

Village of

# Little Chute

## AGENDA

### LITTLE CHUTE VILLAGE BOARD COMMITTEE OF THE WHOLE MEETING

PLACE: Little Chute Village Hall

DATE: Wednesday, October 11, 2017

TIME: 6:00 p.m.

- A. Call to Order
- B. Roll Call
- C. Public Appearance for Items Not on the Agenda

- 1. Approval of Minutes  
*Minutes of the Regular Board Meeting of October 4, 2017*
- 2. Public Hearing—Conditional Use for Northpointe Development
- 3. Action—Northpointe Development Conditional Use
- 4. Action—Northpointe Development Agreement
- 5. Action—Northpointe Offer to Purchase
- 6. Action—Little Chute Community Area Network Agreement
- 7. Action—FVMPD Recruitment Consultant
- 8. Action—Development Agreement with Elemwil LLC/Total Tool Supply Inc.
- 9. Action—Approve Total Tool Supply Inc. Site Plan
- 10. Discussion—2018 Budget Workshop
- 11. Unfinished Business
- 12. Items for Future Agendas
- 13. Adjournment

Requests from persons with disabilities who need assistance to participate in this meeting or hearing should be made with as much advance notice as possible to the Clerk's Office at 108 West Main Street, (920) 423-3852 or email [laurie@littlechutewi.org](mailto:laurie@littlechutewi.org).

Prepared: October 6, 2017

# MINUTES OF THE REGULAR BOARD MEETING OF OCTOBER 4, 2017

Call to Order: President Vanden Berg called the Regular Board Meeting to Order at 6:00 p.m.

## Pledge Allegiance to the Flag

President Vanden Berg led members in the reciting of the Pledge of Allegiance.

## Roll call of Trustees

PRESENT: Michael Vanden Berg, President

John Elrick, Trustee

James Hietpas, Trustee

David Peterson, Trustee

Bill Peerenboom, Trustee

Skip Smith, Trustee

Larry Van Lankvelt, Trustee

## Roll call of Officers and Department Heads

PRESENT: James Fenlon, Village Administrator

Captain Lund, Fox Valley Metro Police Department

Tyler Claringbole, Village Attorney

Laurie Decker, Village Clerk

Jim Moes, Community Development Director

Teri Matheny, Finance Director

Steve Thiry, Library Director

Interested Citizens

EXCUSED: Adam Breest, Director of Parks, Recreation and Forestry

Jeff Elrick, Director of Public Works

## Public Appearance for Items Not on the Agenda

None

## Approval of Minutes

Minutes of the Committee of the Whole Meeting of September 27, 2017.

*Moved by Trustee Smith, seconded by Trustee Van Lankvelt to Approve the Minutes of the Committee of the Whole Meeting of September 27, 2017*

Ayes 7, Nays 0 – Motion Carried

## Committee/Commission Appointments

Approve Appointment of Jessica Schultz to the Utility Commission

*Moved by Trustee Van Lankvelt, seconded by Trustee Peterson to Approve the Appointment of Jessica Schultz to the Utility Commission*

Ayes 7, Nays 0 – Motion Carried

## Presentation—Fox Cities Regional Partnership—Bob Mundt, President/CEO of Fox Cities Chamber of Commerce

Bob Mundt, President and CEO of the Fox Cities Chamber of Commerce gave a Presentation on the Fox Cities Regional Partnership. Also present was Rob Peterson from the Fox Cities Chamber of Commerce.

## Department and Officers Progress Reports

Departments and Officers provided progress reports to the Board

**Discussion/Action—2018 Merit/Bonus Policy**

Administrator Fenlon presented documents for the 2018 Merit and Bonus Policy.

*Moved by Trustee Elrick, seconded by Trustee Smith to Approve the 2018 Merit/Bonus Policy for Little Chute Team Members as presented*

Ayes 7, Nays 0 – Motion Carried

**Action—Reconsider Annuitants Medicare Premiums for 2018**

Director Matheny presented information on “It’s your Choice Medicare Plus” that became available and will allow clients to go to any provider anywhere in the State. Director Matheny is asking the Board to adopt this new plan.

*Moved by Trustee Peerenboom, seconded by Trustee Elrick to Approve the Motion to Reconsider Annuitants Medicare Premiums for 2018*

Ayes 6, Nays 0, Abstain 1(Peterson) – Motion Carried

Trustee Van Lankvelt questioned how many retirees are on this Medicare program, Director Matheny stated there are seven and recommended staying with the State Program.

*Moved by Trustee Peerenboom, seconded by Trustee Elrick to Follow the Recommendations and Approve the “It’s your Choice Medicare Plus Program”*

Ayes 6, Nays 0, Abstain 1(Peterson) – Motion Carried

**Disbursement List**

*Moved by Trustee Peerenboom, seconded by Trustee Elrick to Approve Disbursement List and Authorize the Finance Director to pay all vendors*

Ayes 7, Nays 0 – Motion Carried

**Call for Unfinished Business**

None

**Items for Future Agenda**

None

**Closed Sessions:**

a) 19.85(1)(e) Wis. Stats. Deliberations or negotiations on the purchase of public properties, investing of public funds or conducting other specific public business when competitive or bargaining reasons require a closed session. *Development Negotiations—Total Tool, Property Acquisition*

*Moved by Trustee Smith seconded by Trustee Van Lankvelt to Enter into Closed Session at 6:33 p.m.*

Ayes 7, Nays 0 – Motion Carried

b) 19.85(1)(c) Consideration of Employment, Promotion, or Performance Evaluation Data of any Public Employee of the Village of Little Chute. *Personnel—FVMPD Chief Recruitment*

*Moved by Trustee Smith seconded by Trustee Van Lankvelt to Enter into Closed Session at 6:33 p.m.*

Ayes 7, Nays 0 – Motion Carried

**Return to Open Session**

*Moved by Trustee Elrick, seconded by Trustee Smith to Return to Open Session at 7:15 p.m.*

**Ayes 7, Nays 0 – Motion Carried**

**Adjournment**

*Moved by Trustee Elrick, seconded by Trustee Smith to Adjourn the Regular Board Meeting at 7:15 p.m.*

**Ayes 7, Nays 0 - Motion Carried**

**VILLAGE OF LITTLE CHUTE**

Attest:

By: \_\_\_\_\_  
Michael R. Vanden Berg, Village President

\_\_\_\_\_  
Laurie Decker, Village Clerk

**VILLAGE OF LITTLE CHUTE  
NOTICE OF PUBLIC HEARING  
CONDITIONAL USE REQUEST**

**NOTICE IS HEREBY GIVEN** that a Public Hearing will be held on October 11, 2017 at 6:00 p.m. by the Village of Little Chute Board, for consideration of the granting of conditional use under authority provided in Section 44-50(d)(8) Village Code of Ordinance. Applicant requests conditional use permit for multi-family housing. The property is currently zoned CB—Central Business District parcels of real estate in the Village of Little Chute, Outagamie County, Wisconsin, more particularly described as follows to wit:

**Applicant:** Northpointe Development

**Addresses:** 628, 704, 716 and 720 Grand Avenue

**Legal Description:** Lots 22, 23, 24, & 25 of Block 42 of the 1988 Amendment to the 1917 Assessors Plat  
Parcels 260070300, 260070400, 260070500, and 260070600

<b>DATE OF HEARING:</b>	October 11, 2017
<b>TIME OF HEARING:</b>	6:00 p.m.
<b>PLACE OF HEARING:</b>	Village Hall Board Room 108 West Main Street Little Chute, WI 54140

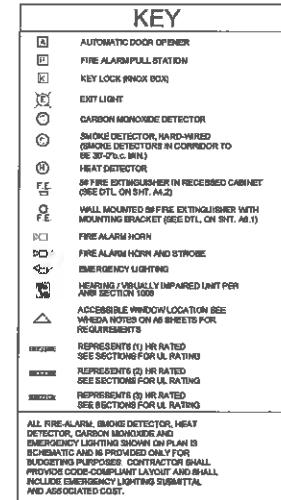
Laurie Decker  
Village Clerk

**Publish:** October 4, 2017

**Reasonable accommodations for persons with disabilities will be made upon request and if feasible.**

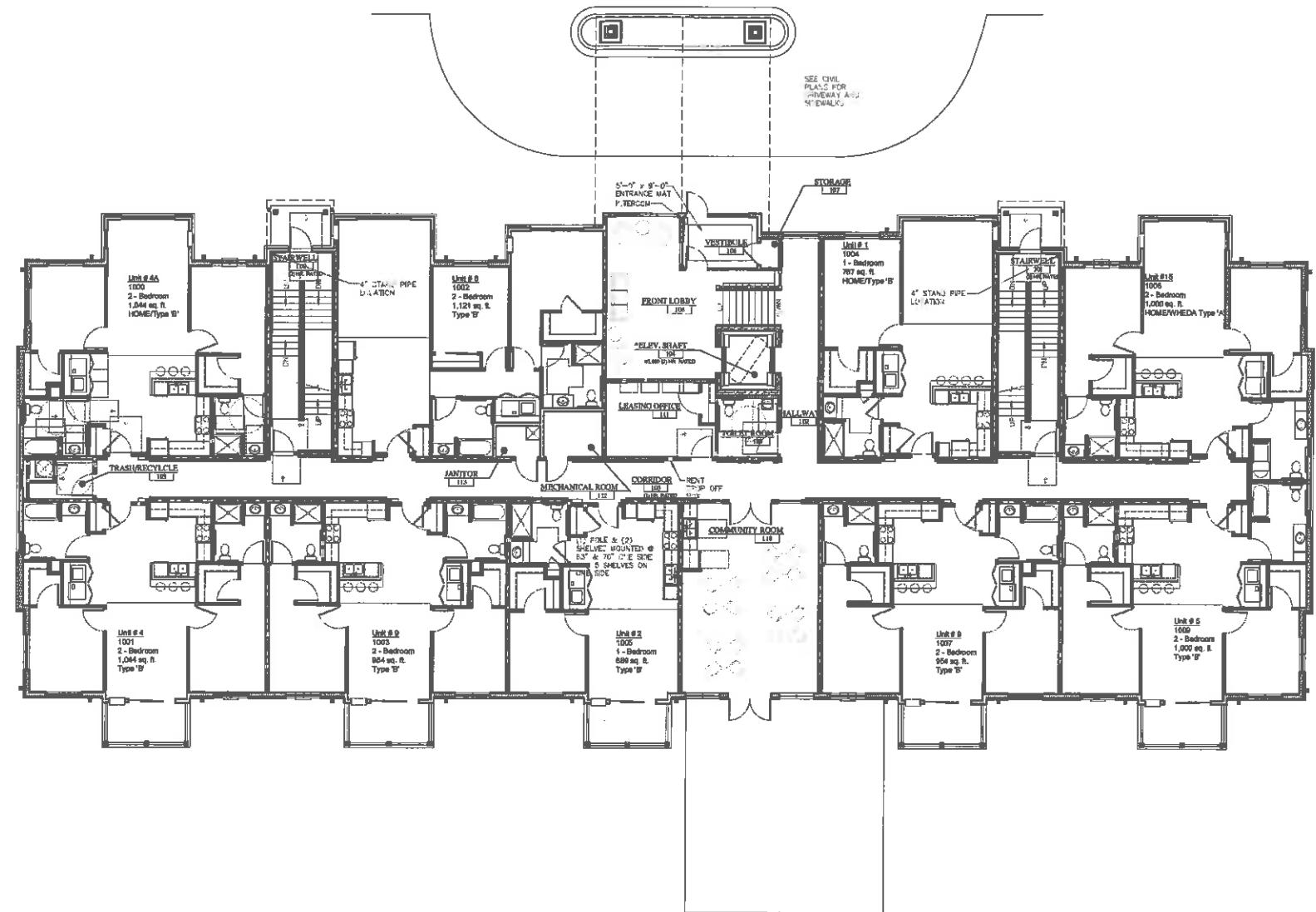






**GENERAL NOTES**

- 1) PUBLIC STAIRWAYS MUST BE EQUIPPED WITH CONTINUOUS GRIPABLE HANDRAILS ON BOTH SIDES OF STAIRS. IF HANDRAIL IS NOT CONTINUOUS, IT MUST EXTEND A MIN. OF 12'-0" BEYOND THE Treads AND A MIN. OF 127" BEYOND THE Treads. HANDRAIL IS TO BE 36"-0" MAX. (TYPE 1).
- 2) PROVIDE VISUAL AND AUDIBLE EMERGENCY ALARM SYSTEM THROUGHOUT PUBLIC AND COMMON USE AREAS OF BUILDING.
- 3) HAND RAILS ON BOTH SIDES OF COMMON HALLWAYS - STOP CORNERS, HANDRAILS @ FIRE EXIT, CABINETS AND REAR DOORS.
- 4) ALL INT. DMS. ARE FROM FACE-OF-STUD TO FACE-OF-STUD. ALL EX. DMS. ARE FROM OUTSIDE FACE OF SHEATHING TO OUTSIDE FACE OF SHEATHING.
- 5) AUTOMATIC DOOR OPENERS AT MAIN ENTRANCE
- 6) HEARING VIBRALLY IMPAIRED UNITS TO INCLUDE THE FOLLOWING: 1) A COORDINATED UNIT TELEPHONE PER AMR SECTION 1000; UNIT SMOKE DETECTION, UNIT BUILDING FIRE ALARM, UNIT DOORBELL, UNIT TELEPHONE.
- 7) THE ELEVATOR CAR SHALL BE OF SUCH SIZE AND APPROXIMATELY 10'-0" X 12'-0" AND SHALL BE CAPABLE OF CARRYING AN AMBULANCE STRETCHER IN THE HORIZONTAL OPEN POSITION AND SHALL BE IDENTIFIED BY THE INTERNATIONAL SYMBOL FOR AMBULANCE. THE ELEVATOR DOOR SHALL BE 36"-0" MAX. THE SYMBOL SHALL NOT BE LESS THAN 3 INCHES (75 MM) HIGH AND SHALL BE PLACED BEHIND ON BOTH SIDES OF THE ELEVATOR DOOR FRAME.



**CONTROL JOINT DESIGN GUIDELINES**

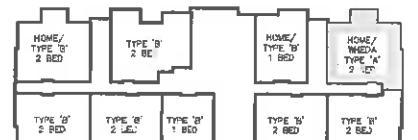
MATERIAL	GUIDELINES
C.M.U.	<p>PROVIDE A CONTROL JOINT:</p> <ul style="list-style-type: none"> <li>- WITHIN 4' OF TYPICAL JOINT SPACINGS AT EVERY CORNER</li> <li>- SPACED NOT MORE THAN 1.5x THE WALL HEIGHT (24"-0" MAX.)</li> <li>- HEAR ONE SIDE OF DOOR/WINDOW OPENINGS OVER 6'-0" WIDE</li> <li>- AT A CHARGE IN WALL THICKNESS</li> <li>- AT A CHANGE IN WALL THICKNESS</li> <li>- AT MOVEMENT JOINTS IN ROOFS AND FLOORS</li> </ul>
C.M.U. VENEER	<p>PROVIDE A CONTROL JOINT:</p> <ul style="list-style-type: none"> <li>- WITHIN 4' OF OUTSIDE CORNERS</li> <li>- AT ALL INSIDE CORNERS</li> <li>- SPACED NOT MORE THAN 1.5x THE WALL HEIGHT (24"-0" MAX.)</li> <li>- HEAR ONE SIDE OF DOOR/WINDOW OPENINGS OVER 6'-0" WIDE (NOT RECD)</li> <li>- AT BOTH SIDES OF OPENINGS OVER 6'-0" WIDE</li> <li>- AT A CHARGE IN WALL THICKNESS</li> <li>- AT A CHANGE IN WALL THICKNESS</li> <li>- AT MOVEMENT JOINTS IN ROOFS AND FLOORS</li> </ul>
CLAY BRICK VENEER	<p>PROVIDE A CONTROL JOINT:</p> <ul style="list-style-type: none"> <li>- AT OR NEAR EVERY BUILDING CORNER</li> <li>- SPACED NOT MORE THAN 20'-0" APART AT WALLS WITHOUT OPENINGS</li> <li>- SPACED NOT MORE THAN 20'-0" APART AT WALLS WITH OPENINGS</li> <li>- WITH SPACINGS BETWEEN DOOR/WINDOW OPENINGS AS MADE IN UST. PLANS ADJUSTED TO PARAPET HEIGHT AND RECD. FOR MOVEMENT JOINTS</li> <li>- AT A CHARGE IN WALL HEIGHT</li> <li>- AT A CHANGE IN WALL THICKNESS</li> <li>- AT MOVEMENT JOINTS IN ROOFS AND FLOORS</li> <li>- AT OFFSETS AND RETAINERS</li> </ul>

UNIT TOTALS					
1 BEDROOM	2 BEDROOM	2 BATH	2 BEDROOM + DEN	TOTAL	
1 BATH	1 BATH	2 BATH	2 BATH	0	0
FIRST FLOOR	0	0	0	0	0
SECOND FLOOR	0	0	0	0	0
THIRD FLOOR	2	1	0	1	10
FOURTH FLOOR	2	1	0	1	10
TOTAL	12	2	24	2	49



**FIRST FLOOR PLAN**

SCALE 1/8" = 1'-0"



**KEY PLAN**

SCALE 1/8"

**LITTLE CHUTE SENIOR HOUSING**  
GRAND AVE • LITTLE CHUTE, WI 54140

NEW CONSTRUCTION

PRELIMINARY DATES
SEPT. 28, 2017

NOT FOR CONSTRUCTION

SHEET INFORMATION
FIRST FLOOR PLAN SHEET NUMBER A1.1

NOT FOR CONSTRUCTION

**LITTLE CHUTE SENIOR HOUSING**  
GRAND AVE • LITTLE CHUTE, WI 54140

PROFESSIONAL

PRELIMINARY DATES  
SEPT. 29, 2017  
NOT FOR CONSTRUCTION

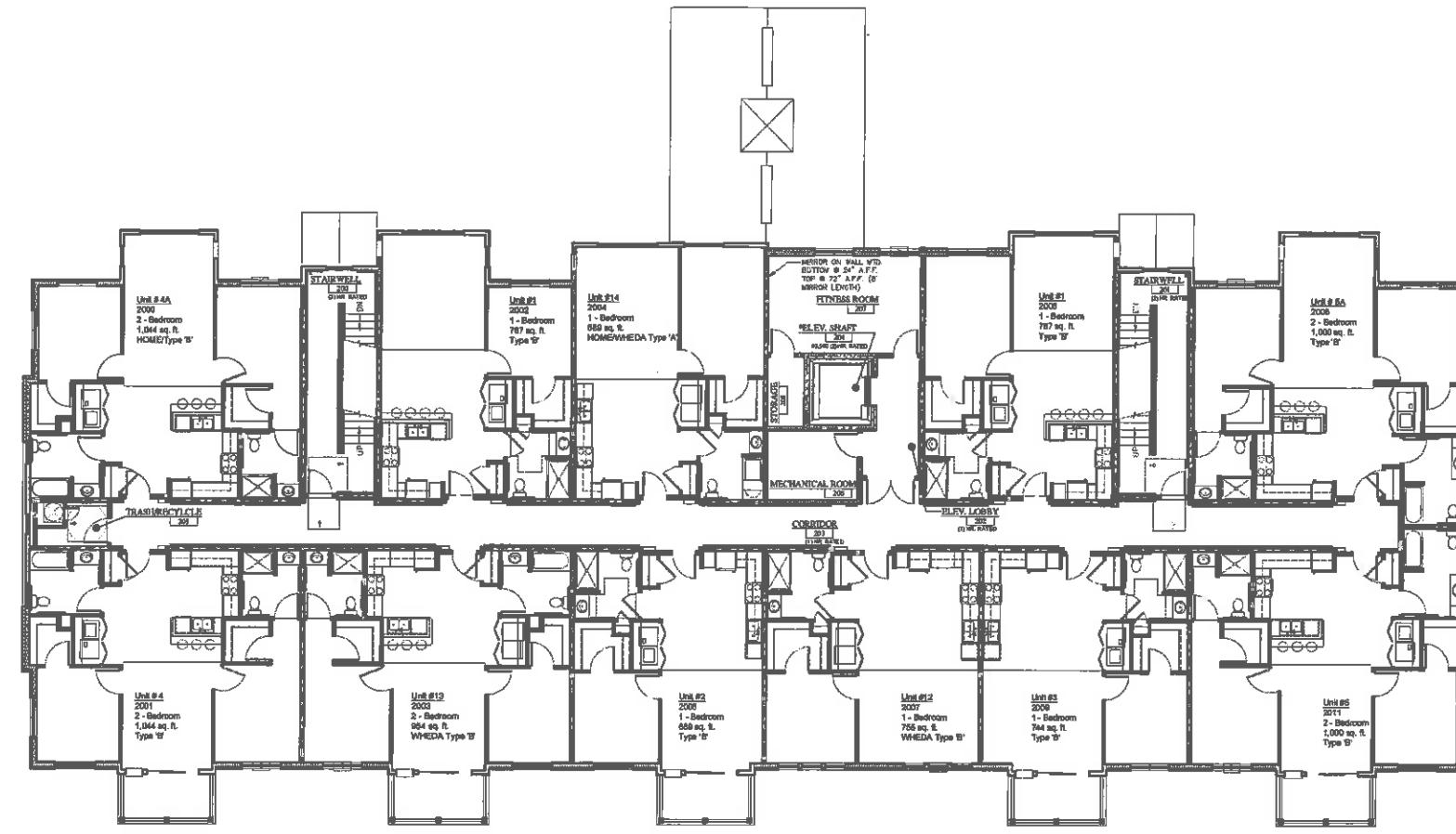
SHEET INFORMATION  
SECOND FLOOR PLAN  
SHEET NUMBER  
**A1.2**

SP7 © 2012, FISHER PRICE INC.

KEY	
A	AUTOMATIC DOOR OPENER
B	FIRE ALARM PULL STATION
C	KEY LOCK (NOX BOX)
D	EXHAUST
E	CARBON MONOXIDE DETECTOR
F	SMOKE DETECTOR, HARDWIRED (SEE FIRE ALARMS IN CORRIDOR TO BE SPOT-CODED AREA)
G	HEAT DETECTOR
H	20 FIRE EXTINGUISHER IN RECESSED CABINET (SEE DTL. ON SH. A-3)
I	WALL MOUNTED 20 FIRE EXTINGUISHER WITH MOUNTING BRACKET (SEE DTL. ON INT. A-1)
J	FIRE ALARM HORN
K	FIRE ALARM HORN AND STROBE
L	EMERGENCY LIGHTING
M	HEARING VIBRALLY IMPAIRED UNIT PER ANSI SECTION 1000
N	ACCESSIBLE VANISH LOCATION SEE WHEELCHAIR ACCESS SHEETS FOR REQUIREMENTS
O	REPRESENTS (1) HR RATED SEE SECTIONS FOR UL RATING
P	REPRESENTS (2) HR RATED SEE SECTIONS FOR UL RATING
Q	REPRESENTS (5) HR RATED SEE SECTIONS FOR UL RATING
R	ALL FIRE-ALARM, SMOKE DETECTOR, HEAT DETECTOR, CARBON MONOXIDE AND EMERGENCY LIGHTING SHOWN ON PLAN IS SIGHT-TESTED AND IS PROVIDED ONLY FOR BUDGETING PURPOSES. OWNER SHALL PROVIDE CODE-COMPLIANT LAYOUT AND SHALL INCLUDE EMERGENCY LIGHTING SUBMITTAL AND BUDGETED COST.

