

# Common Council MEETING AGENDA



July 23, 2024 - 6:05 PM  
(Following the Committee of the Whole Meeting)  
City Hall  
Council Chambers

**Amended: 7/22/2024 @ 4:30 pm**

Published: 7/19/2024

## AGENDA

### 1. PUBLIC HEARING(S)

- A. A public hearing regarding the proposed issuance of City of New Berlin, Wisconsin Industrial Development Revenue Bonds, Series 2024 (Wenthe-Davidson Engineering Co. Project), in an aggregate amount not to exceed \$4,200,000, pursuant to Section 66.1103 of the Wisconsin Statutes, to finance a project to be owned by Wenthe-Davidson Engineering Co., a Wisconsin corporation.

### 2. PRIVILEGE OF THE FLOOR

### 3. CALL TO ORDER, PLEDGE OF ALLEGIANCE

### 4. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

### 5. APPROVAL OF MINUTES

- A. June 18, 2024, Common Council Meeting Minutes

### 6. REPORTS

- A. City Clerk
- B. Council President
- C. Mayor

### 7. COMMUNICATIONS

### 8. NEW BUSINESS

- A. Consideration of Resolution No. 2024-20, A final resolution regarding Industrial Development Revenue Bond Financing for Wenthe-Davidson Engineering Co. Project

### 9. CODE COMMITTEE

- A. Discussion and possible action to recommend to Common Council approval of Ordinance 2689 to amend Chapter 152 of the Municipal Code, Licenses and Permits (*Deferred to Code Committee by Council on 5/14/24*)

### 10. PLAN COMMISSION

- A. (5) NJ LD-2400261 City of New Berlin - 15321 W. National Avenue (Tax Key #: 1207.965.003) - Discussion and possible action to recommend to Common Council approval of 2-Lot Certified Survey Map.
- B. (5) NJ LD-2401009 Daniel Meier with Lynch & Associates on behalf of Debra Bitz - 4310 S. Moorland Road (Tax Key #: 1243.997) - Discussion and possible action to recommend to Common Council approval of 2-Lot Certified Survey Map.

- C. (4) KH UA-2300546 John Holborow with Rock Ridge Developers, LLC – 5276 S. Moorland Road – Use, Site and Architectural approval for Caribou Coffee - Request for site modifications, release of the Cross Access Easement, and amendment to CSM No. 12233 (Approved 5/8/2023)

**11. BOARD OF PUBLIC WORKS**

- A. Discussion and possible action to recommend to Common Council approval of the Relocation Order for the reconstruction of Sunny Slope Road and file with the County Clerk.

**12. UTILITY COMMITTEE**

- A. Discussion and Possible Action to Recommend to the Common Council the Rejection of all Bids for the Davit Lift Station Crane project

**13. MAYORAL APPOINTMENTS**

- A. Discussion and Possible Action to approve the Mayoral Appointments per the list as presented

**14. DEFERRED, REFERRED & TABLED ITEMS**

**15. ITEMS REMOVED FROM CONSENT AGENDA, if any**

**16. CONSENT AGENDA-----**

- A. *Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.*

**17. MINUTES**

- A. June 18, 2024 Committee of the Whole Meeting Minutes

**18. UTILITY & FINANCE**

- A. Discussion and possible action to recommend to Common Council to approve the July 10th, 2024, Water Utility claims in the amount of \$23,538.58, Sewer Utility Claims in the amount of \$740,777.64, and General City Claims in the amount of \$1,279,678.72
- B. Discussion and possible action to recommend to Common Council to approve the July 24th, 2024, Water Utility claims in the amount of \$150,259.68, Sewer Utility Claims in the amount of \$42,407.06, and General City Claims in the amount of \$375,477.76. US Bank EFT of \$39,666.79 and We Energies EFT of \$46,912.94

**19. LICENSES & PERMITS**

- A. Discussion and possible action to recommend to Common Council approval for Kowalske Brewing, doing business as Component Brewing, to sell beer in Malone Park for the Color Clash Dash event on August 10th, 2024, from 10:00 am to 6:00 pm, as outlined in Form AB-105. The application, along with the Council's recommendation, will be forwarded to the Wisconsin DOR, Division of Alcohol Beverages, for final approval and issuance
- B. Discussion and possible action to recommend to Common Council approval for Kowalske Brewing, doing business as Component Brewing, to sell beer in Malone Park for the beer garden event on September 7th, 2024, from 12:00 pm to 6:00 pm, as outlined in Form AB-105. The application, along with the Council's recommendation, will be forwarded to the Wisconsin DOR, Division of Alcohol Beverages, for final approval and issuance
- C. Discussion and possible action to recommend to Common Council approval for Kowalske Brewing, doing business as Component Brewing, to sell beer at the New Berlin Historical Society for the Historical Day Event Open House and Beer Garden event on September 8th, 2024, from 1:00 pm to 4:00 pm, as outlined in Form AB-105. The application, along with the Council's recommendation, will be forwarded to the Wisconsin DOR, Division of Alcohol Beverages, for final approval and issuance



