Rental Income | |

B. Ineligible Activities (24 CFR 570.207)

The following activities may not be assisted with CDBG funds:

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

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

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



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



C. Special Economic Development Projects (24 CFR 570.203)

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

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

D. National Objectives (24 CFR 570.208)

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

- (1). Low & Moderate Income (LMI) Benefit
 - a. Area Benefit: activities available for the benefit of all the residents in a particular area, where at least 51 percent of those residents are LMI persons.
 - b. Limited Clientele: activities benefiting a specific group (i.e. abused children, elderly persons, battered spouses), at least 51 percent of whom are LMI persons.
 - c. Housing: activities carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by LMI households.
 - d. Job Creation/Retention: activities designed to create or retain permanent jobs where at least 51 percent of the jobs involve the employment of LMI persons.
- (2). Slum & Blight Removal
 - a. Area Basis: activities undertaken to eliminate specific conditions of blight, physical decay, or environmental contamination that are located in a designated area of distress, including acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, or rehabilitation. Rehabilitation must eliminate conditions that are detrimental to public health/safety; acquisition and relocation must be precursors to other activities that eliminate blight.
 - b. Spot Basis: activities undertaken to eliminate specific conditions of blight, physical decay, or environmental contamination at specific sites not located in designated blighted areas, including acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, or rehabilitation. Rehabilitation must eliminate conditions that are detrimental to public health/safety; acquisition and relocation must be precursors to other activities that eliminate blight.
- (3). Urgent Need
 - a. Activities designed to alleviate existing conditions of recent origin (18 months) that pose serious threats to the health and welfare of the community; this objective may only be used if the community cannot finance necessary activities with other sources.



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



E. Categorical Limits

- (1). At least 70 percent of CDBG funds utilized during three consecutive program years, as specified by the grantee, must be expended for LMI benefit; the costs of planning and program administration are excluded from this calculation. (24 CFR 570.200(a)(3))
- (2). The amount of CDBG funds obligated for public service activities in each program year may not exceed 15 percent of the total entitlement grant for that program year, plus 15 percent of the program income received during the preceding program year. (24 CFR 570.201(e)(1))
- (3). The amount of CDBG funds obligated for planning and administration activities in each program year may not exceed 20 percent of the total entitlement grant for that program year plus the program income received during that program year. (24 CFR 570.200(g))

F. Program Income (24 CFR 570.426)

The City may reuse any revenue generated from projects undertaken with CDBG funding towards other eligible activities within the entitlement community. Furthermore, any program income earned by a subrecipient or City Program may be retained by the subrecipient or City Program provided the income is treated as additional CDBG funds and thus subject to all applicable federal and local requirements.

G. Fair Housing (24 CFR 570.601)

The Secretary of HUD requires that:

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

H. Environmental Review Procedures (24 CFR 570.604)

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

I. Faith-Based Activities (24 CFR 570.200)

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

J. Submission Requirements (24 CFR 570.302)

CDBG entitlement communities must submit the following documents:

- (1). Action Plan → annually
- (2). Consolidated Annual Performance and Evaluation Report (CAPER) → annually
- (3). Consolidated Plan → every three to five years, as chosen by the entitlement community

Creation of these documents must follow HUD requirements for content and citizen participation (see the City of Appleton CDBG Citizen Participation Plan).

K. Location of Activities (24 CFR 570.309)

CDBG funds may be awarded to an activity outside the jurisdiction of the entitlement community only if it can be determined that the activity directly benefits the entitlement community's residents. Documentation of these benefits must be provided before CDBG funds are awarded for the activity.



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



L. Conflict of Interest (24 CFR 570.611)

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

IV. LOCAL PROGRAM GUIDELINES

A. Program Oversight

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

B. Consolidated Plan Submission

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

C. Definitions

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

D. Local Categorical Limits

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

- (1). At least 70 percent of CDBG funds utilized over three program years must be expended for LMI benefit; this excludes planning/CDBG administration activities.
- (2). The amount of CDBG funds obligated for public service activities in each program year may not exceed 15 percent of the adjusted award for that year.
- (3). The amount of CDBG funds obligated for planning/CDBG administration activities in each program year may not exceed 20 percent of the total entitlement grant for that year.
- (4). Any single award will not be less than \$10,000.

E. Audit Requirements

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



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



F. Fair Housing Services

In keeping with the spirit of federal fair housing requirements, an annual allocation for fair housing services will be approved. This activity will be reported as an administrative expense, which claims no benefit. The City of Appleton will utilize the award to contract with an independent entity qualified to provide residents with a variety of fair housing services. This amount will be deducted from the estimated amount available for the program year and not included in the estimates of the adjusted award.

G. Program Administration

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

H. Annual Allocation of CDBG Funding

The City of Appleton's Program Year begins April 1 and concludes March 31 of the following year. Each program year, administration, audit and fair housing costs, along with adequate funding for the Homeowner Rehabilitation Loan Program, the Neighborhood Program and Appleton Housing Authority will be subtracted from the annual entitlement award amount to determine the adjusted award. The adjusted award will first be available to City of Appleton Departments/Programs/component units that wish to undertake projects. After the City allocation process is complete, any remaining funds may be allocated to community partner applicants.

I. City Allocation Process

Each year adequate funding will be allocated through the City Budget process to the following: Homeowner Rehabilitation Loan Program, Neighborhood Program, Administration Costs and Appleton Housing Authority. Then, other City of Appleton Departments will have the opportunity to submit an application for CDBG funding. The application will include information relating to goals, outputs, budget/financing, detailed activity descriptions, capacity and performance. CEDD staff, per HUD rules and regulations, will perform an administrative review of each plan to ensure that:

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

Upon completion of the administrative review, the plans will be presented to the CEDC. CEDC will also review the submitted plans to ensure the proposed activities meet the four standards listed above and allocate adequate funds for each plan. CEDC's recommendation will then be presented to the Common Council for approval.

J. Community Partner Subrecipient Allocation Process

The community partner application process will begin after allocations for City applications have been approved, and end with recommended allocations being announced after Council approval. Applications will be made available for approximately one month and should be submitted to the CEDD. All applications must be received by the announced deadline; no exceptions will be made. CEDD staff will perform an administrative review of each proposal, per HUD rules and regulations, to ensure the four



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



standards listed under letter E. above, will be met if proposed activities are funded.

Upon completion of the administrative review, the proposals will be presented to the CDBG Advisory Board which will review and make funding recommendations for each proposal. This Board will consist of the following members:

1. Mayor
2. Common Council President
3. Chairperson of the Community and Economic Development Committee or committee designee
4. Chairperson of the Appleton Redevelopment Authority or committee designee
5. Representative from an Experienced Outside Funding Agency – on a rotating basis (i.e. United Way, Community Foundation, JJ Keller Foundation, U.S. Oil Basic Needs Partnership)
6. Citizen member from the City Plan Commission

CEDD staff will supply the Board with applications and all appropriate guidelines along with a summary of each proposal, and an explanation of the proposal score sheet. Board members are asked to allocate funding among the applicants and return their allocations to CEDD staff who will compile all results and present allocation recommendations at a Board meeting during which allocation amounts will be finalized. In completing their funding recommendation, the Board will utilize an estimated CDBG entitlement award dollar amount, which will be calculated based on past awards and any available information on HUD's future funding strategies. Funding recommendations from this Board will be presented as an Action Item to the CEDC. CEDC's recommendation will then be presented to the Common Council for final approval.

K. Estimated vs. Actual Entitlement Award

If there is a differential between the estimated award and the actual award, the CDBG Advisory Board will be consulted and their recommendations will be presented to CEDC and Council for approval.

L. Subrecipient Agreement/Letter of Understanding/Training Session

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

M. Statement of Work

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

N. Report Submissions

All subrecipients and City Programs are required to submit a report of their accomplishments with each payment request during the program year when applicable, as well as an Annual Report by April 15th, which is a comprehensive report covering the agreed upon objectives, activities and expenditures for the entire



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



contract period. If said reports are not attached to payment requests when required, payments will be withheld until the report is submitted.

O. Change of Use

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

P. Displacement/Relocation

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

Q. Procurement

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

R. Audits

All subrecipients are required to submit one copy of their audited financial statement immediately following the end of their fiscal year during which CDBG funds are received, unless an alternate arrangement has been made with the City of Appleton Finance Department. CDBG applications may include audit costs as a reimbursable expense.

S. Disputes

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

T. Unspent Grant Funds

Any uncommitted CDBG funds remaining at the end of the program year will be reprogrammed for use in the subsequent program year. The subrecipient shall submit a carryover request, including both documentation of plans for expending funds and a timeline for the expenditure, to CEDD staff by April 15. If any unspent grant funds remain after September 30, CEDD staff will meet with the subrecipient to determine if further action needs to be taken to expedite the expenditure of funds.

U. Termination

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



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



V. Examination of Records/Monitoring

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

W. Financial Management Systems

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

X. Payment Requests

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

Y. Program Income

Any program income (as defined under applicable federal regulations) gained from any activity of the subrecipient may be retained by the subrecipient or City Program provided the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds. Anticipated program income must be documented and described in the subrecipient or City Program proposal/application. Furthermore, any and all program income received must be reported to the City of Appleton's Community and Economic Development and Finance Departments, unless otherwise specified in this contract.

Z. CDBG Activity Promotion

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

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

V. APPLICATION/PROPOSAL EVALUATION CRITERIA

A. General

In order to receive CDBG funding, subrecipient and City Programs must meet a priority need, as identified



City of Appleton COMMUNITY DEVELOPMENT BLOCK GRANT



in the Five-Year Consolidated Plan. Additional preference, however, will be given to CDBG applicant activities that meet one or more of the following criteria:

- (1). Seek a one-time use of CDBG funding
- (2). Benefit residents of LMI census tracts (population at least 46.7 percent LMI)
- (3). Will result in additional housing units being placed on the tax roll
- (4). Demonstrate secured complementary sources of funding (i.e. leverage) and/or strong efforts to solicit and secure complementary funding.
- (5). Serve special needs populations, including, but not limited to:
 - a. Elderly/frail elderly
 - b. Persons with disabilities (developmental and physical)
 - c. Persons with HIV/AIDS and their families
 - d. Persons seeking solutions to alcohol and drug addiction

B. Public Services (subject to 15 percent cap)

Preference will be given to Public Service CDBG applicants whose activities meet one or more of the following criteria:

- (1). Program service costs – one time use
- (2). Administrative expenses – one time use
- (3). Program service costs – continual use
- (4). Administrative expenses – continual use

**Community Partner Application AWARD RECOMMENDATIONS
for the 2020 CDBG Program Year**

NON-PUBLIC SERVICE	PROJECT ACTIVITY	PROJECTED OUTPUT	FUNDS WILL BE USED TO...	AMOUNT REQUESTED	CDBG ADVISORY BOARD \$ REC
Greater Fox Cities Area Habitat for Humanity	housing	2 properties rehabilitated and sold to qualified homebuyers	acquire 2 properties to do full house rehabilitation and then sell to qualified low or moderate income homebuyers	\$98,000	\$ -
Pillars, Inc Adult & Family Shelter	public facility	elevator replacement	replace current elevator at emergency shelter location	\$75,000	\$ 75,000.00
Rebuilding Together Fox Valley	housing	10 properties rehabilitated	provision of home repairs to low-income homeowners in need, specifically older adults, veterans and individuals with disabilities	\$100,000	\$ 94,000.00
WWBIC (Wisconsin Women's Business Initiative Corporation)	administration	administration	provide business education and one-on-one individualized counseling for up and coming, and established, small business owners	\$25,000	\$ -
The Mooring Programs, Inc. (dba Apricity)	public facility	program rehabilitation	rehabilitation of 6 program houses and the main facility (Phase II)	\$70,000	\$ 56,100.00
Hmong American Partnership	public facility	community room rehabilitation	rehabilitation of community room utilized primarily by minority groups in community	\$95,000	\$ -
St. Bernadette Parish/Iris Place Respite Center	public facility	window replacement	replace original windows in NAMI's peer run respite center	\$62,334	\$ 62,334.00
				\$ 525,334.00	\$ 287,434.00
PUBLIC SERVICE	PROJECT ACTIVITY	PROJECTED OUTPUT	FUNDS WILL BE USED TO...	AMOUNT REQUESTED	CDBG ADVISORY BOARD \$ REC
Harbor House	public service	300 persons served	support counseling/advocacy staff persons that work with women and children affected by domestic violence	\$20,000	\$ -
LEAVEN	public service	61 households served	provide rental assistance to those at risk of homelessness through the Emergency Assistance Program	\$14,530.94	\$ 14,530.94
				\$34,530.94	\$14,530.94

**City Programs/Appleton Housing Authority/Administration
(previously approved)**

\$203,198.00

**Appleton Police Department
(previously approved)**

\$72,051.06

CDBG Advisory Board Recommendations

\$301,964.94

Remaining Unallocated Funds

\$577,214.00

This amount cannot exceed \$14,530.94 due to 15% cap on Public Service Activities per HUD regulations.



**Affordable Housing Project Application AWARD RECOMMENDATIONS
for the 2020 CDBG Program Year**

NON-PUBLIC SERVICE	PROJECT ACTIVITY	PROJECTED OUTPUT	FUNDS WILL BE USED TO...	AMOUNT REQUESTED	CDBG ADVISORY BOARD \$ REC
Greater Fox Cities Area Habitat for Humanity	housing	1 property acquired and rehabilitated	acquire 1 property to do full house rehabilitation and then either sell to qualified low or moderate income homebuyers or incorporate into rental program, Almost Home	\$50,000	\$ 125,000
Pillars, Inc	housing	1 property acquired and rehabilitated	acquire 1 property to complete rehabilitation and incorporate into affordable rental program	\$125,000	<i>application pending</i>
				\$175,000	\$ 125,000.00



This amount cannot exceed \$200,000 due to limitation on available funding.

AWARD RECOMMENDATIONS FOR 2020 CDBG PROGRAM YEAR

City Programs/Appleton Housing Authority/Administration		
City of Appleton Homeowner Rehabilitation Loan Program	\$	77,694.00
Fair Housing Services	\$	25,000.00
Appleton Housing Authority	\$	75,000.00
CDBG Program Administration Costs	\$	25,504.00
Appleton Police Department	\$	72,051.06
Non-Public Service		
Pillars, Inc. Adult & Family Shelter	\$	75,000.00
Rebuilding Together Fox Cities	\$	94,000.00
The Mooring Programs	\$	56,100.00
St. Bernadette/NAMI Fox Valley	\$	62,334.00
Greater Fox Cities Habitat for Humanity- Affordable Housing Initiative	\$	125,000.00
Pillars, Inc.- Affordable Housing Initiative		<i>application pending</i>
Public Service		
LEAVEN	\$	14,530.94
	SUBTOTAL	\$ 577,214.00
	Affordable Housing Initiative Funding	\$ 125,000.00
	TOTAL	\$ 702,214.00



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

MEMORANDUM

TO: Community & Economic Development Committee (CEDC)
FROM: Monica Stage, Deputy Director
DATE: October 25, 2019
RE: Variance to the Declaration of Covenants and Restrictions for Parcel 31-1-6622-00 located at 2101 East Evergreen Drive, Rollie Winter & Associates, LTD on behalf of BTS Properties LLC

The City has received a request from Rollie Winter & Associates, LLC on behalf of BTS Properties LLC for a variance to the Declaration of Covenants and Restrictions to allow for restaurant use at 2101 East Evergreen Drive as outlined in the attached letter of October 22, 2019.

The subject parcel is located in the Northeast Business Park Plat #3. Shopko Express was the previous tenant. Allowable uses from the Restrictive Covenants include (*see the permitted uses for Lots 29 and 30 Northeast Business Park Plat #3 attached*):

- Offices;
- Professional services, except as provided for in Section 23-113(e), special uses;
- Personal services, except as provided for in Section 23-113(e), special uses;
- Parking lot, surface.

In September 2007, the Community & Economic Development Committee (CEDC) and Common Council approved a partial waiver of the Restrictive Covenants for Northeast Business Park Plat #3 to also allow for retail use on this lot (see the attached memo from the CEDC agenda from September 10, 2007). The Common Council approved this action on September 19, 2007.

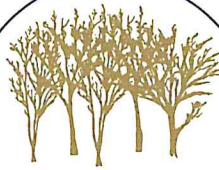
Additional information I have attached to document allowable uses includes:

- the Development Agreement for this area that includes a stipulation that these lots will follow the Northeast Business Park Plat #3 Restrictive Covenants;
- a copy of the Northeast Business Park Plat #3 Restrictive Covenants;
- the Northeast Business Park Plat #3 Plat Map; and
- aerial photo of the site documenting the current status of development around the subject parcel.

As noted in the written request, the area to the east of this parcel does allow for restaurant uses. The current zoning for this parcel also allows for restaurant use.

Staff Recommendation:

A variance to the Declaration of Covenants and Restrictions, Parcel 31-1-6622-00 in Plat 3 in the Northeast Business Park, allowing for a restaurant use (with or without alcohol) **BE APPROVED**.



**ROLLIE WINTER &
ASSOCIATES, LTD.**

October 22, 2019

Ms. Monica N. Stage
Deputy Director
Community & Economic Development
City of Appleton
100 North Appleton Street
Appleton, WI 54911

Dear Monica:

RE: 2101 EAST EVERGREEN DRIVE, APPLETON

As you realize, due to their bankruptcy, Shopko closed the Shopko Express Pharmacy they had been operating earlier this year in the Northeast Business Park. Terry Bomier and I have been actively marketing this building in an attempt to find a replacement user. We have been in contact with other pharmacies, banks and credit unions, medical, and professional office users as new uses for the property. To date, these efforts have been unsuccessful.

Given the great location and visibility of this property, we would like to expand our reach for replacement users to include restaurants. Please consider this letter our formal request for a permanent variance to allow a restaurant use on this parcel. Per the Declaration of Covenants and Restrictions applicable to Northeast Business Park No. 3, a full-service restaurant use is already allowed on Lot 31 just to the east of our site. Considering the prominence of the Shopko Express location, we believe this would be another great restaurant site for this area. We would pursue all options including splitting the building into two or three units (see attached conceptual rendering) or a complete tear down and rebuild.

Please let me know if you have any questions or require any additional information to process this request.

Thank you.

Sincerely,

ROLLIE WINTER & ASSOCIATES, LTD.

Chris Winter
President

Enclosure



Brokers and Consultants to the Business Community

3305C N. Ballard Rd. • Appleton, Wisconsin 54911
Phone (920) 739-0101 • FAX (920) 739-1366 • www.rolliewinter.com





Keller

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Kaukauna, WI 54130
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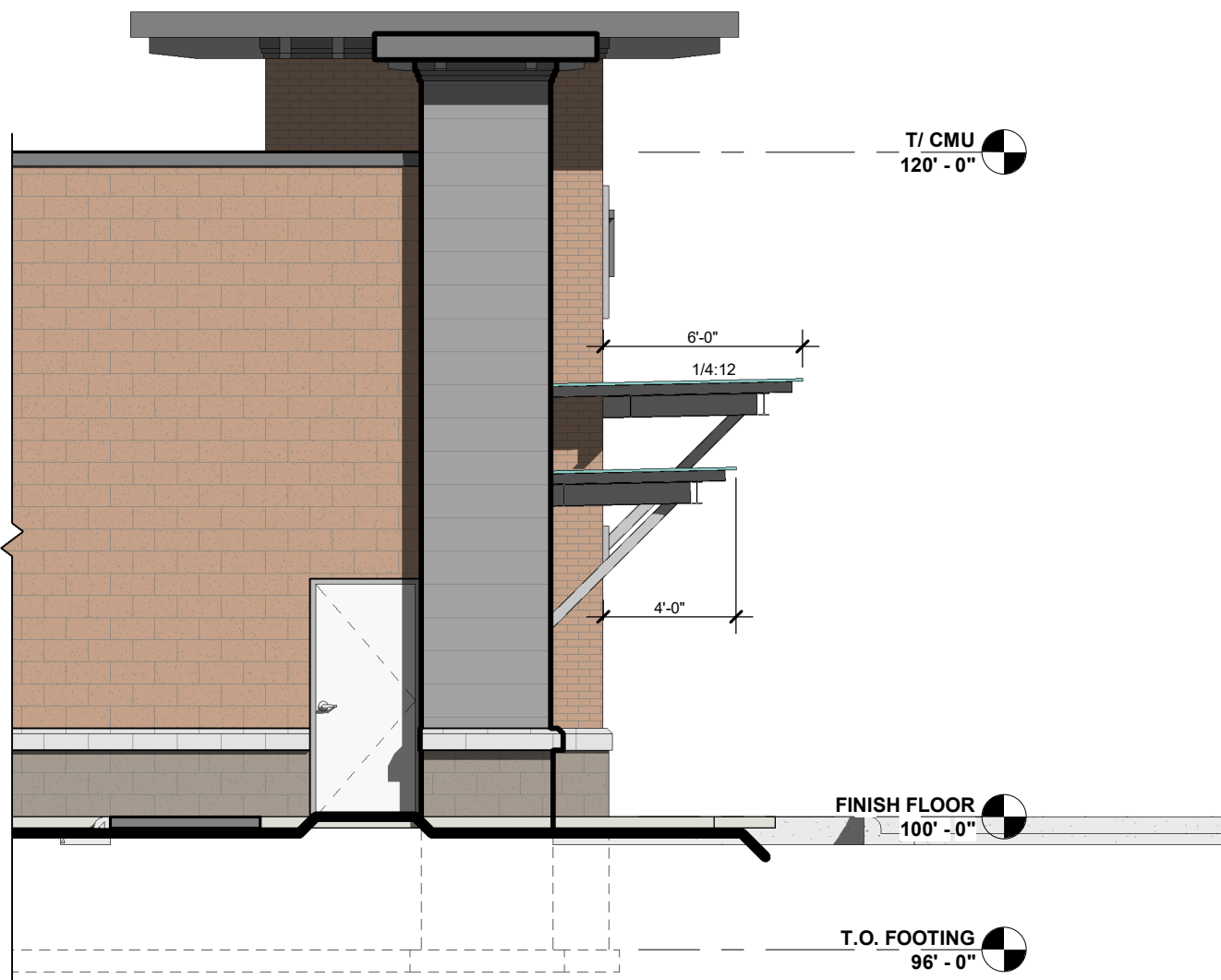
MADISON
711 Lake Dr.
Sun Prairie, WI 53590
PHONE (608) 318-2336
FAX (608) 318-2337

www.kellerbuilds.com

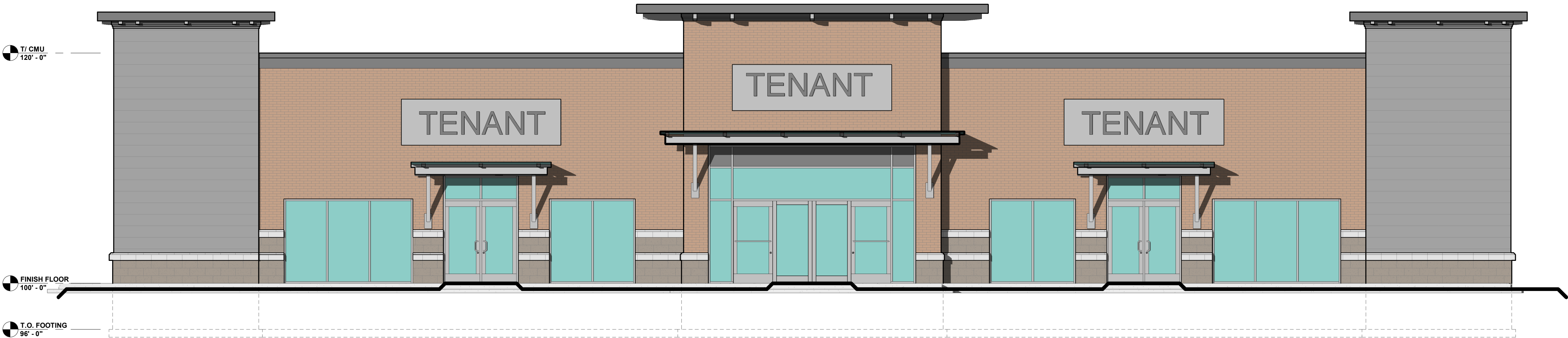
PROPOSED FOR:
WINTERS DEVELOPMENT
APPLETON,
WISCONSIN

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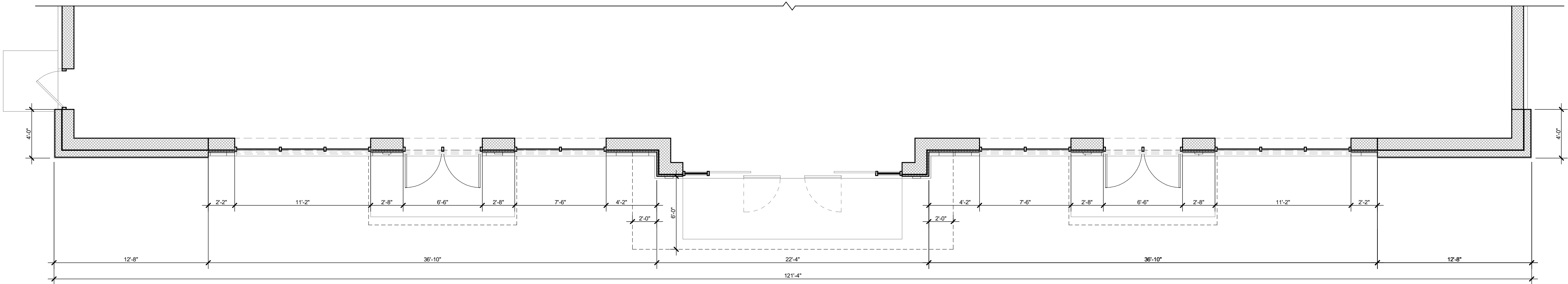
REVISIONS	
PROJECT MANAGER:	_____
DESIGNER:	S. KLESSIG
DRAWN BY:	B. ANDERSON
EXPEDITOR:	_____
SUPERVISOR:	_____
PRELIMINARY NO:	_____
CONTRACT NO:	_____
DATE:	06.17.19
SHEET:	A1.0



NORTH ELEVATION
3/16" = 1'-0"



WEST ELEVATION
3/16" = 1'-0"



FLOOR PLAN
3/16" = 1'-0"

WALL KEY	
	NEW WALL/FURRING
	NEW MASONRY/ VENEER WALL
	NEW COOLER/ FREEZER WALLS
	NEW FOUNDATION WALL
	TYPICAL EXISTING WALL
	DEMO WALLS
	FIRE WALL OR FIRE BARRIER



WINTERS DEVELOPMENT

APPLETON, WISCONSIN



DECLARATION OF COVENANTS AND RESTRICTIONS

APPLICABLE TO ALL PROPERTIES SOLD IN
NORTHEAST BUSINESS PARK NO. 3

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

1. ***Statement of Purpose:***

The general purpose of this Declaration is to help assure that the Development will become and remain an attractive place to do business; to insure the most appropriate improvement of each Lot; to guard against the erection thereon of poorly designed or poorly proportioned structures; and to promote and maintain the highest and best uses of the lands commensurate with the zoning and the use classifications and demographics of this Development.