**GENERAL NOTES**

1. PUBLIC PARKINGS MUST BE EQUIPPED WITH CHARGEABLE GRIPABLE HANDRAILS ON ONE SIDE OF STAIRS. IF HANDRAIL IS NOT CONTINUOUS, IT MUST EXTEND A MIN. OF 17' BEYOND THE TOP TISTER, AND A MIN. OF 12' BEYOND THE BOTTOM TISTER. (SEE DTL. ON SH. A-1)
2. PROVIDE VISUAL AND AUDIBLE EMERGENCY ALARM SYSTEM THROUGHOUT PUBLIC AND COMMON USE AREAS OF BUILDING.
3. HAND RAILS ON BOTH SIDES OF COMMON HALLWAYS - STOP CORRIDOR HANDRAILS @ FIRE EXIT, CABINETS AND REFRIGERATORS.
4. ALL INT. DOORS ARE FROM FACE-OF-STUD TO FACE-OF-STUD  
ALL EXT. DOORS ARE FROM CUT-SIDE FACE-OF-SHEATHING TO  
CUT-SIDE FACE-OF-SHEATHING
5. AUTOMATIC DOOR OPENERS AT MAIN ENTRANCE
6. HEARING VIBRALLY IMPAIRED UNIT(S) TO INCLUDE THE FOLLOWING: 1. SMOKE DETECTOR, 2. FIRE ALARM, 3. AMBULANCE STRETCHER IN THE HORIZONTAL OPEN POSITION AND SHALL BE IDENTIFIED BY THE INTERNATIONAL SYMBOL FOR AMBULANCE. 4. FIRE ALARM PULL STATION. 5. THE SYMBOL SHALL NOT BE LESS THAN 5 INCHES (125MM) HIGH AND SHALL BE PLACED INSIDE ON BOTH SIDES OF THE HOSPITAL DOOR FRAME.
7. THE ELEVATOR CAR SHALL BE OF SUCH A SIZE AND ARRANGEMENT AS TO ALLOW FOR THE PLACEMENT OF A STRETCHER AND AMBULANCE STRETCHER IN THE HORIZONTAL OPEN POSITION AND SHALL BE IDENTIFIED BY THE INTERNATIONAL SYMBOL FOR AMBULANCE. 4. FIRE ALARM PULL STATION. 5. THE SYMBOL SHALL NOT BE LESS THAN 5 INCHES (125MM) HIGH AND SHALL BE PLACED INSIDE ON BOTH SIDES OF THE HOSPITAL DOOR FRAME.



UNIT TOTALS					
	1 BEDROOM	2 BEDROOM	2 BATH	2 BEDROOM + DEN	TOTAL
	1 BATH	1 BATH	2 BATH	2 BATH	
FIRST FLOOR	0	0	0	0	0
SECOND FLOOR	6	6	6	6	24
THIRD FLOOR	2	1	6	1	10
FOURTH FLOOR	2	1	6	1	10
TOTAL	12	2	24	2	40

**SECOND FLOOR PLAN**  
SCALE 1/8" = 1'-0"  
NORTH



**KEY PLAN**  
SCALE: NONE

SHEET INFORMATION  
SECOND FLOOR PLAN  
SHEET NUMBER  
**A1.2**

**LITTLE CHUTE SENIOR HOUSING**  
GRAND AVE • LITTLE CHUTE, WI 54140

PROFESSIONAL SEAL



PRELIMINARY DATES  
SEPT. 29, 2017

NOT FOR CONSTRUCTION

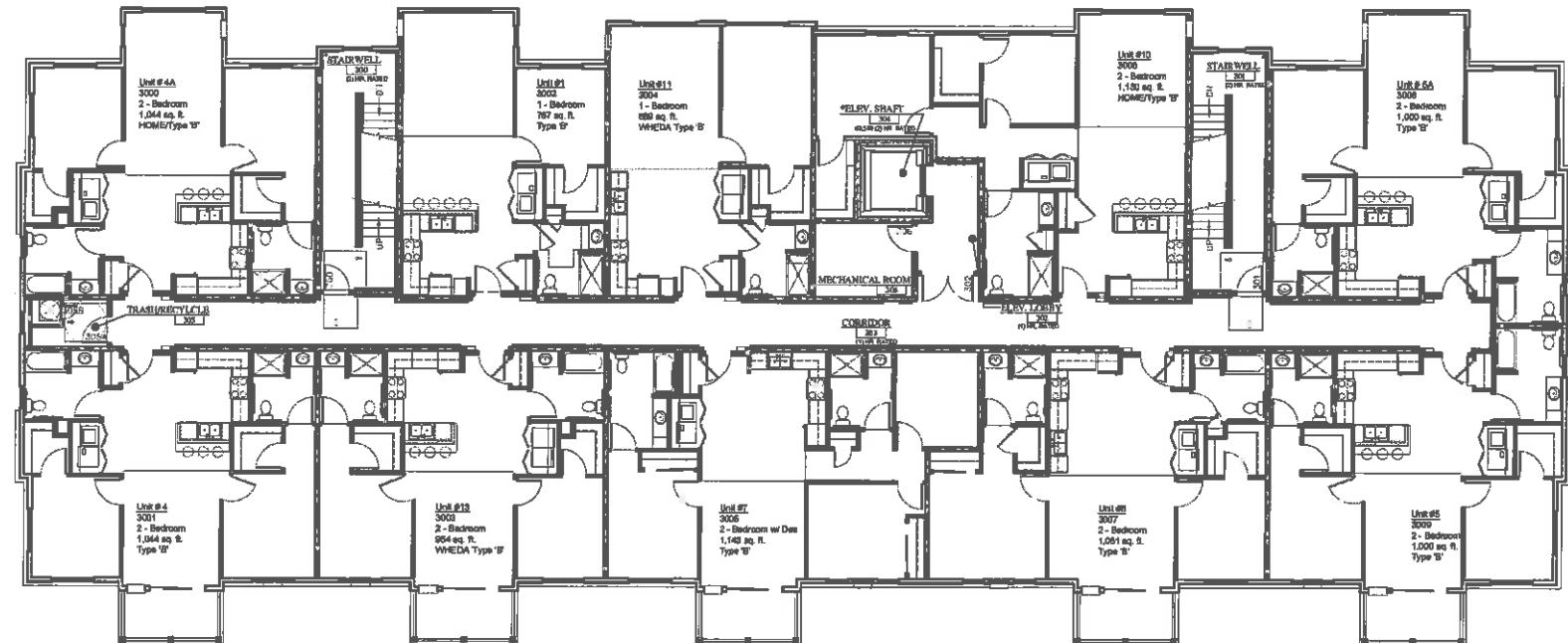
SHEET INFORMATION  
THIRD FLOOR PLAN  
SHEET NUMBER  
**A1.3**

2017 © EXCELENGINERED, INC.



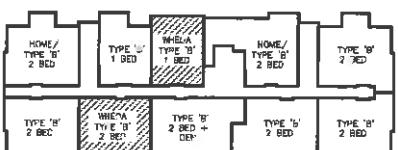
**GENERAL NOTES**

1. PUBLIC STAIRWELL MUST BE EQUIPPED WITH CONTINUOUS GRIPABLE HANDRAIL ON BOTH SIDES OF STAIR. IF HANDRAIL IS NOT CONTINUOUS, IT MUST EXTEND A MIN. OF 12" FROM THE TOP AND BOTTOM OF EACH STAIR TREAD AND EXTEND 12" BEYOND THE TOP AND BOTTOM OF EACH STAIR TREAD TO RETAIN A GRIP.
2. PROVIDE 16" HORN AND AUDIBLE EMERGENCY ALARM SYSTEM THROUGHOUT PUBLIC AND COMMON USE AREAS OF BUILDING.
3. HAND RAILS ON BOTH SIDES OF COMMON HALLWAYS - STOP CORRIDOR HANDRAIL @ FIRE EXIT, CABINETS AND RETAINING WALLS.
4. ALL INT. DOORS ARE FROM FACE-OF-STUD TO FACE-OF-STUD. ALL EXT. DOORS ARE FROM OUTSIDE FACE-OF-SHEATHING TO OUTSIDE FACE-OF-SHEATHING.
5. AUTOMATIC DOOR OPENERS AT MAIN ENTRANCE
6. HEARING VIBUALLY IMPAIRED UNITS TO INCLUDE THE FOLLOWING: SMOKE DETECTION, 1000 FT. SIREN, 1000 FT. PER ANS SECTION 1004; UNIT SMOKE DETECTION, UNIT BUILDING FIRE ALARM, UNIT DOORBELL & UNIT TELEPHONE.
7. THE ELEVATOR CAR SHALL BE OF SUCH A SIZE AND ARRANGEMENT AS TO ALLOW FOR THE PLACEMENT OF AN AMBULANCE STRETCHER IN THE HORIZONTAL OPEN POSITION AND SHALL BE IDENTIFIED BY THE INTERNATIONAL SYMBOL FOR AMBULANCE. THE ELEVATOR DOOR SHALL BE 36" X 36" IN. THE SYMBOL SHALL NOT BE LESS THAN 3 INCHES (76 MM) HIGH AND SHALL BE PLACED INSIDE ON BOTH SIDES OF THE HOSPITAL DOOR FRAME.



UNIT TOTALS					
	1 BEDROOM	2 BEDROOM	2 BATH	2 BEDROOM + DEN	TOTAL
FIRST FLOOR	2	0	0	0	2
SECOND FLOOR	6	0	5	0	11
THIRD FLOOR	2	1	0	1	10
FOURTH FLOOR	2	1	0	1	10
TOTAL	12	2	24	2	49

**THIRD FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



**KEY PLAN**  
SCALE: NONE

SHEET INFORMATION  
THIRD FLOOR PLAN  
SHEET NUMBER  
**A1.3**

**LITTLE CHUTE SENIOR HOUSING**  
NEW CONSTRUCTION  
GRAND AVE • LITTLE CHUTE, WI 54140

NOT FOR CONSTRUCTION

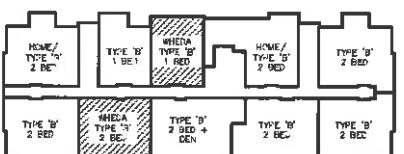
PRELIMINARY DATES  
SEPT. 29, 2017

SHEET INFORMATION  
FOURTH FLOOR PLAN  
SHEET NUMBER  
**A1.4**

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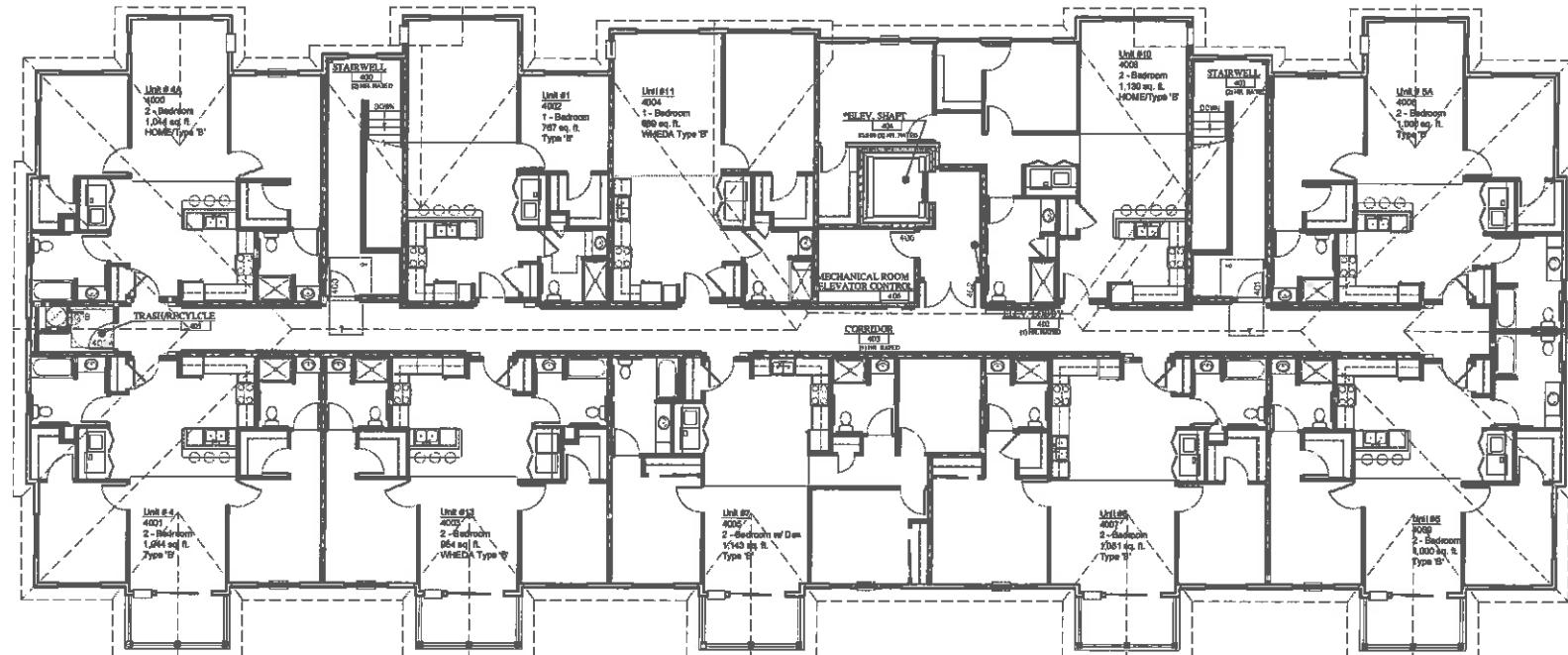
UNIT TOTALS					
	1 BEDROOM	2 BEDROOM	2 BATH	2 BEDROOM + DEN	TOTAL
	1 BATH	1 BATH			
FIRST FLOOR	1	1	0	0	3
SECOND FLOOR	0	0	0	0	0
THIRD FLOOR	2	1	0	1	4
FOURTH FLOOR	2	1	0	1	4
TOTAL	12	2	24	2	49

**FOURTH FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



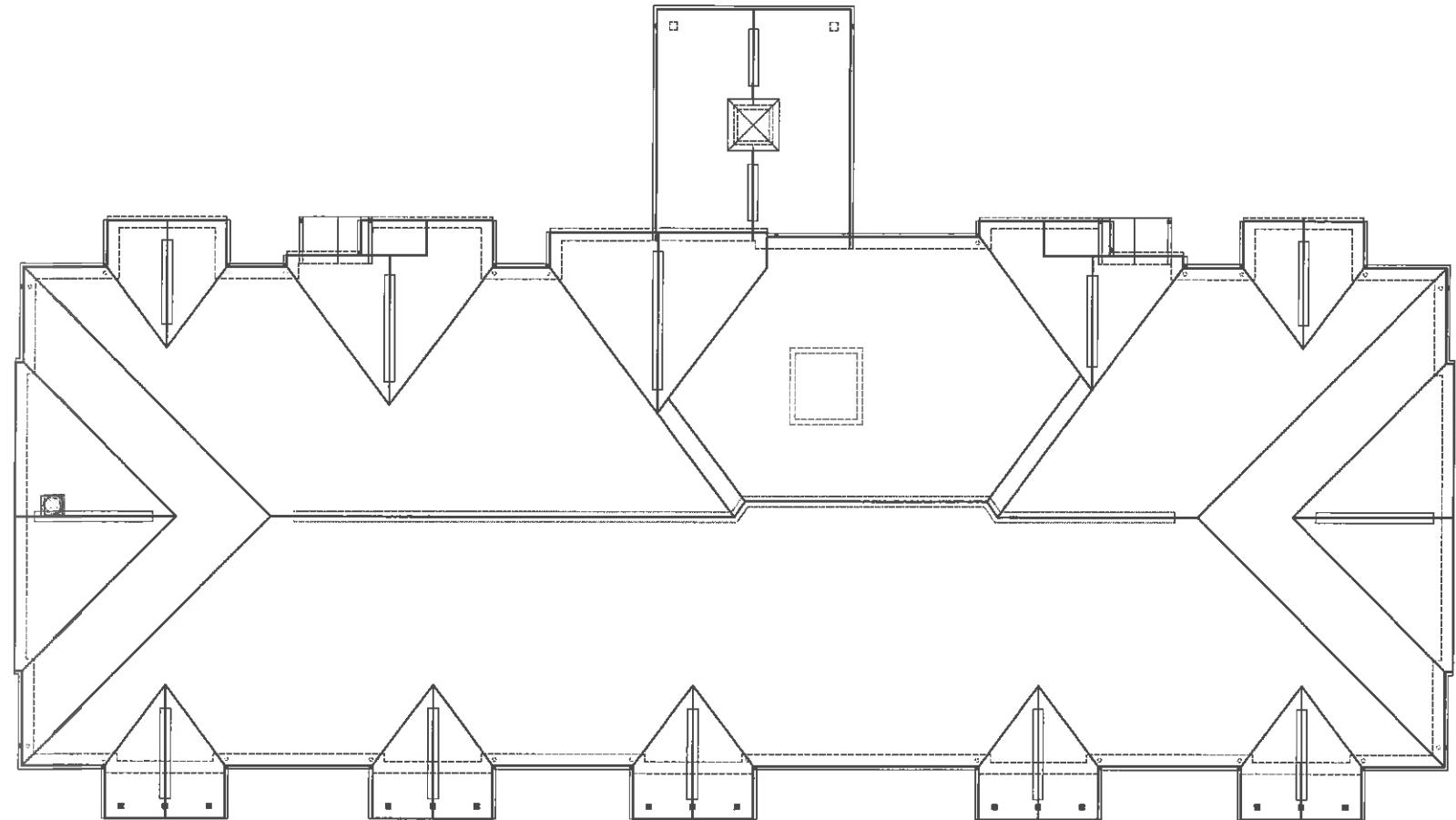
**KEY PLAN**

SCALE: 1/4"



**GENERAL NOTES**

1. PUBLIC STAIRWAYS MUST BE EQUIPPED WITH CONCEALED OR EXPOSED METAL BALUSTERS OR STEPS. IF HANDRAIL IS NOT CONTINUOUS, IT MUST EXTEND A MIN. OF 12" BEYOND THE TOP TREAD, AND A MIN. OF 12" BEYOND THE BOTTOM TREAD. (SEE SECTION 10 FOR DETAILS).
2. PROVIDE VISUAL AND AUDIBLE ENVIRONMENTAL ALARM SYSTEM THROUGHOUT PUBLIC AND COMMON USE AREAS OF BUILDING.
3. HAND RAILS ON BOTH SIDES OF COMMON HALLWAYS - STOP CORRIDOR HANDRAILS @ FIRE EXIT CABINETS AND RETURN TO EXISTING HANDRAILS.
4. ALL INT. DOORS ARE FROM FACE-OF-STUD TO FACE-OF-STUD. ALL EXT. DOORS ARE FROM OUTSIDE FACE-OF-STUD TO OUTSIDE FACE-OF-BREATHING.
5. AUTOMATIC DOOR OPENERS AT MAIN ENTRANCE.
6. HEARING / VISUALLY IMPAIRED UNITS TO INCLUDE THE FOLLOWING: (1) 1 BEDROOM UNIT, (2) 2 BEDROOM UNITS PER ANSI SECTION 102.1; (3) 3 BEDROOM UNITS PER ANSI SECTION 102.1; (4) FIRE ALARM DETECTION, UNIT BUILDING FIRE ALARM, UNIT DOORBELL & UNIT TELEPHONE.
7. THE ELEVATOR CAR SHALL BE OF SUCH A SIZE AND APPROXIMATELY 10'-0" DEEP BY 10'-0" WIDE TO ACCOMMODATE AN AMBULANCE STRETCHER IN THE HORIZONTAL OPEN POSITION AND SHALL BE IDENTIFIED BY THE INTERNATIONAL SYMBOL FOR AMBULANCE. THE ELEVATOR DOOR SHALL BE 36" WIDE. THE SYMBOL SHALL NOT BE LESS THAN 3 INCHES (76.2MM) HIGH AND SHALL BE PLACED INSIDE OR BOTH SIDES OF THE HALLWAY DOOR FRAME.



**ROOF PLAN**  
NORTH

SCALE: 1/8" = 1'-0"  
8' 0' 2' 4' 6' 8'

**GENERAL ROOF NOTES:**

U = - - - - - MOUNT LOCATION  
→ = R-W SLOPE IN ECTION  
ROOF COLOR  
• SEE INCORPORATION FOR GINGLE TYPE  
• PROVIDE ICE AND WATER SHIELD AT ALL EAVES AND VALLEYS AND AS PER MANUFACTURER'S REQUIREMENT  
• R-F VENT TO BE CHIMNEY TYPE  
• PROVIDE STABILIZER CLAD IN VALLEY APPLICATION  
• SEE GENTLINS FOR ALL OVERHANG LENGTH DIMENSIONS  
• DOWNGRIT RIDER LOCATION BELOW RIDGE DOWNSLOP TO RIDGE AS NEEDED

**NEW CONSTRUCTION**  
**LITTLE CHUTE SENIOR HOUSING**  
GRAND AVE • LITTLE CHUTE, WI 54140

**PRELIMINARY DATES**  
SEPT. 28, 2017  
NOT FOR CONSTRUCTION

**SHEET INFORMATION**  
**ROOF PLAN**  
SHEET NUMBER  
**A1.5**

**EXCEL**  
ARCHITECTS • ENGINEERS • SURVEYORS  
100 CAMELOT DRIVE  
FOND DU LAC, WI 54937  
PH: 920.921.1111  
WWW.EXCELENIGNSA.COM

**PROJECT INFORMATION**  
PROJECT NUMBER 1722560



1 EAST ELEVATION  
SCALE: NOT TO SCALE



2 SOUTH ELEVATION  
SCALE: NOT TO SCALE



3 SOUTH EASTERN PERSPECTIVE  
SCALE: NOT TO SCALE



4 NORTH ELEVATION  
SCALE: NOT TO SCALE



5 WEST ELEVATION  
SCALE: NOT TO SCALE

SIDING	
(a)	NICHIA RED BRICK PANELS 5/8" Thick, Fire Clay 18" x 6" panels with a smooth-sawn brick pattern.
(b)	BEIGE CAST STONE BANDING Cast Stone and Limestone, Sand, and Limestone Aggregate (Real Finish)
(c)	BROWN FIBER CEMENT LAP SIDING 5/16" Thick, 8" Fiber Cement boards, with a 6" overlap.
(d)	DARK STAIN FIBER CEMENT TRIM 5/16" Thick, 6" Fiber Cement boards, rough finish
(e)	WHITE FIBER CEMENT SIDING (STUCCO EMBOSSED) 5/16" Thick, Fiber Cement Vertical 4" x 8" panels
(f)	WHITE VINYL WINDOWS 5/8" Low-E Glazing, manufactured by Crystal or equal.

