

**LAND DEDICATION AGREEMENT
CHERRYVALE DEVELOPMENT**

This Agreement is made by, between and among the B&H Properties, Inc. ("B&H") and the City of Appleton ("City").

WHEREAS, B&H is the owner of certain lands; and

WHEREAS, the City and B&H desire to set forth their respective duties and responsibilities with respect to the development of the land and the construction of Cherryvale Avenue; and

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. CITY OF APPLETON

1.1. City shall be responsible for the installation of sanitary sewer, storm sewer and water main in the Cherryvale Avenue right-of-way in 2013. Installation shall be consistent with the terms stated in the Intermunicipal Agreement with the Village of Little Chute, attached hereto and incorporated herein by reference as Exhibit A.

1.2. City shall construct Cherryvale Avenue from the south city limits to the Apple Creek Corridor with grade, gravel and temporary asphalt pavement in 2013 based as indicated on the attached map as Exhibit B. Such construction shall be consistent with the terms stated in the Intermunicipal Agreement with the Village of Little Chute, identified as Exhibit A.

1.3. City shall assess for concrete paving and sidewalk installation when such construction occurs, according to the City's Special Assessment Policy in effect at the time of construction. City anticipates construction occurring in 2020. Concrete street paving will not be installed until over 75% of the developable lots abutting the street have homes constructed on them.

2. B&H

2.1 B&H shall dedicate all land necessary for the 66' right-of-way extension of Cherryvale Avenue in the city of Appleton. Additionally, B&H shall dedicate all land necessary for the 60' right-of-way necessary for the construction of the street identified as street "B" on the attached Exhibit B extending east from Cherryvale Avenue to the Appleton city limits and west to a point that is the west most point of Cherryvale at the south city limit. Dedication of right-of-way for both streets shall be at no cost to the City.

2.2. B&H shall pay a one-time Holland Pond assessment of \$345.78/ERU as development occurs.

2.3. B&H shall pay to the City, sanitary sewer, storm sewer and water main utility connections fees in lieu of special assessments as development occurs in the area (not to exceed \$140,000).

3. GENERAL TERMS

3.1. B&H represents and warrants to the City that B&H is a corporation, duly organized and existing under the laws of the State of Wisconsin, and that all proceedings of B&H necessary to authorize the negotiation and execution of this Agreement and the consummation of the transaction contemplated by this Agreement have been taken in accordance with applicable law.

- B&H 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 B&H at the closing will not violate any provision of B&H's prior agreements or any applicable statute, rule, regulation, judgment, order or decree of the State of Wisconsin or a court having jurisdiction over B&H or its properties.

3.2. This Agreement, along with Exhibits A and B, sets forth the entire understanding of the parties relative to its subject matter and supersedes and merges any and all prior communications, negotiations and agreements, oral or written.

3.3. It is understood and agreed that the provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions contained herein.

3.4. This Agreement may not be modified or amended, except in writing, with the written consent of both the City and B&H.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

B&H

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

STATE OF WISCONSIN)
 : ss.
_____ COUNTY)

Personally came before me on this ____ day of _____, 2013, the
above-named _____ and _____, to me
known to be the persons who executed the foregoing instrument and acknowledge the same.

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

[SIGNATURES CONTINUE ON THE NEXT PAGE]

CITY OF APPLETON

By: _____
Timothy M. Hanna, Mayor

By: _____
Charlene M. Peterson, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me on this ____ day of _____, 2013, the
above-named Timothy M. Hanna and Charlene M. Peterson, to me known to be the persons who
executed the foregoing instrument and acknowledge the same.

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

Provision has been made to pay the liability
that will accrue under this contract.

Approved as to Form:

Lisa A. Remiker, Director of Finance

James P. Walsh, City Attorney

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

J:\Attorney\WORD\FORMS\Development Agreements\Cherryvale
\Cherryvale Land Dedication Agrm City (CLEAN 5-20-13).doc
Last Update: May 20, 2013
By: Paula Vandehey and Jim Walsh

EXHIBIT "B"