2. ***Land Uses and Development Standards:***

Lots 27, 28, 32, 33, 34

A. Permitted Uses include:

1. Offices;
2. Professional Services, except as provided for in Section 23-113(e), special uses;
3. Personal Services, except as provided for in Section 23-113(e), special uses;
4. Medical Clinic;
5. Optical and Pharmaceutical Sales Incidental to a Clinic;
6. Parking Lot, Surface.

B. Accessory Uses include:

1. Refuse containers and enclosures.

C. Special Uses include:

1. Any building that exceeds 35 feet in height.
2. Day Care as an accessory use to office.

D. Building Height shall not exceed 35 feet.

E. **Setbacks** shall be as follows: *

1. Front - 20 feet
2. Rear - 25 feet
3. Sides - 10 feet
4. Parking - 15 feet

* All buildings must be set back a minimum of 80' from U. S. 41 street right of way.

Lots 29, 30

A. **Permitted Uses** include:

1. Offices;
2. Professional Services, except as provided for in Section 23-113(e), special uses;
3. Personal Services, except as provided for in Section 23-113(e), special uses;
4. Parking Lot, Surface.

B. **Accessory Uses** include:

1. Refuse containers and enclosures.

B. **Special Uses** include:

1. Any building that exceeds 35 feet in height.
2. Day Care as an accessory use to office.

D. **Building Height** shall not exceed 35 feet.

E. **Setbacks** shall be as follows:*

1. Front - 50 feet
2. Rear - 50 feet
3. Sides - 25 feet
4. Parking - 15 feet

* All buildings must be set back a minimum of 80' from U. S. 41 street right of way.

Lot 31

A. **Permitted Uses** include:

1. Offices;
2. Professional Services, except as provided for in Section 23-113(e), special uses;
3. Personal Services, except as provided for in Section 23-113(e), special uses;
4. Medical Clinic;
5. Optical and Pharmaceutical Sales Incidental to a Clinic;
6. Full Service Hotel;
7. Full Service Restaurant with or without alcohol (No Drive Through);
8. Parking Lot, Surface.

B. Accessory Uses include:

1. Refuse containers and enclosures.

C. Special Uses include:

1. Any building that exceeds 35 feet in height.
2. Microbrewery Incidental to a Full Service Restaurant.
3. Day Care as an accessory use to office.

D. Building Height shall not exceed 35 feet.

E. Setbacks shall be as follows:

1. Front - 20 feet
2. Rear - 25 feet
3. Sides - 10 feet
4. Parking - 15 feet

Other land uses may be considered for approval by the Community Development Committee if a determination is made that the project fits the development objectives of the City.

3. Nuisance Factors and Hazards:

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

4. Building Standards:

- A. Any building erected shall be at least 7,500 square feet in area and have a gross floor area equal to at least 10 percent of the land area.
- B. The maximum ratio of building area (footprint) to total parcel size shall in no event exceed forty (40) percent, exclusive of parking and loading areas. The building footprint, all parking, driveways, and loading areas, when combined, may not exceed seventy (70) percent of the total Parcel size.
- C. Buildings shall be designed by an Architect or Engineer. Complete architectural design must be given to all façades of all buildings with all sides and rear elevations being given architectural treatment compatible with the front elevation of the building.
- D. This Business Park encourages a variety of architectural styles. However, it is intended that a basic harmony of architecture prevail among the buildings so that no one structure detract from the attractiveness of the overall development.

- E. The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
1. Brick;
 2. Architectural precast concrete panels (surface finish to be painted, stained or exposed aggregate). When using concrete panels as an exterior surface the architect should be careful to avoid a monolithic or monotonous appearance and the use of various textures, colors and accents will be encouraged.
 3. Decorative face concrete block. When using decorative face concrete block as an exterior surface the architect should be careful to avoid a monolithic or monotonous appearance and the use of different types and textures (split face, fluted, scored or striated) to provide variety and relief will be encouraged.
 4. Cut natural stone;
 5. Exterior insulation and finish systems (EFIS);
 6. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Site Plan Review Committee on a case-by-case basis.
- F. Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness, and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other buildings and structures in the Park.
- G. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- H. Ancillary structures will be approved by the Community Development Committee. Approval may be granted only if such structures are necessary to the principal use of the building site, are in architectural and aesthetic conformance with other buildings or structures on the site, are properly screened, meet all requirements of these covenants and are otherwise satisfactory to the Community Development Committee at its sole discretion.

5. ***Site Plan Requirements:***

- A. No lot shall contain more than one primary commercial or office building, and no more than one attached or detached storage structure. Any storage structure shall be of like design and building components as the primary structure. Storage structures shall be single story and not less than 250 square feet or more than 1,000 square feet.

Storage structures shall be located on the rear side of the primary Building (street address side being front).

- B. Each lot in the Plat shall be limited to two driveway accesses to the public street fronting the lot. Two or more lots shall not provide ingress/egress easements across lot lines for common use of more than one driveway.
- C. Each lot is require to maintain a minimum of 30% of the total square footage of the lot as green space planted with mowed grass or landscaped plantings of tress and shrubs.
- D. Fencing shall be limited to decorative fencing. Security fencing and chain link fencing are prohibited. No fencing is allowed on the street side of the Building.

6. ***Landscaping:***

- A. *Landscape Plan:* The landscaping upon any building site or lot shall be carried out in accordance with a detailed landscaping plan which has been reviewed and approved in writing by the City's Site Plan Review Committee. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall show all ground cover and mulch areas, landscape and construction materials, and construction details.
- B. *Landscaping Methods:* Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkler systems, fountains, storm run-off retention ponds, reflective ponds, and landscape lighting.
- C. *Plant Material:* Selected plant material should provide for a variety of shade trees, evergreen trees, and shrubs, ornamental trees and shrubs and ground covers. Plant material selection shall take into consideration the following:
 - 1. Disease and insect resistance;
 - 2. Hardiness to the area;
 - 3. The ability to provide seasonal interest;
 - 4. Future maintenance considerations;
 - 5. Ability of plant material to accomplish its intended purpose in each placement.
- D. *Time for Completion:* All landscaping shall be completed within ninety (90) days following occupancy, or as soon thereafter as weather will allow if such period occurs within winter months.

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

All ground surfaces on each lot not covered by hard surface composed of driveways, parking lots, pedestrian walk ways, and building surface shall be landscaped, mowed, and maintained substantially free from the accumulation or growth of weeds or other wild vegetation.

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

7. **Utility Controls:**

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

8. **Parking, Loading:**

Off-street parking and loading areas shall be provided on each building site and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all site occupants and visitors and comply with the City's Zoning Ordinance regarding parking standards.

1. All truck maneuvering must be confined within the boundaries of the property.
2. All parking, driveways, and loading areas shall be paved.
3. Parking shall be permitted within the minimum front yard setback area, however, it shall be located no closer than fifteen (15) feet to the public right-of-way line.

Truck loading and receiving areas shall occur in the rear of any buildings or structures on any lot except for the lots abutting U.S. 41 where it shall be located on the side. Truck loading and receiving areas shall be permitted on the side of such building if sufficient visual screening is installed to screen the dock area from the street.

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

9. ***Outdoor Storage:***

No outside storage of any kind shall be permitted.

10. ***Exterior Equipment:***

- A. Roof mounted equipment shall be so located and/or screened, and painted to minimize visibility from the street and adjacent owners.
- B. Exterior antennas, towers, poles, dishes, and solar collector panels are expressly prohibited excepting only satellite dish antenna not greater than 24 inches in diameter, flag poles, and light poles.

11. ***Signs:***

Identification signs shall be permitted to promote only the name and/or trademark of the owner or tenant of the parcel on which the sign is placed. The signs shall not advertise business services. Signs, lighting, etc., are to be indicated on the final site plan submitted to the Site Plan Review Committee for review.

- 1. Ground signs must be set back a minimum of 10 feet from the right-of-way line and must be of a low profile design subject to approval by the Committee.
- 2. Signs may not be of unusual size or shape when compared to the improvements situated on the site on which the sign is located.
- 3. Signs may not be installed above the roof line of a building.
- 4. Pole signs are prohibited.
- 5. Signs may not contain or utilize any flashing, blinking, intermittent or moving light as source of illumination.
- 6. No signs shall be located in or painted on any window.
- 7. Building signs must comply with the City Sign Code.

12. ***Maintenance Responsibilities:***

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

13. ***Site Plan Review:***

Before commencing the construction or alterations of any buildings, additions, enclosures, fences, loading docks, parking facilities, or any other structures or permanent improvements on or to the real estate conveyed hereby, the owner shall first submit its building plans, specifications, site and landscape plans, elevations of all sides of the building, samples of materials proposed for all external surfaces including colors and textures, and an artist's rendering of the project or a scale model to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. Renderings should show adjacent buildings, landscaping, screening, signs etc.

14. ***Repurchase Rights:***

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

year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

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

15. ***Subdivision of Lots:***

After a lot has been purchased, such lot shall not be further subdivided without the written consent of the Community Development Committee. No owner may sell, lease or rent less than all of the lot without the prior written consent of the Community Development Committee. The Community Development Committee may delegate this approval authority to the Economic Development Department. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

16. ***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.

17. ***Variances:***

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

18. ***Enforcement:***

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

19. ***Invalidation:***

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

20. ***Term:***

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



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

COMMUNITY DEVELOPMENT COMMITTEE AGENDA

**5:00 P.M., September 10, 2007
Sixth Floor, Committee Room 6 A/B
100 North Appleton Street**

1. Call meeting to order.
2. Roll call of membership.
3. Approval of minutes from August 6, 2007.
4. **APPEARANCES**
—None—
5. **ACTION ITEMS**
 - a. Partial Waiver of Restrictive Covenants – Northeast Business Park Plat #3
 - b. Business Recognition Awards
6. **INFORMATION ITEMS**
—None—
7. Adjournment

Memorandum

TO: Community Development Committee

FROM: Pete Hensler, Director

DATE: September 10, 2007

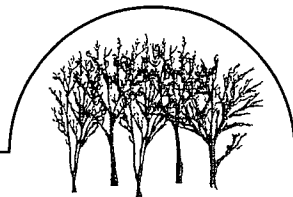
RE: Partial Waiver of Restrictive Covenants-Northeast Business Park Plat #3

The Restrictive Covenants for the Northeast Business Park No. 3 include a clause that restricts uses to such uses as offices, professional services, personal services, parking, and on Lot 31, hotels and restaurants. Retail uses are not included in the allowed uses for this Plat.

The attached letter from Rollie Winter & Associates details their request for establishment of a Shopko Express retail store on land covered by the Restrictive Covenants for NEBP #3, which requires a limited waiver of these Covenants. The plan and elevation as shown on the attached material appear to be a good fit with the development of this area. The plan, as proposed, will accomplish a number of objectives for the City. It provides secondary access to the Park and Ride, as well as a joint right in/right out access to the Park and Ride on the property line of the project and the Park and Ride. The State DOT, Rollie Winter & Associates, and City staff have a tentative plan for expansion of the Park and Ride that will benefit from these access points. The City will also benefit from this proposal as a result of the developer acquisition and inclusion of the last residential property in the Business Park area west of Gateway Drive. This acquisition will not involve City investment. Finally, the proposed retail store will fit well with the mix of uses in this developing area.

RECOMMENDATION:

The Community Development Committee recommend approval of a partial waiver of the Restrictive Covenants for NEBP #3 allowing for retail use on the lot to be established directly east of the Park and Ride at Ballard Road and Evergreen Drive.



**ROLLIE WINTER &
ASSOCIATES, LTD.**

August 15, 2007

Mr. Pete Hensler
Director
Economic Development
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799

Dear Pete:

RE: CORNER OF BALLARD ROAD & EVERGREEN DRIVE

As you realize, we have been working with the City of Appleton for the development of the corner of Ballard Road and Evergreen Drive. One of the provisions of the Development Agreement was to use our best efforts to acquire the former Van Asten house and the Schmidt house located along Evergreen Drive. We have successfully acquired the Van Asten house which subsequently became the new office for Dental Associates. We now have an accepted offer to purchase the Schmidt house at \$335,000.00 and have plans to demolish it and develop a new building for Shopko Express.

As you also realize, we have been in negotiations with your department, Paula Vandehey's department, and the DOT to share the right in/right out access on Evergreen Drive. We are also working to secure a second driveway to Evergreen Drive for our project. In the proposed agreement with the DOT, it requires us to provide land at no cost and share in the cost of an access drive for the purpose of the DOT Park-and-Ride.

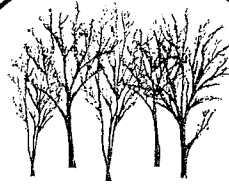
In summary, we are doing our very best to develop a desirable corner to serve the best interest of the City of Appleton and ourselves. The purpose of this letter today is to ask your committee's approval for a retail use for Shopko Express on this former Schmidt parcel.



Brokers and Consultants to the Business Community

3315A N. Ballard Rd. • Appleton, Wisconsin 54911
Phone (920) 739-0101 • FAX (920) 739-1366





We have attached a rendering of the proposed elevation and a very preliminary site plan. We have completed negotiations with Shopko subject to City approvals. If approved, this project would begin this fall with occupancy in June of 2008.

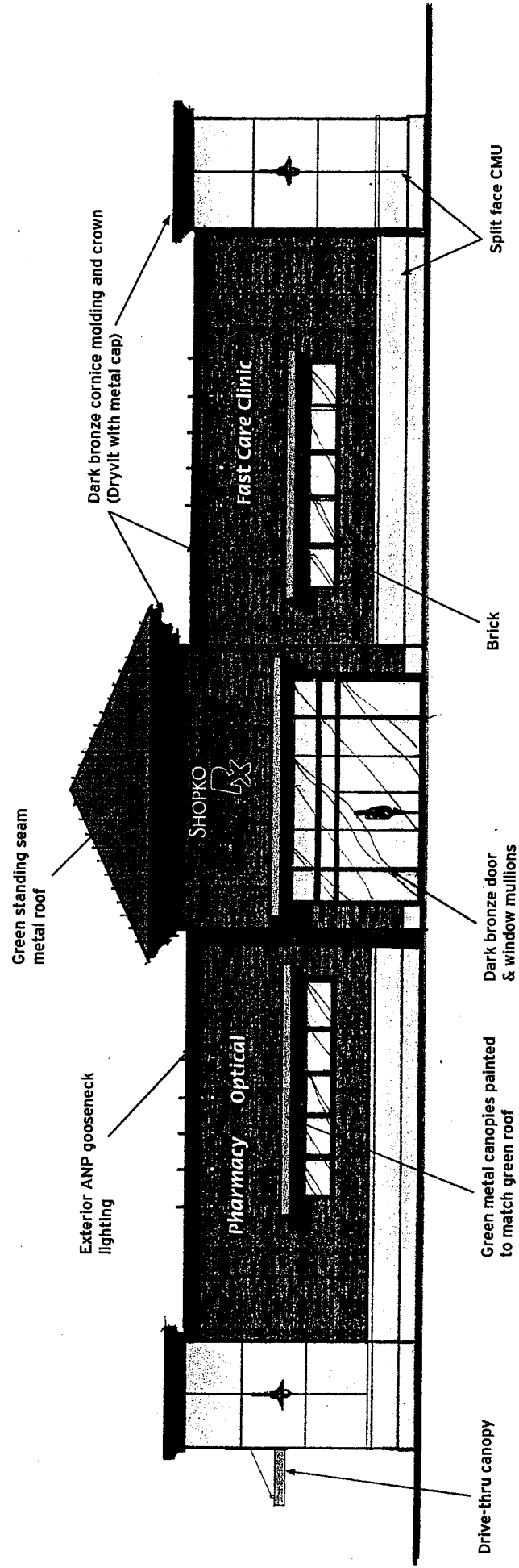
Please let us know what additional information you will require when reviewing this with your committee.

If you have any questions, please contact myself or Chris.
Sincerely,

ROLLIE WINTER & ASSOCIATES, LTD.

Steve / SWT
Steve Winter, CCIM
President

Enclosures



chute gerdeman retail

Storefront Elevation

Memorandum

TO: Community Development Committee

FROM: James E. Van Dyke, Economic Development Specialist

DATE: September 10, 2007

RE: Business Recognition Awards

Each year the Community Development Committee presents recognition awards to Appleton businesses to express the City's appreciation for the contributions the recipients have made to the local economy.

"Thanks Awards" are presented to businesses that have started, expanded, located, or relocated in the industrial parks or elsewhere in the City of Appleton. (No limit on number of awards given.)

"Silver Awards" are presented to businesses that have contributed significantly to the Appleton economy as defined by the creation of fifty or more jobs within one year's time, a project cost of more than \$2 million, or ten or more consecutive years of operation in the Appleton. (1 – 4 awards a year - given out quarterly)

Staff recommends Larson Engineering of Wisconsin be considered for the "Thanks Award" and Primary Care Associates of Appleton be considered for the "Silver Award".

Larson Engineering of Wisconsin relocated its northern Wisconsin office to Appleton and is the major tenant in the new 31,000 square foot, \$3+ million multi-tenant two-story office building at 2801 East Enterprise Avenue.

On July 9, 2007, Primary Care Associates of Appleton opened its new state of the art medical facility located at 3916 Intertech Court in Appleton's Northeast Business Park. The new 46,000 square foot medical office building has approximately 27,600 square feet of medical offices, 8,800 square feet of diagnostic outpatient space, and 8,600 square feet of administrative offices and meeting space. The main entrance features a covered 1,000 square foot drive thru canopy.

RECOMMENDATION:

Larson Engineering of Wisconsin be nominated for the "Thanks Award" for its decision to relocate its northern Wisconsin office to Appleton. Larson Engineering currently has 39 employees.

Primary Care Associates of Appleton be nominated for the "Silver Award" for its new \$5+ million, 46,000 square foot medical facility located at 3916 Intertech Court in Appleton's Northeast Business Park. The new medical facility employs more than 110 people, including 17 physicians.

COPY

**DEVELOPMENT AGREEMENT
BY AND AMONG
THE CITY OF APPLETON, WISCONSIN
AND
GATEWAY OF APPLETON, LLC AND STEVE
WINTER
DATED AS OF June 15, 2005**

This Development Agreement is made and entered into as of the 15th day of June, 2005, by the CITY OF APPLETON, Wisconsin, a Wisconsin municipal corporation (the "City") and Gateway of Appleton, LLC (the "Developer") and Steve Winter, (the "Guarantor").

ARTICLE 1 PURPOSE; DEFINITIONS

Section 1.01. Purpose of Agreement. The parties hereto have worked cooperatively regarding initial planning, financing and feasibility of the development of real properties to be located at the northeast corner of U.S. Highway 41 and Ballard Road, further identified as Lot 30 of the Northeast Business Park Plat #3, Appleton, Wisconsin (the "Real Property"). The parties have reached an understanding regarding participation in such Development and intend to enter into this Development Agreement to record the understandings and undertakings of the parties and to provide the framework within which the Development may proceed.

Section 1.02. Certain Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

"City" means the City of Appleton.

"Developer" means Gateway of Appleton, LLC.

"Development" means the development of real properties to be located in Lot 30 of the Northeast Business Park Plat #3, City of Appleton, Outagamie County, Wisconsin including a fifty thousand (50,000) square foot medical office, clinic and surgery center located on the south portion of said parcel.

"Development Area" means the land contained in Lot 30 of the Northeast Business Park Plat #3, consisting of approximately 16.59 acres more or less and the property identified at the Southwest corner of Evergreen Drive and Gateway Drive in the Town of Grand Chute and further identified in Section 2.01 hereinafter consisting of approximately one-half (½) acre more or less as described in Exhibit A.

"Guarantor" means Steve Winter.

"Site Plan" means the conceptual site plan of which is attached hereto as Exhibit B.

ARTICLE II PARTIES UNDERTAKING

Section 2.01. City's Conveyance of Property. The City agrees at the time of closing to convey to the Developer, all of Lot 30 of the Northeast Business Park Plat #3 located in the City of Appleton, at a cost of \$100,000 per acre. Total purchase price shall be \$1,659,000.

Additionally, the City agrees at the time of closing to convey to the Developer, all of that piece of property owned by the City, at the southwest corner of the intersection of Evergreen Drive and Gateway Drive, in the Town of Grand Chute, and described as follows:

The East ½ of the following: A parcel of land in the Northwest ¼ of the Northwest ¼ of Section 18, Township 21 North, Range 18 East, Town of Grand Chute, Outagamie County, Wisconsin more fully described as follows, to-wit:

Commencing at the Northwest corner of said Section 18; thence South 89°08' East 715.00 feet along the North line of said Section 18 to the point of beginning; thence continuing South 89°08' East along the North line of Section 18, being the centerline of Evergreen Road, 200.00 feet to a point; thence South 0°52' West, at right angles to Evergreen Road 225.00 feet to a point; thence North 89°08' West, parallel with Evergreen Road, 200.00 feet to a point; thence North 0°52' East, 225.00 feet to the point of beginning, LESS the North 24.75 feet for highway purposes and excepting therefrom land recorded as Document No. 1289353.

The purchase price shall be at a cost of \$100,000 per acre, with the price for this ½ acre parcel being \$50,000.

Section 2.02. Covenants and Conditions of the Developer. The Developer, as part of the Development Agreement, agrees as follows:

A. To purchase the 16.59 ± acres of Lot 30 in the Northeast Business Park Plat #3 in the City of Appleton for \$100,000 per acre as identified in Section 2.01 above and all of that piece of property owned by the City, at the southwest corner of the intersection of Evergreen Drive and Gateway Drive, in the Town of Grand Chute, and described as follows:

The East ½ of the following: A parcel of land in the Northwest ¼ of the Northwest ¼ of Section 18, Township 21 North, Range 18 East, Town of Grand Chute, Outagamie County, Wisconsin more fully described as follows, to-wit:

Commencing at the Northwest corner of said Section 18; thence South 89°08' East 715.00 feet along the North line of said Section 18 to the point of beginning; thence continuing South 89°08' East along the North line of Section 18, being the centerline of Evergreen Road, 200.00 feet to a point; thence South 0°52' West, at right angles to Evergreen Road 225.00 feet to a point; thence North 89°08' West, parallel with Evergreen Road, 200.00 feet to a point; thence North 0°52' East, 225.00 feet to the point of beginning, LESS the North 24.75 feet for highway purposes and excepting therefrom land recorded as Document No. 1289353.

The purchase price shall be at a cost of \$100,000 per acre, with the price for this ½ acre parcel being \$50,000.

B. Development Plans and Specifications. Prepare (or have its consultants, tenants or tenant's consultants prepare) architectural drawings, plans and specifications for the Development which are approved by the City as may be normal, customary or required in order to proceed with the Development in accordance with all applicable rules, codes, regulations, ordinances and law. Plans shall be approved by the City of Appleton prior to commencement of construction.

C. Cooperation. Cooperate with the City so as to facilitate the City's performance under and satisfaction of the conditions under Section 2.03.

D. Financial Commitment. A letter from the Developer's bank confirming that the Developer has the ability to finance the development and attached hereto as Exhibit C.

E. The Developer shall use its reasonable efforts to acquire the unplatted lands owned by Donald R. and Judith Schmidt ("Schmidt"), located in the Town of Grand Chute, at the northwest corner of the Development Area. Should the Developer be successful in acquiring said property, the Developer shall annex said property to the City. Developer further agrees that upon annexation, said property shall be subject to the same restrictive covenants on said property as are currently in effect on Lot 30 of the Northeast Industrial Park Plat #3 in the City of Appleton.

F. The Developer shall use its reasonable efforts to acquire the unplatted lands owned by James J. and Bernice VanAsten ("VanAsten"), located in the Town of Grand Chute, generally on the northeast corner of the Development Area. Should the Developer be successful in acquiring said property, the Developer shall annex said property to the City. Developer further agrees that upon annexation, said property shall be subject to the same restrictive covenants on said property as are currently in effect on Lot 30 of the Northeast Industrial Park Plat #3 in the City of Appleton.

G. The Developer agrees to convey the south portion of the Development Area to FVOSA Real Estate Partners, LLC, for the purpose of construction of an office, clinic, and surgery center. Said conveyance shall occur within thirty (30) days of the closing between the City and the Developer. Failure of the Developer to convey the property to FVOSA shall permit the City to reacquire the entire parcel at the price paid by the Developer to the City for acquisition, less the commission paid by the City on the original purchase.

H. The Developer agrees to commence construction on at least one building on that portion of the Development Area not conveyed to FVOSA pursuant to the restrictive covenants contained on Lot 30 of the Northeast Industrial Park Plat #3, within twenty-four (24) months of closing. Should construction of said property fail to commence within twenty-four (24) months, the City, at its option, may reacquire that portion of the Development Area not conveyed to FVOSA at a cost of \$55,000 per acre not to exceed \$450,000 for the entire property previously described in this paragraph.