ROOF	
(g)	ARCHITECTURAL SHINGLES Laminate-Style Glass-Fiber Reinforced Asphalt Shingle
(h)	PREFINISHED METAL COPING & SOFFIT Trim
(i)	WHITE FIBER CEMENT TRIM 3/4" Thick, 6" & 8" Fiber Cement trim, Wolverine finish
(j)	WHITE VINYL RAILINGS Classic Vinyl railing system as manufactured by Color Guard or equal.
(k)	WHITE VINYL WRAPPED COLUMNS Classic Vinyl railing system as manufactured by Color Guard or equal.



September 28, 2017

### **Northpointe Development Senior Living- Little Chute, WI**

The proposed development consists of 40 single-family senior living units contained in a single, four-story building with 24 underground parking stalls and 30 exterior surface parking stalls on the subject property, and five (5) easement stalls on Village property to the south. Residents living in this development are retired and therefore not members of the "8 to 5" daily workforce; traffic generation is anticipated to average one (1) trip per day, per dwelling unit during off-peak times rather than the usual weekday morning and evening peak periods when people are going to and from work.

The development will employ one (1) on-site property manager working approximately 32 hours a week with set office hours and one (1) on-site maintenance person working approximately 25 hours per week. Grounds maintenance (landscaping and snowplowing) will be contracted out to a third-party; they will be managed by the on-site property manager. The development will be designed to blend with the surrounding neighborhood with a tastefully designed building in line with the purpose and intent of the "Little Chute Design Manual" and the overall site designed and landscaped to meet Village requirements. The development will be an asset to the community and provide attractive and affordable senior housing in the downtown area of the Village of Little Chute.

Village of Little Chute Application for CONDITIONAL USE UNDER CHAPTER 44 ZONING CODE

Application fee \$125.00

Date filed \_\_\_\_\_

The undersigned owner(s) of the property herein described hereby petition for a Conditional Use under the Village of Little Chute Zoning Ordinance Chapter 44, in the Village of Little Chute, Outagamie County, Wisconsin

Property location: Grand Avenue (south of 722 Grand Avenue)

Legal Description: Lots 22 through 25 and the north 5 feet of Lot 26, Block 42

19878 Amendment to 1917 Assessors Plat. Village of Little Chute,

Outagamie County, WI

Current Zoning Classification: Central Business District

Petitioner(s) request permission be granted for the following conditional use(s):

Development of a four (4) story, 40 unit senior housing development with both underground and surface lot parking.

Petitioner(s) reason(s) for requesting the above described conditional use are as follows:

This conditional use is being requested as it is our desire to provide attractive and affordable senior housing in the downtown area of the Village of Little Chute.

Multi-family housing is, pursuant to Section 44-50(d)(8) of the Village Code, a special exception/conditional use in the Central Business District.

Attach Surveys, building plans, drainage plans, site plans, statements of days & hours of operation, estimates of additional traffic generated, statements regarding effect on neighboring properties and any other additional information which may assist in determining that the proposed use is appropriate that such use is not hazardous, harmful, offensive or adverse to the environment or the value of the neighborhood or the community.

Owner(s) Name(s) Village of Little Chute

Owner(s) Address 108 W. Main Street, Little Chute WI 54140

Phone Numbers 920-788-7380

APPLICANT(S) Signature(s) 

Date Signed 9/25/17

## Article IV: Conditional Uses

### Sec. 44-113. Purpose.

The development and execution of this article is based upon the division of the village into districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use of a particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses. Such uses are classified as conditional uses.

### Sec. 44-114. Authority of the plan commission and village board; requirements.

- (a) The plan commission or village board may authorize the zoning administrator to issue a conditional use permit after review and public hearings. The village board shall have sole authority to approve conditional uses for multifamily developments whenever a conditional use permit is required. The village board shall prior to holding a public hearing on a conditional use, refer the requested use to the plan commission for review and recommendation. The plan commission may authorize all other conditional uses. Prior to authorization of the zoning administrator to issue a conditional use permit, the board or commission (whichever has jurisdiction), shall hold a public hearing to review the requested use and shall determine that such conditional use and involved structure are found to be in accordance with the purpose and intent of this chapter, and are further found not to be hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or the community. The issuance of a conditional use permit shall specify the period of time for which effective, the name of the permittee, the location and legal description of the affected premises, permitted hours and days of operation if specified, and any other restrictions or regulations imposed so that the standard of this article may be complied with. Prior to the granting of a conditional use the board or the commission shall make findings based upon evidence presented that the standards herein prescribed are being complied with.
- (b) Any development within 500 feet of the existing or proposed rights-of-way of freeways, expressways and within one-half mile of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the traffic way. The plan commission or village board shall request such review and await the highway agency's recommendation for a period not to exceed 20 days before taking final action.
- (c) Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operation control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards or parking requirements may be required by the plan commission or village board upon its finding that these are necessary to fulfill the purpose and intent of this chapter.
- (d) Compliance with all other provisions of this chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards shall be required of all conditional uses.

### Sec. 44-115. Initiation of conditional use.

Any person, firm, corporation or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest, or an exclusive possessory interest, and which is specifically enforceable in the land for which a conditional use is sought may file an application to use such land for one or more of the conditional uses in the zoning district in which such land is located.

### Sec. 44-116. Application.

- (a) *Required application materials.* An application for a conditional use shall be filed in duplicate on a form prescribed by the village. Such applications shall be forwarded to the plan commission or village board on receipt by the zoning administrator. Such applications shall include where applicable:
  - (1) A statement, in writing, by applicant and adequate evidence showing that the proposed conditional use shall conform to the standards set forth in section 44-119.
  - (2) Names and addresses of the applicant, owner of the site, architect, professional engineer, contractor and all property owners of record within 100 feet.
  - (3) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure; proposed operation or use of the structure or site; number of employees and the zoning district within which the subject site lies.
  - (4) Plat of survey prepared by a registered land surveyor showing all of the information required for a building permit and existing and proposed landscaping.
  - (5) Additional information as may be required by the plan commission or village board or other boards, commissions or officers of the village. The village board may require such other information as may be necessary to determine and provide for an enforcement of this chapter, including:
    - a. A plan showing contours and soil types;
    - b. High-water mark and groundwater conditions;
    - c. Bedrock, vegetative cover, specifications for areas of proposed filling, grading, and lagooning;
    - d. Location of buildings, parking areas, traffic access, driveways, walkways, open spaces and landscaping;
    - e. Plans of buildings, sewage disposal facilities, water supply systems and arrangements of operations.
  - (6) Fee receipt in the amount of \$125.00.
- (b) *Conditional use permits granted to applicant only.* All applications for conditional use permits shall be in writing and shall be signed by the real estate property owner. The conditional use permit, if and when granted, shall inure to the benefit of the real estate and any successor in title to ownership of that real estate.
- (c) *Plans.* In order to secure information upon which to base its recommendation, the plan commission or village board, in making its determination, may require the applicant to furnish, in addition to the information required for a building permit, the following information:
  - (1) A plan of the area showing contours, soil types, high-water mark, groundwater conditions, bedrock, slope and vegetation cover;
  - (2) Location of buildings, parking areas, traffic access, driveways, walkways, open spaces, landscaping, lighting;
  - (3) Plans for buildings, sewage disposal facilities, water supply systems and arrangements of operations;
  - (4) Specifications for areas of proposed filling, grading, lagooning or dredging;
  - (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this chapter.

**Sec. 44-117. Hearing on application.**

All requests for conditional uses shall be to the plan commission or the village board can, on its own motion, apply conditional uses when applications for rezoning come before it. Nothing in this chapter shall prohibit the village board, on its own motion, from referring the request for conditional use to the plan commission. Upon receipt of the application and statement referred to in section 44-116, the plan commission or village board shall hold a public hearing on each application for a conditional use at such time and place as shall be established by such commission or the village board. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures, as the plan commission or village board shall, by rule, prescribe from time to time.

**Sec. 44-118. Notice of hearing on application; approval by the plan commission or village board.**

Notice of the time, place and purpose of such public hearing shall also be sent to the applicant, the zoning administrator, members of the plan commission or village board, and the owners of record as listed in the office of the village assessor who are owners of property in whole or in part situated within 100 feet of the boundaries of the properties affected, said notice to be sent at least five days prior to the date of such public hearing. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application. The notification shall include the date and time that the matter will be discussed and acted upon by the commission or village board. The plan commission or village board shall hold said hearing not later than 60 days from the date that the conditional use petition has been presented to the village. The plan commission or village board may also mail copies of the application and notice of the plan commission or village board public hearing thereon to any other interested persons as determined from time to time by the plan commission or village board.

**Sec. 44-119. Standards.**

No application for a conditional use shall be granted by the plan commission or village board on appeal unless such commission or board shall find that the following conditions are present:

- (1) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- (2) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
- (3) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (4) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- (5) That the conditional use shall, except for yard requirements, conform to all applicable regulations of the district in which it is located.
- (6) That the proposed use does not violate floodplain regulations governing the site.
- (7) That, when applying the above standards to any new construction of a building or an addition to an existing building, the plan commission or village board shall bear in mind the statement of purpose for the zoning district such that the proposed building or addition at its location does not defeat the purposes and objectives of the zoning district.
- (8) That, in addition to passing upon a conditional use permit, the plan commission or village board shall also evaluate the effect of the proposed use upon the following:
  - a. The maintenance of safe and healthful conditions.
  - b. The prevention and control of water pollution including sedimentation.
  - c. The existing topographic and drainage features and vegetative cover on the site.
  - d. The location of the site with respect to floodplain and floodways of rivers and streams.
  - e. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
  - f. The location of the site with respect to existing or future access roads.
  - g. The need of the proposed use for a shoreland location.
  - h. Its compatibility with uses on adjacent land.
  - i. The amount of liquid wastes to be generated and the adequacy of the proposed disposal systems.

**Sec. 44-120. Approval or denial of conditional use permit.**

(a) *Plan commission or village board action.* The plan commission or village board may approve, disapprove, or approve subject to stipulated conditions and safeguards a request for a conditional use permit. If the plan commission or village board shall disapprove of an application, it shall state fully in its record its reasons for doing so. Such reasons shall take into account the factors stated in section 44-119 or such of them as may be applicable to the action of disapproval and the particular regulations relating to the conditional use requested, if any.

(b) *Denial.* When the decision of denial of a conditional use application is made, the plan commission or village board shall furnish the applicant, in writing when so requested, those standards that are not met and enumerate reasons used in determining that each standard was not met.

**Sec. 44-121. Appeals.**

Any action of the plan commission or village board in granting or denying a conditional use permit may be appealed to the board of appeals, if a written request for an appeal is filed within ten days after the date of action in granting or denying the permit. Such request for appeal shall be signed by the applicant or by the owners of at least 20 percent of the land area immediately adjacent extending 100 feet therefrom or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land. The request shall be filed with the zoning administrator who shall submit it to the board of appeals at its next meeting, together with any documents and other data used by the plan commission or village board in reaching its decision. The board of appeals may consider the matter forthwith, refer the matter to a subsequent meeting or set a date for a public hearing thereon. In the event the board of appeals elects to hold a public hearing, notice thereof shall be given by mail to the known owners of the land immediately adjacent thereto and directly opposite any street frontage of the lot or parcel in question and by publication of a Class 1 notice in the official newspaper at least ten days before the date of the hearing. The board of appeals may either affirm or reverse in whole or in part the action of the plan commission or village board and may finally grant or deny the application for a conditional use permit.

**Sec. 44-122. Conditions and guarantees.**

The following provisions shall apply to all conditional uses:

(1) *Conditions.* Prior to the granting of any conditional use, the plan commission or village board may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in section 44-119. In all cases in which conditional uses are granted, the plan commission or village board shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such conditions may include specifications for, without limitation because of specific enumeration:

- a. Landscaping;
- b. Type of construction;
- c. Construction commencement and completion dates;
- d. Sureties;
- e. Lighting;
- f. Fencing;
- g. Operational control;
- h. Hours of operation;
- i. Traffic circulation;
- j. Deed restrictions;
- k. Access restrictions;
- l. Setbacks and yards;
- m. Type of shore cover;
- n. Specified sewage disposal and water supply systems;
- o. Planting screens;
- p. Piers and docks;
- q. Increased parking; or
- r. Any other requirements necessary to fulfill the purpose and intent of this chapter.

(2) *Site review.* In making their decisions, the plan commission or village board shall evaluate each application and may request assistance from any source, which can provide technical assistance. The commission or board may review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation/use.

(3) *Alteration of conditional use.* No alteration of a conditional use shall be permitted unless approved by the plan commission or village board.

(4) *Architectural treatment.* Proposed architectural treatment will be in general harmony with surrounding uses and the landscape. To this end, the plan commission or village board may require the use of certain general types of exterior construction materials and/or architectural treatment.

(5) *Sloped sites; unsuitable soils.* Where slopes exceed six percent and/or where a use is proposed to be located on areas indicated as having soils which are unsuitable or marginal for development, on-site soil tests and/or construction plans shall be provided which clearly indicate that the soil conditions are adequate to accommodate the development contemplated and/or that any inherent soil condition or slope problems will be overcome by special construction techniques. Such special construction might include, among other techniques, terracing, retaining walls, oversized foundations and footings, drain tile, etc.

(6) *Conditional uses to comply with other requirements.* Conditional uses shall comply with all other provisions of this chapter such as lot width and area, yards, height, parking and loading. No conditional use permit shall be granted where the proposed use is deemed to be inconsistent or conflicting with neighboring uses for reasons of smoke, dust, odors, noise, vibration, lighting, health hazards or possibility of accident.

**Sec. 44-123. Validity of conditional use permit.**

Where the plan commission or village board has approved or conditionally approved an application for a conditional use, such approval shall become null and void within 12 months of the date of the commission's or board's action unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six months of the date of issuance and which shall not be renewed unless construction has commenced and is being diligently prosecuted. Approximately 45 days prior to the automatic revocation of such permit, the zoning administrator shall notify the holder by certified mail of such revocation. The plan commission or village board may extend such permit for a period of 90 days for justifiable cause, if application is made to the village at least 30 days before the expiration of said permit.

**Sec. 44-124. Complaints regarding conditional uses.**

The plan commission or village board shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. Such authority shall be in addition to the enforcement authority of the zoning administrator to order the removal or discontinuance of any unauthorized alterations of an approved conditional use, and the elimination, removal or discontinuance of any violation of a condition imposed prior to or after approval or violation of any other provision of this Code. Upon written complaint by any citizen or official, the plan commission or village board shall initially determine whether said complaint indicates a reasonable probability that the subject conditional use is in violation of either one or more of the standards set forth in section 44-119, or a condition of approval or other requirement imposed hereunder. Upon reaching a positive initial determination, a hearing shall be held upon notice as provided in section 44-118. Any person may appear at such hearing and testify in person or represented by an agent or attorney. The plan commission or village board may, in order to bring the subject conditional use into compliance with the standards set forth in section 44-119 or conditions previously imposed by the plan commission or village board modify existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use. Additionally, the offending party may be subjected to a forfeiture as set forth in section 1-12. In the event that no reasonable modification of such conditional use can be made in order to ensure that standards in section 44-119(a) and (b) will be met, the plan commission or village board may revoke the subject conditional approval and direct the zoning administrator and the village attorney to seek elimination of the subject use. Following any such hearing, the decision of the plan commission or village board shall be furnished to the current owner of the conditional use, in writing, stating the reasons therefore. An appeal from a decision of the plan commission or village board under this section may be taken to the board of appeals.

**Village of Little Chute**  
**INFORMATION FOR VILLAGE BOARD CONSIDERATION**

**ITEM DESCRIPTION:** Downtown Senior Housing – Northpointe Development Corporation

**PREPARED BY:** James Fenlon, Administrator

**REPORT DATE:** October 6, 2017

**ADMINISTRATOR'S REVIEW/COMMENTS:**

No additional comments to this report: 

See additional comments attached: \_\_\_\_\_

**EXPLANATION:** Presented as a complete package, we are bringing forward a senior housing development agreement, offer to purchase and conditional use to allow multifamily housing in the Central Business District for your review and approval. To ensure you have past efforts in mind, below is timeline on efforts related to this area for development:

- In March of 2015, the Plan Commission held a public hearing for the presentation on the concept of Senior Housing for the Downtown.
- In April if 2015, the Plan Commission recommended rezoning parcels from single family to Central Business District.
- In May 2015, the Village Board held a public hearing and then voted to rezone single family properties to Central Business District to enable a senior housing project to move forward.
- After unsuccessfully being able to negotiate a development from May 2015 through the better part of 2016, Village staff sent roughly 40 developers information on the downtown site in October of 2016.
- From December 2016 through April 2017, the Village was contacted by less than 6 developers expressing interest on a development.
- In June and July of this year, staff and board members had the opportunity to tour a Northpointe Development Corporation project in Oshkosh, WI

Just a reminder, this project will be applying for housing tax credits this fall and will receive notification of those credits in the spring or early summer of 2018, at which point development would occur. As you know and evidenced above, this development has been a focus of the village for some time. If you include the time required to assemble the parcels needed for this development in addition to the efforts outlined more recently, the effort likely spans more than a decade.

This specific project brings a unique advantage for our residents, namely, affordable senior housing that will be located in an area that can provide everyday amenities within walking distance to the primary residence. Couple that with the amenities proposed in the building, underground parking, high quality fixtures/finishes and space within the facility (meeting/eating space and fitness), we will have a highly sought after development that can offer our residents as they look for alternative housing options from traditional single family housing. In conclusion, the value provided to our residents will be something that will be transformational for our residents and the Downtown.

**RECOMMENDATION:** Review and approve the Development Agreement with Northpointe Development Corporation, the Offer to Purchase and Conditional Use to allow the project to move forward.

## DEVELOPER AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of October, 2017 by and between the Village of Little Chute, a Wisconsin municipal corporation (the "Village") and Northpointe Development Corporation (the "Developer").

**WHEREAS**, the parties have entered into an Offer to Purchase dated \_\_\_\_\_ and attached hereto as **Exhibit A** (the "Offer") for the property known as Outagamie County Tax Parcel Nos. 260070300, 260070400, 260070500, and 260070600 and described as follows:

Lots 22-25 on Grand Avenue, Little Chute, WI  
(the "Property")

**WHEREAS**, the cost to the Village to acquire the Property was originally \$445,000 which makes the Price Incentive involving the Purchase Price for the Property at \$1.00 under the Offer a substantial Price Incentive.

**WHEREAS**, the Developer wishes to purchase the Property with the intent of constructing forty (40) apartments, qualifying for senior (over age 55) residential occupancy status under state and federal law, consisting of one (1) building to be used for rental property as shown on the attached **Exhibit B** (the "Project").

**WHEREAS**, public utilities for sanitary sewer and water already exist in the street right-of-way for providing access and service for the Project, no further extension of these public utilities is required for the Project and Developer will be responsible for its own connection facilities for sanitary sewer and water services from these existing public mains.

**WHEREAS**, the Project requires, purchase of the Property considerable extension of the existing Village storm water utility, ("SWU"), and if the cost of constructing such SWU, and other Project costs such as land purchase, were born solely by the Developer, without financial incentives from the Village, the Project would not be financially feasible.

**WHEREAS**, this Agreement is being made by Village and Developer in contemplation, and as a condition that the Village will successfully form Tax Increment District No. 7 ("TID #7") which will include, but not be limited to the Property for this Project.

**WHEREAS**, to enable the Project to be financially feasible and to benefit the Village by creating more high-quality rental units and increasing the tax base, the Village shall extend its SWU sufficiently to service the Property by extending a storm water main to an existing utility easement right-of-way on the Property, and pay for the expenses as set forth herein, and also provide a purchase price incentive for the Property ("Price Incentive") as part of the overall Project costs.

**WHEREAS**, all facilities necessary for the Project for connection to the SWU will remain the sole responsibility of the Developer at such time that the SWU has been extended as described above.

**WHEREAS**, the extended SWU is necessary for the Project, but not for the exclusive use of the Project, and will to some extent service other property in the Village;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the representations and covenants made herein by the Developer, it is hereby agreed as follows:

## AGREEMENT

1. **Obligations and Rights of the Village.** The Village shall extend its SWU on to the public utility easement on or adjacent to the Property. The parties acknowledge that the Village has estimated the cost of the SWU extension to be Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00). The Village shall not be obligated to begin construction of the SWU until the Property has been transferred to Developer and the building permit for the Project has been issued. The Village shall complete construction of the SWU no later than ninety (90) days after these conditions have been met. If the Village's construction of the SWU is delayed through no fault of the Village, including, without limitation, by weather or inability to obtain voluntary easements for the SWU, the Village shall be given such reasonable time, but not to exceed one hundred eighty (180) days from the date the conditions set forth in this paragraph have been met, to complete the SWU extension.

The Village may deny connection to the SWU and to the existing sanitary sewer and water mains if any part of the Project is not materially and substantially constructed in accordance with **Exhibit B**. The Village may continue to deny connection to the SWU, sanitary sewer, and water mains until the Project is materially and substantially constructed as set forth in **Exhibit B**.

2. **Agreement Contingent on Closing of Sale of Property.** The obligations in this Agreement are contingent upon the closing of the sale of the Property from the Village to Developer. If such sale does not close on or before October 31, 2018 for whatever reason, this Agreement shall be null and void. The Village and Developer acknowledge that Addendum A to the Offer includes several contingencies that must be met before the parties are obligated to close the sale and purchase of the Property.

3. **Agreement Contingent on Formation of TID #7.** The obligations in this Agreement are contingent upon the successful formation of TID #7 by the Village prior to closing of the sale of the Property from the Village to Developer. If such formation of TID #7 does not occur on or before October 31, 2018 for whatever reason, this Agreement shall be null and void.

4. **Purchase Price Incentive/** The parties acknowledge the Purchase Price of the Property being purchased is \$1.00 (one dollar) which shall be paid by Developer to Village at closing.

5. **Developer/Design, Permits, and Construction Costs.** Developer is responsible for all design, permitting, and construction costs of the Project at Developer's sole expense, in compliance with state and local laws, code and ordinances.