- D. Discussion and possible recommendation to Common Council approval of a loudspeaker variance until 11 pm for St. Elizabeth Ann Seton Parish for their Seton Funfest on July 26th, 27th, and 28th, 2024

**20. MISCELLANEOUS**

- A. Human Resource Department Update
- B. Discussion and possible action to recommend to Common Council approval of Resolution 2024-18, a Resolution providing for the sale of approximately \$14,135,000 General Obligation Promissory Notes, Series 2024A
- C. Discussion and possible action to recommend to Common Council approval of Ordinance 2696, an Ordinance Amending Chapter 93 and Section 152-3(A) of the City of New Berlin Municipal Code regarding vaping devices
- D. Discussion and possible action to recommend to Common Council approval of Ordinance No. 2697, an Ordinance to amend Section 6-31, A of the City of New Berlin Municipal Code Regarding the Membership of the Recreation Commission
- E. Discussion and possible action to recommend to Common Council approval of eliminating large room rentals
- F. Discussion and possible action to recommend to Common Council approval of the public bids and CM related fees for Phase 1 of the Community Center at Hickory Grove Renovation Project
- G. Discussion and possible action to recommend to Common Council approval of service agreement with All Star Health Center
- H. Discussion and possible action to recommend to Common Council approval of Resolution No. 2024-19, a Resolution of the City of New Berlin releasing portions of Public Sewer, Water, Storm Sewer, and Access Easements as Depicted on CSM #12050, #6872, and #7554, which are no longer necessary on the Activity Recreation Center property. This action will facilitate the creation of a lot to sell to Nice Bites, LLC.
- I. Discussion and possible action to recommend to Common Council approval of the amendments to the City Clerk's Fee List as presented
- J. Discussion and Possible Action to approve or reject the use of the Ballot Drop Box in the City of New Berlin, as outlined in the Requested Action Statement by the Mayor and City Clerk

**21. END CONSENT AGENDA-----**

**22. ADJOURN**

**Supplemental Information:**

- The meeting agenda and agenda packet are available online at [www.NewBerlinWI.gov](http://www.NewBerlinWI.gov)
- The minutes are published online and are approved at the next regularly scheduled meeting.
- Action may be taken on any of the agenda items, and the agenda may be discussed in any order.
- You may email comments to the City Clerk at [CitizenComments@NewBerlinWI.gov](mailto:CitizenComments@NewBerlinWI.gov). The comments will be forwarded to the mayor and Common Council members. The emailed comments are not read during the meeting.
- The City of New Berlin is committed to hosting inclusive, accessible meetings. We strive to enable all individuals to engage and participate fully regardless of their abilities. If you have a qualifying disability under the Americans with Disabilities Act that requires the meeting to be accessible, please get in touch with the Office of the City Clerk at (262) 786-8610 or via email at [ClerksOffice@NewBerlinWI.gov](mailto:ClerksOffice@NewBerlinWI.gov) at least 48 hours before the scheduled meeting time. We will make every effort to accommodate your needs through appropriate aids and/or services.

- *It is also possible that members of and possibly a quorum of other municipal governmental bodies may attend the above-stated meeting to gather information; any governmental body will take no action at the above-stated meeting other than the governmental body specifically referred to in the above meeting notice.*

## NOTICE OF PUBLIC HEARING

Notice is hereby given, in compliance with requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, that the City of New Berlin, Wisconsin (the “City”), will hold a public hearing on July 23, 2024 at 6:00 p.m., or as soon thereafter as the matter may be heard, at City Hall, 3805 South Casper Drive, New Berlin, Wisconsin, regarding the proposed issuance of City of New Berlin, Wisconsin Industrial Development Revenue Bonds, Series 2024 (Wenthe-Davidson Engineering Co. Project), in an aggregate amount not to exceed \$4,200,000 (the “Bonds”), pursuant to Section 66.1103 of the Wisconsin Statutes, to finance a project to be owned by Wenthe-Davidson Engineering Co., a Wisconsin corporation (the “Borrower”).