I. The Developer agrees that any building constructed on the Development parcel shall be a minimum of thirty thousand (30,000) square feet.

J. The Developer agrees that the entire property as indicated on Exhibit A shall remain taxable. Developer agrees to a deed restriction, indicating such taxable status, and giving the City the right of approval of change of use, being recorded.

Section 2.03. Covenants and Conditions of the City. Prior to closing, the City agrees to use all reasonable efforts to:

A. **Authorize Funding.** Authorize the sale of the property in the Development Area.

B. **Cooperation.** Cooperate with the Developer so as to facilitate the Developer's performance and satisfaction of the conditions under Section 2.02.

ARTICLE III TERMINATION & POST DISBURSEMENT CONDITIONS

Section 3.01. Developer's Right to Terminate. Prior to closing, the Developer shall have the right to terminate this Agreement by written notice delivered to the City not less than three (3) days prior to the effective date of such termination for only the following reason, and in the event of such termination, neither party hereto shall have any further obligation to continue to perform its obligation hereunder thereafter.

A. **Municipal Approval.** Developer fails to obtain any and all necessary governmental approvals from any governmental body, entity, or agency having jurisdiction over the Development;

Section 3.02. City's Right to Terminate. The City shall have the right to terminate this Agreement by written notice delivered to the Developer not less than three (3) days prior to the effective date of such termination in the event the City fails to authorize the sale of said property to the Developer. In the event of such termination, neither party hereto shall have any further obligation to perform its obligations hereunder thereafter.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF CITY

Section 4.01. Authority. The City represents and warrants to the Developer that the City has the power, authority, and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by the City, as the case may be, under this Agreement.

Section 4.02. Delivery of Agreement. The City represents and warrants to Developer that the City is empowered and authorized to execute and deliver this Agreement and any other

agreements and documents, if any, required hereunder to be executed and delivered by the City as the case may be. This Agreement has been and each such document at the time it is executed and delivered will be duly executed and delivered on behalf of the City. When executed and delivered to Developer, all such agreements shall constitute a legal, valid, and binding obligation of the City in accordance with its terms.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 5.01. Valid Existence. Developer represents and warrants to the City that the Developer is a limited liability corporation.

Section 5.02. Authority. Developer represents and warrants to the City that this Agreement and all other documents required to be executed and delivered by Developer at closing have been duly and validly authorized, executed, and delivered by Developer and will be enforceable against Developer in accordance with their terms except as limited by bankruptcy, insolvency, or similar laws of general application affecting the enforcement of creditor rights.

Section 5.03. No Conflict. Developer represents and warrants to the City that the execution and delivery of this Agreement, the consummation of the transactions contemplated in this Agreement, and the execution and delivery of the documents required to be executed, delivered, or acknowledged by Developer will not violate any provision of Developer's articles or bylaws or any applicable statute, rule, regulation, judgment, order, or decree of the state of Wisconsin or a court having jurisdiction over Developer or its properties.

ARTICLE VI PAYMENTS TO BE MADE BY DEVELOPER

Section 6.01. Annual Tax Guarantee. The City agrees to uniformly apply tax assessment procedures and practices with respect to the Development Site and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing, the Developer and Guarantor, jointly and severally, shall guarantee to the City a minimum real estate tax valuation for the Development for the years and in the amounts as set forth in the Schedule on Exhibit D attached hereto and incorporated herein by reference (the "Minimum Real Estate Tax Valuation"). It is understood by the parties hereto that the Developer's and Guarantor's annual tax payment guarantee will continue until tax payments are made in 2020 pursuant to Exhibit D.

Section 6.02. Minimum Real Estate Tax Valuation. The Minimum Real Estate Tax Assessed Valuation shall be paid in the following manner: Commencing with the 2007 calendar year (assessed valuation as of January 1, 2006) and for each calendar year thereafter, the Developer and Guarantor shall pay to the City an amount equal to the valuation of the properties as indicated on Exhibit D, times the total applicable tax rate, less the actual amount of the real estate tax assessed. The Developer and Guarantor shall not be required to make any tax guarantee payment to the City if the real estate assessed valuation exceeds the valuations indicated in Exhibit D, in any given year. The Minimum Real Estate Tax Payment Guarantee

shall be released from year to year, as long as this Agreement is in effect, by the amount of the assessed value of land and any improvements thereon.

Section 6.03. Form of Guaranty. At the time of approval of the Development Agreement by the City of Appleton, the Developer and Guarantor shall execute and deliver to the City within three (3) business days the annual tax guaranty substantially in the form attached as Exhibit E hereto.

Section 6.04. Should the City reacquire any portion of the Development Area pursuant to Sections 2.02(g) and 2.02(h), the Developer and Guarantor shall be relieved from the tax guarantee for that portion of the property.

Section 6.05. The parties recognize that the Development Area is located within Appleton Tax Increment Financing District #4. The parties agree that upon the closing of TIF #4, the Developer's and Guarantor's minimum tax payment guarantee shall be reduced to that portion of the tax rate for the City of Appleton. In any event, the Developer's guarantee expires at the end of 2019, with taxes payable in 2020.

ARTICLE VII SUBORDINATION

This Development Agreement and any interest the City may have in and to the Development is and at all times shall remain subordinate to any mortgages or other liens which Developer may now or hereafter place against the Development for the purpose of financing the construction and operation of the Development including any refinancing or renewals of any such mortgage(s). This subordination provision shall be self-operative and no other instrument shall be deemed necessary or required to effectuate its intent and purpose. Notwithstanding the foregoing, the City agrees to execute on or before ten (10) days after written request from Developer a written Subordination Agreement in confirmation of and in conformance with the terms of this paragraph in such form as Developer or its mortgagees may reasonably request.

ARTICLE VIII ASSIGNMENT

Developer shall have the right to assign this Agreement with the written consent of the City, which consent shall not be unreasonably withheld and which shall be deemed granted if not withheld by written notice to Developer from City given on or before ten (10) days after Developer requests in writing that City Consent to an assignment of this Agreement. This provision shall not apply to assignments by partners, shareholders, or members of the Developer to other parties, shareholders, or members of the Developer nor shall it apply to a sale or transfer of less than a majority interest of the Developer, except with City approval.

ARTICLE IX DEFAULT PROVISIONS

Section 9.01. Notice of Default. In the event either party is in default hereunder (the "Defaulting Party"), the other party (the "Non-defaulting Party") shall be entitled to take any action allowed by applicable law by virtue of said default provided that the Nondefaulting Party first gives the Defaulting Party written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same, and specifying a time period of not less than thirty (30) days in which the default may be cured by the Defaulting Party.

Section 9.02. Remedies Upon Developer's Default. In the event Developer defaults under the terms of this Agreement and fails to cure the default after a notice within the time period provided pursuant to Paragraph 9.01 above, the City without prejudice to any other rights or remedies afforded City by applicable law may compel conformance of this Agreement by bringing an action for a specific performance hereof.

ARTICLE X NOTICES

All notices, demands, certificates, or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered or when mailed by first class mail, postage prepaid, properly addressed as indicated in the following:

To the Developer:

Gateway of Appleton, LLC
Attn: Mr. Steve Winter
3315A North Ballard Road
Appleton, WI 54911

To the Guarantor:

Mr. Steve Winter
3315A North Ballard Road
Appleton, WI 54911

To the City:

City of Appleton
Economic Development Department
100 North Appleton Street
Appleton, WI 54911-4799
Attn: Peter Hensler

With a copy to:

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

Any party may, by written notice to the party(ies), designate a change of address for the purposes aforesaid.

ARTICLE XI NONDISCRIMINATION

In the performance of work under this Agreement, the Developer agrees not to discriminate against any employee or applicant for employment nor shall the developer or any portion thereof be sold to, leased, or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry, and that the construction and operation of the Development shall be in compliance with all effective laws, ordinances, and regulations relating to discrimination on any of the foregoing grounds.

ARTICLE XII NO PERSONAL LIABILITY

Under no circumstances shall any alderperson, officer, official, commissioner, director, member, partner, or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability. The limitation on personal liability included in this section shall extend to Developer's assignment of this Agreement to a partnership or to a limited liability company consistent with Article VIII.

ARTICLE XIII MISCELLANEOUS PROVISIONS

Section 13.01. Entire Agreement. This document contains the entire agreement between Developer and the City and it shall inure to the benefit of and shall be binding upon the parties hereto and the respective heirs, executors, successors, and assigns. This Agreement may be modified only by a written Amendment signed by the parties, which Amendment shall become effective upon the recording in the Office of Register of Deeds for Outagamie County.

Section 13.02. Survival of Warranties, Representations and Agreements. Any warranty, representation, or agreement herein contained shall survive the closing.

Section 13.03. Governing Law. The internal laws of the State of Wisconsin shall govern this Agreement without giving effect to this conflict of law provisions.

Section 13.04. Captions. The 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.

Section 13.05. Counterparts. 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.

Section 13.06. Severability. If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any

other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

Section 13.07. City Authorization. The execution of this Agreement by the City was authorized by resolution of the Common Council adopted March 16, 2005.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, or caused it to be duly executed, as of the 15th day of June, 2005.

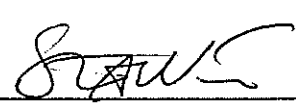
City of Appleton:

Developer: Gateway of Appleton, LLC

By:



Timothy M. Hanna, Mayor

By:


Printed Name: _____

Title: _____

By:


for Cynthia I. Hesse, City Clerk

By: _____

Printed Name: _____

Title: _____

Guarantor:

By:


Steve Winter

STATE OF WISCONSIN)

: ss.

OUTAGAMIE COUNTY)


Personally came before me this 15th day of June, 2005, the above-named Stephen A Winter the MEMBER and _____ the _____ of Gateway of Appleton, LLC, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.


Notary Public, State of Wisconsin

My commission is/expires: permanent

STATE OF WISCONSIN)
: ss.
OUTAGAMIE COUNTY)


Personally came before me this 15th day of June, 2005 the above-named Steve Winter 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~~ permanent

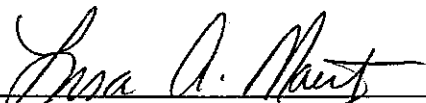
STATE OF WISCONSIN)
: ss.
OUTAGAMIE COUNTY)

MARY WENDELL, DEPUTY
Personally came before me this 15th day of June, 2005, Timothy M. Hanna, Mayor and Cynthia I. Hesse, 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.



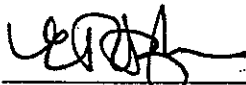
Notary Public, State of Wisconsin
My commission is ~~expires~~ permanent

Countersigned pursuant to §62.09(10) Wis. Stats.



Lisa A. Maertz, City Finance Director

APPROVED AS TO FORM:



James P. Walsh, City Attorney
Ellen Totzke, Deputy

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

After recording should be returned to:
James P. Walsh, City Attorney
City Hall
100 North Appleton Street
Appleton, WI 54911-4799

N:\WORD\FORMS\Development Agreements\Gateway Properties-Steve Winter\June 14, 2005.doc
Last Update Made: June 14, 2005
By: James P. Walsh, City Attorney

EXHIBIT A
LEGAL DESCRIPTION

Parcel I

Lot Thirty (30) of Northeast Business Park Plat #3, City of Appleton, Outagamie County, Wisconsin.

Tax Key No. 31-1-6510-30

Parcel II

The East ½ of the following: A parcel of land in the Northwest ¼ of the Northwest ¼ of Section 18, Township 21 North, Range 18 East, Town of Grand Chute, Outagamie County, Wisconsin more fully described as follows, to-wit:

Commencing at the Northwest corner of said Section 18; thence South 89°08' East 715.00 feet along the North line of said Section 18 to the point of beginning; thence continuing South 89°08' East along the North line of Section 18, being the centerline of Evergreen Road, 200.00 feet to a point; thence South 0°52' West, at right angles to Evergreen Road 225.00 feet to a point; thence North 89°08' West, parallel with Evergreen Road, 200.00 feet to a point; thence North 0°52' East, 225.00 feet to the point of beginning, LESS the North 24.75 feet for highway purposes and excepting therefrom land recorded as Document No. 1289353.

Tax Key No. 10-1-1687-00

EXHIBIT B
SITE PLAN

EXHIBIT C
DEVELOPER'S FINANCIAL COMMITMENT



**Wolf River
Community Bank**

June 14, 2005

Mr. Peter Hensler
City of Appleton

Re: Land Acquisition Northeast Business Park, Appleton, Outagamie, Wisconsin

This is to advise you that *Wolf River Community Bank* is extending the commitment dated April 27, 2005 for Gateway of Appleton LLC. This commitment will be extended through June 17th, 2005.

If you need further information, please feel free to contact our office.

Sincerely,

John F. Morford
Vice President

Member FDIC

309 E. Main Street
P.O. Box 459
Hortonville, WI 54944-0459
Phone: (920) 779-7000 Fax: (920) 779-7004

1008 N. Shawano St.
P.O. Box 329
New London, WI 54961-0329
Phone: (920) 982-0055 Fax: (920) 982-9058

www.wolfriverbank.com

2 8 1865 ON No. 5987 P. 2

Jun. 14. 2005 2:00PM



Wolf River Community Bank

April 27, 2005

Mr. Stephen A. Winter
Gateway of Appleton LLC
3315A North Ballard Road
Appleton, WI 54914

RE: Land Acquisition Northeast Business Park, Appleton, Outagamie, Wisconsin

Dear Mr. Winter:

Wolf River Community Bank, ("Lender") is pleased to advise you that your loan requests has been approved. Wolf River Community Bank will lend Gateway of Appleton LLC ("Borrower") a permanent loan in the amount of up to Six Hundred Sixty Nine Thousand Dollars (\$669,000.00)("Loan A"). In addition, Wolf River Community Bank will lend Gateway of Appleton LLC ("Borrower") a short term loan in the amount of up to One Million Forty One Thousand, Three Hundred Dollars (\$1,041,300.00)("Loan B"). The funds are to be used for the benefit of the borrower on the terms and conditions set forth below.

Please be advised that Lender's commitment to the Loan is contingent upon:

- A. Borrower's written acceptance of this commitment as hereafter provided on or prior to May 15th 2005;
 - B. Borrower's completion of the Conditions Precedent to Closing as hereinafter set forth, to the satisfaction of the Lender, prior to the closing date of May 30th 2005;
 - C. The execution and delivery of the Loan Documents as hereinafter provided on or prior to the closing date.
1. **Term:** The term of the Loan A shall commence at the closing of the Loan and shall continue for 2 years. The loan will not be amortized, and will call for interest only payments. The term of the Loan B shall commence at the closing of the Loan and shall continue for 30 days. The loan will not be amortized, and will call for interest only payments.

Member FDIC

309 E. Main Street
P.O. Box 459
Hortonville, WI 54944-0459

Phone: (920) 779-7000 Fax: (920) 779-7004

1008 N. Shawano St.
P.O. Box 329

New London, WI 54981-0329

Phone: (920) 982-0055 Fax: (920) 982-9058

www.wolfriverbank.com

2. **Interest Rate:** So long as there is no default under the Loan or any of the Loan Documents, the rate of interest on the principal balance of Loan A which remains unpaid and outstanding from time to time shall be Six and One Eighth percent (6.125%) per annum during the term of the Loan. So long as there is no default under the Loan or any of the Loan Documents, the rate of interest on the principal balance of Loan B which remains unpaid and outstanding from time to time shall be Wall Street Prime.

3. **Repayment:** Commencing on the first day of the month following the closing of these transactions, payments of interest (in arrears) in consecutive monthly installments will be made no later than the fifteenth day of each month thereafter through the remaining term of the loan.

In the event that any monthly installments of principal and interest or other payment due under the Loan is not received within fifteen days of its due date, the Borrower shall pay Anchorbank a late charge in the amount of 5 percent (5%) of such delinquent amount.

4. **Prepayment:** Borrower may prepay the loan balance at any time without penalty.

5. **Loan Documents:** Repayment of the Loan shall be evidenced and secured by the following Loan Documents ("Loan Documents"):

- a. A mortgage note (the "note") which shall evidence the Loans to Borrower.
- b. A first mortgage (the "Mortgage") on the Real Estate. The Mortgage shall contain such restrictions on the transfer of the property as Lender, in its sole discretion, shall deem appropriate.
- c. An assignment of all-existing and future leases and rental payments relating to the property.
- d. A collateral assignment of all licenses and permits as may be issued and or required by governmental authorities having jurisdiction thereof relating to the use of the Property, if warranted.
- e. Such other agreements, assignments or security interests as Lender may, at its sole discretion, deem necessary or advisable to adequately protect its interests in connection with the Loan.
- f. Borrower will provide Lender with copies of all leases relating to the property.
- g. The Loan Documents and this commitment shall be construed in accordance with the laws of the State of Wisconsin.

6. **Required Financial Statements:** During the entire term of the Loan, on an annual basis, Borrower shall cause to be furnished to Lender operating statements for Borrower, a Balance Sheet and Statement of Income and Expenses, and a financial statement for each borrower and guarantor. All statements shall be in form and content acceptable to Lender, and shall be certified to be true, correct, and complete.
7. **Tax Escrow.** So long as there is no default by Borrower, Lender shall not require that the Borrower escrow amounts necessary for the payment of real estate taxes. However, in the event of a default, Lender may thereafter require the deposit, in escrow, of amounts necessary to reasonably anticipate the payment of real estate taxes.
8. **Insurance Escrow.** So long as there is no default by Borrower, Lender shall not require that the Borrower escrow amounts necessary for the payment of premiums for insurance required of the Borrower. However, in the event of a default, Lender may thereafter require the deposit, in escrow, of amounts necessary to reasonably anticipate the payment of premiums on all required insurance.
9. **Conditions Precedent to Closing:** Lender's obligation to make the Loan to Borrower shall be subject to the following conditions:
 - a. Fee simple title to the Property shall be vested in Borrower and shall be good and marketable and free of all liens, restrictions, and encumbrances, which have not been approved in writing by Lender.
 - b. All Loan Documents shall be in such form and contain such provisions, as Lender deems necessary and desirable and shall be duly executed and delivered by Borrower.
 - c. The opening of an operating account for Gateway of Appleton LLC at Wolf River Community Bank.
 - d. Lender shall have received, prior to closing of the Loan, the following, which shall be in form and substance satisfactory to Lender and its counsel:
 1. **Financial Statements and Tax Returns:** A current financial statement for Borrower certified by the party providing the same as true, correct, and complete.
 2. **Credit Report:** Lender shall obtain credit reports on Borrower and Guarantors.

3. **Certificates:** Evidence that the property is properly zoned for and all necessary occupancy permits have been issued by the proper regulatory authorities.
4. **Casualty and Public Liability Insurance:** Certificates of insurance from a company showing that the property is insured by casualty and extended coverage insurance, liability insurance, and business interruption insurance.
5. **Title Insurance:** A commitment for an ALTA loan policy of title insurance written by a title insurance company without standard exceptions, with a liability limit of not under the Mortgage, subject only to such defect and exceptions as shall have been approved in writing by Lender and containing such endorsements as Lender shall require.
6. **Survey:** Original improvement survey dated within 90 days of the date of closing of the Loan certified by Borrower and any entity guaranteeing title to the real estate. Lender may waive this provision if Title Company provides the proper endorsement.
7. **Appraisal:** An appraisal showing the value of the Real Estate to be not less than Eight Hundred Eighty Five Thousand Dollars (\$885,000.00). Loan to Value will not exceed 80% of the appraised value or cost; which ever is the lesser of the two, of all Real Estate securing the Loan. The appraisal shall be obtained after the closing of this transaction and shall only cover the parcel the borrower will retain.
8. **Governmental Approvals:** Evidence that all governmental requirements relating to the operation and use of the Property have been satisfied.
9. **Compliance with Environmental Law:** Evidence that the property is free from environmental hazards, or toxic waste or materials, and is in compliance with all environmental laws, regulations and rules imposed by any governmental entity having jurisdiction over the Property. As part of the evidence, Borrower shall furnish Lender with an Environmental Questionnaire certified by the Lender.
10. **Participation or sale of Loan:** Lender shall have the right to sell the Loan or an undivided ownership or participation interest in the Loan.
10. Lender shall have the right to inspect the Property prior to closing and from time to time during the entire term of the Loan.

- 11. Commitment Fee:** If this commitment is accepted by Borrower as hereinafter provided, Borrower shall pay to Lender as consideration for Lender's agreement to be bound by the terms and conditions of this commitment a \$5,000.00 loan fee. Borrower acknowledges and agrees that the entire loan fee is earned by Lender upon acceptance of this commitment by Borrower and is non-refundable.
- 12. Closing Costs:** All expense incurred by Lender and Borrower arising from this commitment or in connection with the closing of the Loan shall be paid by Borrower, including without limitation, title company charges, survey charges, taxes, assessments, and appraisal fees. The Borrower shall pay all such expenses when due and owing.
- 13. Expiration:** This commitment shall expire automatically and without necessity of any further notice by Lender to Borrower if not accepted on or prior to May 15th, 2005, or in the event the Loan is not closed on or prior to May 30th, 2005, and in either event, Lender shall have no obligation or liability to make the Loan or refund any portion of the loan commitment fee received by it. Any extensions of the commitment must be in writing and signed by Lender.
- 14. Termination:** Lender may terminate this commitment and its obligations hereunder by written notice mailed or faxed to Borrower if:
- a. Borrower fails to satisfy, observe or comply with material terms, conditions, covenants, agreements, and provisions herein contained;
 - b. Insolvency, receivership, consolidation, bankruptcy or similar proceedings are commenced by or against the Borrower;
 - c. Borrower fails to disclose to Lender all information and material relating to the Loan or the Property and improvements, or Borrower misrepresents any facts deemed by Lender to be material or substantial, relating to the Loan, the Property, the improvements, or the financial condition of the Borrower.
 - d. Any warranty or representation made by Borrower in the application of supporting documentation furnished in connection with the obtaining of the commitment for the Loan or any warranty, representation, or statement in the Loan Documents or in any statement or certificate furnished pursuant to any of the foregoing, shall be materially false, misleading or inaccurate.
- 15. Commitment Non Assignable:** This commitment shall not be assignable by operation of law or otherwise, except with the written consent of Lender.

7:58P

05-19-2005 14:40 ROLLIE WINTER REALTY 920 739 1366

16. Personal Liability: The repayment of the indebtedness evidenced by the Note and the performance of all obligations contained in the Loan Documents are the liability of Stephen A. and Theresa E. Winter.


17. Survival of Commitment: The terms and conditions of this commitment letter shall survive closing provided, however, in the event that the Loans are closed and the terms and conditions of the Loan Documents for the Loan are inconsistent with the terms and conditions of this commitment, the Loan Documents shall control. Subject to the preceding sentence, all warranties, representations, terms, conditions, covenants and provisions set forth herein shall survive the closing of the transaction contemplated hereby.

18. Time is of the Essence: Time shall be of the essence with respect to all aspects of this commitment. No waiver of the terms or conditions of the commitment shall be effective unless made in writing by both the Borrower and Lender.

Please evidence acceptance of this commitment by executing the duplicate copy of this commitment, which is enclosed herewith, and return it to the undersigned.

Very Truly Yours,

Wolf River Community Bank

By: 
Harold L. Hermansen
Vice President

AGREED TO AND ACCEPTED

Acceptance of the terms of the above commitment acknowledged this ^{19th} day of ^{July}, 2005.

BY:



Gateway of Appleton LLC
Stephen A. Winter Managing Member

EXHIBIT D
TAX ASSESSED VALUATION SCHEDULE

Tax Year	Assessed Value	Tax Payable In
2005	\$0	2006
2006	\$9,000,000	2007
2007	\$12,000,000	2008
2008	\$12,000,000	2009
2009	\$12,000,000	2010
2010	\$15,000,000	2011
2011	\$15,000,000	2012
2012	\$15,000,000	2013
2013	\$15,000,000	2014
2014	\$15,000,000	2015
2015	\$15,000,000	2016
2016	\$15,000,000	2017
2017	\$15,000,000	2018
2018	\$15,000,000	2019
2019	\$15,000,000	2020

This assessed value schedule shall apply to the entire Development Area.

EXHIBIT E TAX GUARANTEE

THIS GUARANTEE made by Gateway of Appleton, LLC (the "Developer") and Steve Winter (the "Guarantor") to and for the benefit of the City of Appleton, Wisconsin, a Wisconsin Municipal Corporation (the "City").

WITNESSETH:

WHEREAS, City and Developer have entered into a Development Agreement dated March 16, 2005 (the "Development Agreement"); and

WHEREAS, as a part of the Development Agreement, Developer and Guarantor have agreed to guarantee to the City an annual minimum real estate tax valuation as follows:

Annual Tax Guarantee. The City agrees to uniformly apply tax assessment procedures and practices with respect to the Development Site and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing Developer and Guarantor, jointly and severally, shall guarantee to the City the minimum real estate valuation described in this paragraph for the years and in the amounts set forth in the schedule in Exhibit D attached hereto and incorporated herein by reference (the "Minimum Real Estate Tax Valuation"). It is the intent of this provision that the Developer's and Guarantor's Minimum Real Estate Tax Valuation shall be in effect over a 15-year period commencing with tax payments made in 2007, for value as of January 1, 2006, and ending with the year 2020.

The Minimum Real Estate Tax Valuation payment shall be paid in the following manner: Commencing with the 2007 calendar year (valuation as of January 1, 2006) and for each calendar year thereafter until the Minimum Real Estate Valuation expires, the Developer and Guarantor shall pay to the City the amount, if any, by which the Minimum Real Estate Tax Valuation for each calendar year exceeds the actual real estate tax valuation generated from the Development for such calendar year. The Minimum Real Estate Tax Payment Guarantee shall be released from year to year, as long as this Agreement is in effect, by the amount of the assessed value of land and any improvements thereon.