6. **Developer/Property Improvements.** Developer is responsible to fully improve the Property including all design and construction costs, including labor and materials, and all utility connections to and from public utility mains servicing the Property for storm water, sanitary sewer, and water services, plus gas, electric, public street driveways and aprons, and other necessary facilities at Developer's sole expense.

7. **Village Approval of Building Plans and Materials/Fees.** The Village is further requiring, and the Developer is in agreement, that the Project, including but not limited to, building design, plans, specifications, and materials, including landscaping features, will be constructed in accordance with advance approval by the Village Board of Trustees and that material changes will only be allowed with prior written consent of the Village Board. The Developer will also be required to pay all applicable fees and permit costs as detailed in the Village's schedule of fees shown on **Exhibit C**.

8. **Village Approval of Site Plan.** The Village is further requiring, and the Developer is in agreement, that prior to commencement of construction, the site plan, and storm water drainage plan shall be submitted for advance approval by the Village Board of Trustees and that changes will only be allowed with prior written consent of the Village Board.

9. **Developer to Deed Back Property for Failure to Meet Initial Construction Time Limits.** In the event that thirty days (30) or more after closing of the sale of the Property: (i) construction of the Project has not begun and/or (ii) it has become apparent that completion of the footings and foundation of the building(s) will not occur within sixty (60) days from closing, Developer shall deed the Property back to the Village by warranty deed free and clear of liens, and the Village shall refund the \$1.00 purchase price to the Developer.

10. **Developer to Deed Back Property for Failure to Complete Project.** If construction of the Project is not substantially completed on or before October 31, 2019, Developer shall deed the Property back to the Village by warranty deed free and clear of liens, in exchange for refund of the \$1.00 by the Village to the Developer.

11. **Mortgage and Escrow Deed as Security.** At time of closing the sale of the Property Developer shall grant a mortgage back to the Village as security for the deed back provisions in paragraph 9 and/or 10 above on a mortgage form approved by the Village and Developer shall also execute a warranty deed to the Village to be held in escrow by Evans Title Companies, and released to the Village in the event of an uncured default by Developer for failing to comply with the time limits set forth in paragraphs 9 or 10 above, or alternatively in the discretion of the Village this mortgage may be foreclosed on in the Outagamie County Circuit Court in accordance with the provisions of Chapter 846 Wisconsin Statutes in addition to or in lieu of any other remedy at law or in equity.

12. **PILOT Payments** Developer recognizes, acknowledges, and agrees that the financial benefits afforded hereunder by the Village to Developer are available only because the Project is located within TID #7 and will generate an increase in assessed value equal, to or greater than, \$1,800,000, exclusive of land value. The Developer further agrees to maintain this minimum assessed value for the remainder of the life of TID #7 to protect the Village's tax base and the risk due to the Price Incentive granted pursuant to this Agreement. If the assessed value, exclusive of land, were to fall below \$1,800,000 for any reason, including but not limited to: the improvements do not achieve the target value of \$1,800,000, the improvements are destroyed by fire or other casualty, the result of inadequate maintenance or repair, decline in value due to market forces, or if all or a portion of the property becomes tax exempt for any reason, the Developer expressly covenants and guarantees to pay a Payment in Lieu of Taxes (PILOT) equal to the difference between the assessed value, exclusive of land, and \$1,800,000, which is the the minimum guaranteed assessed value amount, multiplied by the current mill rate of all taxing jurisdictions. The Developer is still responsible for paying the usual tax bill in addition to the PILOT. The PILOT only covers differences in taxes resulting from the differences in the actual assessed value and the \$1,800,000 required minimum assessed value, agreed to in this Agreement, for the building improvements, exclusive of land value. PILOT payments shall also be made by Developer for each year, if any, that the Property becomes exempt from real estate taxes under state or federal law even though tax exemption status has not been pursued by Developer as prohibited in A. below. The following additional provisions shall apply to this Agreement:

A. **Tax Exemption Forbearance**. Developer acknowledges that the Village is relying upon the Developer's real property taxes to generate (i) the Village's normal share of pre-development taxes and (ii) the Village's full share of tax increment taxes resulting from development. As a result, the Developer agrees neither the Developer nor any existing or future entity or partnership of the Developer (collectively, "Developer Affiliates") will pursue, assist, support, or be involved in any federal, state, or local, judicial, legislative, or regulatory action or process that seeks, directly or indirectly, to prohibit, set aside, or limit the taxability of all or any portion of the Property on any basis whatsoever, and the Developer for itself and on behalf of the Developer Affiliates, and each of their respective successors in interest, waives any and all rights thereto to the contrary.

B. **Due Date for PILOT Payments**. The PILOT will be due and payable within 30 days after Developer receives an invoice from Village.

C. **Special Assessments or Charges**. If the PILOT is not timely paid, the Village may levy a special assessment or special charge against the entire Property, which includes the Project, in the amount of the PILOT plus a 10% administrative fee and 12% interest per year, to defray the Village's costs for the Price Incentive and SWU extended by the Village specially benefitting the Property and/or for services provided by the Village associated with the Property. Developer hereby consents to the imposition of such special assessment or special charge under 66.0703 or 66.0627 Wis. Stats., and hereby waives on behalf of itself and its successors and assigns, pursuant to Section 66.0703(7) (b), Wis. Stats., and all other applicable provisions, any and all notices and other requirements and procedures of the Wisconsin Statutes which must otherwise be met prior to the imposition of special assessments. This remedy is in

addition to any and all other legal and equitable remedies available to the Village and these remedies may be exercised in any order simultaneously or separately in the Village's discretion.

13. **Expiration/Termination.** Upon expiration of TID #7, which is currently projected to be 12/31/2045, this Agreement shall automatically expire and terminate, in addition to any other reason for termination of TID #7 or this Agreement.

14. **Right to Cure.** If either party is in default of any obligation in this Agreement, the defaulting party shall have ten (10) days from receipt of notice of such default from the other party to cure such default or make provisions satisfactory to the non-defaulting party to cure same in respect to any default which cannot be cured within the ten (10) days.

15. **Miscellaneous.**

(a) Except as otherwise specifically set forth herein, the respective rights and liabilities of the Village and the Developer in this Agreement are not assignable or delegable, in whole or in part, without the prior written consent of the other party. Provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

(b) No waiver, amendment, or variation of the terms of this Agreement shall be valid unless in writing and signed by the Village and the Developer, and then only to the extent specifically set forth in writing.

(c) All material applicable agreements, representations, warranties, covenants, liabilities and obligations made in this Agreement and in any document delivered pursuant to this Agreement shall remain effective during the Term of this Agreement.

(d) All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given: (i) upon delivery to an officer or the person entitled to such notice, if hand delivered, or (ii) two business days following deposit in the United States Mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, air bill prepaid, or (iii) upon transmission if by facsimile or email (unless a notice of non-delivery is received), any such communication or notice shall be addressed as follows, unless and until any such party notifies the other in accordance with this section of any change of address:

If to the Village:

Village of Little Chute  
Village Administrator  
108 W Main Street  
Little Chute, WI 54140  
[Email: james@littlechutewi.org](mailto:james@littlechutewi.org)

If to the Developer: Northpointe Development Corporation  
Attn: Andy Dumke  
230 Ohio Street, Suite 200  
Oshkosh, WI 54902  
[Email: andy@alliancedevelopment.biz](mailto:andy@alliancedevelopment.biz)

(e) This Agreement and the document executed pursuant to this Agreement, including the Offer and all Addenda, which are incorporated herein, contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or understandings other than those expressly set forth in this Agreement and documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

(f) This Agreement is intended solely for the benefit of the Developer and the Village, and no third party (other than successors, permitted assigns and involuntary transferors) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the Village in connection therewith.

(g) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Wisconsin applicable to contracts made and wholly performed within the State.

(h) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. Facsimile or email signatures shall be deemed original signatures for all purposes of this Agreement.

(i) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, being in effect to the extent of such prohibition or enforceability without invalidating the remaining provisions of this Agreement in such jurisdiction or affecting the validity or enforcement of any provision in any other jurisdiction.

(j) Nothing contained in this Agreement or any other documents executed pursuant to this Agreement shall be deemed or construed as creating a partnership or joint venture between the Village and the Developer or between the Village and any other person, or cause the Village to be responsible in any way for the debts or obligations of the Developer or any other person or cause the Developer to be responsible in any way for the debts or obligations of the Village or any other person. Each party represents, warrants and agrees, for itself and its successors and assigns, not to make any assertion inconsistent with its acknowledgement or with the acknowledgement and agreement contained in the preceding sentence in the event of any action, suit or proceeding, at law or in equity, with respect to the transactions which are the subject of this Agreement and this paragraph may be pleaded and construed as a complete bar and estoppel against any assertion by or for a party and its successors and permitted assigns, that is inconsistent with its successors and permitted assigns, that is inconsistent with its acknowledgement and agreement contained in the preceding sentence.

(k) Time is of the essence as to each and every obligation or agreement contained in this Agreement.

(l) If any party is delayed or prevented from timely performing any act required under this Agreement other than the payment of money, by reason of fire, highly unusual weather events, earthquake, war, terrorist act, flood, riot, strikes, labor disputes or shortages, government restrictions, judicial order, public emergency, or other causes beyond the reasonable control of the party obligated to perform, the performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

(m) No payment or performance of services by either party shall prevent a party from declaring a default hereunder and pursuing its remedies hereunder in the event the other party fails to fulfill its obligations hereunder or cure any such default.

(n) The headings to this Agreement are for reference only and are not intended to modify any of the terms and conditions of this Agreement.

(o) This Agreement is the product of negotiation between the parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the other drafted this Agreement or any term, covenant or condition contained herein.

(p) All amounts not paid when due hereunder shall bear interest the rate of twelve percent (12%).

(q) This Agreement shall run with the land and may be recorded in the office of the Outagamie County Register of Deeds by either party. At such time as the obligations of both parties have been fulfilled, either party may request a satisfaction of such obligations from the other party in writing, in recordable form, and may record such satisfaction at its own cost. Such satisfaction shall not be unreasonably withheld by either party.

15. **Other Approvals.** In addition to any approvals required under this Agreement, the Developer shall be required to obtain all approvals, consents, and licenses as may be required by any governmental or non-governmental authority in connection with the Project, including, without limitation, all building permits, Project plan approvals and zoning approvals. The Developer's compliance with the terms of this Agreement shall not relieve the Developer from complying with all applicable federal, state and local laws, rules, regulations and ordinances in connection with the Project and to the extent any governmental or non-governmental entity imposes different or more restrictive conditions on the Developer or the Project, compliance by the Developer with the terms of this Agreement shall not relieve the Developer from complying with such different or more restrictive conditions. Likewise, any less restrictive conditions imposed on the Developer or the Project by any governmental or non-governmental authority shall not relieve the Developer or the Project from complying with all of the terms and conditions of this Agreement.

16. **Default.** In addition to the specific defaults and remedies contained herein, the occurrence of any one or more of the following events shall also constitute a default hereunder:

(a) The Developer or any successor shall fail to pay any amount due from it under this Agreement, and such failure continues for fifteen (15) days after the Developer has received a written notice of default; or

(b) Any representation or warranty made by a party in this Agreement or any document delivered by a party in fulfillment of an obligation under this Agreement shall prove to have been false in a material way as of the time made or given; or

(c) The Project is not substantially completed on or before the Completion Date (subject to matters of force majeure); or

(d) Either party shall: (i) become insolvent or generally not pay, or unable to pay, or admit in writing its inability to pay, its debts as they mature; or (ii) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its assets; or (iii) become the subject of an order for relief within the meaning of the United States Bankruptcy Code, or file a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or (iv) have a petition or application filed against it in bankruptcy or any similar proceeding, and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or more, or the Developer shall file an answer to such a petition or application, admitting material allegations thereof; or (v) apply to a court for the appointment of a receiver or custodian for any of its assets or properties or have a receiver or custodian appointed for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after its appointment; or (vi) adopt a plan of complete liquidation of its assets; or

(e) The failure of either party to cure a default after notice and within the appropriate cure period.

17. **Remedies.** Upon the occurrence of any default, without further notice, demand or action of any kind by a party, a party may, at its option, pursue any one or more of the following remedies simultaneously or successively:

(a) Cease to continue to fulfill its obligations under this Agreement, including without limitation ceasing construction of the SWU or Project; or

(b) Pursue any or all of the rights and remedies available to either party at law and/or in equity against the other party.

Except as may be otherwise specifically set forth herein, no remedy herein invoked upon a party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or available to a party under the Offer and any other covenants, restrictions, documents or

instruments governing the Property or Project, and/or now or hereafter existing at law or in equity. No failure or delay on the part of a party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or party exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

18. **No Personal Liability.** Under no circumstances shall any Village board member, official, director, attorney, employee, or agent of a party have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

19. **Village Authorization.** The execution of this Agreement by the Village is authorized by Village Board Resolution No. \_\_\_\_\_ dated \_\_\_\_\_.

20. **Assignment.** Rights and obligations hereunder of the Developer shall not be assigned and are not assignable without the written consent and authorization of the Village which will not be unreasonably withheld.

21. **Recording.** Any party hereto may record a copy of this Agreement or a memorandum hereof with the Register of Deeds for Outagamie County.

22. **Complete Agreement.** This constitutes the complete agreement between the parties and there have been no other oral or written representations, warranties, or agreements upon which any party hereto has relied.

23. **Parties Bound.** This Agreement shall be binding on the parties hereto and their respective heirs, successors and assigns.

24. **Joint Drafting.** This Agreement shall be deemed jointly drafted by the Village and Developer and shall not be construed against either party on the basis of drafting responsibility.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed by the persons below which are authorized representatives with authority to bind each party on behalf of which the signatures below are made.

VILLAGE OF LITTLE CHUTE:

BY: \_\_\_\_\_

Michael Vanden Berg, President

STATE OF WISCONSIN      )  
                            )  
OUTAGAMIE COUNTY      ) ss.  
                            )

Personally came before me this this \_\_\_\_ day of October, 2017, the above named Michael Vanden Berg, President of the Village of Little Chute, to me known to be the person who executed the foregoing instrument and acknowledged the same.

---

(Print Name)  
Notary Public, State of Wisconsin  
My commission expires \_\_\_\_\_

NORTHPOINTE DEVELOPMENT  
CORPORATION

BY: \_\_\_\_\_  
Andrew Dumke, President

STATE OF WISCONSIN      )  
                            )  
                            ) ss.  
WINNEBAGO COUNTY      )

Personally came before me this this \_\_\_\_ day of October, 2017, the above named Andrew Dumke, to me known to be the person who executed the foregoing instrument and acknowledged the same.

---

(Print Name)  
Notary Public, State of Wisconsin  
My commission expires \_\_\_\_\_

WB-13 VACANT LAND OFFER TO PURCHASE

1 **LICENSEE DRAFTING THIS OFFER ON** October, 2017 **[DATE] IS (AGENT OF BUYER)**  
2 **(AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER)** **STRIKE THOSE NOT APPLICABLE**  
3 **GENERAL PROVISIONS** The Buyer, Northpointe Holdings II, LLC and/or assigns

4 \_\_\_\_\_, offers to purchase the Property  
5 known as [Street Address] Lots 22-25 on Grand Avenue (parcels 260070300, 260070400, 260070500, 260070600)  
6 in the Village of Little Chute, County of Outagamie, Wisconsin (Insert  
7 additional description, if any, at lines 458-464 or 526-534 or attach as an addendum per line 525), on the following terms:  
8 ■ **PURCHASE PRICE:** One Dollar which is a Price Incentive pursuant to the Development Agreement between Village of Little  
9 Chute and North Pointe Development Corporation Dollars (\$ 1.00).  
10 ■ **EARNEST MONEY** of \$ zero accompanies this Offer and earnest money of \$ n/a  
11 will be mailed, or commercially or personally delivered within n/a days of acceptance to listing broker or  
12 \_\_\_\_\_  
13 ■ **THE BALANCE OF PURCHASE PRICE** will be paid in cash or equivalent at closing unless otherwise provided below.  
14 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on the  
15 date of this Offer not excluded at lines 18-19, and the following additional items: \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 ■ **NOT INCLUDED IN PURCHASE PRICE:** \_\_\_\_\_  
19 \_\_\_\_\_  
20 **CAUTION:** Identify Fixtures that are on the Property (see lines 290-294) to be excluded by Seller or which are rented  
21 and will continue to be owned by the lessor.  
22 **NOTE:** The terms of this Offer, not the listing contract or marketing materials, determine what items are  
23 included/excluded. Annual crops are not part of the purchase price unless otherwise agreed.  
24 ■ **ZONING:** Seller represents that the Property is zoned: R-3.  
25 **ACCEPTANCE:** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical  
26 copies of the Offer.  
27 **CAUTION:** Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines  
28 running from acceptance provide adequate time for both binding acceptance and performance.  
29 **BINDING ACCEPTANCE:** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on  
30 or before October 5, 2017. Seller may keep the Property on the  
31 market and accept secondary offers after binding acceptance of this Offer.  
32 **CAUTION:** This Offer may be withdrawn prior to delivery of the accepted Offer.  
33 **OPTIONAL PROVISIONS:** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (  ) ARE PART OF THIS  
34 OFFER ONLY IF THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A"  
35 OR ARE LEFT BLANK.  
36 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES:** Unless otherwise stated in this Offer, delivery of documents and  
37 written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 38-56.  
38 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if  
39 named at line 40 or 41.  
40 Seller's recipient for delivery (optional): James Fenlon, Village Administrator  
41 Buyer's recipient for delivery (optional): Andrew Dumke  
42  (2) **Fax:** fax transmission of the document or written notice to the following telephone number:  
43 Seller: ( ) Buyer: ( )  
44  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a  
45 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 40 or 41, for  
46 delivery to the Party's delivery address at line 49 or 50.  
47  (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party,  
48 or to the Party's recipient for delivery if named at line 40 or 41, for delivery to the Party's delivery address at line 49 or 50.  
49 Delivery address for Seller: \_\_\_\_\_  
50 Delivery address for Buyer: \_\_\_\_\_  
51  (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line  
52 55 or 56. If this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for  
53 personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically  
54 to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.  
55 E-Mail address for Seller (optional): james@littlechutewi.org  
56 E-Mail address for Buyer (optional): andy@alliancedevelopment.biz  
57 **PERSONAL DELIVERY/ACTUAL RECEIPT:** Personal delivery to, or Actual Receipt by, any named Buyer or Seller  
58 constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

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

63 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no  
64 notice or knowledge of Conditions Affecting the Property or Transaction (see lines 163-187 and 246-278) other than those  
65 identified in the Seller's disclosure report dated None provided, which was received by Buyer prior to  
66 Buyer signing this Offer and which is made a part of this Offer by reference **COMPLETE DATE OR STRIKE AS APPLICABLE**  
67 and \_\_\_\_\_  
68 \_\_\_\_\_

69 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE REPORT**

70 **CLOSING** This transaction is to be closed no later than October 31, 2018  
71 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

72 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:  
73 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association  
74 assessments, fuel and no others.

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

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

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

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

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

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

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

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

94 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights  
95 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the  
96 (written) (oral) **STRIKE ONE** lease(s), if any, are Seller warrants that the property is not leased

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

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

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

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

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

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

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

130 **FARMLAND PRESERVATION:** Rezoning a property zoned farmland preservation to another use or the early termination of a  
131 farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to  
132 3 times the class 1 "use value" of the land. Contact the Wisconsin Department of Agriculture, Trade and Consumer Protection  
133 Division of Agricultural Resource Management or visit <http://www.datcp.state.wi.us/> for more information.

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

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

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

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

160 **DEFINITIONS:**

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

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

- 165 a. Proposed, planned or commenced public improvements or public construction projects which may result in special  
166 assessments or otherwise materially affect the Property or the present use of the Property.
- 167 b. Government agency or court order requiring repair, alteration or correction of any existing condition.
- 168 c. Land division or subdivision for which required state or local approvals were not obtained.
- 169 d. A portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations.
- 170 e. A portion of the Property being subject to, or in violation of, a farmland preservation agreement or in a certified farmland  
171 preservation zoning district (see lines 130-133), or enrolled in, or in violation of, a Forest Crop, Managed Forest (see lines  
172 111-120), Conservation Reserve (see lines 134-138), or comparable program.
- 173 f. Boundary or lot disputes, encroachments or encumbrances, a joint driveway or violation of fence laws (Wis. Stat. ch. 90)  
174 (where one or both of the properties is used and occupied for farming or grazing).
- 175 g. Material violations of environmental rules or other rules or agreements regulating the use of the Property.
- 176 h. Conditions constituting a significant health risk or safety hazard for occupants of the Property.
- 177 i. Underground storage tanks presently or previously on the Property for storage of flammable or combustible liquids,  
178 including, but not limited to, gasoline and heating oil.
- 179 j. A Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, pesticides, herbicides,  
180 fertilizer, radon, radium in water supplies, lead or arsenic in soil, or other potentially hazardous or toxic substances on the  
181 premises.
- 182 k. Production of methamphetamine (meth) or other hazardous or toxic substances on the Property.
- 183 l. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the  
184 Property.
- 185 m. Defects in any well, including unsafe well water due to contaminants such as coliform, nitrates and atrazine, and out-of-  
186 service wells and cisterns required to be abandoned (Wis. Admin. Code § NR 812.26) but that are not closed/abandoned  
187 according to applicable regulations.

188 **(Definitions Continued on page 5)**

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

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

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

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

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

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

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

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

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

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

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

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

245 **DEFINITIONS CONTINUED FROM PAGE 3**

246 n. Defects in any septic system or other sanitary disposal system on the Property or out-of-service septic systems not  
247 closed/abandoned according to applicable regulations.

248 o. Subsoil conditions which would significantly increase the cost of development including, but not limited to, subsurface  
249 foundations or waste material; organic or non-organic fill; dumpsites where pesticides, herbicides, fertilizer or other toxic  
250 or hazardous materials or containers for these materials were disposed of in violation of manufacturer's or government  
251 guidelines or other laws regulating said disposal; high groundwater; adverse soil conditions (e.g. low load bearing  
252 capacity, earth or soil movement, slides) or excessive rocks or rock formations.

253 p. Brownfields (abandoned, idled or under-used land which may be subject to environmental contamination) or other  
254 contaminated land, or soils contamination remediated under PECFA, the Department of Natural Resources (DNR)  
255 Remediation and Redevelopment Program, the Agricultural Chemical Cleanup Program or other similar program.

256 q. Lack of legal vehicular access to the Property from public roads.

257 r. Homeowners' associations, common areas shared or co-owned with others, zoning violations or nonconforming uses,  
258 conservation easements, restrictive covenants, rights-of-way, easements, easement maintenance agreements, or use of  
259 a part of Property by non-owners, other than recorded utility easements.

260 s. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to  
261 impose assessments against the real property located within the district.

262 t. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.

263 u. Property tax increases, other than normal annual increases; completed or pending property tax reassessment of the  
264 Property, or proposed or pending special assessments.

265 v. Burial sites, archeological artifacts, mineral rights, orchards or endangered species.

266 w. Flooding, standing water, drainage problems or other water problems on or affecting the Property.

267 x. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.

268 y. Significant odor, noise, water intrusion or other irritants emanating from neighboring property.

269 z. Substantial crop damage from disease, insects, soil contamination, wildlife or other causes; diseased trees; or substantial  
270 injuries or disease in livestock on the Property or neighboring properties.

271 aa. Existing or abandoned manure storage facilities on the Property.

272 bb. Impact fees, or other conditions or occurrences that would significantly increase development costs or reduce the value of  
273 the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.

274 cc. The Property is subject to a mitigation plan required by DNR rules related to county shoreland zoning ordinances that  
275 obligates the owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county  
276 (see lines 139-145).

277 dd. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion  
278 charge or the payment of a use-value conversion charge has been deferred.

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

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

290 ■ **Fixture:** A "Fixture" is an item of property which is physically attached to or so closely associated with land so as to be  
291 treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage  
292 to the premises, items specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited  
293 to, all: perennial crops; garden bulbs; plants; shrubs and trees and fences; storage buildings on permanent foundations and  
294 docks/piers on permanent foundations.

295 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented on lines 18-19.**

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

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

306  **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: Multi-family housing

307

308

309 [insert proposed use and type and size of building, if applicable; e.g. three bedroom single family home]. The optional  
310 provisions checked on lines 314-345 shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers  
311 written notice to Seller specifying those items which cannot be satisfied and written evidence substantiating why each specific  
312 item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice, this Offer shall be null and void. Seller  
313 agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 314-350.

314  **ZONING CLASSIFICATION CONFIRMATION:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's)  
315 **STRIKE ONE** ("Buyer's" if neither is stricken) expense, verification that the Property is zoned \_\_\_\_\_  
316 and that the Property's zoning allows the Buyer's proposed use described at lines 306-308.

317  **SUBSOILS:** This offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither  
318 is stricken) expense, written evidence from a qualified soils expert that the Property is free of any subsoil condition which  
319 would make the proposed use described at lines 306-308 impossible or significantly increase the costs of such  
320 development.

321  **PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM (POWTS) SUITABILITY:** This Offer is contingent  
322 upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense, written evidence from  
323 a certified soils tester that (a) the soils at the Property locations selected by Buyer, and (b) all other conditions that must  
324 be approved, meet the legal requirements in effect on the date of this Offer to obtain a permit for a POWTS for use of the  
325 Property as stated on lines 306-308. The POWTS (septic system) allowed by the written evidence must be one of  
326 the following POWTS that is approved by the State for use with the type of property identified at lines 306-308 **CHECK**  
327 **ALL THAT APPLY:**  conventional in-ground;  mound;  at grade;  in-ground pressure distribution;  holding tank;  
328  other:

329  **EASEMENTS AND RESTRICTIONS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE**  
330 **ONE** ("Buyer's" if neither is stricken) expense, copies of all public and private easements, covenants and restrictions  
331 affecting the Property and a written determination by a qualified independent third party that none of these prohibit or  
332 significantly delay or increase the costs of the proposed use or development identified at lines 306-308.

333  **APPROVALS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if  
334 neither is stricken) expense, permits, approvals and licenses, as appropriate, or the final discretionary action by the  
335 granting authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's  
336 proposed use: \_\_\_\_\_

337  **UTILITIES:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither  
338 is stricken) expense, written verification of the following utility connections at the listed locations (e.g., on the Property, at  
339 the lot line, across the street, etc.) **CHECK AND COMPLETE AS APPLICABLE:**  electricity \_\_\_\_\_;  
340  gas \_\_\_\_\_;  sewer \_\_\_\_\_;  water \_\_\_\_\_;  
341  telephone \_\_\_\_\_;  cable \_\_\_\_\_;  other \_\_\_\_\_.

342  **ACCESS TO PROPERTY:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE**  
343 ("Buyer's" if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public  
344 roads.

345  **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if  
346 neither is stricken) expense, a  rezoning;  conditional use permit;  license;  variance;  building permit;   
347 occupancy permit;  other \_\_\_\_\_ **CHECK ALL THAT APPLY**, and delivering  
348 written notice to Seller if the item cannot be obtained, all within \_\_\_\_\_ days of acceptance for the Property for its proposed  
349 use described at lines 306-308.

350  **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) **STRIKE ONE** ("Seller  
351 providing" if neither is stricken) a Map of the Property dated subsequent to the date of acceptance of this Offer prepared by a  
352 registered land surveyor, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's) **STRIKE ONE** ("Seller's" if neither is stricken)  
353 expense. The map shall show minimum of \_\_\_\_\_ acres, maximum of \_\_\_\_\_ acres, the legal description of the  
354 Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements,  
355 if any, and: \_\_\_\_\_

356 [STRIKE AND COMPLETE AS APPLICABLE] Additional map features which may be added include, but are not limited to:  
357 staking of all corners of the Property; identifying dedicated and apparent streets; lot dimensions; total acreage or square  
358 footage; easements or rights-of-way. **CAUTION: Consider the cost and the need for map features before selecting them.**  
359 **Also consider the time required to obtain the map when setting the deadline.** This contingency shall be deemed satisfied  
360 unless Buyer, within five days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for delivery of said map,  
361 delivers to Seller a copy of the map and a written notice which identifies: (1) the significant encroachment; (2) information  
362 materially inconsistent with prior representations; or (3) failure to meet requirements stated within this contingency.

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

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

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

370 **EARNEST MONEY**

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

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

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

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

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

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

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

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

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

417 **TITLE EVIDENCE**

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

424 \_\_\_\_\_  
425 \_\_\_\_\_  
426 \_\_\_\_\_

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

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

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

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

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

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

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

458 **ADDITIONAL PROVISIONS/CONTINGENCIES:** See attached Addendum A which is incorporated herein and made a part of  
459 this Offer. See also Addendum B which is the Developer Agreement for the Property also incorporated as part of this Offer.

460 This Offer may be terminated by either Buyer or Seller upon 10 days written notice by either party to the other in the event  
461 it is determined that any of the conditions or requirements in Addendum A hereto or in the Developer Agreement attached as  
462 Addendum B to this Offer cannot be accomplished for any reason.

463 Seller's obligation to close is conditioned upon Seller successfully forming Tax Incentive District No. 7 prior to closing.  
464 The Property is sold "as is" with all faults and defects whether known or unknown by Buyer or Seller.

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

468 If Buyer defaults, Seller may:

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

472 If Seller defaults, Buyer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

525  **ADDENDA:** The attached Addendum A \_\_\_\_\_ is/are made part of this Offer.

526 **ADDITIONAL PROVISIONS/CONTINGENCIES** See attached Addendum A which is incorporated herein and made a part of 527 this Offer. This Offer is not binding on the Village until approved by the Village Board at an open meeting even if signed in advance 528 by any representative of the Village, including but not limited to the Village Administrator. See attached Addendum B which is also 529 incorporated herein and made part of this Offer.

530 \_\_\_\_\_  
531 \_\_\_\_\_  
532 \_\_\_\_\_  
533 \_\_\_\_\_  
534 \_\_\_\_\_

535 This Offer was drafted by [Licensee and Firm] jointly by both Buyer and Seller

536 \_\_\_\_\_ on October , 2017

537 (x) \_\_\_\_\_  
538 Buyer's Signature▲ Print Name Here► Andy Dumke, Northpointe Holdings II, LLC Date▲

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

541 **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.  
542 n/a \_\_\_\_\_  
543 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER**  
544 **SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON**  
545 **THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

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

548 (x) \_\_\_\_\_  
549 Seller's Signature▲ Print Name Here► By: Village President or Administrator subject to Village Board approval Date▲

550 This Offer was presented to Seller by [Licensee and Firm] n/a  
551 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

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

Addendum A to the Offer to Purchase

Addendum attached to and made part of the Offer to Purchase dated July 27, 2017 made by the buyer, Northpointe Holdings II, LLC and/or Assigns with respect to the property at Lots 22-25 on Grand Avenue, parcels 260070300, 260070400, 260070500, 260070600 in Little Chute, Wisconsin.

Contingencies: Buyer's obligation to close this transaction is contingent upon the following:

- A. Buyer's inspection and complete satisfaction with the real property, the improvements, and systems servicing said property. Seller shall cooperate with Buyer to the extent reasonably requested, but at no expense to Seller, other than making available copies of pertinent documents, to facilitate such inspection and review by Buyer. Seller shall grant Buyer reasonable access to the property for purposes of conducting said inspection. This contingency shall be waived in writing by 6/15/2018 or this Offer shall be null and void.
- B. Buyer obtaining any other approvals from appropriate local, state or federal governments or government agencies having jurisdiction over the Property and all necessary support, permits, and licenses necessary for the Buyer's proposed use. This contingency shall be waived by Buyer in writing by 6/15/18 or this Offer shall be null and void.
- C. Buyer shall obtain a Phase I Environmental Report, at Buyer's expense, satisfactory to Buyer. This contingency shall be waived in writing by 6/15/18 or this Offer shall be null and void.
- D. Buyer shall obtain a Geotechnical Engineering Report, at Buyer's expense, satisfactory to Buyer for Buyer's proposed use. Seller shall grant Buyer access to the property for purposes of conducting soil borings. This contingency shall be waived in writing by 6/15/18 or this offer shall be null and void.
- E. Buyer shall obtain a ALTA Survey, at Buyer's expense, satisfactory to Buyer for Buyer's proposed use. Seller shall grant Buyer access to the property for purposes of conducting the survey. This contingency shall be waived in writing by 6/15/18 or this Offer shall be null and void.
- F. Buyer obtaining approval for Buyer's application for certain WHEDA tax credits for the proposed use from the State of Wisconsin. This contingency shall be waived in writing by Buyer by 3/15/18 or this Offer shall be null and void.
- G. Seller shall extend a storm water utility main ("SWU") to the Property as described in the Development Agreement attached after closing utilities (water, sewer, and storm sewer) to the lot line of the property. This Offer shall be contingent upon (1) the Village's ability to obtain the proper easements for the extension of the SWU utilities on or before 5/1/18, while keeping the Village's cost for the SWU extension utilities at \$250,000.
- H. Buyer obtaining from the Village of Little Chute approval of the mutually agreed upon Developer's Agreement in the form attached hereto as Exhibit I, on or before October 31, 2018.

The Offer and Addendum constitute the complete Agreement between the parties with respect to the purchase of the property. The Offer shall not be amended in any form whatsoever, unless such amendment is in writing and duly signed by all parties. Each party acknowledges that it has carefully read and fully understands all provisions of the Offer. Neither party has relied on the statements made by the other party regarding the interpretation or legal effect of the Offer.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE TERMS OF THIS ADDENDUM ARE INCORPORATED AND MADE A PART OF THE OFFER TO WHICH IT IS ATTACHED

---

(Buyer's Signature)▲ Northpointe Holdings II, LLC (Date)▲

(Seller's Signature)▲

(Date)▲

**Village of Little Chute  
INFORMATION FOR VILLAGE BOARD CONSIDERATION**

**ITEM DESCRIPTION: Little Chute Community Area Network (LC CAN) Agreement**

**PREPARED BY: James Fenlon, Administrator**

**REPORT DATE: October 6, 2017**

**ADMINISTRATOR'S REVIEW/COMMENTS:**

No additional comments to this report: 

See additional comments attached: \_\_\_\_\_

**EXPLANATION:** While the LC CAN has been operational for Fox Valley Metro and Village offices for the nearly the past year, staff of both the Village and School District have been working to get the configuration of the network set-up as originally intended. An effort that has been running concurrently with working on configuration matters was the effort to draft formal guidelines for the agreement on how the LC CAN runs, is maintained and governed. The attached document was drafted by Village Legal Counsel and the main tenets of the agreement cover the following:

- Legal entities of originating members and additional members
- Ownership, management and control features
- Maintenance, repair, relocation and replacement
- Financial matters
- Licensing agreement (Exhibit A)
- Establishing the LC CAN Oversight Committee (Exhibit B)

Getting the agreement in place, reviewed and adopted by each originating member is imperative if we ever want to responsibly grow the network or have the possibility to add additional members. Given the length of review and time spent on this document, staff supports moving forward and approval.

**RECOMMENDATION: Review and approve the agreement for the LC CAN.**

## LC CAN AGREEMENT

THIS "Agreement" is made and entered into as of the \_\_\_\_\_ day of October, 2017, by the Little Chute Area School District ("School District"), and the Village of Little Chute ("Village"). The School District and Village may be referred to herein individually as "party" or collectively as "parties", both of which are also "Members" and together are "Originating Members".

### BACKGROUND RECITALS

WHEREAS, this Agreement is authorized for intergovernmental sharing of services and/or services facilities pursuant to § 66.0301 Wisconsin Statutes; and

WHEREAS, the School District and Village have cooperatively acquired and installed equipment for a shared fiber optic network, which network is herein referred to as the Little Chute Community Area Network ("LC CAN"), to enhance the speed and efficiency of software technology operations, by providing access to high-speed internet services, for administration and provision of their respective school and municipal services; and

WHEREAS, the LC CAN runs from the administration buildings of the School District and Village to the Outagamie County garage where the LC CAN connects with the Appleton Area Municipal Fiber Optic Network ("AAMFON"); and

WHEREAS, AAMFON then carries signal from the Outagamie County Recycling Center connection point, located on County Road OO approximately 0.45 miles west of the Outagamie County Recycling Center, to the Appleton Area School District administration located at the Morgan Building located at 120 East Harris Street, Appleton, Wisconsin; and

WHEREAS, the internet service provider sources are located at the Morgan Building which School District and Village tie into for service through the LC CAN and AAMFON; and

WHEREAS, School District and Village are parties to Memorandums of Understanding regarding the LC CAN and its connection to AAMFON made in January 2016 recited herein for reference purposes; and

WHEREAS, all purposes of this Agreement remain subject to the Memorandum of Understanding ("MOU") between the School District and the Appleton Area Municipal Fiber Optic Network which terms are incorporated herein by reference, and the parties acknowledge that this MOU may be either supplemented or replaced fully or partially by a subsequent agreement involving AAMFON and LC CAN; and

WHEREAS, if and when a subsequent agreement is made involving AAMFON and LC CAN this LC CAN AGREEMENT may require further amendments or modifications to coordinate with the new AAMFON agreement which is currently under negotiation; and

**WHEREAS**, for cost saving purposes School District and Village have shared the cost for the initial installation of the LC CAN making them presently the sole owners and users of the LC CAN; and

**WHEREAS**, due to the Memorandum of Understanding between the School District and the Village made in January 2016 the School District will remain the “lead agency” for purposes set forth in that Memorandum of Understanding as between the School District and Village; and

**WHEREAS**, School District and Village recognize that they can further reduce their respective costs for initial installation, maintenance, and continued use of the LC CAN by selectively admitting additional public service entities as users of the LC CAN by admitting additional entities to participate as parties to this Agreement under terms and conditions specified below; and

**WHEREAS**, the School District and Village recognized the need for an Oversight Committee, Fiscal Agent, and Chief Technology Officer for management and technical support purposes relating to LC CAN operations;

**NOW, THEREFORE**, the School District and Village agree to the following terms and conditions:

## **TERMS AND CONDITIONS**

### **ARTICLE I**

#### **LEGAL RELATIONSHIP - MEMBERS**

1. **Legal Relationship of Members**. The School District and Village, and any additional entity admitted as a party hereto shall at all times be separate and independent legal entities, and nothing herein creates a partnership, joint venture, or any other form of combined entity legal relationship.

2. **Additional Parties/Members**. Upon joint agreement by School District and Village additional entities may be admitted as parties for use of the LC CAN under the terms and conditions specified in this Agreement. Additional parties admitted for use of the LC CAN are referred to herein as “Members” or “parties”. If admitted, all new Members shall sign a License Agreement for Use of the LC CAN in the form attached hereto as **Exhibit A** setting forth the terms and conditions as Members entitled to use the LC CAN.

3. **Term of Membership and LC CAN Use**. The Originating Members of this Agreement shall remain parties until such time as they elect to withdraw as Members in their sole discretion. All new Members admitted as parties to this Agreement shall be subject to all terms of this Agreement.

4. **Oversight Committee.** The Originating Members have created an Oversight Committee, including provisions for a Fiscal Agent and Chief Technology Officer set forth in more detail on Exhibit B hereto entitled "LC CAN Oversight Committee" to which shall apply to Originating Members and subsequent Members.

## **ARTICLE II**

### **SCOPE OF AGREEMENT**

1. **Scope.** The scope of this Agreement includes all provisions stated herein which are also subject to and including those contained in **Exhibit A** and **Exhibit B**.

2. **Definition.** As stated in the Agreement, the term "Aerial & Underground Infrastructure and other Appurtenances" means any reinforced passage or opening in, on, under, or through the ground, or aerial utility pole attachments above the ground, or in/through Member buildings, and/or facilities capable of containing communications pathways and will be referred to as the LC CAN Infrastructure.

3. **Ownership and Management of the LC CAN.**

A. All Members agree to jointly own, maintain, and perform the assets, easements, and agreements applicable to the LC CAN except for the items below which remain solely owned, managed, and controlled by the Originating Members stated below.

1. Current LC CAN Easements/ROW/Agreements/Attachment Permits and related features held by the Originating Members include the following:

- a. County Highway OO (W. North Avenue) – Outagamie County public ROW
- b. Village of Little Chute - public right of way
- c. AAMFON Member Agreements & IRU – Existing Aerial/Overlash County Highway OO (W. North Avenue)
- d. Members – Utility placement on Member property
- e. Diggers Hotline Membership Agreement
- f. USIC Locating Agreement
- g. Additional Regulatory Pre-Exempt Aerial & Underground Infrastructure and other Appurtenances that have been affected due to changes in local & federal legislature.

2. Current Ongoing Occupancy/Easements/ROW/Agreements/Attachment Permits, Required for Installation of LC CAN connections held by Little Chute Area School District include the following:

- a. Little Chute Area School District – Existing Utility Occupancy Crossing - Fox Valley & Western Limited Railroad, North of Hans Parkway.
3. The Originating Members shall retain sole ownership and exclusive control rights to all Occupancy/Easements/ROW/Agreements/Attachment Permits set forth in 1 and 2 above. Additional admitted Members which become parties to this Agreement, do not acquire or retain ownership, management, or control rights to any of these specified Occupancy/Easements/ROW/Agreements/Attachment Permits, although these additional Members may benefit from these Occupancy/Easements/ROW/Agreements/Attachment Permits, during their term as Members.

B. The Originating Members of the LC CAN are tax-exempt entities; however, all newly admitted Members, if any, that are not tax-exempt entities, are solely and individually responsible for any and all taxes, fees or obligations for which they are or may become liable imposed by any regulatory agency, including but not limited to, state, federal, or local agencies having authority to impose such taxes, fees, or obligations.

4. **Management and Control.**
  - A. It is recognized that Members may in the future enter into agreements and arrangements with other entities which are not parties to this Agreement regarding the operation, maintenance, or use of the LC CAN; however, all such future LC CAN users are subject to advance approval by the Originating Members and as a condition for using the LC CAN must become Members subject to this Agreement and sign a License Agreement for use of the LC CAN in the form attached hereto as Exhibit A.
  - B. All additional Members shall at all times be subject to any present or future joint-use arrangement between LC CAN and any other entity providing service in the general interest of the public which benefits the LC CAN or Members, including but not limited to such things as communications for public safety, homeland security, and future technologies.
  - C. The Originating Members will control and manage any additions, modifications, or expansions to the currently existing LC CAN infrastructure (“Original LC CAN”) and will complete; Engineering, Design, Creation of Drawings & Maps, As-Built Maps, RFQ Process, if required. The Originating Members will manage the Contractor/Contractors additions, modifications, or expansions throughout the process.

- D. Each Member must submit requested notices in a timely manner to the **Originating Members** outlining the Member's requested future connections, additions, modifications, or expansions, (herein "Projects") all of which are subject to Originating Members advance approval. This applies to LC CAN's Infrastructure including but not limited to any modifications to the Aerial & Underground Infrastructure and other Appurtenances. Members shall submit information to the Oversight Committee as set forth in Article V below.
- E. Management of future Projects, to the LC CAN will be controlled by the Members for whose benefit these Projects have been made, through the Oversight Committee.

5. **Indemnification.**

- A. To the fullest extent permitted by law, each Member ("Indemnifying Member") shall indemnify and hold harmless the other Members ("Indemnified Members") from liability and claims of Members and third parties, and for breach of this Agreement by the Indemnifying Member, to the extent such liability, claims, or breach are caused by the Indemnifying Member or its agents or employees.
- B. In the event that there are any disputes between the parties with respect to the terms of this Agreement or the performance of the work as contemplated hereunder, then the aggrieved party shall submit notices per Notices - Article IV not less than 30 days after the event giving rise to the claim of the nature of the dispute and the claim being made. Such dispute, if not resolved within 120 days, shall be submitted to non-binding mediation in Outagamie County, Wisconsin. The mediation shall be heard by a mediator, who shall be a retired Wisconsin Circuit Court judge mutually agreed to between the parties; however, in the event that the parties fail to consent to a mediator, then each party shall select a mediator who, in turn, shall select a third which shall be a retired Wisconsin Circuit Court judge, who shall serve as the sole mediator to hear the mediation for purposes of attempting to reach full settlement without the need for litigation. The mediator's fee shall be split equally and paid by the participating Members.
- C. In the event that non-binding mediation fails to achieve a complete resolution of all disputed matters, and the affected parties do not agree on an alternate means of final resolution, then all remaining disputed matters shall then be resolved by legal action in the Circuit Court for Outagamie County, Wisconsin, and the appellate courts thereafter as the exclusive jurisdiction and venue for final dispute adjudication.

## ARTICLE III

### WARRANTY DISCLAIMERS AND LIABILITY WAIVERS

1. **Warranty Disclaimer.** The Originating Members make no express or implied representations or warranties, of the quality, condition, function, usefulness, merchantability or fitness for any particular purpose of the Original LC CAN or any LC CAN Projects, or any environmental or other surface or subsurface conditions at locations of the Original LC CAN or LC CAN Projects, now or at any time in the future to any Member. Any and all such listed or similar representations and warranties are specifically disclaimed by the Originating Members.

2. **Liability, Waiver, and Release of Originating Members.** The Members, by electing the privilege to become parties to this Agreement, hereby waive and release the Originating Members from any and all liability, claims, demands, causes of action, of every kind and nature, unconditionally and without reservation, resulting from the quality, condition, function, usefulness, merchantability or fitness for any particular purpose of both the Original LC CAN and any LC CAN Projects, or any environmental or other surface or subsurface conditions at locations of the Original LC CAN or LC CAN Projects, now or at any time in the future, despite any provisions anywhere in this Agreement to the contrary.