By January 15th, starting with calendar year 2007, the City shall provide Developer and Guarantor with: (1) an itemization of the actual real estate tax valuation received from the Development, and (2) a calculation of the amount, if any, by which the Minimum Real Estate Tax Valuation for the Development for such calendar year exceeds the actual real estate tax payment allocable to the Development for the preceding calendar year. If for any given calendar year the Minimum Real Estate Tax Valuation exceeds the actual real estate tax valuation, Developer and Guarantor shall pay the amount of tax on such excess of such excess to the City in a single installment due on January 31st following the end of each calendar year. If the amount of the actual real estate tax valuation exceeds the Minimum Real Estate Tax Valuation, no additional payment shall be due from Developer or Guarantor.

WHEREAS, the City requires the Developer and Guarantor to execute and deliver to the City at Closing its guarantee of payment of the Minimum Real Estate Tax Valuation to the City in accordance with the terms of the Development Agreement.

NOW THEREFORE, subject to all other terms and conditions of the Development Agreement and for value received, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Guarantor, does hereby unconditionally, absolutely and irrevocably guarantee the payment to the City of the Minimum Real Estate Tax Valuation in accordance with the terms of the Development Agreement. Developer and Guarantor hereby waives notice of acceptance of this Guaranty. Developer and Guarantor consents to City proceeding directly against Developer and Guarantor on this Guaranty without first exhausting any remedy or remedies which City may have pursuant to the Development Agreement.


IN WITNESS WHEREOF, the Developer has executed this Agreement on the 15th day of June, 2005.

Gateway of Appleton, LLC (Developer)

By: 

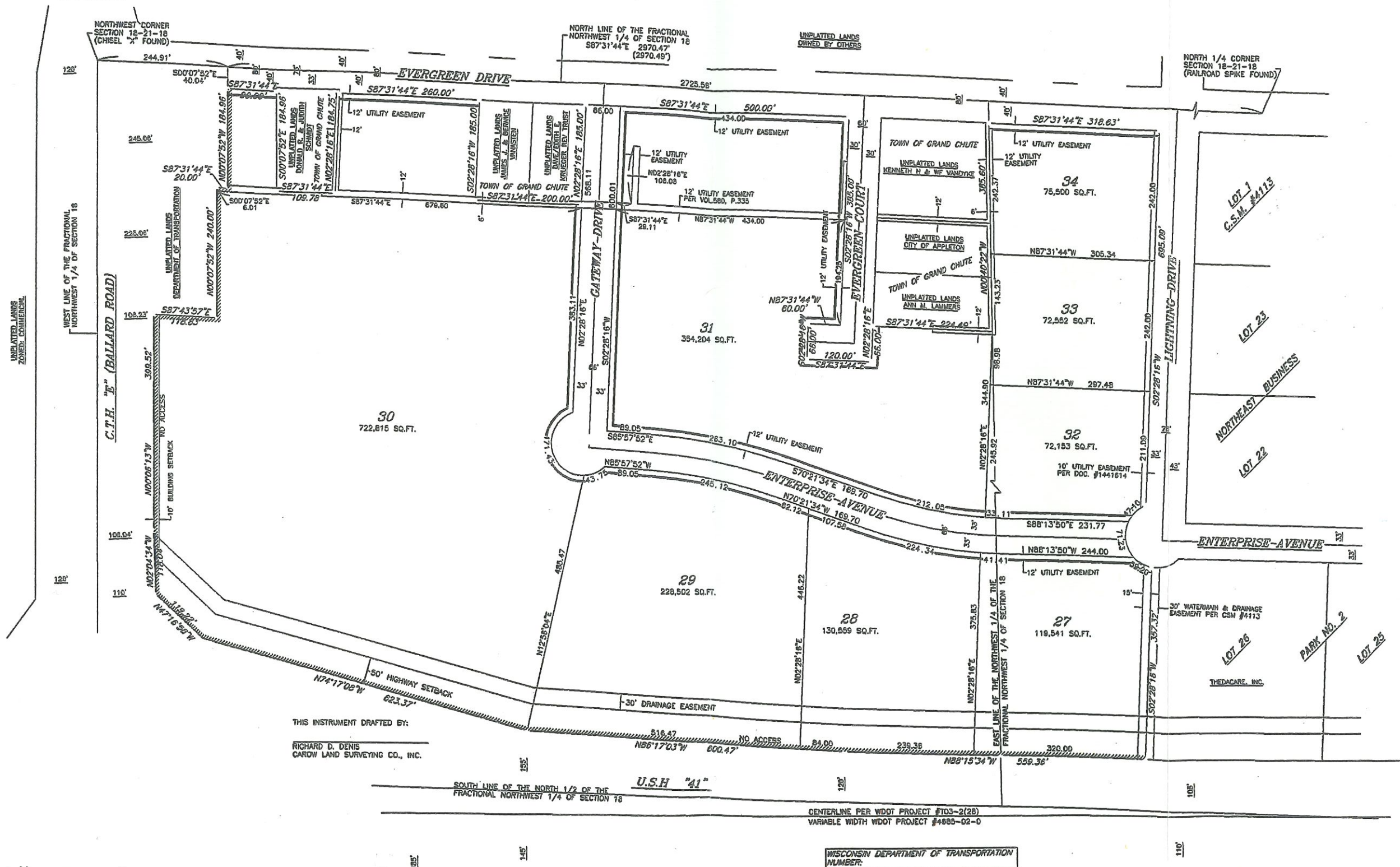
By: _____

Guarantor, Steve Winter:

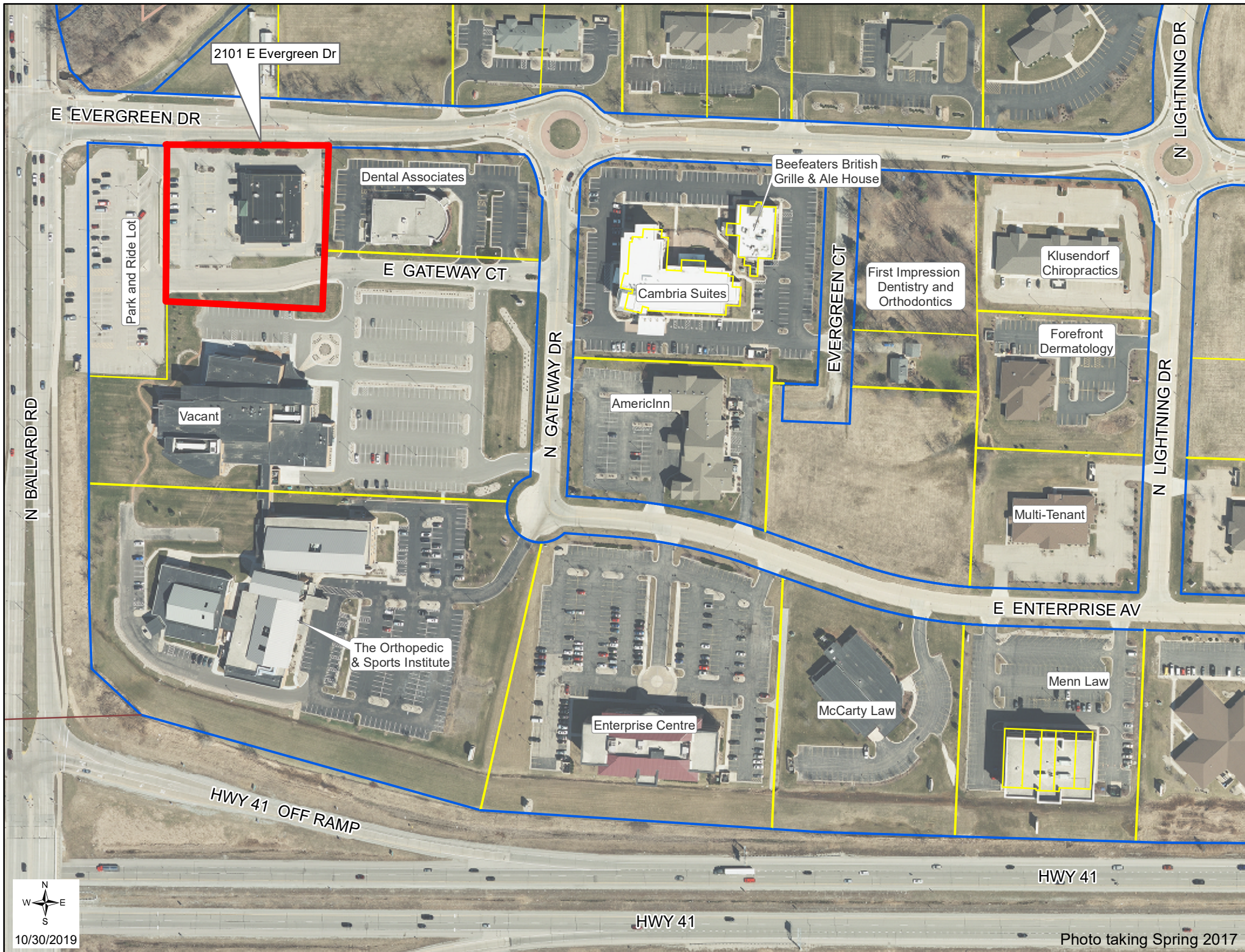
By: 

NORTHEAST BUSINESS PARK NO. 3

BEING PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 4113 AS RECORDED IN VOLUME 22 OF CERTIFIED SURVEY MAPS ON PAGE 4113 AND PART OF THE NORTHWEST 1/4 OF THE FRACTIONAL NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE FRACTIONAL NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 21 NORTH, RANGE 18 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN.



1"=200'



2101 E Evergreen Dr

E EVERGREEN DR

Dental Associates

E GATEWAY CT

Beefeaters British
Grille & Ale House

Cambria Suites

First Impression
Dentistry and
Orthodontics

Klusendorf
Chiropractics

Forefront
Dermatology

Multi-Tenant

E ENTERPRISE AV

The Orthopedic
& Sports Institute

Enterprise Centre

McCarty Law

Menn Law

HWY 41 OFF RAMP

HWY 41

HWY 41

Photo taking Spring 2017



10/30/2019



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

MEMORANDUM

TO: Appleton Redevelopment Authority and CEDC

FROM: Karen Harkness, Director of Community & Economic Development

DATE: October 27, 2019

RE: Eagle Point Amended Development Agreement for Eagle Court

The Amended Development Agreement supports the Developer's construction of Phase II at Eagle Point (Eagle Court).

The Developer proposes to construct a community-based residential facility, considered a community living arrangement (CLA) under the Zoning Ordinance, on the subject site. The building would include 28 units and be approximately 22,307 square feet in size, as shown on the attached development plan. Its exterior would be similar in appearance to the existing residential care apartment complex at 955 East John Street, which was also developed by the applicant. East John Street would provide vehicular access, with a segment of public right-of-way also being considered for vacation. Off-street parking spaces are proposed on the subject site #31-1-0772-01 (975 East John Street) and adjacent parcel #31-1-0772-00 (955 East John Street), which would require an off-site parking agreement. An extension of a publicly accessible trail is also proposed for the subject site.

The original Development Agreement anticipated Phase II projected assessed value of \$2,100,000. The amended Development Agreement anticipates Phase II projected assessed value of \$5,100,000. Phases 1 & 2 combined are anticipated to be \$20,800,000.

The City has determined that development of this project at the former Foremost Dairy Plant 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) \$1,275,00 or 2) Twenty-five percent (25%) of the tax increment value of Phase 2.

Please contact Karen Harkness, Director of Community and Economic Development at 920-832-6408 or email karen.harkness@appleton.org with any questions.

**FIRST AMENDMENT TO
EAGLE POINT DEVELOPMENT AGREEMENT**

WHEREAS, EP Development, Inc., a Wisconsin corporation (the “Developer”), and the City of Appleton, a Wisconsin municipal corporation (the “City”) and the Redevelopment Authority of the City of Appleton (the “Authority”) have previously entered into a Development Agreement dated March 7, 2017 (the “Development Agreement”); and,

WHEREAS, following the execution of the Development Agreement, Developer conveyed a portion of the property subject to the Development Agreement (the “Property”) to an affiliate, ASHRE, LLC, a Wisconsin limited liability company (“ASHRE”). The portion of the Property conveyed to ASHRE is legally described as Lot 1 of Certified Survey Map No. 7281 (the “ASHRE Property”), and the portion of the Property retained by Developer is Lot 2 and Lot 3 of Certified Survey Map No. 7281 (the “Developer Property”); and,

WHEREAS, the Developer, ASHRE, and the City have been working cooperatively to accomplish the projects identified in the Development Agreement; and,

WHEREAS, as the projects progress, the Developer, ASHRE, and the City find it appropriate to amend certain terms within the Development Agreement.

NOW THEREFORE, the Developer, ASHRE, and the City agree that the Development Agreement dated March 7, 2017 shall be amended as follows:

1. Paragraph 3.3 is amended to read as follows:

3.3 ASHRE has constructed Phase I of the Project on Lot 1 of Certified Survey Map 72821 (Outagamie County Document #2089713) and also identified as Parcel Number 31-1-0772-00, comprised of a senior living facility of approximately

ninety-eight (98) dwelling units and one (1) guest unit with a projected assessed value of \$15,700,000 upon stabilization. Developer shall construct, or cause to be constructed, Phase II of the Project in the area identified as Lot 2 of Certified Survey Map 7281 (Outagamie County Document #2089713) and also identified as Parcel Number 31-1-0772-01, comprised of a 28-unit memory care facility with a projected assessed value of \$5,100,000. The projected assessed value of Phases 1 & 2 combined is expected to be \$20,800,000. Developer shall use best efforts to construct the final phase of the Project on Lot 3 of Certified Survey Map 7281 (Outagamie County Document #2089713) as market conditions permit, which may include, but not be limited to, market rate, senior, single-family housing, student housing, mixed-use, or commercial components, by December 31, 2020.

2. Paragraph 5.4.1 is amended to read as follows:

5.4.1 Reimbursement of Developer Costs. The City will provide payments to the Developer solely from future Tax Increment Revenue from the Property as a reimbursement for Developer Costs. The City and the Developer agree that there will be no reimbursement for any activities prior to the creation of the District. The City's total payment of Tax Increment Revenue to the Developer for Phase 1 shall not exceed the lesser of: i) \$3,742,500; or ii) twenty-five percent (25%) of the Tax Increment Value of Phase 1, plus interest thereon. The City's total payment of Tax Increment Revenue to the Developer for Phase 2 shall not exceed the lesser of: i) \$1,275,000; or ii) twenty-five percent (25%) of the Tax Increment Value for Phase 2, plus interest thereon. The Contribution may be prepaid at any time, but until paid in full, the Tax Increment Revenue payments will be provided to the Developer as follows: On or about August 15th

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

3. Paragraphs 3.5.1 through 3.5.3 are created to read as follows:

3.5.1 As of the date of this Amendment, ASHRE has constructed a public walkway on Phase 1 of the Project and has conveyed an easement granting the City public access to said walkway. Said easement includes a maintenance and operation plan for the public walkway. ASHRE shall continue to maintain signage for six (6) parking spaces near the end of East John Street indicating that said spaces are available for public access to the trail. ASHRE reserves the right to impose limits on the use of the spaces (e.g. time limits, time of day, etc.) to avoid abuse by the public.

3.5.2 The public walkway located on Lot 2 of CSM 7281, and generally depicted in Amendment Exhibit A (hereafter "Northeast Trail Segment"), shall be constructed by Developer within one (1) year after building construction on Lot 2 is substantially complete. Upon completion or as soon as practicable thereafter, Developer shall convey to the City a public access easement for the Northeast Trail Segment and a maintenance and operation plan. The terms and conditions of said easement and operations and maintenance plan shall be substantially the same as the easement granted to the City over the completed portion of the public walkway referenced in Section 3.5.1. A copy of the recorded easement referenced above is attached as Amendment Exhibit B. Developer or ASHRE will permit the City to install a trail sign substantially like that shown in Amendment Exhibit D near the trail and the

end of East John Street. Developer or ASHRE and the City shall work cooperatively to find an appropriate location for said sign.

3.5.3 The City, Developer and ASHRE acknowledge that a public walkway will also be constructed connecting the existing walkway's southern end to a walkway located at the Property's Southwestern boundary (hereafter "Southwestern Trail Segment"). The City agrees, at its sole expense, to construct the Southwestern Trail Segment in the location generally depicted by Amendment Exhibit A. ASHRE shall grant the City a temporary limited easement allowing the City adequate access for trail construction purposes. In addition, as part of the construction of the Southwest Trail Segment, the City shall be permitted to stripe a portion of the existing fire lane in a manner to identify and distinguish the trail from the adjoining paved area as well as identifying the area as intended only for use by emergency or other authorized motor vehicles. The City shall stripe a path 10' in width within the fire lane to indicate the location of the path. Additionally, the City shall be permitted to stripe the first 10' of the entrance to the fire lane to prevent vehicular traffic from entering the path. A striping location plan is attached hereto as Amendment Exhibit C. City shall provide ASHRE with a detailed striping plan for ASHRE's approval prior to commencing work on striping. ASHRE shall be solely responsible for future maintenance of said striping. Upon completion of the Southwestern Trail Segment, ASHRE shall convey to the City a public access easement and maintenance and operation plan for that segment consistent with the terms and conditions in the recorded easement referenced in Section 3.5.1 above and attached as Amendment Exhibit B provided however that the requirements for snow removal in the maintenance and operations plan shall be amended for this portion of the trail. The City shall perform snow removal operations on the Southwestern trail

segment from the Property's boundary to the point where the trail first meets the shared trail and fire lane. The City's snow removal vehicle shall be permitted to use the fire lane/trail area on the Property to turn around.

4. Paragraph 3.7 is created to read as follows:

3.7 Parties mutually agree that the City shall pave the public portion of East John Street between South Court and the terminus of East John Street on the west side of the Fox River, with concrete when East John Street is reconstructed (hereafter "reconstruction") at the City's sole cost and expense. Scheduling of the reconstruction is anticipated to occur in the year following Developer's completion of Phase 2.

5. Section 3.8 is created to read as follows:

3.8 Developer and City are pursuing the vacation of the end of East John Street to benefit Developer and ASHRE. Vacation of the end of John Street would create a non-conforming zoning issue for ASHRE. In order to relieve such an issue, ASHRE hereby authorizes the City to transfer the entire vacated portion of East John Street to Developer. Developer, concurrent with the transfer of the vacated property from the City, shall enter into and record a perpetual easement to provide Lot 1 with unrestricted access to East John Street. In the event that a future legal determination determines that the City cannot transfer the entire vacated parcel as described above but must transfer a portion of the vacated property to ASHRE, ASHRE hereby agrees to immediately transfer the portion of the property received from the vacation to Developer and Developer shall concurrently provide an easement as described above. In the event Developer or ASHRE transfer ownership of either of their respective

parcels, any subsequent owner must agree to abide by this section prior to the City vacating said portion of East John Street.

6. For avoidance of doubt, the parties agree that certain references to “Developer” herein and in the Development Agreement shall refer to ASHRE with respect to obligations of the owner of the ASHRE Property, and shall refer to Developer with respect to obligations of the owner of the Developer Property. ASHRE is joining in this amendment to acknowledge such obligations. Notwithstanding anything herein to the contrary, however, Developer, not ASHRE, shall receive any and all payments, grants, incentives, and tax increment financing proceeds under the Development Agreement, as amended hereby. Nothing herein is intended to modify any payments, grants, incentives, or tax increment financing previously payable to Developer pursuant to the March 7, 2017 Development Agreement regarding Phase 1 of the Project. Modification to payments, grants, incentives, or tax increment financing for Phase 2 are being made to account for a higher projected value of Phase 2 are consistent with the intent of the original development plan and Development Agreement.
7. All other terms of the March 7, 2017 Development Agreement shall remain in full force and effect. All references to the “Development Agreement” shall hereafter refer to the Development Agreement, as amended by this Agreement.

Dated this ____ day of _____, 2019.

[SIGNATURES BEGIN ON THE FOLLOWING PAGES]

EP Development, Inc.

By: _____
Printed Name: Joseph Alexander
Title: President

STATE OF WISCONSIN)
 : ss.
DANE COUNTY)

Personally came before me this ____ day of _____, 2019, Joseph Alexander, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

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

ASHRE, LLC

By: Eagle Point Partners, LLC

Its: Manager

By: National Venture, LLC

Its: Manager

By: _____

Printed Name: Joseph Alexander

Title: Manager

STATE OF WISCONSIN)

: ss.

DANE COUNTY)

Personally came before me this ____ day of _____, 2019, Joseph Alexander, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____

Notary Public, State of Wisconsin

My commission is/expires: _____

City of Appleton:

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2019, Timothy M. Hanna, Mayor and Kami 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.

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

APPROVED AS TO FORM:

PROVISION HAS BEEN MADE TO PAY THE LIABILITY
THAT WILL ACCRUE UNDER THIS AGREEMENT.

James P. Walsh, City Attorney
City Law A17-0038

Anthony D. Saucerman, Finance Director

Redevelopment Authority of the City of Appleton:

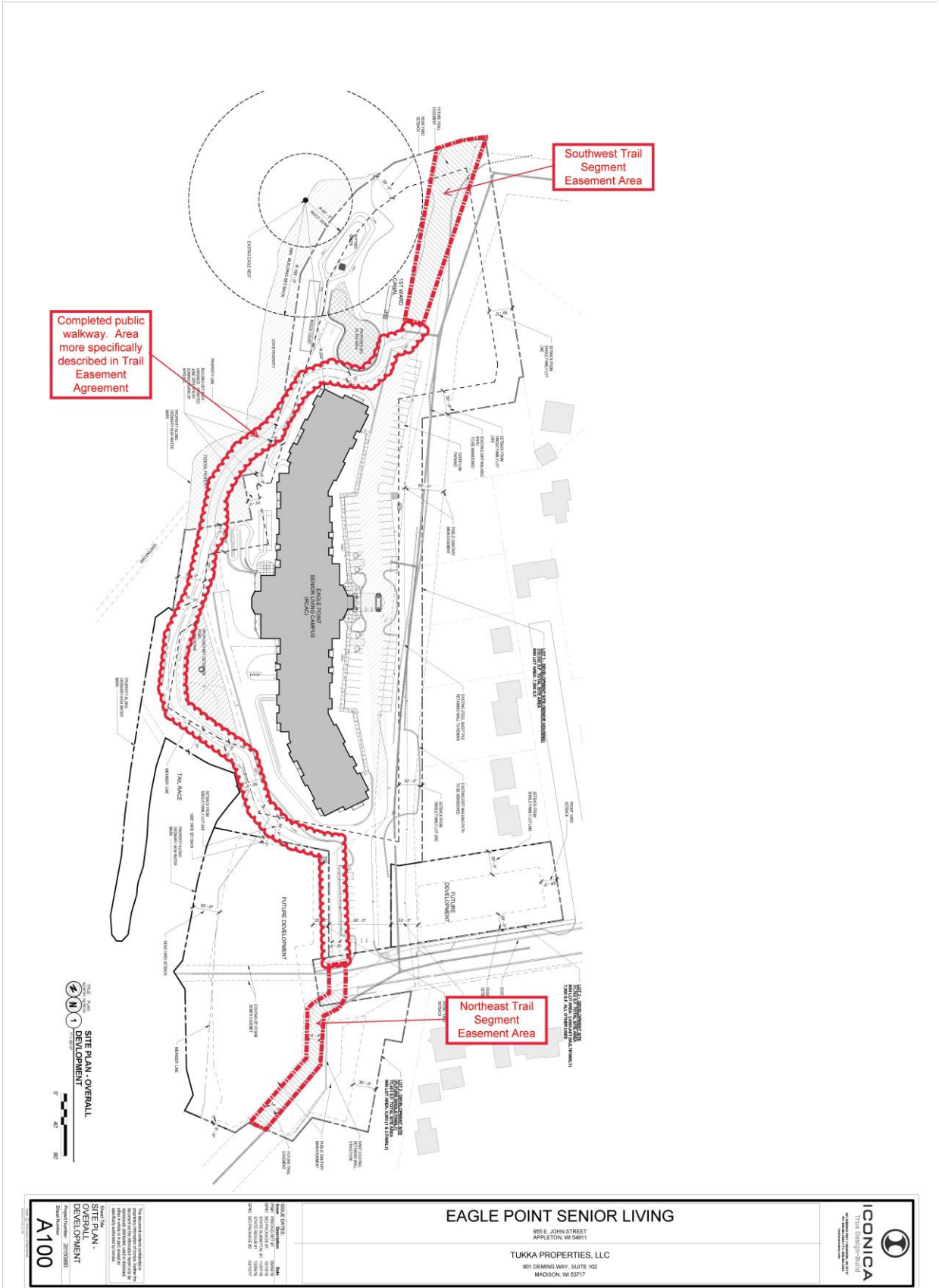
By: _____
Karen E. Harkness, Executive Director

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2019, Karen E. Harkness, Executive Director, of the Redevelopment Authority of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

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

Amendment Exhibit A Trail Plan



**Amendment Exhibit B
Recorded Easement**

TRAIL EASEMENT AND AGREEMENT

This Trail Easement and Agreement (this "Agreement") made this 15 day of August, 2019, by and between Ashre LLC, a Wisconsin Limited Liability Company, hereinafter referred to as "Grantor", and the City of Appleton, a Wisconsin municipal corporation, hereinafter referred to as "Grantee" or "City". Whereas, Grantor is the fee owner of the real property in Outagamie County and being further described below:

See Exhibit "A" for real property and easement description, Exhibit "B" for map and Exhibit "C" for Trail Maintenance and Operating Plan which are all attached hereto and incorporated herein by reference.

EASEMENT

Grant. The undersigned Owner or Owners grant and convey to City the right to make available to the public a non-exclusive perpetual easement (the "Easement"), over the area described in Exhibits A and B (the "Easement Area"), and right-of-way over the "Trail", actually constructed within the Easement Area and defined in Exhibit C, and the right to use the Trail as follows:

- (a) Permitted Trail Uses. Use of the Trail as a right-of-way for (1) walking, hiking, jogging, bicycling, bird watching, nature study or other like recreational activities; (2) power-driven mobility devices for use by persons who have mobility impairments; (3) emergency vehicles in the case of emergency on or near the Trail; and (4) special events consistent with use limitations and restrictions set forth in the City's Trail Reservation and Fee Policy (hereafter "Policy"), as amended from time to time. In considering approval for special events, Grantee shall make the safety and quiet enjoyment of persons living near the trail a priority, including consulting with Grantor when reasonably necessary regarding the implementation of reasonable restrictions or limitations Grantee may impose on special events in order to preserve such safety and quiet enjoyment. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public or the Grantee and neither the general public nor the Grantee shall acquire any property rights in the Easement Area other than the non-exclusive easement rights expressly set forth in this Agreement.
- (b) This Trail is intended to be directly connected to adjoining properties by a City wide trail system and the City may from time to time have or permit to have special events that charge a fee as permitted by the Policy. The fee for these special events shall be a permitted use of this easement grant. No Owner shall be permitted to charge a fee for the use of this Trail.
- (c) This grant of easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto and shall run with the land. This Agreement and the Easement rights set forth herein shall not be transferred or assigned by Grantee without the prior written approval of Grantor, which may be withheld in Grantor's sole discretion.
- (d) Grantor shall have the right to use any portions of the Grantor's property upon which the Easement Area is situated, subject to the rights granted in this Agreement, in any way that is not inconsistent with the Easement grant herein, provided such use does not materially and adversely interfere with or

Document #: **2168774**
Date: **08-22-2019** Time: **11:19 AM**
Pages: **13** Fee: **\$30.00**
County: **OUTAGAMIE COUNTY** State: **WI**

Sarah R. Van Camp

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

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

Tax Key No. 31-1-0772-00

ENVELOPE

(13)

with a required copy to:
City Attorney
100 North Appleton Street
Appleton, WI 54911-4799

For the Grantee:
ASHRE LLC:
c/o The Alexander Company, Inc.
2450 Rimrock Road, Suite 100
Madison, WI 53713
Attn: Colin Cassidy

with a required copy to:
Michael Best & Friedrich
One South Pinckney Street, Suite 700
Madison, WI 53703
Attention: Kevin A. Martin

- (ii) Waiver: No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
- (iii) Invalidity: If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
- (iv) Construction: This Agreement may be amended, modified or terminated only in writing signed by Grantor and City, or their respective successors and permitted assigns, as applicable.
- (v) Governing Law: This Agreement will be governed and construed in accordance with the internal laws of the state of Wisconsin.

AGREEMENT

An affiliate of Grantor, EP Development, Inc., and Grantee (hereafter collectively the "Parties") entered a Development Agreement that includes, among other things, a Trail Maintenance and Operating Plan (hereafter "Plan") setting forth duties and responsibilities of the Parties and their respective successors and/or assigns with respect to the Trail so long as the Easement remains in effect. A copy of the Plan is attached hereto as Exhibit C and incorporated herein by reference.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

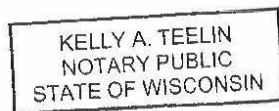
This indenture made this 26 day of July, 2019, by and between Ashre LLC, a Wisconsin Limited Liability Company, herein referred to as "Grantor/Owner" and the City of Appleton, a Wisconsin municipal corporation, herein referred to as "Grantee/City".

Ashre, LLC
By: Eagle Point Partners, LLC, Managing Member

By: [Signature]
Joseph Alexander, Manager

STATE OF WISCONSIN)
: ss.
DANE COUNTY)

Personally came before me this 26th day of July, 2019, the above-named Joseph Alexander to me known to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]
Printed Name: Kelly Teelin
Notary Public, State of Wisconsin
My commission is/expires 10-28-2021

City of Appleton, a Wisconsin municipal corporation

By: [Signature]
Timothy M. Hanna, Mayor

By: [Signature]
Kami Lynch, City Clerk

STATE OF WISCONSIN)
: ss.
OUTAGAMIE COUNTY)

Personally came before me this 15 day of August, 2019 the above-named, Timothy M. Hanna, Mayor and Kami Lynch, City Clerk to me known to be the persons who executed the foregoing instrument and acknowledged the same.

[Signature]
Printed Name: James P. Walsh
Notary Public, State of Wisconsin
My commission is/expires 11/11/2021



Approved as to form:
James P. Walsh, City Attorney
This instrument was drafted by:
Christopher R. Behrens, Deputy City Attorney
City Law A18-0785

LENDER CONSENT AND SUBORDINATION TO EASEMENT

WHEREAS, Ashre LLC is the owner of certain real property more particularly described in Document No. 2099383 filed in the Office of the Register of Deeds for Outagamie County, Wisconsin on March 17, 2017 ("Property").

AND WHEREAS, JOHNSON BANK, a Wisconsin banking corporation, and its successors and assigns ("Lender") hold certain secured interests in the Property as recorded in the Office of the Register of Deeds for Outagamie County, Wisconsin.

AND WHEREAS, by virtue of the foregoing instrument, Ashre LLC is conveying to the City of Appleton ("City") a permanent easement for purposes of a public trail and subject to the terms and conditions also previously set forth and referenced herein ("Easement").

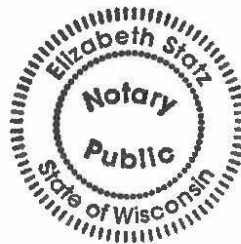
NOW THEREFORE, for and in consideration of the benefits to accrue to the Property by acceptance of the Easement, the undersigned authorized representative of Lender expressly subordinates all right, title, and interest in and to that portion of said Property to the interest of the City in said Easement with the intent that said Easement shall be prior and superior to Lenders secured interests in the Property filed prior to the date of this consent.

JOHNSON BANK

By: [Signature]
Printed Name: Todd M. Cegelski
Title: SVP

STATE OF WISCONSIN)
: ss.
DANE COUNTY)

Personally came before me this 5th day of August, 2019, the above-named Todd M. Cegelski to me known to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]
Printed Name: Elizabeth Stutz
Notary Public, State of Wisconsin
My commission is/expires 10.26.21

EXHIBIT A – Trail Easement Legal Description

An Easement being a part of Lot 1, Outagamie County Certified Survey Map No. 7281, located in part of the Southwest Quarter of Section 25 and being a part of and located in part of the Northwest Quarter of Section 36, T21N, R17E, City of Appleton, Outagamie County, Wisconsin.

Commencing at the Southwest Corner of Section 25, T21N, R17E;

Thence N63°41'35"E for a distance of 1095.09 feet to the beginning of a trail easement centerline;

Thence S07°40'05"W for a distance of 132.87 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the left a distance of 13.51 feet, having a radius of 9.55 feet, and whose long chord bears S31°23'56"E a distance of 12.41 feet;

Thence S71°56'01"E for a distance of 21.15 feet to "point a" which is also the beginning of a non-tangential curve to Point A;

Thence through said curve turning to the right a distance of 74.60 feet, having a radius of 105.84 feet, and whose long chord bears S47°24'35"E a distance of 73.07 feet to Point B which is also the beginning of a compounded curve;

Thence through said curve turning to the right a distance of 17.21 feet, having a radius of 55.01 feet, and whose long chord bears S15°54'52"E a distance of 17.14 feet;

Thence S06°56'47"E for a distance of 49.62 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the left a distance of 16.60 feet, having a radius of 22.24 feet, and whose long chord bears S28°39'00"E a distance of 16.22 feet;

Thence S50°03'53"E for a distance of 38.27 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the right a distance of 10.52 feet, having a radius of 1965.72 feet, and whose long chord bears S45°26'52"E a distance of 10.52 feet;

Thence S42°30'03"E for a distance of 41.77 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the right a distance of 18.46 feet, having a radius of 25.00 feet, and whose long chord bears S20°52'19"E a distance of 18.04 feet to the beginning of a compounded curve;

Thence through said curve turning to the right a distance of 62.05 feet, having a radius of 195.32 feet, and whose long chord bears S09°30'47"W a distance of 61.79 feet;

Thence S18°23'51"W for a distance of 5.80 feet to the beginning of a curve;

Thence through said curve turning to the right a distance of 12.35 feet, having a radius of 55.00 feet, and whose long chord bears S24°49'42"W a distance of 12.32 feet;

Thence S31°15'33"W for a distance of 52.81 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the left a distance of 11.89 feet, having a radius of 210.30 feet, and

whose long chord bears S31°21'05"W a distance of 11.89 feet;

Thence S24°58'28"W for a distance of 10.10 feet to the beginning of a curve;

Thence through said curve turning to the left a distance of 13.44 feet, having a radius of 106.53 feet, and whose long chord bears S21°21'34"W a distance of 13.43 feet;

Thence S17°44'41"W for a distance of 25.42 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the right a distance of 19.19 feet, having a radius of 59.57 feet, and whose long chord bears S26°37'56"W a distance of 19.10 feet to the beginning of a compounded curve;

Thence through said curve turning to the left a distance of 18.03 feet, having a radius of 68.27 feet, and whose long chord bears S19°07'28"W for a distance of 17.98 feet to Point C;

Thence S42°19'06"W for a distance of 151.48 feet to the beginning of a non-tangential curve also being Point D;

Thence through said curve turning to the left a distance of 31.54 feet, having a radius of 105.16 feet, and whose long chord bears S44°17'33"W a distance of 31.43 feet;

Thence S35°42'05"W for a distance of 23.33 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the right a distance of 54.29 feet, having a radius of 42.27 feet, and whose long chord bears S71°53'53"W a distance of 50.63 feet;

Thence N66°48'30"W for a distance of 25.53 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the left a distance of 52.61 feet, having a radius of 33.00 feet, and whose long chord bears S69°25'21"W a distance of 47.22 feet to Point E;

Thence S23°44'41"W for a distance of 19.74 feet to the beginning of a non-tangential curve;

Thence through said curve turning to the left a distance of 41.18 feet, having a radius of 40.76 feet, and whose long chord bears S70°27'33" W for a distance of 39.45 feet to the end of the trail easement centerline.

Less and excepting the portion lying between Point C and Point D in this description and as shown on the corresponding map, with the trail easement from the beginning point to Point A, being 10 feet in width and centered on the centerline.

The segment of said easement from point B to point C, being 15 feet in width, with 5 feet lying on the easterly side of the centerline and 10 feet on the westerly side of the centerline.

The segment of said easement from Point D to Point E, being 20 feet in width centered on the centerline. The segment of said easement from Point E to the end point, being 15 feet in width, with 5 feet lying on the on the westerly side of the centerline and 10 feet on the easterly side of the centerline.

EXHIBIT B – Trail Easement Map

TRAIL EASEMENT MAP

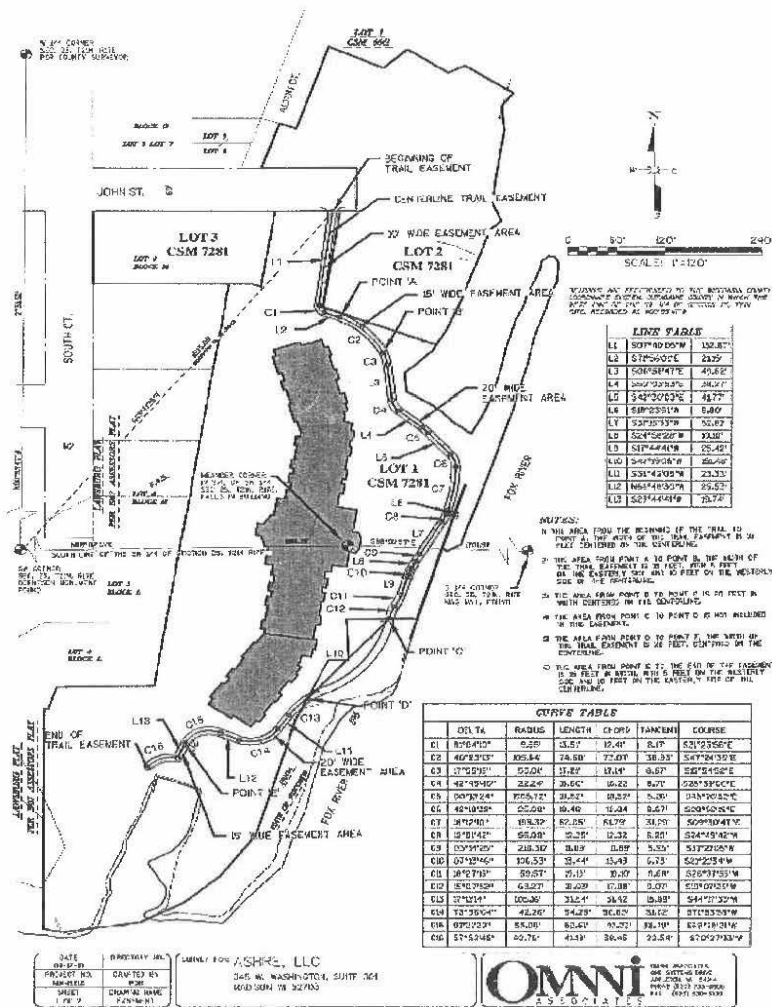


EXHIBIT C – Trail Maintenance and Operating Plan
CITY OF APPLETON TRAIL MAINTENANCE AND OPERATING PLAN
Permanent Easement/Private Property

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

DEFINITIONS

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

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

TRAIL MAINTENANCE

1.0 Owner's Responsibility

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

- 1.1.1 Snow and Ice Removal.** The Owner must ensure snow and ice is removed from the trail, including plowing the trail within thirty-six (36) hours of the cessation of a snowfall and immediately treating the trail with sand, salt or other substance to prevent it from being slippery after the accumulation of ice.

1.1.2 Vegetation.

1.1.2.1 Encroaching Vegetation. The Owner must ensure a minimum of four (4) foot clearance from the paved edge of the trail at all times from encroaching vegetation, including grass, weeds, brush and tree limbs.

1.1.2.2 Grass. The Owner must mow the grass located within the easement area of the trail and must comply with the grass height limits per Sec. 12-58(c) of the City Code.

1.2 Inspection. The Owner must routinely inspect the trail for garbage, debris, obstructions, necessary repairs and defects.

1.2.1 Garbage and Debris. The Owner must ensure the immediate and proper disposal of any garbage and debris found on the trail except when this responsibility falls upon a special event permit holder following the special event.

1.2.2 Obstructions. The Owner must remove obstructions to or on the trail if the obstruction falls within Sec. 1.1.2.1 above, or if it is within the Owner's reasonable ability to remove the obstruction, otherwise the Owner must notify the City within twenty-four (24) hours of becoming aware of the obstruction whereupon the City shall be responsible for the removal of the obstruction.

1.2.3 Defects. The Owner must immediately notify the City upon becoming aware of a defect.

1.2.4 Repairs. The Owner must notify the City within three (3) business days of learning of the need to repair or replace a fixture or the need to repair the trail where the repair does not rise to the level of being a defect.

1.3 Claims. In the event the Owner becomes aware of an incident involving personal injury and/or property damage occurring on the trail, the Owner must notify the City within five (5) business days of becoming aware of the incident.

2.0 City's Responsibility

2.1 Trail Maintenance. The City is responsible for repairs to the trail, for the repair and/or replacement of fixtures, and for the removal of obstructions to or on the trail that the Owner is unable to remove.

2.1.1 Defects. Upon learning of a defect, the City must inspect the trail as soon as possible and make any necessary repairs, in the City's discretion, as soon as reasonably possible.

2.1.2 Repairs/Replacements. Upon learning of the need to repair or replace a fixture, or the need to repair the trail where the repair does not rise to the level of being a defect, the City shall inspect the fixture and/or trail as soon as reasonably possible to determine whether, in the City's discretion, repair or replacement is needed. The

City shall make necessary repairs and/or replacements as soon as reasonably possible. City shall not make any replacement of a fixture substantially different from the original fixtures without the authorization of the Owner. Furthermore, City shall not install additional fixtures along Trail without Owner's consent, which shall not be unreasonably withheld.

2.1.3 Obstruction. Upon learning of an obstruction to or on the trail, the City shall be responsible for the removal of the obstruction as soon as reasonably possible and for the proper disposal of said obstruction.

2.2 Trail Operating Costs. The City shall be responsible for payment of the ongoing electric bills relating to lighting of the trail. Such costs shall be individually metered.

2.3 Trail Closure. The City shall be responsible for closing the trail for both planned and unplanned reasons, and must notify the Owner as soon as reasonably possible about a closure.

3.0 Other Terms And Conditions

3.1 Governing Law. This Plan is governed by the law of the State of Wisconsin, Outagamie County.

3.2 Disputes. Should a dispute arise out of this Plan, the Owner and the City agree to work together for thirty (30) days to try and resolve the dispute. If the dispute is not resolved, the parties agree to mediate the dispute prior to taking any further legal action.

3.3 Indemnification. (See Section (e) in Easement.)

3.4 Taxes and Assessments. The Owner and the City shall each be independently responsible for tax liabilities and IRS reporting requirements as they relate to this Plan.

3.5 Notice. Notices required pursuant to this Plan shall, whenever practicable, be served in person or, alternatively, mailed by Certified Mail with Return Receipt in which case the date of mailing shall be considered the date notice is given.

3.6 Amendments. This Plan may be modified at any time upon written agreement between the Owner and the City.

3.7 Insurance. The Owner must maintain insurance in accordance with the attached "I.R. 2.1 SMALL EXPOSURE JOBS CITY OF APPLETON INSURANCE REQUIREMENTS."

**IR 2.1 SMALL EXPOSURE JOBS
City of Appleton
Insurance Requirements**

Project: Trail Maintenance Plan (Eagle Point)

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force and remain in force throughout the term of the Trail Maintenance and Operating plan.

1. INSURANCE REQUIREMENTS FOR OWNER

Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form with the following minimum limits and coverage:

- Each Occurrence limit \$1,000,000
- Personal and Advertising Injury limit \$1,000,000
- General aggregate limit per project \$2,000,000
- Medical Expense limit — any one person \$5,000

Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, provided on a Symbol #1 — “Any Auto” basis.

Workers’ Compensation as required by the State of Wisconsin, and employers liability insurance with sufficient limits to meet underlying umbrella liability insurance requirements. If applicable for the work coverage must include Maritime (Jones Act) or Longshoremen’s and Harbor Workers Act coverage.

Contractor’s Equipment or Property (If applicable): The Owner is responsible for loss and coverage for these exposures. City of Appleton will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the trail maintenance work being performed by the Owner.

- **Primary and Non-Contributory requirement:** All insurance must be primary and non-contributory to any insurance or self-insurance carried by City of Appleton.
- **Acceptability of Insurers:** Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the State of Wisconsin.
- **Additional Insured Requirements:** The following must be named as additional insureds on all liability policies: **City of Appleton, and its officers, council members, agents, employees and authorized volunteers.** On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04. This does not apply to Workers Compensation policies.

- Certificates of Insurance acceptable to the City of Appleton shall be submitted prior to commencement of this project. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least 30 days' prior written notice has been given to the City of Appleton.

Amendment Exhibit C
Striping Location Plan

Amendment Exhibit D Trail Sign Design Example

TAX INCREMENT DISTRICT NO. 8
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the 7 day of ^{March} February, 2017 by and between EP Development, Inc., a Wisconsin corporation (the "Developer"), the CITY OF APPLETON, a Wisconsin municipal corporation (the "City") and the REDEVELOPMENT AUTHORITY OF THE CITY OF APPLETON (the "Authority").

RECITALS

City, Developer, and Authority acknowledge the following:

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

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

C. Subject to obtaining the financial assistance set forth herein, Developer intends to undertake a redevelopment of the Property that will increase the value of the Property and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole, consistent with the District Plan for the District.

D. The City and Authority desire to encourage economic development including the elimination of slum and blight, expand the City's tax base, and create new jobs within the City. The City and Authority find that the redevelopment of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interests of the City and Authority and its residents and serve a public purpose in accordance with state and local law.

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

F. The Authority, pursuant to the action dated September 20, 2016, has approved this Agreement and authorized the execution of the Agreement by the proper Authority officers on the Authority's behalf.

G. The City, pursuant to Common Council action dated September 21, 2016, has approved this Agreement and authorized the execution of the Agreement by the proper City officers on the City's behalf.

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

ARTICLE 1 PURPOSES - DEFINITIONS

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

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

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

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

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

1.2.3 **Contribution** means the Tax Increment Revenue payment made to the Developer by the City pursuant to Section 5.4 upon Substantial Completion of Phase I of the Project as depicted on Exhibit C. The Contribution is deemed incurred and payable pursuant to Section 5.4 upon Substantial Completion of Phase I of the Project, notwithstanding that portions of the Project specified in Articles 3, 4 and 5 will be completed following Substantial Completion of Phase I of the Project. "Substantial Completion" means completion of Phase I of the Project evidenced by: (a) issuance by the Project architect of a certificate of substantial completion for the building and improvements, including all exterior building work and base mechanical and HVAC systems; and (b) issuance by the City of a certificate of occupancy.

1.2.4 **Development Area** means the sum of all property depicted in Exhibit B, including the Property and certain adjacent public property and rights of way, and constitutes the total boundaries of the Project.

1.2.5 **Development Plan** means the Project as generally shown on Exhibit C as improved by the site improvements further described by this Agreement.

1.2.6 **Developer** means EP Development, Inc., a Wisconsin corporation.

1.2.7 **Project** means the improvements and uses anticipated by the Development Plan and this Agreement for the Development Area, including each Phase of the Project as depicted on Exhibit C and described in Sections 3.3 and 3.4.

1.2.8 **Property Base Value** means the equalized value of the Property described on Exhibit A upon the creation of TID #8 in 2009 as certified by the State, which was \$730,000.

1.2.9 **Tax Increment Value** means the equalized value above the Property Base Value established for the Property as determined by the City assessor.

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

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

ARTICLE 2 DESCRIPTION OF PROJECT

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

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

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

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

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

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

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

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

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

ARTICLE 3 UNDERTAKINGS OF THE DEVELOPER

The Developer agrees that it shall:

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

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

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

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

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

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

3.5 Developer Costs – Walkway Construction. The Developer shall construct or cause the construction of a public walkway on the Property substantially as depicted in the Development Plan and in

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

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

ARTICLE 4 UNDERTAKINGS OF THE AUTHORITY

- 4.1 The Authority shall convey the Property, by warranty deed, to the Developer on a date mutually agreed by the Authority and the Developer.
- 4.2 Developer shall pay the Authority Eight Hundred Fifty Thousand Dollars (\$850,000) for the Property. The Developer shall use commercially reasonable efforts to construct improvements on the Property to reach an assessed value of Five Million Dollars (\$5,000,000) by January 1, 2019, to assist

the Authority and the City in meeting the Authority's and the City's obligations under Wisconsin Economic Development Corporation (WEDC) Brownfields Grant Contract #20975. The City and the Authority agree that if, despite Developer's efforts, the Property does not reach an assessed value of Five Million Dollars (\$5,000,000) by January 1, 2019, Developer shall not be liable for the City's or the Authority's obligations under the WEDC Brownfields Grant Contract, but shall work cooperatively with the City and the Authority to secure an extension from WEDC.

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

ARTICLE 5 UNDERTAKINGS OF THE CITY

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

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

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

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

- 5.4.1 Reimbursement of Developer Costs. The City will provide payments to the Developer solely from future Tax Increment Revenue from the Property as a reimbursement for Developer Costs. The City and the Developer agree that there will be no reimbursement for any activities prior to the creation of the District. The Developer shall submit to the City's Director of Finance a summary of Developer Costs on a periodic basis as the development progresses. The City's total payment of Tax Increment Revenue to the Developer shall not

exceed the lesser of: i) \$4,267,500; or ii) twenty-five percent (25%) of the Tax Increment Value of Phases 1 & 2, plus interest thereon. The Contribution may be prepaid at any time, but until paid in full, the Tax Increment Revenue payments will be provided to the Developer as follows: Each year over the life of the District, the City will pay the Developer ninety percent (90%) of the Tax Increment Revenue received by the City with respect to the Project in that year. No payments will be distributed until the property taxes have been paid on the Property.

5.5 As the sole source for payment of the Contribution, the City agrees to pay the Developer an amount equal to ninety percent (90%) of the Tax Increment Revenue and any City portion of payments received under a payment in lieu of taxes (PILOT) agreement applicable to the Property through the earlier of: (i) the date on which the Contribution has been paid in full; or (ii) the date the last Tax Increment Revenue is received from the District; (the "Expiration Date"). Interest on the Contribution shall begin to accrue effective on January 1st of the year following the date of this Agreement. The interest rate on the Contribution shall be the lesser of 1) the interest paid by the Developer to any lender for the Project, as evidenced by the note indicating the loan amount; or 2) four percent (4%).

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

5.7 Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the Contribution, Developer's recovery of the full amount of the Contribution depends on factors including, but not limited to, future mill rates, changes in the assessed value of the Project, the failure of the Project to generate the Tax Increment Revenue in the amount

expected by Developer, or reduction in Tax Increment Revenue caused by changes in the Tax Increment Law to the extent they apply retroactively to this Agreement or the District.

5.8 The City covenants to Developer that:

5.8.1 Until the Contribution plus interest thereon has been paid in full, the City shall not take any action to close the District. Upon the Expiration Date, the City will be entitled to close the District and no liability shall remain from the City to the Developer upon expiration of the District, except the City's obligation to pay Tax Increment Revenue accrued but not paid prior to the Expiration Date.