3. **Damages Waiver.** The Originating Members shall not be liable to Members for any interruption of LC CAN service or for interference with the operation of any Member's facilities, or for any general, special, indirect or consequential damages arising in any manner for any reason or cause whatsoever, including but not limited to the warranty disclaimers and liability waivers set forth above, all of which damage claims by Members against the Originating Members are fully and unconditionally waived by Members by becoming party to this Agreement.

## ARTICLE IV

### MAINTENANCE, REPAIR, RELOCATION, OR REPLACEMENT

1. **Precautions and Damage Reporting.** Members shall exercise precaution to avoid damaging the facilities of LC CAN and shall make an immediate report to all the Members of the occurrence of any such damage caused by its employees, agents or contractors.

2. **Originating Members' Exclusive Authority.** All maintenance, repairs, and replacements for the Original LC CAN made for the benefit of the Originating Members shall at all times remain under the exclusive authority and control of the Originating Members despite any provision herein to the contrary; except to the extent such authority is granted to the Oversight Committee as described in **Exhibit B**.

3. **Members' Notice and Representative Presence Requirements.** No Member or Member's representative shall open manholes, vaults, or engage in any form of access to any other portion of the Original LC CAN without first giving written notice to both Originating

Members, and then such access may only occur with a representative appointed by the Originating Members is either present, or as otherwise authorized by the Originating Members in writing.

4. **Member Safety Precautions Responsibilities/Connections.** Each Member engaging in connection to the Original LC CAN, subject to the notice and representation requirements in paragraph 3 above, shall be responsible for the safety precautions set forth in paragraph 5 below.

5. **Member Safety Precautions Responsibilities/Maintenance.** Each Member engaging in maintenance, repair, relocation, or replacement of any LC CAN Project shall be responsible for taking all necessary safety precautions when entering manholes or vaults including the following:

- a. Testing atmosphere in manholes and vaults for presence of gases or absence of oxygen
- b. Ventilation of manholes and vaults
- c. Pumping accumulated water from manholes and vaults
- d. Furnishing and installing all necessary traffic/safety warning signs and devices, etc.
- e. All other special devices and or permits, etc.

6. **Originating Members' Authority/Original LC CAN.** The Originating Members shall have exclusive authority over all emergency and non-emergency maintenance of the Original LC CAN including but not limited to the following items:

- a. Emergency/Non-Emergency utility relocation
- b. Emergency/Non-Emergency utility troubleshooting
- c. Emergency/Non-Emergency underground cable locating
- d. Emergency/Non-Emergency restoration of aerial & underground utility
- e. Emergency/Non-Emergency splicing & testing restoration of fiber

7. **Members' Authority/LC CAN Projects.** The Members who have made LC CAN Projects for serving their own uses shall have exclusive authority over all emergency and non-emergency maintenance of the LC CAN Projects including but not limited to the following items:

- a. Emergency/Non-Emergency utility relocation
- b. Emergency/Non-Emergency utility troubleshooting
- c. Emergency/Non-Emergency underground cable locating
- d. Emergency/Non-Emergency restoration of aerial & underground utility
- e. Emergency/Non-Emergency splicing & testing restoration of fiber

8. **Digger's Hotline Requirements.** All Members will maintain membership in Digger's Hotline and will contract locating services prior to any work associated with the LC

CAN, to locate LC CAN Underground Infrastructure and other Appurtenances per WI State Statutes 182.0175.

9. **Aerial Conducts/NESC Rules.** All Members will maintain Aerial Conductors per NESC rules, and shall maintain the system for vegetation management per NESC 218 and obstructions per NESC 217A4.

10. **Annual Inspections Requirements.** The Originating Members will conduct an annual inspection of the Aerial & Underground Infrastructure and other Appurtenances of the Original LC CAN. The Member(s) will conduct an annual inspection of the Aerial & Underground Infrastructure and other Appurtenances of the LC CAN Projects that service that particular Member or Members. Any work required as a result of these inspections will be shared based upon the Cost Sharing Formula below by the Members serviced as determined from calculations provided by the consulting engineer retained for this purpose by the Originating Members. All new Members will also have to conduct annual inspections of the portion of their Project that services them alone; and, any work required as determined by that inspection will be the sole responsibility of such new Members, which the Project services, in accordance with the Cost Sharing Formula below.

## **ARTICLE V**

### **PROCUREMENT AND PAYMENT RESPONSIBILITIES OF MEMBERS** **ADVANCE APPROVAL OF PROJECTS**

1. **Cost Sharing Formula:** The breakdown of cost sharing for the LC CAN Members is based on a "Cost Sharing Formula" derived from the final Project cost reconciliation as detailed in the LC CAN Infrastructure As-Built Maps. Cost sharing allocation among Members, based upon the Cost Sharing Formula, for operations and maintenance of the LC CAN, and future Projects, will be reviewed annually or as additional Projects warrant. Any additional fiber optic cable, equipment or software that benefits all Members will be funded by all of the Members in accordance with the Cost Sharing Formula. Modification to the Cost Sharing Formula will be determined by the Oversight Committee referencing the As-Built Logical Map showing segment percentages allocated to each Member. The Originating Members for purposes of the original LC CAN have agreed to share costs associated with the upkeep and maintenance of the original LC CAN infrastructure on the basis of 50% each, even though this equal split of costs deviates from the Cost Sharing Formula.

2. **Advance Approval of Projects Required.** All Members desiring Projects to the Original LC CAN, in order to connect to the Original LC CAN for services for that Member, must provide to the Oversight Committee for review and approval before construction begins (1) supply plans and specifications, (2) provide the name of the contractor to perform the work, (3) provide the estimated start and completion dates for such work, (4) provide a copy of the proposed contract with exhibits for the work to be performed between the Member and its contractor, and (5) obtain approval in writing for the Projects from the Originating Members, and in addition thereto the following information:

- i. The route of the proposed Projects.
- ii. The LC CAN existing Members that will benefit from the Project.
- iii. All new proposed Members for use of the Project.
- iv. The source of funding for the Project.
- v. The preliminary design of the Project.
- vi. Any such additional items requested by the Oversight Committee.

3. **Members Procure and Pay for Projects for Their Sole Benefit.** Each Member is separately and solely responsible for the procurement and full payment for that Member's requested Projects which benefit only that Member including, but not limited to, easements, engineering, construction, labor, materials, applicable permit fees, maps, as-built maps, and project management.

4. **Projects Jointly Benefiting More than One Member.** Members who are jointly benefited from a Project are jointly responsible for the procurement and full payment for those benefited Members' requested Projects including, but not limited to, easements, design engineering, construction, labor, materials, applicable permit fees, maps, as-built maps, and project management.

5. **Payment Responsibility Allocation.** Members shall pay their fees and their proportionate percentages of Project Costs, for membership and Projects for all the various costs associated therewith based upon final Project Cost reconciliation as determined by the LC CAN Engineering Consultant, in accordance with the Cost Sharing Formula above.

6. **Payment Responsibility for LC CAN Changes Required by Third Parties.** It is acknowledged by all Members that Projects to the LC CAN may be required from time to time, by third parties not members of this Agreement including, but not limited to, governmental agencies, regulatory authorities, AAMFON, or others, for which more than one Member must be responsible on a proportionate basis. The cost sharing proportion of each Member for such Modifications shall be in accordance with the Cost Sharing Formula above. Examples of such Modifications are the following:

1. Acts of God, or casualties or property damage resulting from events of nature.
2. Public utility modification requests
3. Outagamie County utility modification requests
4. AAMFON utility modification requests
5. Official requests from regulatory agencies having such authority.

## **ARTICLE VI** **TERMINATION OF MEMBERSHIP/OR AGREEMENT**

1. **Member Involuntary Termination.** Subject to paragraph 4 below, a Member's rights to remain party to this Agreement shall terminate when:

- a. The Member ceases to have authority to operate its facilities on, in or under public or private property at the location of the particular portion of Aerial/Conduit System covered by this Agreement, which authority is not renewed within ninety (90) days.
- b. The Member fails to meet, comply with, or otherwise breaches any term or condition of this Agreement, and fails to cure any such breach or deficiency within thirty (30) days of receiving written notice from one of the Originating Members.
- c. Involuntary termination of a Member shall be determined by, and within the reasonable discretion of, the Originating Members as outlined in **Exhibit A**.
- d. Any losses, claims or damages incurred by non-terminating Members as a result of the breach by the Member may be pursued by the affected Members against the terminated Member.

2. **Member Voluntary Termination.** Any Member may terminate its party status to this Agreement upon giving thirty (30) days written notice to all other Members and following the voluntary termination procedures as outlined in **Exhibit A**.

3. **Termination of Agreement.** This Agreement may be terminated for all those Members for which the LC CAN usage for those Members is no longer feasible or practical due to such things as technology changes, functional obsolescence, changes in law, prohibitive cost issues, regulatory changes, or other occurrences rendering the LC CAN incapable of continued use, or impractical for continuation, as contemplated by this Agreement. Remaining Members may continue under this Agreement if they so choose in their discretion.

4. **Continuing Obligations on Termination.** In the event of termination of any Member's party status to this Agreement or termination of the entire Agreement, all Members remain responsible to carry out their payment and performance obligations hereunder that arose prior to such termination, or resulted from event occurring prior to such termination. LC CAN Expenses shall then be shared and reallocated among remaining Members, in accordance with the Cost Sharing Formula above.

## **ARTICLE VII**

### **NOTICES**

All written notices required under this Agreement shall be given by posting the same by certified mail, return receipt requested to the Originating Members as follows:

Little Chute Area School District  
ATTN: District Superintendent  
325 Meulemans St. Suite A  
Little Chute, WI 54140

Village of Little Chute  
ATTN: Village Administrator  
108 West Main Street  
Little Chute, WI 54140

All written notices permitted or required under this Agreement to Members other than Originating Members shall be given by posting the same by certified mail, return receipt requested to the Members' last known address.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

1. **Regulatory Fees and Charges.** All Members acknowledge that they may be subject to fees, charges, or permits which they shall each pay as imposed by federal, state, or local regulatory authorities and agencies which may now exist, change or be newly imposed at any time during the term this Agreement remains in effect.

2. **Representation of Authority.** All individuals signing this Agreement on behalf of any Member represents and warrants that he/she/they is/are an authorized representative of the Member on whose behalf their signature is made.

3. **Amendments.** This Agreement may be amended by the sole unanimous written consent of the Originating Members whether or not additional Members have been admitted.

4. **No Assignment.** No rights of any Member hereto may be assigned to any third party which is not a duly admitted Member as party to this Agreement.

4. **Complete Agreement.** This constitutes the complete agreement between the parties and there have been no other oral or written representations, warranties, or agreements upon which any party hereto has relied.

**LITTLE CHUTE AREA SCHOOL DISTRICT**  
325 Meulemans St, Suite A  
Little Chute, WI 54140

By: \_\_\_\_\_  
**Gerald H. Verhagen, LCASD Board President**

By: \_\_\_\_\_  
**Joe Roehl, LCASD Board Clerk**

**VILLAGE OF LITTLE CHUTE**  
108 West Main St  
Little Chute, WI 54140

By: \_\_\_\_\_  
**Michael Vanden Berg, Village President**

By: \_\_\_\_\_  
**Laurie Decker, Village Clerk**

## EXHIBIT A

### LICENSE AGREEMENT FOR USE OF THE LC CAN

This License Agreement (herein "License") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Little Chute Area School District and the Village of Little Chute (herein "Originating Members") and \_\_\_\_\_ (herein "License Member"). The Originating Members and License Member may be referred to herein individually as "party" or collectively as "parties".

#### BACKGROUND RECITALS

**WHEREAS**, the Originating Members are party to an "LC CAN Agreement" dated the \_\_\_\_\_ day of \_\_\_\_\_, 2017, the terms of which are incorporated herein by reference; and

**WHEREAS**, the Originating Members are the owners of the LC CAN Infrastructure and as such may grant licenses to one or more "License Members" to permit use of the LC CAN under the terms of a License Agreement; and

**WHEREAS**, License Member named above has requested a license to use the LC CAN which request has been approved by the Originating Members subject to the terms and conditions of this License;

**NOW, THEREFORE**, the Originating Members and License Member agree to the following terms and conditions:

#### TERMS AND CONDITIONS

1. **Effective Date**. The effective date of this License is the first date shown in this License above.
2. **Term**. The term of this License shall be twenty-five (25) years unless sooner terminated by the Originating Members or License Member as set forth herein.
3. **Grant of License**. The Originating Members hereby grant this License to the License Member subject to the foregoing RECITALS, TERMS, AND CONDITIONS, and further subject to the provisions of the LC CAN AGREEMENT
4. **Authorized Connection and Use**. The License Member is authorized to connect to and use the LC CAN for the sole purpose of high speed internet services for purposes of public services administration.
5. **Commercial Use Prohibited**. Commercial and other uses of the LC CAN for purposes other than public services administration are prohibited without advance written consent from the Originating Members.
6. **Connection Infrastructure Cost and Insurance**. License Member is solely and exclusively responsible for the design, installation, connection, maintenance, repair, relocation, and replacement of all facilities reasonable or necessary to connect to and use the LC CAN ("Connection Infrastructure"), and all insurances deemed reasonable and appropriate for such Connection Infrastructure, at License Member's sole cost and expense.

7. **Damage to LC CAN Infrastructure.** License Member and/or its contractor shall not cause any damage to the LC CAN Infrastructure, and License Member shall be liable to reimburse the Originating Members for all costs and expenses incurred in connection with such damage to the LC CAN Infrastructure, which costs and expenses shall be reimbursed on demand.

8. **Ownership of Connection Infrastructure/Ownership of LC CAN.** License Member is the sole and exclusive owner of Connection Infrastructure. Originating Members at all times retain sole and exclusive ownership of the LC CAN.

9. **Other Licenses, Permits, and Easements.** License Member is solely and exclusively responsible to obtain all reasonable or necessary licenses, permits, and easements for all of its own technology systems and for the location and installation of all of its Connection Infrastructure.

10. **Pre-Conditions for Connection / As Built Plans.** Connection to the LC CAN by the License Member may only be allowed after the design, description, and location of Connection Infrastructure, and the name and qualifications of the contractor hired to make the connection to the LC CAN, are presented to the Originating Members for approval, and the License Member is granted such approval from the Originating Members in writing prior to making connection to the LC CAN. License Member shall provide "as-built" plans for all Connection Infrastructure within 60 days of completion of connection to the LC CAN.

11. **Additions or Modifications to Connection Infrastructure / As Built Plans.** Any additions, modifications, or expansions to the Connection Infrastructure of the License Member shall be submitted to the Originating Members for approval prior to implementation which approval shall not be unreasonably withheld. License Member shall provide "as-built" plans for all additions, modifications, or expansions to the Connection Infrastructure within 60 days of completion of such additions, modifications, or expansions.

12. **Compliance with Law and Property Rights.** License Member shall at all times remain in compliance with all federal, state, and local laws and regulations, and the private and public property rights of all property owners through which easements exist for License Member's Connection Infrastructure.

13. **Interference of LC CAN Prohibited / Responsibility on Termination.** License Member shall not engage in any form of activity or use detrimental to the unrestricted use of the LC CAN by the Originating Members or other License Members, including but not limited to, any activities which either interfere with or interrupt LC CAN services. In the event this License Member's License Agreement for use of the LC CAN is terminated either by the License Member or by the originating members as authorized in paragraph 14 below, and in the event termination occurs due to expiration without renewal of the 25 year term, the following provisions shall apply.

- a) It is the responsibility of the License Member being terminated to negotiate the terms and conditions of continued use of the Connection Infrastructure installed by this License Member with other license members utilizing this License Member's Connection Infrastructure for access to the LC CAN. These other members who access the LC CAN through the terminating License Member's Connection Infrastructure are referred to as "Upstream License Member Users".
- b) The Originating Members do not object to the continued use of other Upstream License Member Users of the Connection Infrastructure of the terminating License Member; however, the other

Upstream License Member Users of the terminating License Member's Connection Infrastructure, as a condition for remaining license members, shall assume all financial responsibility for the Connection Infrastructure and also the LC CAN Expenses associated with the terminating License Member's use of the LC CAN as set forth in paragraph 16 below.

14. **Early Termination.** This License may be terminated prior to the expiration of the twenty-five (25) year term as follows:

- a) **By License Member.** License Member may terminate this Agreement any time upon sixty (60) days advance notice except that License Member will remain responsible to pay its portion of LC CAN Expenses incurred or committed to be incurred prior to the date notice of such termination has been given in writing to the Originating Members.
- b) **By Originating Members Upon Breach or Default.** Originating Members may terminate this License upon breach or default by License Member of the terms of this License, upon termination or abandonment of the LC CAN by Originating Members, or upon discontinuance or other modification by or in the AAMFON system deemed unreasonable or unacceptable to the Originating Members, or due to termination or other restrictions imposed by the high-speed internet service provider providing services through AAMFON or the LC CAN.
- c) **Notice and Cure.** Prior to termination of this License for breach or default by License Member, Originating Members must give notice of the nature of breach or default to the License Member which shall have thirty (30) days to cure such breach or default, and if not cured within thirty (30) days of such notice being given, this Agreement may be terminated at the option of Originating Members.
- d) **Additional Grounds for Termination.** The Originating Members may also terminate this License in the following events, and upon such further termination have no further liability to this License Member or any Upstream License Member Users:
  - i. this License would make one or both of the Originating Members a telecommunications company, telecommunications carrier, or telecommunications service provider, or other entity subject to state or federal statutes, rules, or regulations; or in the event that this License would create an adverse impact on the tax exempt bonding status of Originating Members; or
  - ii. One or both of the Originating Members withdraw as members from the LC CAN Agreement or the Originating Members elect to terminate the LC CAN; or
  - iii. The AMFON or internet service provider sources located at the Morgan Building change in a manner that the Originating Members deem impractical for continued use of the LC CAN.
- e) **Disconnection on Termination.** If the License Member does not cooperate to disconnect the connection for infrastructure from the LC CAN on termination, and one or more of Upstream License Member Users do not assume all responsibility of the terminated License Member for that License Member's Connection Infrastructure and other obligations of the terminated License Member for under this License and the LC CAN Agreement, the Originating Members may undertake said disconnection and charge the cost of said disconnection back to the License Member whose rights under this License have been terminated.

f) **Other Remedies.** Originating Members shall have all other remedies available at law or in equity for termination and other enforcement of this License with respect to the rights and obligations of License Member.

15. **Consideration and Fees/LC CAN Expenses.** License Member shall pay its proportionate share of maintenance, repair, replacement, improvements, and/or expansion of the LC CAN ("LC CAN Expenses") as outlined in ARTICLE V "Procurement and Payment Responsibilities of Members" of the LC CAN Agreement. License Member shall also pay an annual fee to the Originating Members, as determined by the Oversight Committee, for the use of the LC CAN, paid in advance at the time of entering this License and on the anniversary date each year thereafter during the term of this Agreement. This annual fee may be adjusted by the Originating Members in an amount equal to the increase in the Consumer Price Index, and also to accommodate and offset other charges, fees, and expenses incurred by the Originating Members to maintain and operate the LC CAN.

16. **Proportionate Responsibility for LC CAN Expenses.** Originating Members and each License Member shall share liability for LC CAN Expenses in accordance with the Cost Sharing Formula set forth in ARTICLE V "Procurement and Payment Responsibilities of Members" of the LC CAN Agreement, which share shall be paid within thirty (30) days of billing, and the following provisions also apply.

- a) If a License Member is granted permission by the Originating Members for a sub-licensee, that sub-licensee will share the LC CAN Expenses on the same basis as any other License Member. Any such sub-licensee shall also be approved by and sign a License Agreement for use of the LC CAN with the Originating Members.
- b) In the event that one of the Originating Members make additions, modifications, or expansions to the LC CAN that benefit only one of the Originating Members; or a License Member, or an Upstream License Member User make additions, modifications, or expansions to the LC CAN or the Connection Infrastructure, or further additions, modifications, or expansions to existing additions, modifications, or expansions, that benefit only the License Member or Upstream License Member User, then the proportionate sharing of LC CAN Expenses shall be recalculated in accordance with the Cost Sharing Formula set forth in ARTICLE V "Procurement and Payment Responsibilities of Members" of the LC CAN Agreement.

17. **School District as Fiscal Agent.** The Fiscal Agent of the Originating Members is the Little Chute Area School District. License Member shall make all payments due or to become due to the Little Chute Area School District.

18. **Sublicenses.** License Member may grant sublicenses to use License Member's Connection Infrastructure only to entities approved by the Originating Members, and subject to the condition and requirement that as a condition for such approval such sub-licensees enter into License Agreements to use the LC CAN with the Originating Members in addition to whatever sublicense agreements these entities may enter with the License Member.

19. **Maintenance, Repairs, and Replacement of LC CAN.** Maintenance, repairs, and replacement of the LC CAN or any of its component features is subject to and controlled by the LC CAN Agreement to which this License remains subject.

20. **Notice of Proposed Expenditures.** The Originating Members to the extent reasonable, and excluding circumstances where either emergency or immediate repairs, replacements, or modifications are necessary, will give reasonable advance notice of the proposed maintenance, repairs, and replacement of the LC CAN or any of its component features, to the License Member prior to contracting for and commencing the work for such matters.

21. **Requests for LC CAN Modifications.** License Member may, whenever deemed appropriate by License Member, make requests or proposals to the Originating Members for modifications to the LC CAN. Such requests and proposals may be considered by the Originating Members, but no assurance is given by this License that any such requests or proposals can or will be granted, all of which decisions remain in the sole and exclusive discretion of the Originating Members.

22. **Reimbursement for Costs of Enforcement.** License Member shall reimburse Originating Members for all costs, including reasonable attorney's fees incurred as a result of breach of this Agreement by License Member and/or for other enforcement of this Agreement.

23. **No Representations or Warranties.** Originating Members make no express or implied representations or warranties to License Member regarding the present, or continuing, operational condition, suitability, availability of modifications, or fitness for particular uses or purposes of the License Member, now or in the future.

24. **Hold Harmless and Waiver of Liability.** License Member hereby agrees to hold harmless Originating Members from any and all claims, liabilities, and/or losses of every nature whatsoever, whether known or unknown, including but not limited to, claims and liabilities associated with defects, service interruptions, or other malfunctions of the LC CAN.

25. **Amendments.** This License may be amended only in writing signed by both Originating Members and the License Member.

26. **Complete Agreement.** This constitutes the complete agreement between the parties, together with the LC CAN Agreement referenced herein, and memorandums of understanding referenced therein, and there have been no other oral or written representations, warranties, or agreements upon which any party hereto has relied.

27. **Parties Bound.** This Agreement shall be binding on the parties hereto and their respective heirs, successors, and assigns.

(SIGNATURES ON FOLLOWING PAGE)

Dated and effective the first date written above.