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

ARTICLE 6
TAX STATUS

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

ARTICLE 7
NO PARTNERSHIP OR VENTURE

7.1 Developer, its affiliates and successors, and their contractors or subcontractors, shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or

effect any partnership, venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

ARTICLE 8 CONFLICT OF INTEREST

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

ARTICLE 9 WATER AND WATER RELATED PUBLIC IMPROVEMENTS

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

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

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

ARTICLE 10 SANITARY SEWER

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

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

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

ARTICLE 11 STORMWATER MANAGEMENT

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

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

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

ARTICLE 12 WRITTEN NOTICES

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

FOR THE CITY:

City of Appleton
Community Development Department
100 North Appleton Street

Appleton, WI 54911-4799
Attention: Karen E. Harkness

With a copy to:

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

DEVELOPER:

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

AND

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

With a copy to:

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

ARTICLE 13 ASSIGNMENT

13.1 No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of all other parties except as otherwise provided for in this Agreement. Notwithstanding the foregoing, Developer may assign its rights and obligations under this Agreement, in whole or in part, to a successor owner of any portion of the Property. In addition, Developer may assign its rights under this Agreement to any lender providing financing for any portion of the Project and shall notify the City of any such assignment. The City shall not be bound to any such

assignment until it has received written notice, including whether the Agreement has been assigned in whole or in part, the portion of the Property affected and which rights and obligations have been assigned. Developer may assign its rights and obligations hereunder without corresponding assignment of its right to collect the Contribution.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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

CITY OF APPLETON:

By: 

Timothy M. Hanna, Mayor

ATTEST:

By: 

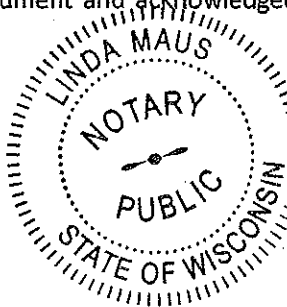
Kami Lynch, City Clerk

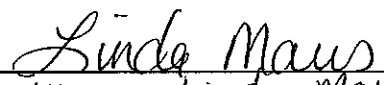
STATE OF WISCONSIN)

: ss.

OUTAGAMIE COUNTY)

Personally came before me this 7 day of ~~February~~ ^{March}, 2017, Timothy M. Hanna, Mayor and
Kami 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.




Printed Name: Linda Maus

Notary Public, State of Wisconsin

My commission is/expires: 7/23/19

APPROVED AS TO FORM:


James P. Walsh, City Attorney

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

REDEVELOPMENT AUTHORITY OF THE CITY OF
APPLETON:

By: Karen E. Harkness
Karen E. Harkness, Executive Director

ATTEST:

By: _____
Printed Name: _____

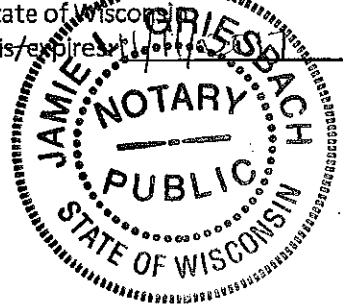
STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this 6 day of ^{March} February, 2017, Karen E. Harkness, Executive Director and _____, of the Redevelopment Authority of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Jamie L. Friesbach
Printed Name: Jamie L. Friesbach
Notary Public, State of Wisconsin
My commission expires 11/1/2018

APPROVED AS TO FORM:

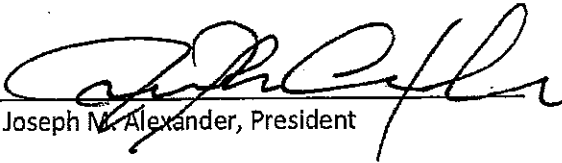
Christopher R. Behrens
Printed Name: Christopher R. Behrens



[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]


DEVELOPER:

EP Development, Inc.

By: 
Joseph M. Alexander, President

STATE OF WISCONSIN)
 : ss.
DANE COUNTY)

Personally came before me this 27 day of February, 2017, Joseph M. Alexander, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.


Printed Name: Adam Winkler
Notary Public, State of Wisconsin
My commission is/expires: 12/26/2017

SCHEDULE OF EXHIBITS

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

EXHIBIT A

Legal Description of Property

SURVEYOR'S CERTIFICATE: SHEET 2 OF 3

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

13085841.1

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

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

Dated this _____ day of _____, 2013.

Wisconsin Registered Land Surveyor, Thomas M. Kromm

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

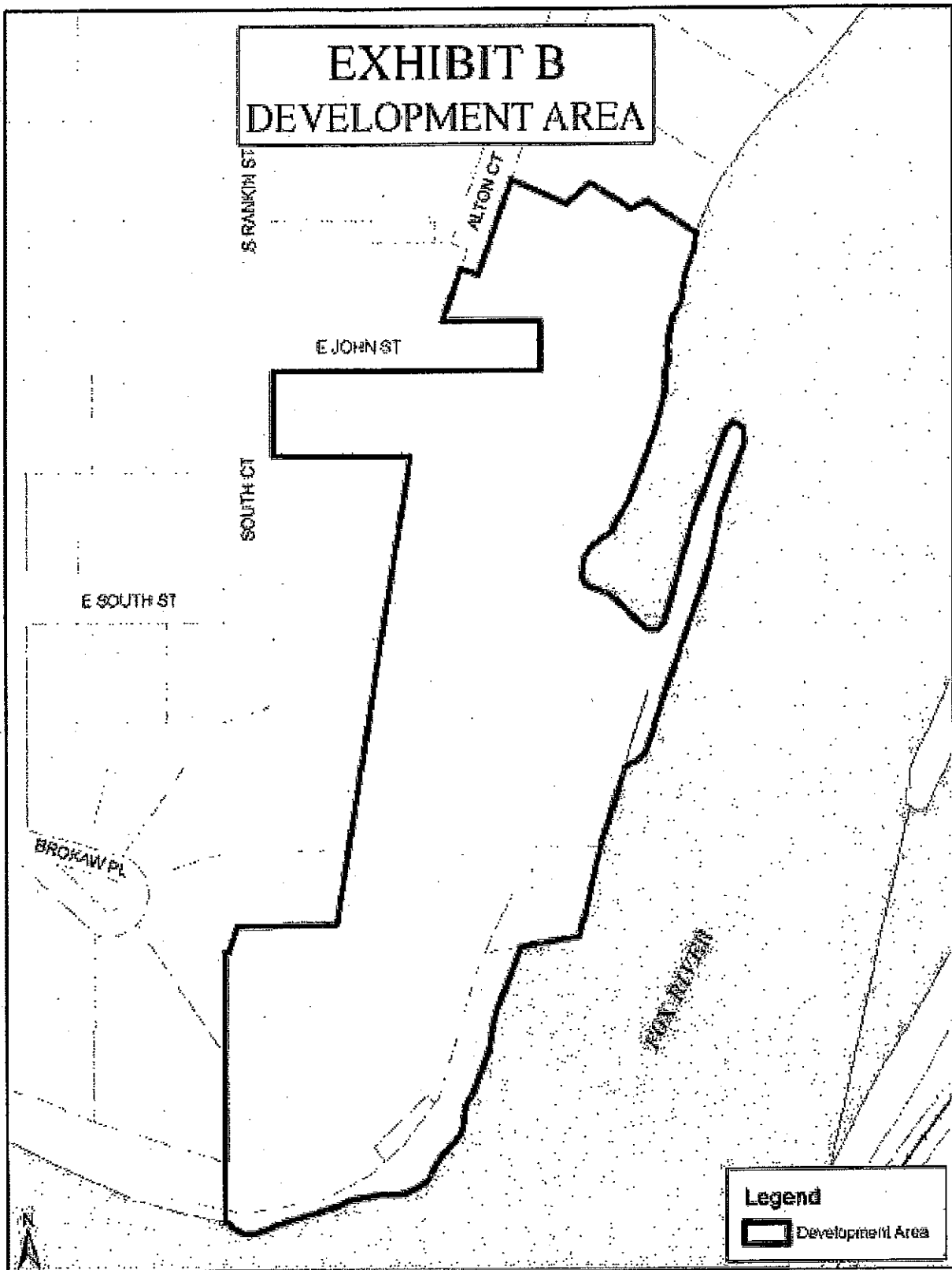
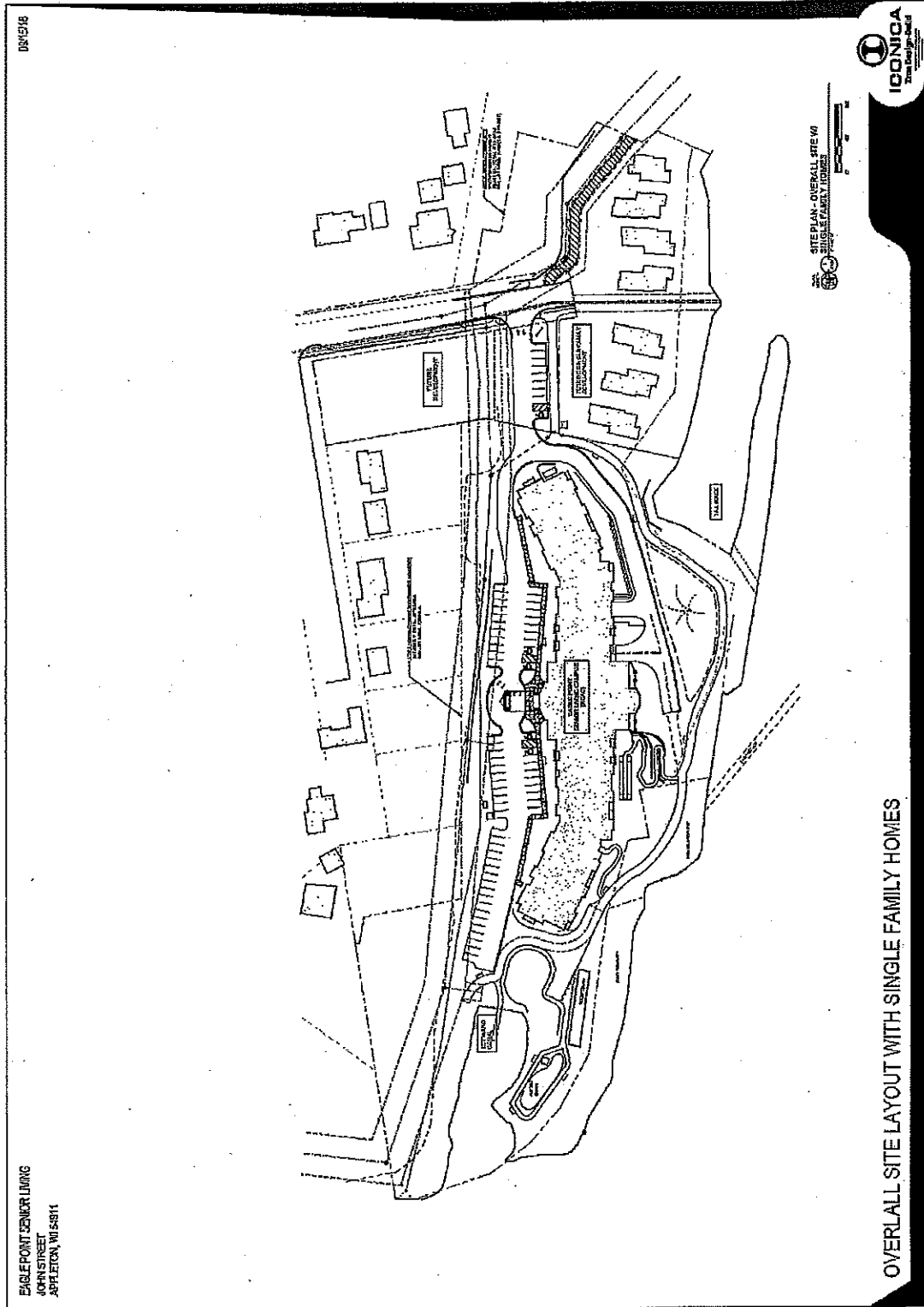


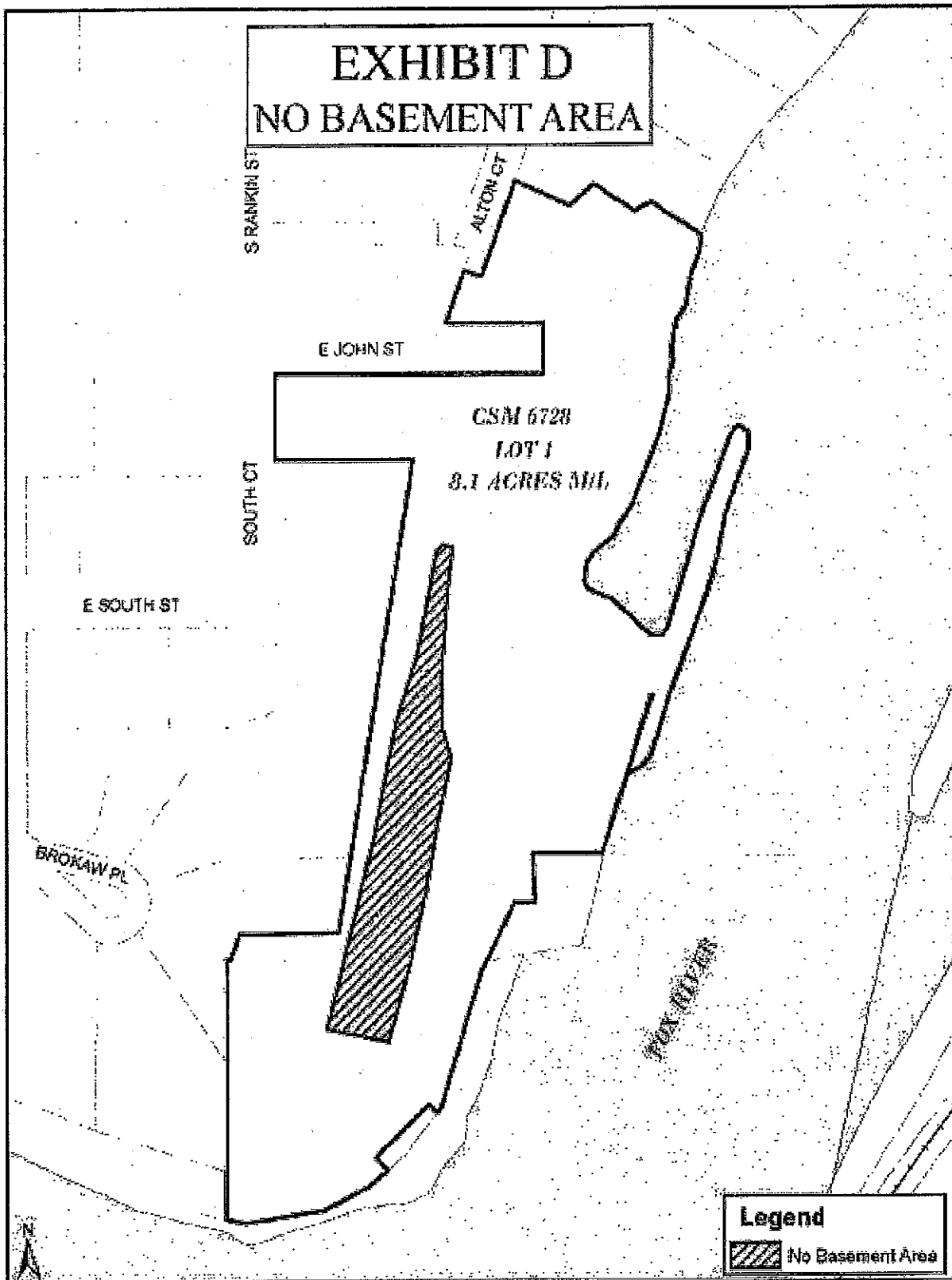
EXHIBIT C



13085841.1

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

Page 22





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

**PARKS, RECREATION & FACILITIES
MANAGEMENT**

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

EXHIBIT E
CITY TRAIL DEVELOPMENT REQUIREMENTS
Permanent Easement/Private Property

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

EXHIBIT F

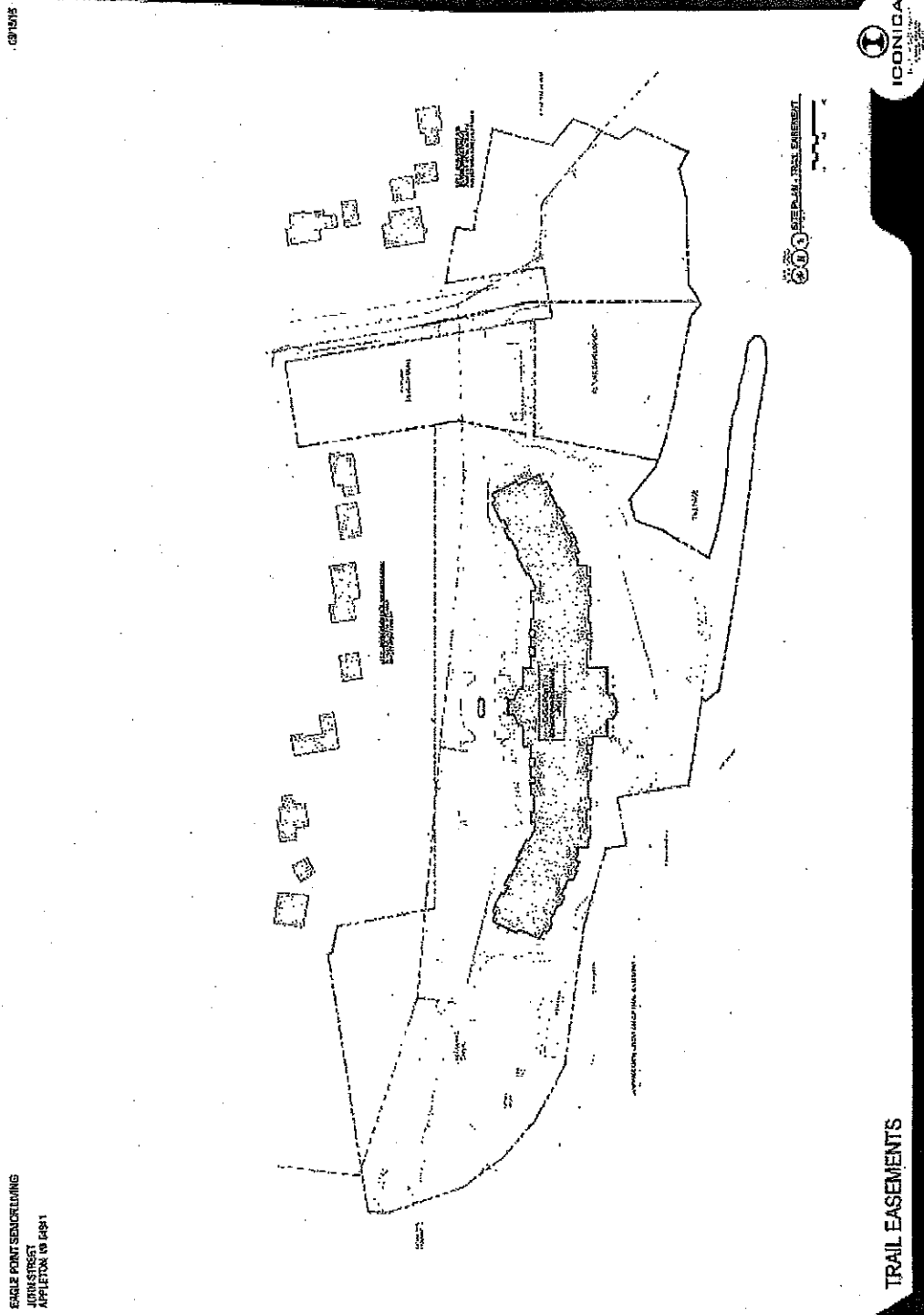


Exhibit G

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

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

DEFINITIONS

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

City: The City of Appleton, a Wisconsin municipal corporation with a business address of 100 North Appleton Street, Appleton, WI 54911. A responsibility that must be completed by the City in accordance with this Plan may be done by an employee or authorized agent of the City.

City Code: The Municipal Code of the City of Appleton.

Defect: A problem with the trail or a portion thereof that may cause a safety concern or hazard to a person using the trail.

Fixture: Real property permanently located on the trail that is owned and maintained by the City, and may include benches, light fixtures and waste receptacles. City ownership of any Owner-installed fixtures shall be evidenced by a bill of sale from the Owner to the City.

Owner: The person(s) or entity that owns the property containing the trail. A responsibility that must be completed by the Owner in accordance with this Plan may instead be done by an employee or authorized agent of the Owner.

Trail: A paved path with a permanent easement to the City that is located on the Owner's property and designated a trail pursuant to City Code, Chapter 13, and subject to the rules and regulations thereof.

TRAIL MAINTENANCE

1.0 Owner's Responsibility

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

1.1.1 Snow and Ice Removal. The Owner must ensure snow and ice is removed from the trail, including plowing the trail within thirty-six (36) hours of the cessation of a snowfall and immediately treating the trail with sand, salt or other substance to prevent it from being slippery after the accumulation of ice.

1.1.2 Vegetation.

1.1.2.1 Encroaching Vegetation. The Owner must ensure a minimum of four (4) foot clearance from the paved edge of the trail at all times from encroaching vegetation, including grass, weeds, brush and tree limbs.

1.1.2.2 Grass. The Owner must mow the grass located within the easement area of the trail and must comply with the grass height limits per Sec. 12-58(c) of the City Code.

1.2 Inspection. The Owner must routinely inspect the trail for garbage, debris, obstructions, necessary repairs and defects.

1.2.1 Garbage and Debris. The Owner must ensure the immediate and proper disposal of any garbage and debris found on the trail.

1.2.2 Obstructions. The Owner must remove obstructions to or on the trail if the obstruction falls within Sec. 1.1.2.1 above, or if it is within the Owner's reasonable ability to remove the obstruction, otherwise the Owner must notify the City within twenty-four (24) hours of becoming aware of the obstruction whereupon the City shall be responsible for the removal of the obstruction.

1.2.3 Defects. The Owner must immediately notify the City upon becoming aware of a defect.

1.2.4 Repairs. The Owner must notify the City within three (3) business days of learning of the need to repair or replace a fixture or the need to repair the trail where the repair does not rise to the level of being a defect.

1.3 Claims. In the event the Owner becomes aware of an incident involving personal injury and/or property damage occurring on the trail, the Owner must notify the City within five (5) business days of becoming aware of the incident.

2.0 City's Responsibility

2.1 Trail Maintenance. The City is responsible for repairs to the trail, for the repair and/or replacement of fixtures, and for the removal of obstructions to or on the trail that the Owner is unable to remove.

2.1.1 Defects. Upon learning of a defect, the City must inspect the trail as soon as possible and make any necessary repairs, in the City's discretion, as soon as reasonably possible.

2.1.2 Repairs/Replacements. Upon learning of the need to repair or replace a fixture, or the need to repair the trail where the repair does not rise to the level of being a defect, the City shall inspect the fixture and/or trail as soon as reasonably possible to determine whether, in the City's discretion, repair or replacement is needed. The City shall make necessary repairs and/or replacements as soon as reasonably possible. City shall not make any replacement of a fixture substantially different from the original fixtures without the authorization of the Owner. Furthermore, City shall not install additional fixtures along Trail without Owner's consent, which shall not be unreasonably withheld.

2.1.3 Obstruction. Upon learning of an obstruction to or on the trail, the City shall be responsible for the removal of the obstruction as soon as reasonably possible and for the proper disposal of said obstruction.

2.2 Trail Operating Costs. The City shall be responsible for payment of the ongoing electric bills relating to lighting of the trail. Such costs shall be individually metered.

2.3 Trail Closure. The City shall be responsible for closing the trail for both planned and unplanned reasons, and must notify the Owner as soon as reasonably possible about a closure.

3.0 Other Terms And Conditions

3.1 Governing Law. This Plan is governed by the law of the State of Wisconsin, Outagamie County.

3.2 Disputes. Should a dispute arise out of this Plan, the Owner and the City agree to work together for thirty (30) days to try and resolve the dispute. If the dispute is not resolved, the parties agree to mediate the dispute prior to taking any further legal action.

3.3 Indemnification. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party and the other party's subsidiaries, affiliated entities, successors, assigns, officers, directors, shareholders, members, managers, employees, attorneys and agents (each an "Indemnified Party") from and against any and all claims, actions, causes of action, liabilities, losses, demands, fines, and penalties, judgments, damages or expenses, including reasonable attorney fees and costs incurred by or on behalf of any Indemnified Party due to, arising out of or relating to any act or omission of the Indemnifying Party under this Plan, except to the extent caused by the negligence or willful misconduct of the Indemnified Party.

3.4 Taxes and Assessments. The Owner and the City shall each be independently responsible for tax liabilities and IRS reporting requirements as they relate to this Plan.

3.5 Notice. Notices required pursuant to this Plan shall, whenever practicable, be served in person or, alternatively, mailed by Certified Mail with Return Receipt in which case the

date of mailing shall be considered the date notice is given.

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

"EXHIBIT B"

INSURANCE REQUIREMENTS FOR CITY OF APPLETON "SMALL EXPOSURE JOBS"

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

1. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability must limits of:
 - (a) \$1,000,000 general aggregate – per project
 - (b) \$1,000,000 products - completed operations aggregate
 - (c) \$1,000,000 personal injury and advertising injury, and
 - (d) \$1,000,000 each occurrence limit
- B. Claims made form of coverage is not acceptable.
- C. Insurance must include:
 - (a) Premises and Operations Liability
 - (b) Contractual Liability including coverage for the joint negligence of the City of Appleton, its officers, council members, agents, employees, authorized volunteers and the named insured
 - (c) Personal Injury
 - (d) Explosion, collapse and underground coverage
 - (e) Products/Completed Operations
 - (f) The general aggregate must apply separately to this project/location

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

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

3. ADDITIONAL PROVISIONS

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

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

**NOTICE OF PARTIAL COLLATERAL ASSIGNMENT OF DEVELOPMENT
AGREEMENT AND PHASE I TIF PAYMENTS**

TO: FOR THE CITY:

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

DEVELOPER:

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

Copy: City of Appleton

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

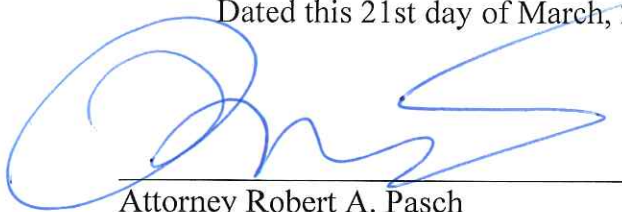
IconiCare

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

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

PLEASE TAKE NOTICE THAT THE ATTACHED PARTIAL COLLATERAL
ASSIGNMENT OF DEVELOPMENT AGREEMENT AND PHASE I TIF PAYMENTS, to
which the City of Appleton, EP Development, Inc. and State Bank of Cross Plains are parties
and signatories, has been fully executed and is sent to you in accordance with Article 13 of
the Development Agreement.