**LITTLE CHUTE AREA SCHOOL DISTRICT**

By: \_\_\_\_\_  
**Gerald H. Verhagen, LCASD Board President**

By: \_\_\_\_\_  
**Joe Roehl, LCASD Board Clerk**

**VILLAGE OF LITTLE CHUTE**

By: \_\_\_\_\_  
**Michael Vanden Berg, Village President**

By: \_\_\_\_\_  
**Laurie Decker, Village Clerk**

\_\_\_\_\_, License Member Name

By: \_\_\_\_\_  
**Authorized Representative/Title**

\_\_\_\_\_  
**(Print Name)**

## LC CAN AGREEMENT

THIS "Agreement" is made and entered into as of the \_\_\_\_\_ day of October, 2017, by the Little Chute Area School District ("School District"), and the Village of Little Chute ("Village"). The School District and Village may be referred to herein individually as "party" or collectively as "parties", both of which are also "Members" and together are "Originating Members".

### BACKGROUND RECITALS

WHEREAS, this Agreement is authorized for intergovernmental sharing of services and/or services facilities pursuant to § 66.0301 Wisconsin Statutes; and

WHEREAS, the School District and Village have cooperatively acquired and installed equipment for a shared fiber optic network, which network is herein referred to as the Little Chute Community Area Network ("LC CAN"), to enhance the speed and efficiency of software technology operations, by providing access to high-speed internet services, for administration and provision of their respective school and municipal services; and

WHEREAS, the LC CAN runs from the administration buildings of the School District and Village to the Outagamie County garage where the LC CAN connects with the Appleton Area Municipal Fiber Optic Network ("AAMFON"); and

WHEREAS, AAMFON then carries signal from the Outagamie County Recycling Center connection point, located on County Road OO approximately 0.45 miles west of the Outagamie County Recycling Center, to the Appleton Area School District administration located at the Morgan Building located at 120 East Harris Street, Appleton, Wisconsin; and

WHEREAS, the internet service provider sources are located at the Morgan Building which School District and Village tie into for service through the LC CAN and AAMFON; and

WHEREAS, School District and Village are parties to Memorandums of Understanding regarding the LC CAN and its connection to AAMFON made in January 2016 recited herein for reference purposes; and

WHEREAS, all purposes of this Agreement remain subject to the Memorandum of Understanding ("MOU") between the School District and the Appleton Area Municipal Fiber Optic Network which terms are incorporated herein by reference, and the parties acknowledge that this MOU may be either supplemented or replaced fully or partially by a subsequent agreement involving AAMFON and LC CAN; and

WHEREAS, if and when a subsequent agreement is made involving AAMFON and LC CAN this LC CAN AGREEMENT may require further amendments or modifications to coordinate with the new AAMFON agreement which is currently under negotiation; and

WHEREAS, for cost saving purposes School District and Village have shared the cost for the initial installation of the LC CAN making them presently the sole owners and users of the LC CAN; and

WHEREAS, due to the Memorandum of Understanding between the School District and the Village made in January 2016 the School District will remain the "lead agency" for purposes set forth in that Memorandum of Understanding as between the School District and Village; and

WHEREAS, School District and Village recognize that they can further reduce their respective costs for initial installation, maintenance, and continued use of the LC CAN by selectively admitting additional public service entities as users of the LC CAN by admitting additional entities to participate as parties to this Agreement under terms and conditions specified below; and

WHEREAS, the School District and Village recognized the need for an Oversight Committee, Fiscal Agent, and Chief Technology Officer for management and technical support purposes relating to LC CAN operations;

NOW, THEREFORE, the School District and Village agree to the following terms and conditions:

### **TERMS AND CONDITIONS**

#### **ARTICLE I**

##### **LEGAL RELATIONSHIP - MEMBERS**

1. **Legal Relationship of Members.** The School District and Village, and any additional entity admitted as a party hereto shall at all times be separate and independent legal entities, and nothing herein creates a partnership, joint venture, or any other form of combined entity legal relationship.

2. **Additional Parties/Members.** Upon joint agreement by School District and Village additional entities may be admitted as parties for use of the LC CAN under the terms and conditions specified in this Agreement. Additional parties admitted for use of the LC CAN are referred to herein as "Members" or "parties". If admitted, all new Members shall sign a License Agreement for Use of the LC CAN in the form attached hereto as **Exhibit A** setting forth the terms and conditions as Members entitled to use the LC CAN.

3. **Term of Membership and LC CAN Use.** The Originating Members of this Agreement shall remain parties until such time as they elect to withdraw as Members in their sole discretion. All new Members admitted as parties to this Agreement shall be subject to all terms of this Agreement.

4. **Oversight Committee.** The Originating Members have created an Oversight Committee, including provisions for a Fiscal Agent and Chief Technology Officer set forth in more detail on Exhibit B hereto entitled "LC CAN Oversight Committee" to which shall apply to Originating Members and subsequent Members.

## **ARTICLE II**

### **SCOPE OF AGREEMENT**

1. **Scope.** The scope of this Agreement includes all provisions stated herein which are also subject to and including those contained in **Exhibit A** and **Exhibit B**.

2. **Definition.** As stated in the Agreement, the term "Aerial & Underground Infrastructure and other Appurtenances" means any reinforced passage or opening in, on, under, or through the ground, or aerial utility pole attachments above the ground, or in/through Member buildings, and/or facilities capable of containing communications pathways and will be referred to as the LC CAN Infrastructure.

3. **Ownership and Management of the LC CAN.**

A. All Members agree to jointly own, maintain, and perform the assets, easements, and agreements applicable to the LC CAN except for the items below which remain solely owned, managed, and controlled by the **Originating Members** stated below.

1. Current LC CAN Easements/ROW/Agreements/Attachment Permits and related features held by the **Originating Members** include the following:

- a. County Highway OO (W. North Avenue) – Outagamie County public ROW
- b. Village of Little Chute - public right of way
- c. AAMFON Member Agreements & IRU – Existing Aerial/Overlash County Highway OO (W. North Avenue)
- d. Members – Utility placement on Member property
- e. Diggers Hotline Membership Agreement
- f. USIC Locating Agreement
- g. Additional Regulatory Pre-Exempt Aerial & Underground Infrastructure and other Appurtenances that have been affected due to changes in local & federal legislature.

2. Current Ongoing Occupancy/Easements/ROW/Agreements/Attachment Permits, Required for Installation of LC CAN connections held by Little Chute Area School District include the following:

- a. Little Chute Area School District – Existing Utility Occupancy Crossing - Fox Valley & Western Limited Railroad, North of Hans Parkway.
3. The Originating Members shall retain sole ownership and exclusive control rights to all Occupancy/Easements/ROW/Agreements/Attachment Permits set forth in 1 and 2 above. Additional admitted Members which become parties to this Agreement, do not acquire or retain ownership, management, or control rights to any of these specified Occupancy/Easements/ROW/Agreements/Attachment Permits, although these additional Members may benefit from these Occupancy/Easements/ROW/Agreements/Attachment Permits, during their term as Members.
- B. The Originating Members of the LC CAN are tax-exempt entities; however, all newly admitted Members, if any, that are not tax-exempt entities, are solely and individually responsible for any and all taxes, fees or obligations for which they are or may become liable imposed by any regulatory agency, including but not limited to, state, federal, or local agencies having authority to impose such taxes, fees, or obligations.

4. **Management and Control.**

- A. It is recognized that Members may in the future enter into agreements and arrangements with other entities which are not parties to this Agreement regarding the operation, maintenance, or use of the LC CAN; however, all such future LC CAN users are subject to advance approval by the Originating Members and as a condition for using the LC CAN must become Members subject to this Agreement and sign a License Agreement for use of the LC CAN in the form attached hereto as **Exhibit A**.
- B. All additional Members shall at all times be subject to any present or future joint-use arrangement between LC CAN and any other entity providing service in the general interest of the public which benefits the LC CAN or Members, including but not limited to such things as communications for public safety, homeland security, and future technologies.
- C. The **Originating Members** will control and manage any additions, modifications, or expansions to the **currently existing** LC CAN infrastructure ("Original LC CAN") and will complete; Engineering, Design, Creation of Drawings & Maps, As-Built Maps, RFQ Process, if required. The **Originating Members** will manage the Contractor/Contractors additions, modifications, or expansions throughout the process.

- D. Each Member must submit requested notices in a timely manner to the Originating Members outlining the Member's requested future connections, additions, modifications, or expansions, (herein "Projects") all of which are subject to Originating Members advance approval. This applies to LC CAN's Infrastructure including but not limited to any modifications to the Aerial & Underground Infrastructure and other Appurtenances. Members shall submit information to the Oversight Committee as set forth in Article V below.
- E. Management of future Projects, to the LC CAN will be controlled by the Members for whose benefit these Projects have been made, through the Oversight Committee.

## 5. Indemnification.

- A. To the fullest extent permitted by law, each Member ("Indemnifying Member") shall indemnify and hold harmless the other Members ("Indemnified Members") from liability and claims of Members and third parties, and for breach of this Agreement by the Indemnifying Member, to the extent such liability, claims, or breach are caused by the Indemnifying Member or its agents or employees.
- B. In the event that there are any disputes between the parties with respect to the terms of this Agreement or the performance of the work as contemplated hereunder, then the aggrieved party shall submit notices per Notices - Article IV not less than 30 days after the event giving rise to the claim of the nature of the dispute and the claim being made. Such dispute, if not resolved within 120 days, shall be submitted to non-binding mediation in Outagamie County, Wisconsin. The mediation shall be heard by a mediator, who shall be a retired Wisconsin Circuit Court judge mutually agreed to between the parties; however, in the event that the parties fail to consent to a mediator, then each party shall select a mediator who, in turn, shall select a third which shall be a retired Wisconsin Circuit Court judge, who shall serve as the sole mediator to hear the mediation for purposes of attempting to reach full settlement without the need for litigation. The mediator's fee shall be split equally and paid by the participating Members.
- C. In the event that non-binding mediation fails to achieve a complete resolution of all disputed matters, and the affected parties do not agree on an alternate means of final resolution, then all remaining disputed matters shall then be resolved by legal action in the Circuit Court for Outagamie County, Wisconsin, and the appellate courts thereafter as the exclusive jurisdiction and venue for final dispute adjudication.

## ARTICLE III

### WARRANTY DISCLAIMERS AND LIABILITY WAIVERS

1. **Warranty Disclaimer.** The Originating Members make no express or implied representations or warranties, of the quality, condition, function, usefulness, merchantability or fitness for any particular purpose of the Original LC CAN or any LC CAN Projects, or any environmental or other surface or subsurface conditions at locations of the Original LC CAN or LC CAN Projects, now or at any time in the future to any Member. Any and all such listed or similar representations and warranties are specifically disclaimed by the Originating Members.

2. **Liability, Waiver, and Release of Originating Members.** The Members, by electing the privilege to become parties to this Agreement, hereby waive and release the Originating Members from any and all liability, claims, demands, causes of action, of every kind and nature, unconditionally and without reservation, resulting from the quality, condition, function, usefulness, merchantability or fitness for any particular purpose of both the Original LC CAN and any LC CAN Projects, or any environmental or other surface or subsurface conditions at locations of the Original LC CAN or LC CAN Projects, now or at any time in the future, despite any provisions anywhere in this Agreement to the contrary.

3. **Damages Waiver.** The Originating Members shall not be liable to Members for any interruption of LC CAN service or for interference with the operation of any Member's facilities, or for any general, special, indirect or consequential damages arising in any manner for any reason or cause whatsoever, including but not limited to the warranty disclaimers and liability waivers set forth above, all of which damage claims by Members against the Originating Members are fully and unconditionally waived by Members by becoming party to this Agreement.

## ARTICLE IV

### MAINTENANCE, REPAIR, RELOCATION, OR REPLACEMENT

1. **Precautions and Damage Reporting.** Members shall exercise precaution to avoid damaging the facilities of LC CAN and shall make an immediate report to all the Members of the occurrence of any such damage caused by its employees, agents or contractors.

2. **Originating Members' Exclusive Authority.** All maintenance, repairs, and replacements for the Original LC CAN made for the benefit of the Originating Members shall at all times remain under the exclusive authority and control of the Originating Members despite any provision herein to the contrary; except to the extent such authority is granted to the Oversight Committee as described in **Exhibit B**.

3. **Members' Notice and Representative Presence Requirements.** No Member or Member's representative shall open manholes, vaults, or engage in any form of access to any other portion of the Original LC CAN without first giving written notice to both Originating

Members, and then such access may only occur with a representative appointed by the Originating Members is either present, or as otherwise authorized by the Originating Members in writing.

4. **Member Safety Precautions Responsibilities/Connections.** Each Member engaging in connection to the Original LC CAN, subject to the notice and representation requirements in paragraph 3 above, shall be responsible for the safety precautions set forth in paragraph 5 below.

5. **Member Safety Precautions Responsibilities/Maintenance.** Each Member engaging in maintenance, repair, relocation, or replacement of any LC CAN Project shall be responsible for taking all necessary safety precautions when entering manholes or vaults including the following:

- a. Testing atmosphere in manholes and vaults for presence of gases or absence of oxygen
- b. Ventilation of manholes and vaults
- c. Pumping accumulated water from manholes and vaults
- d. Furnishing and installing all necessary traffic/safety warning signs and devices, etc.
- e. All other special devices and or permits, etc.

6. **Originating Members' Authority/Original LC CAN.** The Originating Members shall have exclusive authority over all emergency and non-emergency maintenance of the Original LC CAN including but not limited to the following items:

- a. Emergency/Non-Emergency utility relocation
- b. Emergency/Non-Emergency utility troubleshooting
- c. Emergency/Non-Emergency underground cable locating
- d. Emergency/Non-Emergency restoration of aerial & underground utility
- e. Emergency/Non-Emergency splicing & testing restoration of fiber

7. **Members' Authority/LC CAN Projects.** The Members who have made LC CAN Projects for serving their own uses shall have exclusive authority over all emergency and non-emergency maintenance of the LC CAN Projects including but not limited to the following items:

- a. Emergency/Non-Emergency utility relocation
- b. Emergency/Non-Emergency utility troubleshooting
- c. Emergency/Non-Emergency underground cable locating
- d. Emergency/Non-Emergency restoration of aerial & underground utility
- e. Emergency/Non-Emergency splicing & testing restoration of fiber

8. **Digger's Hotline Requirements.** All Members will maintain membership in Digger's Hotline and will contract locating services prior to any work associated with the LC

CAN, to locate LC CAN Underground Infrastructure and other Appurtenances per WI State Statutes 182.0175.

9. **Aerial Conducts/NESC Rules**. All Members will maintain Aerial Conductors per NESC rules, and shall maintain the system for vegetation management per NESC 218 and obstructions per NESC 217A4.

10. **Annual Inspections Requirements**. The Originating Members will conduct an annual inspection of the Aerial & Underground Infrastructure and other Appurtenances of the Original LC CAN. The Member(s) will conduct an annual inspection of the Aerial & Underground Infrastructure and other Appurtenances of the LC CAN Projects that service that particular Member or Members. Any work required as a result of these inspections will be shared based upon the Cost Sharing Formula below by the Members serviced as determined from calculations provided by the consulting engineer retained for this purpose by the Originating Members. All new Members will also have to conduct annual inspections of the portion of their Project that services them alone; and, any work required as determined by that inspection will be the sole responsibility of such new Members, which the Project services, in accordance with the Cost Sharing Formula below.

## **ARTICLE V**

### **PROCUREMENT AND PAYMENT RESPONSIBILITIES OF MEMBERS** **ADVANCE APPROVAL OF PROJECTS**

1. **Cost Sharing Formula**: The breakdown of cost sharing for the LC CAN Members is based on a "Cost Sharing Formula" derived from the final Project cost reconciliation as detailed in the LC CAN Infrastructure As-Built Maps. Cost sharing allocation among Members, based upon the Cost Sharing Formula, for operations and maintenance of the LC CAN, and future Projects, will be reviewed annually or as additional Projects warrant. Any additional fiber optic cable, equipment or software that benefits all Members will be funded by all of the Members in accordance with the Cost Sharing Formula. Modification to the Cost Sharing Formula will be determined by the Oversight Committee referencing the As-Built Logical Map showing segment percentages allocated to each Member. The Originating Members for purposes of the original LC CAN have agreed to share costs associated with the upkeep and maintenance of the original LC CAN infrastructure on the basis of 50% each, even though this equal split of costs deviates from the Cost Sharing Formula.

2. **Advance Approval of Projects Required**. All Members desiring Projects to the Original LC CAN, in order to connect to the Original LC CAN for services for that Member, must provide to the Oversight Committee for review and approval before construction begins (1) supply plans and specifications, (2) provide the name of the contractor to perform the work, (3) provide the estimated start and completion dates for such work, (4) provide a copy of the proposed contract with exhibits for the work to be performed between the Member and its contractor, and (5) obtain approval in writing for the Projects from the Originating Members, and in addition thereto the following information:

- i. The route of the proposed Projects.
- ii. The LC CAN existing Members that will benefit from the Project.
- iii. All new proposed Members for use of the Project.
- iv. The source of funding for the Project.
- v. The preliminary design of the Project.
- vi. Any such additional items requested by the Oversight Committee.

3. **Members Procure and Pay for Projects for Their Sole Benefit.** Each Member is separately and solely responsible for the procurement and full payment for that Member's requested Projects which benefit only that Member including, but not limited to, easements, engineering, construction, labor, materials, applicable permit fees, maps, as-built maps, and project management.

4. **Projects Jointly Benefiting More than One Member.** Members who are jointly benefited from a Project are jointly responsible for the procurement and full payment for those Members' requested Projects including, but not limited to, easements, design engineering, construction, labor, materials, applicable permit fees, maps, as-built maps, and project management.

5. **Payment Responsibility Allocation.** Members shall pay their fees and their proportionate percentages of Project Costs, for membership and Projects for all the various costs associated therewith based upon final Project Cost reconciliation as determined by the LC CAN Engineering Consultant, in accordance with the Cost Sharing Formula above.

6. **Payment Responsibility for LC CAN Changes Required by Third Parties.** It is acknowledged by all Members that Projects to the LC CAN may be required from time to time, by third parties not members of this Agreement including, but not limited to, governmental agencies, regulatory authorities, AAMFON, or others, for which more than one Member must be responsible on a proportionate basis. The cost sharing proportion of each Member for such Modifications shall be in accordance with the Cost Sharing Formula above. Examples of such Modifications are the following:

1. Acts of God, or casualties or property damage resulting from events of nature.
2. Public utility modification requests
3. Outagamie County utility modification requests
4. AAMFON utility modification requests
5. Official requests from regulatory agencies having such authority.

## **ARTICLE VI** **TERMINATION OF MEMBERSHIP/OR AGREEMENT**

1. **Member Involuntary Termination.** Subject to paragraph 4 below, a Member's rights to remain party to this Agreement shall terminate when:

- a. The Member ceases to have authority to operate its facilities on, in or under public or private property at the location of the particular portion of Aerial/Conduit System covered by this Agreement, which authority is not renewed within ninety (90) days.
- b. The Member fails to meet, comply with, or otherwise breaches any term or condition of this Agreement, and fails to cure any such breach or deficiency within thirty (30) days of receiving written notice from one of the Originating Members.
- c. Involuntary termination of a Member shall be determined by, and within the reasonable discretion of, the Originating Members as outlined in **Exhibit A**.
- d. Any losses, claims or damages incurred by non-terminating Members as a result of the breach by the Member may be pursued by the affected Members against the terminated Member.

2. **Member Voluntary Termination.** Any Member may terminate its party status to this Agreement upon giving thirty (30) days written notice to all other Members and following the voluntary termination procedures as outlined in **Exhibit A**.

3. **Termination of Agreement.** This Agreement may be terminated for all those Members for which the LC CAN usage for those Members is no longer feasible or practical due to such things as technology changes, functional obsolescence, changes in law, prohibitive cost issues, regulatory changes, or other occurrences rendering the LC CAN incapable of continued use, or impractical for continuation, as contemplated by this Agreement. Remaining Members may continue under this Agreement if they so choose in their discretion.

4. **Continuing Obligations on Termination.** In the event of termination of any Member's party status to this Agreement or termination of the entire Agreement, all Members remain responsible to carry out their payment and performance obligations hereunder that arose prior to such termination, or resulted from event occurring prior to such termination. LC CAN Expenses shall then be shared and reallocated among remaining Members, in accordance with the Cost Sharing Formula above.

## **ARTICLE VII**

### **NOTICES**

All written notices required under this Agreement shall be given by posting the same by certified mail, return receipt requested to the Originating Members as follows:

Little Chute Area School District  
ATTN: District Superintendent  
325 Meulemans St. Suite A  
Little Chute, WI 54140

Village of Little Chute  
ATTN: Village Administrator  
108 West Main Street  
Little Chute, WI 54140

All written notices permitted or required under this Agreement to Members other than Originating Members shall be given by posting the same by certified mail, return receipt requested to the Members' last known address.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

1. **Regulatory Fees and Charges.** All Members acknowledge that they may be subject to fees, charges, or permits which they shall each pay as imposed by federal, state, or local regulatory authorities and agencies which may now exist, change or be newly imposed at any time during the term this Agreement remains in effect.
2. **Representation of Authority.** All individuals signing this Agreement on behalf of any Member represents and warrants that he/she/they is/are an authorized representative of the Member on whose behalf their signature is made.
3. **Amendments.** This Agreement may be amended by the sole unanimous written consent of the Originating Members whether or not additional Members have been admitted.
4. **No Assignment.** No rights of any Member hereto may be assigned to any third party which is not a duly admitted Member as party to this Agreement.
4. **Complete Agreement.** This constitutes the complete agreement between the parties and there have been no other oral or written representations, warranties, or agreements upon which any party hereto has relied.

**LITTLE CHUTE AREA SCHOOL DISTRICT**  
325 Meulemans St, Suite A  
Little Chute, WI 54140

By: \_\_\_\_\_  
**Gerald H. Verhagen, LCASD Board President**

By: \_\_\_\_\_  
**Joe Roehl, LCASD Board Clerk**

**VILLAGE OF LITTLE CHUTE**  
108 West Main St  
Little Chute, WI 54140

By: \_\_\_\_\_  
**Michael Vanden Berg, Village President**

By: \_\_\_\_\_  
**Laurie Decker, Village Clerk**

## EXHIBIT A

### LICENSE AGREEMENT FOR USE OF THE LC CAN

This License Agreement (herein "License") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Little Chute Area School District and the Village of Little Chute (herein "Originating Members") and \_\_\_\_\_ (herein "License Member"). The Originating Members and License Member may be referred to herein individually as "party" or collectively as "parties".

#### BACKGROUND RECITALS

**WHEREAS**, the Originating Members are party to an "LC CAN Agreement" dated the \_\_\_\_\_ day of \_\_\_\_\_, 2017, the terms of which are incorporated herein by reference; and

**WHEREAS**, the Originating Members are the owners of the LC CAN Infrastructure and as such may grant licenses to one or more "License Members" to permit use of the LC CAN under the terms of a License Agreement; and

**WHEREAS**, License Member named above has requested a license to use the LC CAN which request has been approved by the Originating Members subject to the terms and conditions of this License;

**NOW, THEREFORE**, the Originating Members and License Member agree to the following terms and conditions:

#### TERMS AND CONDITIONS

1. **Effective Date**. The effective date of this License is the first date shown in this License above.
2. **Term**. The term of this License shall be twenty-five (25) years unless sooner terminated by the Originating Members or License Member as set forth herein.
3. **Grant of License**. The Originating Members hereby grant this License to the License Member subject to the foregoing RECITALS, TERMS, AND CONDITIONS, and further subject to the provisions of the LC CAN AGREEMENT
4. **Authorized Connection and Use**. The License Member is authorized to connect to and use the LC CAN for the sole purpose of high speed internet services for purposes of public services administration.
5. **Commercial Use Prohibited**. Commercial and other uses of the LC CAN for purposes other than public services administration are prohibited without advance written consent from the Originating Members.
6. **Connection Infrastructure Cost and Insurance**. License Member is solely and exclusively responsible for the design, installation, connection, maintenance, repair, relocation, and replacement of all facilities reasonable or necessary to connect to and use the LC CAN ("Connection Infrastructure"), and all insurances deemed reasonable and appropriate for such Connection Infrastructure, at License Member's sole cost and expense.

7. **Damage to LC CAN Infrastructure.** License Member and/or its contractor shall not cause any damage to the LC CAN Infrastructure, and License Member shall be liable to reimburse the Originating Members for all costs and expenses incurred in connection with such damage to the LC CAN Infrastructure, which costs and expenses shall be reimbursed on demand.

8. **Ownership of Connection Infrastructure/Ownership of LC CAN.** License Member is the sole and exclusive owner of Connection Infrastructure. Originating Members at all times retain sole and exclusive ownership of the LC CAN.

9. **Other Licenses, Permits, and Easements.** License Member is solely and exclusively responsible to obtain all reasonable or necessary licenses, permits, and easements for all of its own technology systems and for the location and installation of all of its Connection Infrastructure.

10. **Pre-Conditions for Connection / As Built Plans.** Connection to the LC CAN by the License Member may only be allowed after the design, description, and location of Connection Infrastructure, and the name and qualifications of the contractor hired to make the connection to the LC CAN, are presented to the Originating Members for approval, and the License Member is granted such approval from the Originating Members in writing prior to making connection to the LC CAN. License Member shall provide "as-built" plans for all Connection Infrastructure within 60 days of completion of connection to the LC CAN.

11. **Additions or Modifications to Connection Infrastructure / As Built Plans.** Any additions, modifications, or expansions to the Connection Infrastructure of the License Member shall be submitted to the Originating Members for approval prior to implementation which approval shall not be unreasonably withheld. License Member shall provide "as-built" plans for all additions, modifications, or expansions to the Connection Infrastructure within 60 days of completion of such additions, modifications, or expansions.

12. **Compliance with Law and Property Rights.** License Member shall at all times remain in compliance with all federal, state, and local laws and regulations, and the private and public property rights of all property owners through which easements exist for License Member's Connection Infrastructure.

13. **Interference of LC CAN Prohibited / Responsibility on Termination.** License Member shall not engage in any form of activity or use detrimental to the unrestricted use of the LC CAN by the Originating Members or other License Members, including but not limited to, any activities which either interfere with or interrupt LC CAN services. In the event this License Member's License Agreement for use of the LC CAN is terminated either by the License Member or by the originating members as authorized in paragraph 14 below, and in the event termination occurs due to expiration without renewal of the 25 year term, the following provisions shall apply.

- a) It is the responsibility of the License Member being terminated to negotiate the terms and conditions of continued use of the Connection Infrastructure installed by this License Member with other license members utilizing this License Member's Connection Infrastructure for access to the LC CAN. These other members who access the LC CAN through the terminating License Member's Connection Infrastructure are referred to as "Upstream License Member Users".
- b) The Originating Members do not object to the continued use of other Upstream License Member Users of the Connection Infrastructure of the terminating License Member; however, the other

Upstream License Member Users of the terminating License Member's Connection Infrastructure, as a condition for remaining license members, shall assume all financial responsibility for the Connection Infrastructure and also the LC CAN Expenses associated with the terminating License Member's use of the LC CAN as set forth in paragraph 16 below.

14. **Early Termination.** This License may be terminated prior to the expiration of the twenty-five (25) year term as follows:

- a) **By License Member.** License Member may terminate this Agreement any time upon sixty (60) days advance notice except that License Member will remain responsible to pay its portion of LC CAN Expenses incurred or committed to be incurred prior to the date notice of such termination has been given in writing to the Originating Members.
- b) **By Originating Members Upon Breach or Default.** Originating Members may terminate this License upon breach or default by License Member of the terms of this License, upon termination or abandonment of the LC CAN by Originating Members, or upon discontinuance or other modification by or in the AAMFON system deemed unreasonable or unacceptable to the Originating Members, or due to termination or other restrictions imposed by the high-speed internet service provider providing services through AAMFON or the LC CAN.
- c) **Notice and Cure.** Prior to termination of this License for breach or default by License Member, Originating Members must give notice of the nature of breach or default to the License Member which shall have thirty (30) days to cure such breach or default, and if not cured within thirty (30) days of such notice being given, this Agreement may be terminated at the option of Originating Members.
- d) **Additional Grounds for Termination.** The Originating Members may also terminate this License in the following events, and upon such further termination have no further liability to this License Member or any Upstream License Member Users:
  - i. this License would make one or both of the Originating Members a telecommunications company, telecommunications carrier, or telecommunications service provider, or other entity subject to state or federal statutes, rules, or regulations; or in the event that this License would create an adverse impact on the tax exempt bonding status of Originating Members; or
  - ii. One or both of the Originating Members withdraw as members from the LC CAN Agreement or the Originating Members elect to terminate the LC CAN; or
  - iii. The AMFON or internet service provider sources located at the Morgan Building change in a manner that the Originating Members deem impractical for continued use of the LC CAN.
- e) **Disconnection on Termination.** If the License Member does not cooperate to disconnect the connection for infrastructure from the LC CAN on termination, and one or more of Upstream License Member Users do not assume all responsibility of the terminated License Member for that License Member's Connection Infrastructure and other obligations of the terminated License Member for under this License and the LC CAN Agreement, the Originating Members may undertake said disconnection and charge the cost of said disconnection back to the License Member whose rights under this License have been terminated.

f) Other Remedies. Originating Members shall have all other remedies available at law or in equity for termination and other enforcement of this License with respect to the rights and obligations of License Member.

15. Consideration and Fees/LC CAN Expenses. License Member shall pay its proportionate share of maintenance, repair, replacement, improvements, and/or expansion of the LC CAN ("LC CAN Expenses") as outlined in ARTICLE V "Procurement and Payment Responsibilities of Members" of the LC CAN Agreement. License Member shall also pay an annual fee to the Originating Members, as determined by the Oversight Committee, for the use of the LC CAN, paid in advance at the time of entering this License and on the anniversary date each year thereafter during the term of this Agreement. This annual fee may be adjusted by the Originating Members in an amount equal to the increase in the Consumer Price Index, and also to accommodate and offset other charges, fees, and expenses incurred by the Originating Members to maintain and operate the LC CAN.

16. Proportionate Responsibility for LC CAN Expenses. Originating Members and each License Member shall share liability for LC CAN Expenses in accordance with the Cost Sharing Formula set forth in ARTICLE V "Procurement and Payment Responsibilities of Members" of the LC CAN Agreement, which share shall be paid within thirty (30) days of billing, and the following provisions also apply.

- a) If a License Member is granted permission by the Originating Members for a sub-licensee, that sub-licensee will share the LC CAN Expenses on the same basis as any other License Member. Any such sub-licensee shall also be approved by and sign a License Agreement for use of the LC CAN with the Originating Members.
- b) In the event that one of the Originating Members make additions, modifications, or expansions to the LC CAN that benefit only one of the Originating Members; or a License Member, or an Upstream License Member User make additions, modifications, or expansions to the LC CAN or the Connection Infrastructure, or further additions, modifications, or expansions to existing additions, modifications, or expansions, that benefit only the License Member or Upstream License Member User, then the proportionate sharing of LC CAN Expenses shall be recalculated in accordance with the Cost Sharing Formula set forth in ARTICLE V "Procurement and Payment Responsibilities of Members" of the LC CAN Agreement.

17. School District as Fiscal Agent. The Fiscal Agent of the Originating Members is the Little Chute Area School District. License Member shall make all payments due or to become due to the Little Chute Area School District.

18. Sublicenses. License Member may grant sublicenses to use License Member's Connection Infrastructure only to entities approved by the Originating Members, and subject to the condition and requirement that as a condition for such approval such sub-licensees enter into License Agreements to use the LC CAN with the Originating Members in addition to whatever sublicense agreements these entities may enter with the License Member.

19. Maintenance, Repairs, and Replacement of LC CAN. Maintenance, repairs, and replacement of the LC CAN or any of its component features is subject to and controlled by the LC CAN Agreement to which this License remains subject.

20. **Notice of Proposed Expenditures.** The Originating Members to the extent reasonable, and excluding circumstances where either emergency or immediate repairs, replacements, or modifications are necessary, will give reasonable advance notice of the proposed maintenance, repairs, and replacement of the LC CAN or any of its component features, to the License Member prior to contracting for and commencing the work for such matters.

21. **Requests for LC CAN Modifications.** License Member may, whenever deemed appropriate by License Member, make requests or proposals to the Originating Members for modifications to the LC CAN. Such requests and proposals may be considered by the Originating Members, but no assurance is given by this License that any such requests or proposals can or will be granted, all of which decisions remain in the sole and exclusive discretion of the Originating Members.

22. **Reimbursement for Costs of Enforcement.** License Member shall reimburse Originating Members for all costs, including reasonable attorney's fees incurred as a result of breach of this Agreement by License Member and/or for other enforcement of this Agreement.

23. **No Representations or Warranties.** Originating Members make no express or implied representations or warranties to License Member regarding the present, or continuing, operational condition, suitability, availability of modifications, or fitness for particular uses or purposes of the License Member, now or in the future.

24. **Hold Harmless and Waiver of Liability.** License Member hereby agrees to hold harmless Originating Members from any and all claims, liabilities, and/or losses of every nature whatsoever, whether known or unknown, including but not limited to, claims and liabilities associated with defects, service interruptions, or other malfunctions of the LC CAN.

25. **Amendments.** This License may be amended only in writing signed by both Originating Members and the License Member.

26. **Complete Agreement.** This constitutes the complete agreement between the parties, together with the LC CAN Agreement referenced herein, and memorandums of understanding referenced therein, and there have been no other oral or written representations, warranties, or agreements upon which any party hereto has relied.

27. **Parties Bound.** This Agreement shall be binding on the parties hereto and their respective heirs, successors, and assigns.

(SIGNATURES ON FOLLOWING PAGE)

Dated and effective the first date written above.

**LITTLE CHUTE AREA SCHOOL DISTRICT**

By: \_\_\_\_\_  
**Gerald H. Verhagen, LCASD Board President**

By: \_\_\_\_\_  
**Joe Roehl, LCASD Board Clerk**

**VILLAGE OF LITTLE CHUTE**

By: \_\_\_\_\_  
**Michael Vanden Berg, Village President**

By: \_\_\_\_\_  
**Laurie Decker, Village Clerk**

\_\_\_\_\_, License Member Name

By: \_\_\_\_\_  
**Authorized Representative/Title**  
\_\_\_\_\_  
**(Print Name)**

**EXHIBIT B**  
**LC CAN OVERSIGHT COMMITTEE**

The LC CAN Originating Members hereby create the "LC CAN Oversight Committee" in recognition that there is need for (i) a Chief Technology Officer ("CTO") as part of this Committee, and (ii) joint decision responsibility on matters pertaining to the LC CAN and certain Projects pertaining thereto that affect connections, additions, modifications, or expansions thereto referred to in the LC CAN Agreement as "Projects".

1. **Membership and Officers.** Membership and Officers in the Committee shall consist of the following:
  - a. **Membership.** Original Members being the School District and Village shall each appoint two Member at Large representatives who shall be permanent Members of the Committee as may be replaced by the appointing Original Member from time to time in the discretion of the Original Member making the appointment. There shall initially be a total of four (4) Members on the Committee. The Member at Large is a voting position.
  - b. **Chairperson.** The Chairperson will preside at meetings and will have authority to recommend approval to the Original Members and other Members. The Chairperson will rotate annually January 1 between the Village Administrator and School District Superintendent. The Chairperson will only be called to vote when the committee is at a voting deadlock (meaning an equal number of both votes both for and against an action item).
  - c. **Officers.** The Original Members shall appoint the following officers from among their Member at Large representatives on the Committee who shall have the responsibilities set forth below:
    - i. **Secretary.** The Secretary will keep minutes of Committee Meetings, maintain custody of LC CAN agreement documents and LC CAN License Agreements and other records pertaining to the LC CAN. The Secretary will always be one of the Committee Members appointed by Original Members and will rotate annually between the Village appointee and School District appointee.
    - ii. **Treasurer.** The Treasurer will maintain all financial records of the Members, submit billings to the Members on an appropriate periodic basis, and report on LC CAN finances at each meeting. Because the School District is the fiscal agent for the LC CAN, the Treasurer will be the School District Business Manager. The Committee may replace the person holding this position on 30 days' notice.
    - iii. **Chief Technology Officer.** The CTO will initially be Diana Sepe. The CTO will provide central administration and technical support for the LC CAN infrastructure, appurtenances, and technical operations for both the original LC CAN and subsequent projects. The CTO shall report on technical matters to the other members of the Committee at each meeting. This is a non-voting position.
2. **Duties and Responsibilities of the Oversight Committee.**
  - a. Actions by the Committee shall be approved by majority vote of the Committee Members.
  - b. Establish annual budget for payment by Members to meet expenses.
  - c. All financial expenditures are subject to approval by the governing bodies of the Members.
  - d. Develop fiscal policy for operation of the LC CAN.
  - e. Procure and maintain pool of critical spare parts and equipment for LC CAN operations.
  - f. Procure casualty insurance for LC CAN infrastructure.
  - g. Obtain an annual independent financial audit of LC CAN financial matters.
  - h. Implement an annual inspection of the LC CAN infrastructure.
  - i. Review and recommend leases or contracts on behalf of the LC CAN
  - j. Approve additional Member License Agreements.
  - k. Review and approve or reject LC CAN related Projects.
  - l. Determine fees and costs payable by LC CAN Members.
  - m. Other matters reasonably necessary to carry out the intent of the LC CAN Agreement.
  - n. Hold quarterly Meetings at a mutually determined location.

Village of Little Chute  
**INFORMATION FOR VILLAGE BOARD CONSIDERATION**

**ITEM DESCRIPTION:** Recruitment for Chief of Police for Fox Valley Metro Police Department

**PREPARED BY:** James Fenlon, Administrator

**REPORT DATE:** October 6, 2017

**ADMINISTRATOR'S REVIEW/COMMENTS:**

No additional comments to this report: \_\_\_\_\_

See additional comments attached: \_\_\_\_\_

**EXPLANATION:** The Village of Kimberly and Little Chute were provided with 3 proposals from qualified firms for directing the recruitment efforts for Fox Valley Metro Police Department. The lowest cost proposal was submitted by IPR of McMahon and Associates by Mr. Russ Van Gompel at a cost of \$8,500.

By approving this effort, the Board extends the authority to the Police Commission to enter this agreement and begin the recruitment process.

**RECOMMENDATION:** Review and approve in an amount not to exceed \$8500 (excluding incidental costs) for consultation services in the recruitment of the Chief of Police for Fox Valley Metro Police Department.

Village of Little Chute  
**INFORMATION FOR VILLAGE BOARD CONSIDERATION**

**ITEM DESCRIPTION:** Development Agreement and Site Plan for Elemwil LLC/Total Tool Supply Inc.

**PREPARED BY:** James Fenlon, Administrator

**REPORT DATE:** October 6, 2017

**ADMINISTRATOR'S REVIEW/COMMENTS:**

No additional comments to this report: JPF

See additional comments attached: \_\_\_\_\_

**EXPLANATION:** Attached to this document is a development agreement with Elemwil LLC/Total Tool Supply Inc. that would have them constructing a new 21k square foot building on Allegiance Court. The effort includes the opportunity for a phase 2 expansion space for an additional 15k square feet. The development agreement authorizes an incentive equal to 10% of the improved property value.

In addition to recommended action on the development agreement, staff feel approving the site plan with your additional recommendations will allow us to complete Board required actions as it pertains to this development agreement. Developer is obviously required to work with staff and to meet all enumerated ordinances/regulations related to zoning and development.

**RECOMMENDATION:** Review and approve the agreement for Elemwil LLC and approve the site plan for the new development.

## **DEVELOPMENT AGREEMENT Elemwil LLC**

This Agreement is made between the Village of Little Chute, (herein "Village"), and Elemwil LLC (herein "Developer"). The Village and Developer may be referred to herein individually as "party" or collectively as "parties".

### **BACKGROUND RECITALS**

**WHEREAS**, the property subject to this Agreement is approximately 3.54 acres consisting of HJT BUSINESS PARK - NORTH LOT 2, Tax Parcel No. 260442100 and HJT BUSINESS PARK - NORTH LOT 3, Tax Parcel No. 260442200 located in the Village of Little Chute, Outagamie County, Wisconsin (the "Property"); and

**WHEREAS**, the proposed Property boundaries and map is attached hereto as Exhibit A which is the site plan provided by the Developer, which Property is located in Tax Increment District #6 in the Village; and

**WHEREAS**, Developer plans to construct a building of at least 21,000 square feet, consisting of a receiving, sales distribution, and office facility (the "Project") in the fall 2017 and to be completed in 2018; and

**WHEREAS**, Developer has the geographic capacity to construct an addition of at least an additional 15,000 square feet as part of a phase II development; and

**WHEREAS**, subject to the terms and conditions herein, the Village has authorized a Financial Incentive equivalent to 10% of the total initial assessed value of the completed Project (excluding land value), as determined for real estate tax purposes by the State of Wisconsin, (the "Financial Incentive"), for the Developer to build the Project described herein; and

**WHEREAS**, but for this incentive the proposed Project herein would not have been undertaken and the Financial Incentive payment referenced herein will be used for Project development costs by the Developer.

**NOW, THEREFORE**, the parties agree to the following terms and conditions:

### **TERMS AND CONDITIONS**

1. **Developer/Property Improvements**. Developer is responsible to fully improve the Property including, if necessary, any additional or expanded utility facilities including but not limited to sanitary sewer, storm sewer, storm water detention, gas, electric, public streets, street access, and other necessary facilities at Developer's sole expense.

2. **Developer/Design and Construction Costs**. Developer is responsible for all design and construction costs of the Project at Developer's sole expense.

3. **Description of Project.** The Project shall consist of a single story combination use building of approximately 21,000 square feet, or more, for use as a receiving, sales distribution, and office facility. The layout of the Project shall be as substantially shown on Exhibit A attached hereto and incorporated herein by reference.

5. **Village Approval of Building Plans and Materials/Fees.** The Village is further requiring, and the Developer is in agreement, that the Project, including but not limited to, building design, plans, specifications, and materials, including landscaping features, will be constructed in accordance with advance approval by the Village Board of Trustees and that material changes will only be allowed with prior written consent of the Village Board. The Developer will also be required to pay all applicable fees and permit costs as detailed in the Village's schedule of fees shown on Exhibit B.

6. **Village Approval of Site Plan and Utility Systems.** The Village is further requiring, and the Developer is in agreement, that prior to commencement of construction, the site plan, water main(s) sizing and location, location of hydrants, sanitary main(s) sizing and location, and storm water drainage systems and plan shall be submitted for advance approval by the Village Board of Trustees and that changes will only be allowed with prior written consent of the Village Board.

7. **Financial Incentive.** This Financial Incentive will be an annual cash payment to Developer from the Village equal to 100% of the tax increment received by the Village each year from real estate tax payments until a maximum Financial Incentive of 10% of the initial assessed value of the substantially completed Project has been paid by the Village to the Developer. Tax increment is the additional tax received by the Village resulting from the construction of the Project on the Property, and excludes that portion of taxes for the Property that would have been payable had the Project not been constructed.

8. **Construction Commencement / Completion.** Construction commencement of the Project consisting of site grading and excavation shall begin no later than December 31, 2017. The Project shall be substantially completed on or before the 31st day of December, 2018. If the Project is not substantially completed by December 31, 2018 this Agreement is automatically terminated, null, and void with no further obligations owned by Village to the Developer hereunder.

9. **Conditions for Awarding Financial Incentive.** The Financial Incentive herein will be awarded to the Developer only if the Developer complies with all terms and conditions set forth in this Agreement as determined in the sole and exclusive good faith discretion of the Village Board.

10. **Recording/Lien.** This Agreement or a memorandum hereof may be recorded with the Register of Deeds for Outagamie County by either party.

11. **Assignment.** This Agreement may not be assigned by Developer without the written authorization on behalf of the Village Board of Trustees which will not be unreasonably withheld.

12. **Amendments.** This Agreement may be amended only pursuant to a written amendment signed by the party or parties to be bound.

13. **Complete Agreement.** This Agreement and the exhibits constitute the complete agreement between the parties and there have been no other representations, warranties, or oral agreements, which are not contained herein.

14. **Persons Bound.** This Agreement shall be binding on the parties and their respective heirs, successors, and assigns and constitutes a covenant running with the land until all performance by the Developer is complete.

Dated this \_\_\_\_\_ day of October, 2017.

VILLAGE OF LITTLE CHUTE

BY:

Michael Vanden Berg, Village President

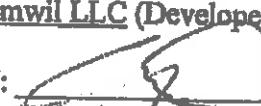
BY:

James Fenlon, Village Administrator

Dated this 3 day of October, 2017.

Elemwil LLC (Developer)

BY:

 Authorized Representative/Title

 President



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NEW BUILDING FOR:  
**TOTAL TOOL**  SUPPLY CO.



1 C101 T = 30'-0"

PRELIMINARY NOT FOR CONSTRUCTION

Drawn By J.W. Approved By  
Project No. 17-1041 Date 06/02/17  
Sheet No. 104-2017-23851-1

C101

NEW BUILDING FOR:  
TOOL TOOL  
ALLEGANIE COUNTY, LITTLE CHUTE, WI  
SCHEMATIC SITE PLAN

No.	Date	Description
Key Plan		

NORTH

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FAX: 920.767.1015

N1040 CRAFTSMEN DRIVE  
GREENVILLE, WI 54842