Dated this 21st day of March, 2017



Attorney Robert A. Pasch
Murphy Desmond S.C.
Attorneys for State Bank of Cross Plains
33 East Main Street, Suite 500
Madison, WI 53701-2038
(608) 257-7181

cc: State Bank of Cross Plains, Attn: Kevin Mahaney

4827-7262-1381, v. 1

**PARTIAL COLLATERAL ASSIGNMENT OF DEVELOPMENT
AGREEMENT AND PHASE I TIF PAYMENTS**

THIS PARTIAL COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT AND PHASE I TIF PAYMENTS ("Assignment") is made and entered into as of the 16th day of March, 2017, by and among **EP DEVELOPMENT, INC.**, a Wisconsin corporation ("Developer"), **STATE BANK OF CROSS PLAINS** ("Bank"), and the **CITY OF APPLETON**, Wisconsin municipal corporation ("City").

RECITALS

WHEREAS, pursuant to the terms and conditions of that certain Business Loan Agreement dated March 16, 2017 by and between Developer and Bank ("Loan Agreement"), Bank has agreed to make a loan to Developer in the amount of \$3,742,500.00 ("Loan");

WHEREAS, the Loan is evidenced by a \$3,742,500.00 Promissory Note dated March 16, 2017 ("Note"), and shall be secured by, among other things, this Assignment, a Commercial Security Agreement, and a Collateral Pledge Agreement, (which together with the Note and the Loan Agreement and other related documents, are the "Loan Documents");

WHEREAS, Developer and the City have entered into that certain TAX INCREMENT DISTRICT NO. 8 DEVELOPMENT AGREEMENT between the City of and Developer, dated March 7, 2017 ("Development Agreement"), providing for, among other things, the payment by City to Developer of an amount up to \$4,267,500 pursuant to and in accordance with the terms and conditions of the Development Agreement ("Total Contribution") in connection with the improvements and uses to be constructed on the real property identified in the Development Agreement as the "Property", which is now comprised of Lots 1, 2 and 3 of Certified Survey Map No. 7281, recorded in the Office of the Register of Deed of Outagamie County, Wisconsin on November 11, 2016 in Vol. 43 on page 7281 as Document No. 2089713 ("CSM");

WHEREAS, as Lot 1 of the CSM corresponds to "Phase I" of the "Project" defined in the Development Agreement;

WHEREAS, the Total Contribution to be paid by the City to the Developer in accordance with the Development Agreement includes anticipated increment to be generated for Phase 1 and Phase 2 of the Project, with the portion of the Total Contribution allocable to Phase 1 estimated to be \$3,742,500 ("Phase 1 Contribution"), with the balance of the Contribution being allocated to Phase 2, to be constructed on Lot 2 of the CSM ("Phase 2 Contribution"), currently estimated to be \$525,000;

WHEREAS, as a condition precedent to the obligation of Bank to make the Loan, Bank has required that this Assignment be executed and delivered by Developer and consented to by the City; and

WHEREAS, Developer desires to execute this Assignment to induce Bank to make the Loan.

NOW THEREFORE, in consideration of the Loan and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

1. Capitalized Terms: Recitals. All capitalized terms not defined in this Assignment shall have the means ascribed to them in the Development Agreement, except "Event of Default" shall have the meaning ascribed to it in the Loan Agreement. The above recitals are hereby restated and incorporated by reference as if fully set forth in this section.

2. Partial Assignment. As additional collateral and security for the obligations of Developer to Bank under and in connection with the Loan, Developer hereby partially collaterally assigns, transfers and conveys to Bank all of its rights, title and interest in, to and under the Development Agreement with respect to Phase 1 of the Project, including but not limited to the obligations of City to make the Phase 1 Contribution, and the rights of Developer to receive the payments required in the Development Agreement in connection with Phase 1, together with interest thereon as provided in Section 5.5 of Development Agreement. The rights hereby assigned to Bank are to secure the payment and performance by Developer of the amounts due under the Note and the full performance of all obligations of the Loan Documents. Developer shall direct and City shall make payments of the Phase 1 Contribution directly to Bank without any further action by Developer or Bank. Unless and until an uncured Event of Default occurs under the Loan Documents, Bank shall not exercise the rights assigned to it under this Assignment other than all rights with respect to the right to collect the Phase 1 Contribution.

3. Security Interest in Development Agreement. In addition, as security for the payment and performance of Developer's obligations to Bank, Developer hereby grants to Bank a security interest in Developer's right, title and interest in the Development Agreement with respect to Phase 1 of the Project and in the Phase 1 Contribution. Developer further agrees that, in connection with Phase 2, it shall not assign any rights in the Phase 2 Contribution in excess of the amount of \$525,000 (which is the Total Contribution less the Phase 1 Contribution) unless and only to the extent the Total Contribution is increased due to changes in the anticipated improvements to be constructed in connection with Phase 2.

4. Rights of Bank Upon Default. After the occurrence of an uncured Event of Default by Developer under the Loan Documents, in addition to all other rights and remedies provided to Bank in the Loan Documents or under applicable law, Bank may, at its sole option, exercise its rights, benefits and privileges under this Assignment as well as to continue to collect the Phase 1 Contribution due and payable to Developer by City under the Development Agreement. However, this Assignment shall not constitute an assumption by Bank of any of the obligations of Developer under the Development Agreement. Notwithstanding the foregoing, Developer shall continue to be liable for all obligations of Developer under the Development Agreement. Developer hereby agrees to protect, defend, indemnify and hold harmless Bank from and against any and all loss, cost, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) resulting from any failure of Developer to perform and observe, at the time and in the manner therein provided, each of the covenants, agreements and obligations of Developer contained in the Development Agreement.

5. Rights and Obligations of Developer. Developer shall perform its obligations under the Development Agreement and shall provide immediate notice to Bank of any notice of default or other notices received by Developer regarding the Development Agreement. Developer may continue to receive and exercise all of the rights, benefits and privileges under the Development Agreement other than to receive the Phase 1 Contribution until Bank has certified to City that an uncured Event of Default exists under the Note or any other Loan Documents.

6. Rights and Obligations of the City. Except for the additional promises and obligations under paragraphs 11 (City Consent, Covenants and Attornment) and 12 (Notice/Cure), nothing in this Assignment shall be construed to alter the City's rights or obligations under the Development Agreement.

7. Bank's Right to Cure. After the occurrence of an uncured Event of Default by Developer under the Note or the other Loan Documents, Bank shall have the right and option at any time (but under no circumstances shall be obligated) to take in its name or in the name of Developer or otherwise, such action as Bank may at any time or from time to time reasonably determines to be necessary to cure any default of the Developer under the Development Agreement. Developer agrees to protect, defend, indemnify and hold harmless Bank from and against any and all loss, cost, liability or expenses (including, but not limited to, reasonable attorneys' fees and expenses) in connection with Bank's exercise of its rights hereunder unless such loss, cost, liability or expenses arise from the negligence or willful misconduct of Bank.

8. Appointment of Bank as Attorney-in-Fact. Developer hereby irrevocably constitutes and appoints Bank its true and lawful attorneys-in-fact in Developer's name or in Bank's name, or otherwise, from and after the occurrence of an uncured event of default under the Note or the other Loan Documents, to demand, receive and enforce all rights of Developer under the Development Agreement, and such power, being coupled with an interest, is irrevocable.

9. Separate Tax Parcels. Each phase of the Project is a separate legal and tax parcel, with tax parcel number 311077200 having been assigned to Lot 1 of the CSM.

10. Representations, Warranties and Covenants of Developer. Developer represents and warrants that the Development Agreement is valid and in full force and effect, that it previously has not been assigned, transferred or hypothecated, that no defaults exist thereunder, and no event has occurred which, with notice or lapse of time or both, would constitute a default or give rise to a claim thereunder. Developer covenants to perform its obligations under the Development Agreement, and to give immediate notice to Bank of any notice of default served upon Developer with respect to its obligations under the Development Agreement. Developer represents and warrants that this Assignment does not, and the exercise by Bank of any of its rights hereunder will not, constitute a default or breach under the terms of the Development Agreement. Developer also covenants that it shall make no material changes in or amendments to the Development Agreement with respect to Phase 1, without the prior written consent of Bank and shall not tender or accept a surrender or cancellation of the Development Agreement, or further assign or create any further encumbrance or hypothecation of Developer's interest under the Development Agreement with respect to Phase 1, without the prior written consent of Bank. A "material change in or amendment to" the Development Agreement shall include, without limitation, any change in or modification of the amount of the Phase 1 Contribution or the repayment terms thereof, including any change in or

modification of the term of, or method of calculating, the Phase 1 Contribution. Nothing herein shall impact or restrict Developer's rights with respect to Phase 2 or subsequent phases of the Project or parcels other than Lot 1 of the CSM.

11. City Consent, Covenants and Attornment. The City hereby consents to the terms and provisions of this Assignment and agrees to attorn to and recognize Bank as the successor in interest to the Developer for all purposes of the Development Agreement with respect to Phase 1, and the Phase 1 Contribution, so long as the Bank complies with the applicable terms of the Development Agreement. City agrees that a) no modifications or amendments to the Development Agreement with respect to Phase 1 shall be made without the prior written consent of Bank; b) its obligations to make the Phase 1 Contribution under the Development Agreement are absolute and unconditional except as may be otherwise provided for therein, c) until the Phase 1 Contribution has been paid in full (not to exceed the total amount of \$3,742,500) to Bank it will not agree to or effectuate any setoff, subordination, recoupment, or other action that will adversely affect the Phase 1 Contribution or the timing of the payment thereof; and d) the Development Agreement is valid, binding and enforceable in accordance with its terms and that neither City nor Developer is in default thereunder.

12. Notice/Cure. City hereby agrees to give Bank copies of any notices of default under the Development Agreement, including but not limited to any notices regarding any events which following the passage of time and failure to cure could result in the occurrence of a default under the Development Agreement. City agrees to accept any cure of a default under the Development Agreement which is tendered or performed by Bank as if such cure were tendered or performed by Developer.

13. Miscellaneous Provisions.

(a) Development Agreement. A true and complete copy of the Development Agreement is attached hereto as Exhibit A.

(b) Entire Agreement. This Assignment contains the entire agreement between the parties relating to the subject matter hereof and the rights granted herein and shall supersede any provisions contained in any other document with respect thereto.

(c) Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Wisconsin.

(d) Severability. If any of the provisions of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be deemed invalid or unenforceable, the remainder of this Assignment and the application of such provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby.

(e) Counterparts. This Assignment and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(f) Notices. Any notice to be delivered under this Assignment shall be sufficiently given or delivered if dispatched by registered or certified mail, postage pre-paid

or delivered personally to Developer and City at each such party's address set forth in the Development Agreement and to Bank at 1205 Main Street, Cross Plains, WI 53528, Attn: Kevin Mahaney.


(g) Binding Effect. This Assignment and the agreements and undertakings of the Assignor hereunder shall be binding upon Developer and City and their respective successors and assigns and shall inure to the benefit of Bank and its successors and assigns.

(h) Termination. Upon payment in full of the Loan, this Assignment and Bank's rights hereunder shall automatically terminate. Bank agrees to promptly execute and deliver a document acknowledging such termination upon Developer's written request.

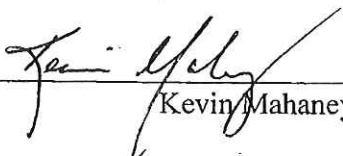
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed, effective as of the 16th day of March, 2017.

EP DEVELOPMENT, INC.,
As Developer

By: 
Joseph M Alexander, President

STATE BANK OF CROSS PLAINS
As Bank

By: 
Kevin Mahaney, Vice President

CITY OF APPLETON, WISCONSIN

By: _____
Timothy M. Hanna, Mayor

By: _____
Kami Lynch, City Clerk

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed, effective as of the 16th day of March, 2017.

EP DEVELOPMENT, INC.,
As Developer

By: _____
Joseph M Alexander, President

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As Bank

By: _____
Kevin Mahaney, Vice President

CITY OF APPLETON, WISCONSIN

By: _____
Timothy M. Hanna, Mayor

By: _____
Kami Lynch, City Clerk

EXHIBIT A

Development Agreement



ISSUE DATES:

Issue	Description	Date
SUP	SUP SUBMITTAL	08-27-19

**PRELIMINARY
NOT FOR
CONSTRUCTION**

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Sheet Title
SITE PLAN

Project Number: 20190200
Sheet Number

A100

ISSUE DATES:		
Issue	Description	Date
SUP	SUP SUBMITTAL	08-27-19

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CONSTRUCTION

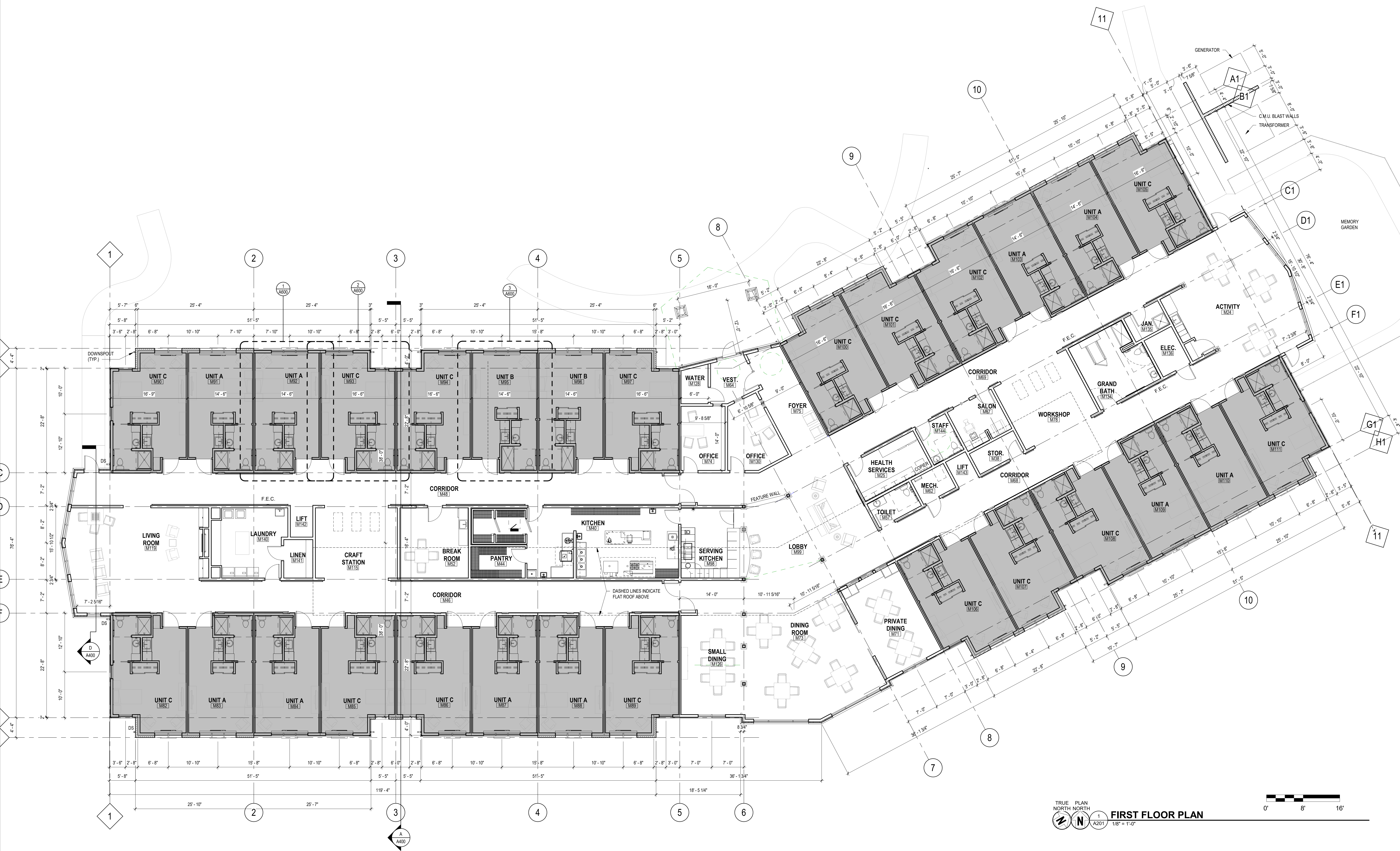
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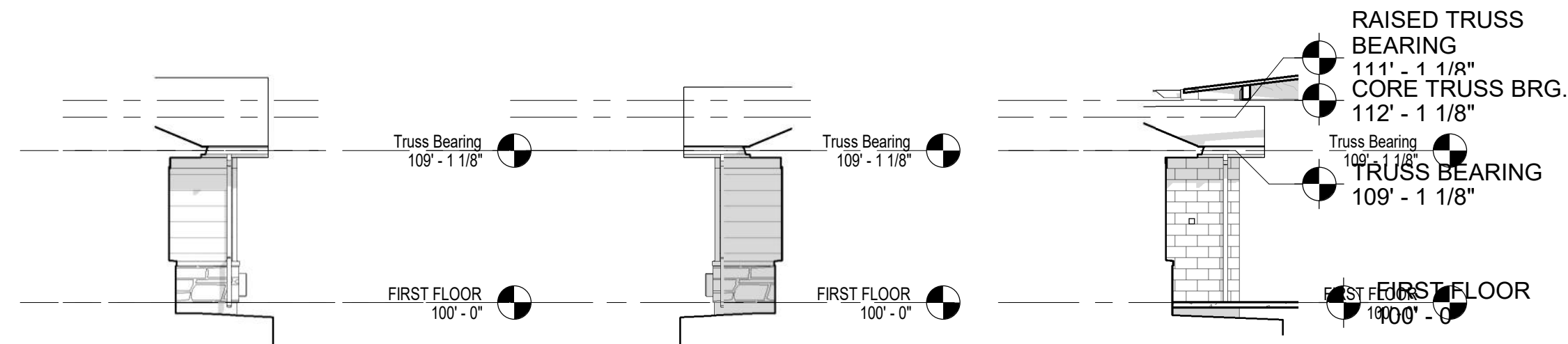
Sheet Title
FIRST FLOOR PLAN

Project Number: 20190200
Sheet Number

A201

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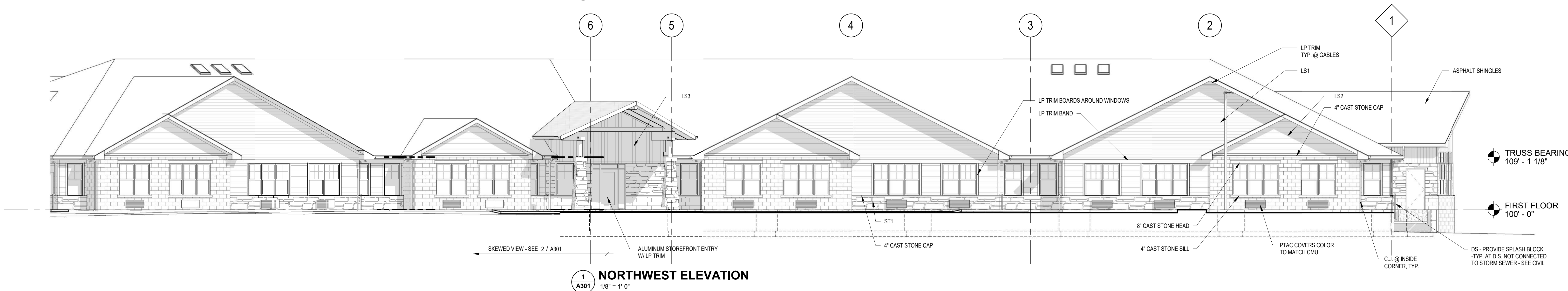
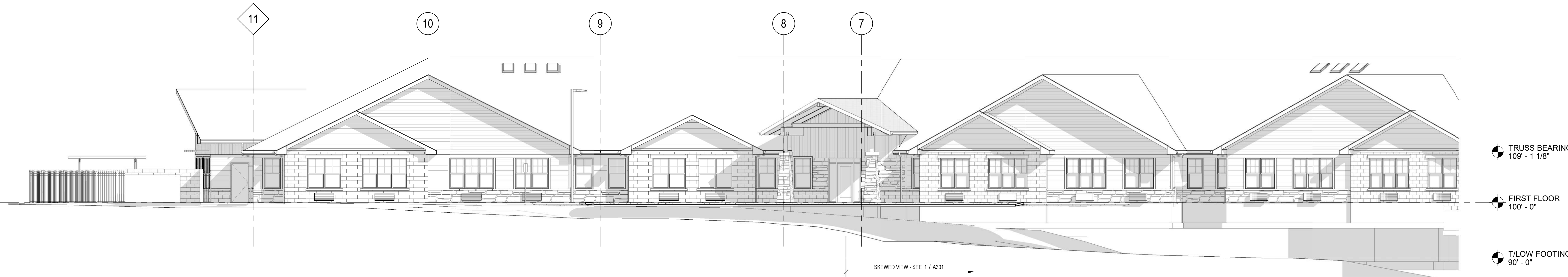
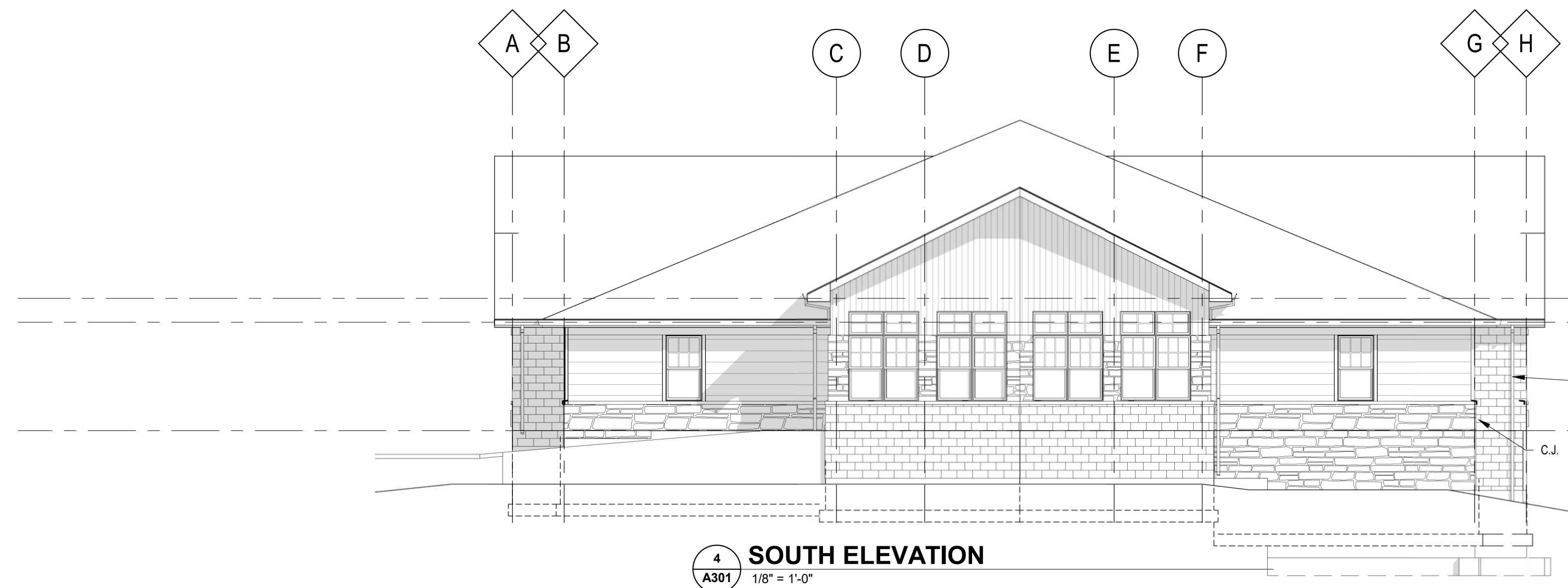


12
A301
ELEV. D
1/8" = 1'-0"

11
A301
ELEV. C
1/8" = 1'-0"

9
A301
ELEV. - A
1/8" = 1'-0"

EXTERIOR MATERIAL KEY			
CMU1	CMU VENEER: SPLIT FACE CMU COUNTY MATERIALS - BROWN (18 - 088A) MORTAR: MAX TAN (MORTAR TECHNOLOGIES)	LP SMART SIDE TRIM	WINDOW TRIM (SIDE AND SILL) 9/16" x 3.5" COLOR: SW-7034 - STATUS BRONZE WINDOW TRIM (HEAD) 9/16" x 5.5" COLOR: SW-7034 - STATUS BRONZE FRIEZE TRIM BAND 9/16" x 7.21" COLOR: SW-7034 - STATUS BRONZE VERTICAL CORNER TRIM: 9/16" x 3.5" COLOR: SW-7034 - STATUS BRONZE
ST1	STONE VENEER: THIN STONE NATURAL STONE VENEERS INTERNATIONAL: SHADY CANYON MORTAR: LITE PRAIRIE STONE (MORTAR TECHNOLOGIES)		
LS1	LAP SIDING 1: LP SMART SIDE - 4" EXPOSURE SW: 6121 - WHOLE WHEAT - WOOD GRAIN TEXTURE		CAST STONE - HERITAGE CAST STONE COLOR: SAND DUNE - SMOOTH
LS2	LAP SIDING 2: LP SMART SIDE - 8" EXPOSURE SW: 7032 - WARM STONE - WOOD GRAIN TEXTURE		ALUMINUM SOFFIT, FASCIA, SCREEN WALL COPING, GUTTERS AND DOWN SPOUTS COLOR: BRONZE (ROLLEX)
LS3	VERTICAL SIDING PANEL: LP SMART SIDE PANEL SW: 6363 - GINGERLY - WOOD GRAIN TEXTURE		ASPHALT SHINGLES - TIMBERLINE PRESTIQUE - MISSION BROWN ALUMINUM RAILINGS - COLOR: DARK BRONZE ALUMINUM STOREFRONT / CURTAINWALL COLOR: DARK BRONZE ANODIZED H.M. DOORS & FRAMES - PAINTED COLOR: SW 7032 WARM STONE



EAGLE COURT

975 EAST JOHN STREET
APPLETON WI
TUKKA PROPERTIES, INC
901 DEMING WAY, SUITE 102
MADISON, WI 53717

ISSUE DATES:		
Issue	Description	Date
SUP	SUP SUBMITTAL	08-27-19

PRELIMINARY
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CONSTRUCTION

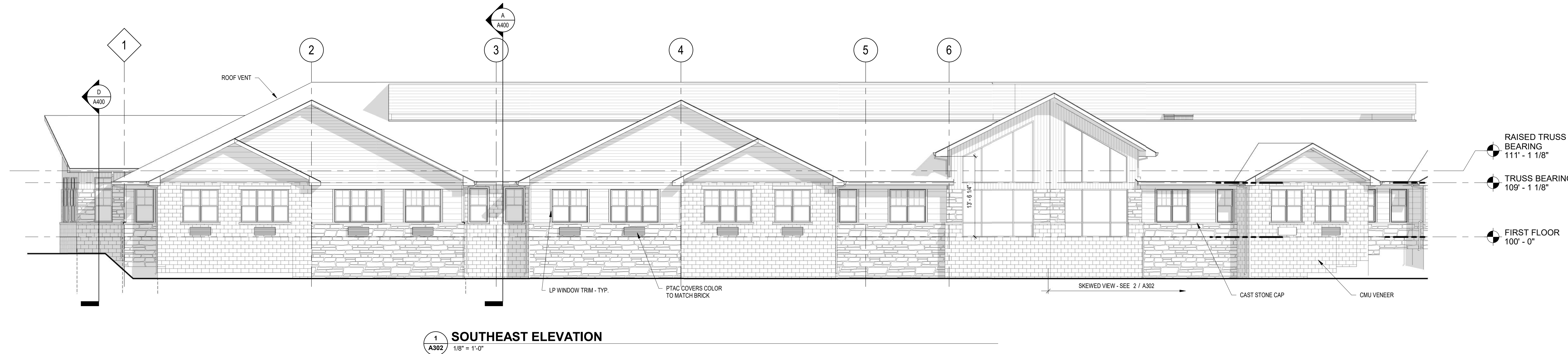
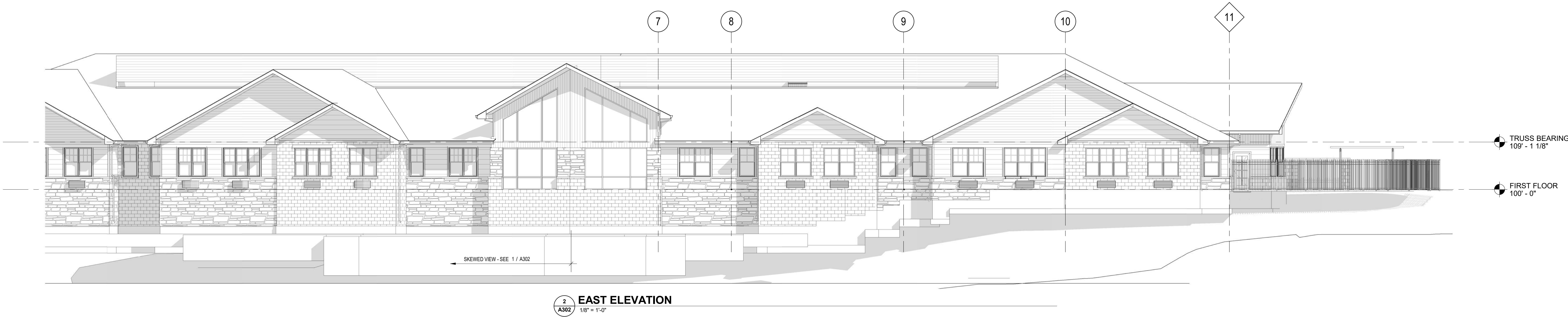
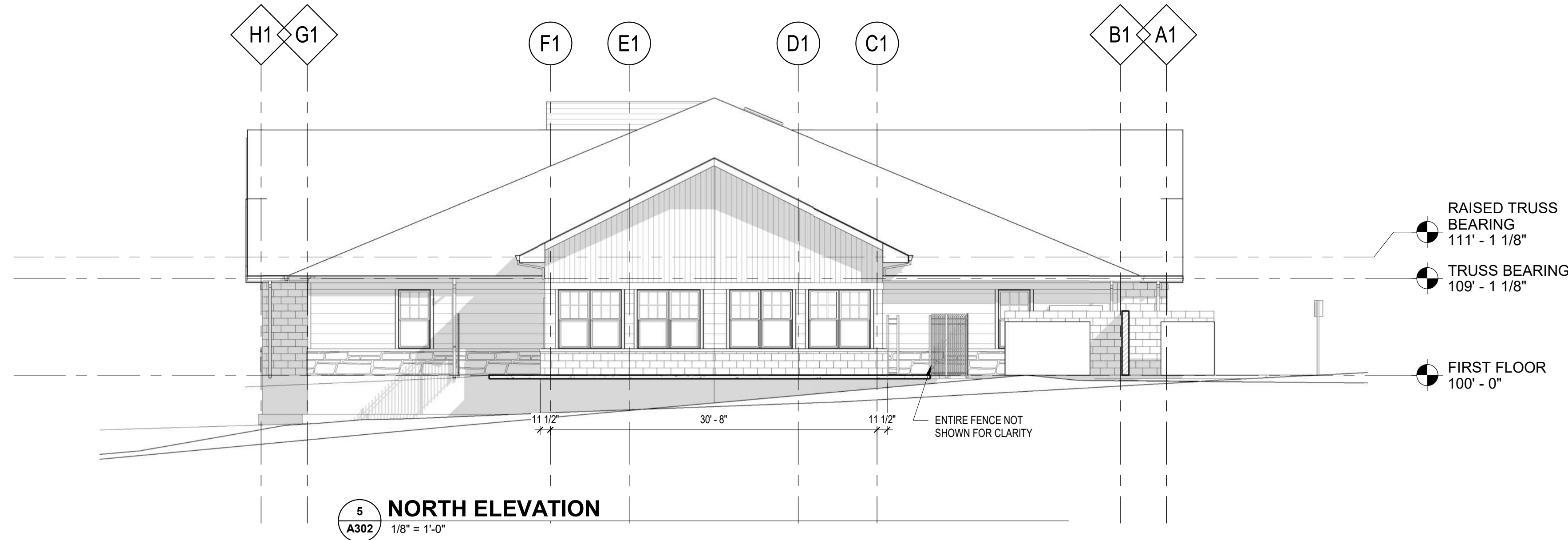
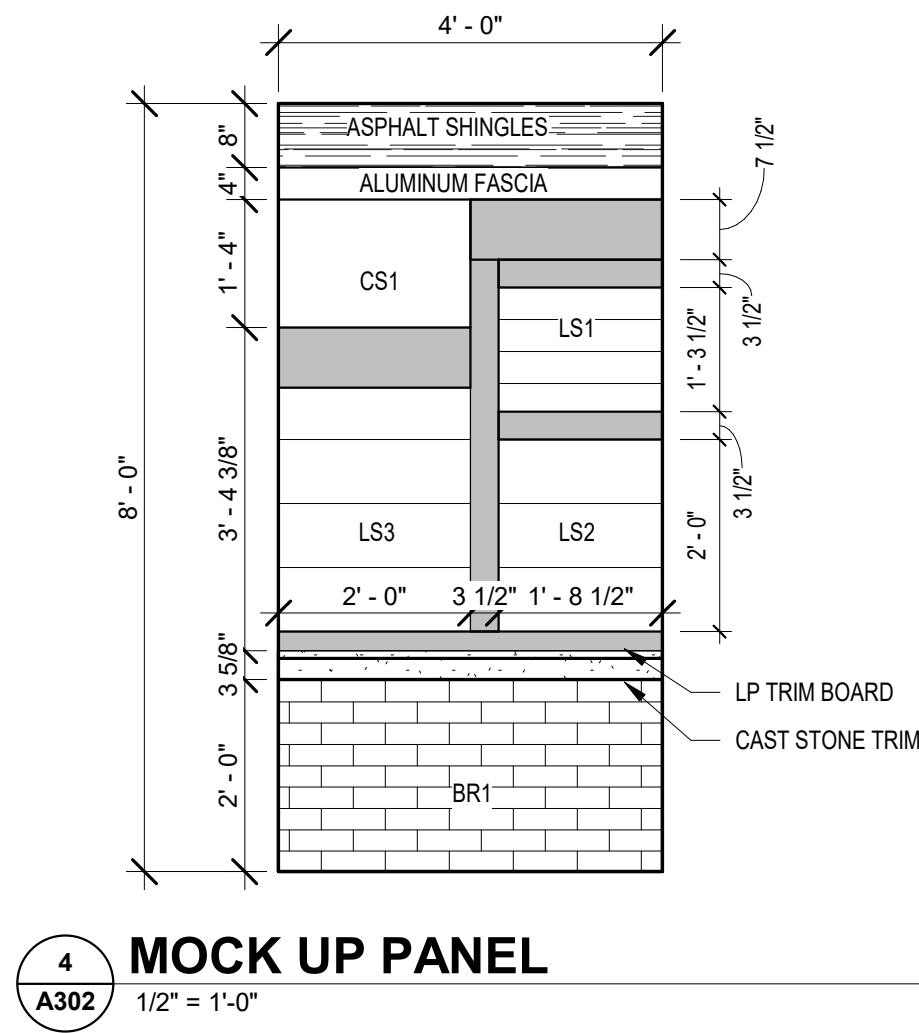
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Sheet Title
BUILDING
ELEVATIONS

Project Number: 20190200
Sheet Number

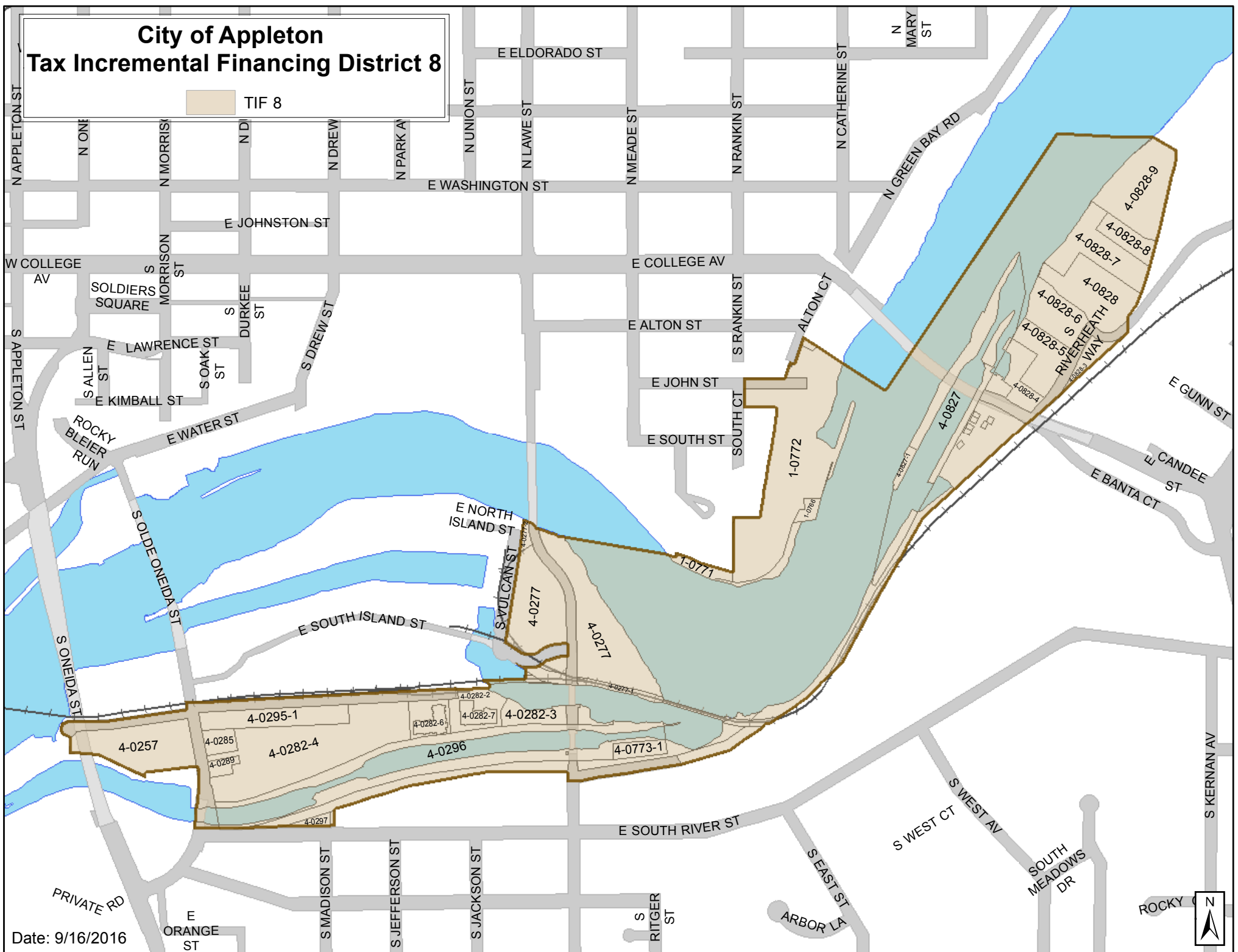
A302

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8/27/2019 10:17:08 AM



City of Appleton Tax Incremental Financing District 8

TIF 8



Date: 9/16/2016



MEMORANDUM

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

TO: Community & Economic Development Committee (CEDC)
FROM: Monica Stage, Deputy Director
DATE: October 31, 2019
RE: Approval of Engineering Services for Wetland Delineation in Southpoint Commerce Park

Southpoint Commerce Park is located on the southeast side of the City and is bound by Plank Road, Coop Road and Midway Road. It provides continued growth opportunities for Appleton's business and industrial markets, especially with the Northeast Business Park having only 1.44 acres of City-owned land available for sale.

Between 2015 and 2016, Southpoint Commerce Park was delineated for wetlands using the team from R.A. Smith. Numerous isolated wetlands were delineated, as well as a large, high-quality wooded wetland and adjacent low-quality meadow wetlands in the area east of Eisenhower Drive. See the attached wetlands map.

The City worked with Stantec Consulting over the course of 2017 and into early 2018 to pursue the potential of creating a wetland mitigation bank for the high-quality wooded wetland property. The purpose of the wetland mitigation bank would have been to serve Appleton's needs as wetlands would be impacted on a variety of projects.

After submission of a draft prospectus for the creation of the wetland mitigation bank to the Interagency Review Team [comprised of the Army Corp of Engineers, Environmental Protection Agency (EPA) and WI Department of Natural Resources (WDNR)], we received feedback on our plan that was not encouraging. Staff and Stantec followed up by hosting members of the Interagency Review Team for a site visit at Southpoint in the summer of 2018, and their views of our proposed bank did not change. Concerns over adjacent development, the need for us to re-create a wooded wetland, and overall hydrology to serve the bank were some key concerns. This essentially ended our efforts to use this area for a wetland mitigation bank.

As we evaluated options to create benefit for the City, provide opportunities for growth of business and industry, and protect the high-quality wetlands, we reached out to R.A. Smith for technical expertise to provide conceptual engineering plans for this area east of Eisenhower Drive. R.A. Smith provided the engineering report for this area in early fall 2019, and staff is working closely with the Department of Public Works on the next phases for infrastructure in this area.

In the meantime, the five-year statutory life of the wetland delineations for the entire area is coming up, and staff solicited two proposals to complete full delineations of Southpoint Commerce Park (not dividing it into multiple areas which has created some confusion).

The NES Ecological Services, a division of Robert E. Lee & Associates, Inc. proposal was submitted at \$20,143.36 in total, and the R.A. Smith proposal was submitted at \$20,300.00 in total. Both proposals did have an allowance to reduce the cost should sales continue to close and lots transfer to private ownership, thereby eliminating the City's need to delineate that area. The \$156.64 difference in the proposals was considered by staff, and given the professional nature of these services to be delivered and existing knowledge of Southpoint, staff is recommending the contract to be awarded to R.A. Smith. The contingency allowance requested from staff is to allow for additional time (if needed) to file for wetland exemption request(s) and jurisdictional approval from the Department of Natural Resources and the Army Corp of Engineers, respectively.

The funds to pay for the contract are included in the 2019 Industrial Park Land Fund (IPLF) budget. The funds had initially been designated to address wetlands/drainage improvements at the property the City owns at 210 W. Edgewood Drive. Staff continues to work with the Department of Public Works Engineering and Inspections staff to address the issues at Edgewood Drive via enforcement efforts.

Unfortunately, due to the current weather conditions, completing the field work for the wetland delineation will not be possible in 2019. However, by approving this contract now, it allows for the City to secure 2019 pricing as well as placement on the R.A. Smith schedule for fieldwork as conditions allow in 2020.

Staff Recommendation:

The wetland delineation services for Southpoint Commerce Park by R.A. Smith in the amount of \$20,300 with a contingency of \$3,045, for a project total not to exceed \$23,345 **BE APPROVED**.

In accordance with paragraph 1.01 of the **Master Agreement for Professional Services between the City of Appleton, WI ("City") and R.A. Smith ("Consultant")**, dated January 5, 2015 ("**Agreement**") and as amended effective January 2, 2018, **Consultant** and **City** agree as follows:

I. Specific Project Information

A. Title: Appleton Southpoint Commerce Park Wetland Delineation

B. **Description of Services to be Performed:** We will provide wetland delineation services of Southpoint Commerce Park and provide the City with both electronic and hard copies of the final deliverables as further described herein. Services conducted under this contract will be provided on a time and materials basis.

II. Scope of Services:

Identification and delineation of wetlands on the subject property will be completed as requested by the City of Appleton, including these specific subtasks:

A. **Background Information Review:** A background data and map search will be conducted to establish previous and current conditions that exist on the subject property. The subject property extends north from Midway Road between Eisenhower Drive and North Coop Road, to the business park's northern limits. The documents used to characterize the subject property may include but are not limited to:

- Available past reports and studies as provided by the City of Appleton
- U.S.G.S. 7.5-Minute Topographic Quadrangle Maps
- Large Scale Site Maps (if available)
- Aerial Photographs (typically 2005 and 2010)
- Wisconsin Department of Natural Resources (WDNR) Surface Water Viewer Tool (http://dnr.wi.gov/org/water/data_viewer.htm)
- Wisconsin Wetland Inventory (WWI) Maps
- County Soil Surveys & County Hydric Soils Lists for Calumet & Outagamie Counties (<http://websoilsurvey.nrcs.usda.gov/app/>)
- WDNR Threatened & Endangered Species (TES) Fact Sheets
- WDNR/BER County TES Data for Calumet & Outagamie Counties (<http://www.dnr.state.wi.us/org/land/er/nhi/CountyData/>)

B. **Field Wetland Assessment:** During the field study, wetland areas will be identified using the Routine On-Site Determination Method as defined in the 1987 Corps of Engineers Wetland Delineation Manual and in the Regional Supplements, and in accordance with Wisconsin Department of Natural Resources (WDNR) requirements. Due to the presence of agricultural activity within the Study Area, a Farmed Area Desktop Review will be conducted prior to field work to determine the presence/absence of wetness signatures. The delineation technique uses a multi-parameter approach, which requires evidence of wetland hydrology, hydric soils, and hydrophytic vegetation. Topographic conditions and professional judgment are also given consideration. Areas exhibiting wetland criteria are flagged in the field and marked on available site maps. Data are collected at sample points using the Northeast/Northcentral Regional Supplement data forms to verify the wetland boundary, and representative photographs are taken. The sample point locations are also flagged in the field. The wetland boundary will be marked in the field with pink flags with the words "Wetland Delineation" and the boundary will be mapped using a handheld GPS unit (Trimble Geo7X), which has sub-foot-accuracy. The findings will be documented in a wetland delineation report.

C. **Wetland Delineation Report:** We will prepare a wetland delineation report to document the findings of the background map review, describe the field procedures, and provide the results of

the wetland delineation. Farmed area desktop review, data sheets, soils map, aerial photographs, Wisconsin Wetlands Inventory map and color copies of photographs will be included in the report. A wetland boundary map to show the location of wetland boundaries will also be included in the final delineation report.

We will deliver the final report to the City in hard copy and electronic (MS Word) format. Drawings, exhibits, and maps will be provided in a GIS (ArcMap) and AutoCAD format. In addition, a complete final report will be provided in Adobe Acrobat (PDF) format. Wetland boundaries will be provided in electronic format to the City of Appleton in both AutoCAD and GIS compatible files referenced to the City of Appleton's recommended coordinate system.

- D. **Regulatory Agency Coordination:** The R.S. Smith Ecologist leading the work is a WDNR Assured Delineator, therefore concurrence from the WDNR is not necessary. The USACE has requested that delineation reports not be sent to them for concurrence unless the project is associated with a wetland fill permit application.
- E. **USACE Approved Jurisdictional Determination:** We will request Approved Jurisdictional Determinations for wetlands identified within the Southpoint Commerce Park Study Area, prioritizing parcels with pending offers or potential offers.
- F. **WDNR Artificial Wetland Exemption and/or WDNR Non-Federal Wetland Exemption:** We will apply for WDNR Artificial Wetland and Non-Federal Wetland Exemptions after completion of Wetland Delineation Report and upon receipt of USACE Approved Jurisdictional Determinations.

III. Deliverables

All deliverables shall be provided to the City, and shall be the sole and exclusive property of the City and shall not be used, distributed, shared, sold, exchanged or published by Consultant without the City's consent. We will return to the City, at no cost to the City, any plans, files, maps or other documents that City provides during the term of this project. Deliverables shall further include any electronic or printed documents, data, and work products developed for this project.

IV. Additional Services

Additional services, if requested by the City of Appleton, will be provided upon authorization as an amendment to this task order.

V. City's Responsibilities

City shall have the responsibilities set forth in the Agreement and shall provide access to the project site as needed to complete the required services and any other existing data pertinent to the proposed project.

VI. Times for Rendering Services

We will begin fieldwork the month of August 2019 for this project, weather permitting. An electronic copy of the wetland boundary map will be prepared and provided to the City within two (2) weeks following completion of the fieldwork. The wetland report will be submitted within five (5) weeks following completion of the delineation fieldwork.

VII. Payments to Consultant

- A. We will provide the above-described services on a time and expense basis with time charged in no less than fifteen (15) minute increments, **not-to-exceed \$19,600 (excluding lots with accepted offers) or not-to-exceed \$20,300 (including lots with accepted offers)**, unless otherwise authorized in writing.
- B. **Key Project Personnel Fee Schedule:** The following hourly rates will be applied to services provided under this task order:
 - 1. Theran Stautz, PWS (Ecologist/PM) \$ 117.00

2. Tina Myers, PWS (Ecologist) \$ 117.00
3. Charlie Nowakowski (Ecologist Tech 1) \$ 99.00
4. Matt Stangel (Ecologist Tech 1) \$ 99.00

Hourly billing rates for other Consultant personnel providing support for additional services will be offered in accordance with the R.A. Smith, Inc. Standard Hourly Rate Schedule in effect at the time the services are authorized.

- C. **Direct Expenses:** Direct expenses related to the services provided under this task order will be applied in accordance with the following rates. Other items or supplies provided with these services will be charged at cost, without any markup.

1. Travel – mileage: \$ 0.585/ mile
2. GPS Data Collector: \$ 120.00/ day

- D. **Additional Service Authorization:** As the project progresses, additional services beyond the Scope of Services herein may be provided upon written authorization(s) amending this Task Order or any individual wetland delineation assignment.

VIII. Consultants

No other consultants have been identified or are contemplated to assist with the professional services authorized by this Task Order.

IX. Other Modifications to Agreement - None.

X. Attachments/Exhibits - None.

XI. Documents Incorporated By Reference - None.

XII. Terms and Conditions

Execution of this Task Order by Consultant and City shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Consultant is authorized to begin performance upon the earlier of its receipt of a copy of this Task Order signed by City or the authorized Effective Date. The Effective Date of this Task Order is July 20, 2019.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

R.A. Smith, Inc. (Consultant):

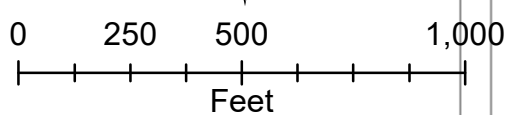
By: Jeff Mazanec
 Jeff Mazanec, PE
 Project Principal

By: Theran Stautz
 Theran Stautz
 Project Manager

City of Appleton (City):

By: _____ Date: _____
 Karen Harkness, Director
 Department of Community and
 Economic Development

Southpoint Commerce Park Appleton, Wisconsin



Prepared by City of Appleton
Comm. & Econ. Dev. Dept. 11/2019