The Borrower’s project to be financed with the Bonds consists of the (i) construction of an approximately 27,183 square foot addition to the Borrower’s existing approximately 109,283 square foot facility located at 16300 West Rogers Drive in the City of New Berlin, Wisconsin (the “Facility”) which is operated by Wenthe-Davidson Engineering Co. to manufacture custom metal electric motor and generator housing, lock seam tubular products, and metal casings, (ii) acquisition and installation of equipment at the Facility, and (iii) payment of certain professional costs and costs of issuance (collectively, the “Project”). The Bonds will be special, limited obligations of the City and will not constitute an indebtedness of the City within the meaning of any state constitutional provision or statutory limitation or a charge against its general credit or taxing powers.

At the hearing, all persons will be afforded a reasonable opportunity to express their views, both orally and in writing, on the proposed Bonds and the location and nature of the Project proposed to be financed. Comments made at the public hearing are for the consideration of the Common Council but do not bind any legal action to be taken by it.

Published: July 16, 2024

Rubina Medina, City Clerk  
City of New Berlin, Wisconsin



# Common Council MEETING MINUTES

June 18, 2024 - 6:05 PM  
City Hall Council Chambers  
3805 S. Casper Drive

*Please note: Minutes are unofficial until approved at the next scheduled meeting.*

## MINUTES

### 1. PRIVILEGE OF THE FLOOR

*Each speaker is limited to 3 minutes. The session will conclude at 6:30 pm*  
No one spoke during the privilege of the floor.

### 2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Ament called the meeting to order at 6:44 pm and led the Pledge of Allegiance.

### 3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk took the roll call as follows:

Present: Alderperson Hopkins, Alderperson Maxey, Alderperson Harenda, Alderperson La Fever, Alderperson Kroupa, Alderperson Horbinski

Excused: Alderperson Joseph Stribl

Staff Present: Mayor Ament, City Attorney Mark Blum, City Clerk Rubina R. Medina

The city clerk stated that a quorum had been established and that the meeting had been properly noticed.

### 4. APPROVAL OF MINUTES

A. June 11, 2024, Common Council Minutes

**MOTION:** Motion to approve

**VOTE:** Motion by: Maxey  
Second by: Kroupa  
Motion 6-0

### 5. REPORTS

A. City Clerk

The partisan primary election will take place on August 13th. Absentee ballots will be mailed on June 27th to all voters with applications on file. Please visit the MyVote Wisconsin website at [www.myvote.wi.gov](http://www.myvote.wi.gov) to request an absentee ballot.

B. Council President

C. Mayor

### 6. COMMUNICATIONS

A. Mark Sailer Claim

## 7. SAFETY COMMISSION

- A. Discussion and recommendation to Common Council to move the "No Parking" sign that is currently on the east side of Hunter Lane, just north of the intersection of Forest Point Blvd (south intersection), north to the end of the double yellow, no passing lines.

**MOTION:** Motion to approve

**VOTE:** Motion by: Kroupa  
Second by: Hopkins  
Motion 6-0

- B. Discussion and recommendation to Common Council to install permanent "No Parking" signs on the north/west side of Forest Point Blvd, west from the intersection of Hunter Lane to the end of the shifting taper.

**MOTION:** Motion to approve

**VOTE:** Motion by: Kroupa  
Second by: Hopkins  
Motion 6-0

## 8. MAYORAL APPOINTMENTS

- A. Discussion and possible action to approve the Mayoral Appointments per the lis as presented

**MOTION:** Motion to approve

**VOTE:** Motion by: Kroupa  
Second by: Horbinski  
Motion 6-0

## 9. DEFERRED, REFERRED & TABLED ITEMS

## 10. ITEMS REMOVED FROM CONSENT AGENDA, if any

Item 13D will be removed and voted on separately.

**MOTION:** Motion to Approve

**VOTE:** Motion by: Alderperson Hopkins  
Second by: Alderperson Horbinski  
Motion Failed 2-4

## 11. **CONSENT AGENDA**-----

*Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.*

**MOTION:** Motion to approve

**VOTE:** Motion by: Kroupa  
Second by: La Fever  
Motion 6-0

## 12. MINUTES

- A. June 11, 2024, Committee of the Whole minutes

**13. MISCELLANEOUS**

- A.** Library Department Update
- B.** Discussion and possible recommendation to Common Council approval of a Location Agreement between the City of New Berlin and Trivity Health Services, LLC. (i.e. Silver Sneakers)
- C.** Discussion and possible recommendation to Common Council approval of an agreement between the City of New Berlin and Optum Health Care Solutions, LLC
- D.** Discussion and possible recommendation to Common Council to approve Resolution 2024-13, a Resolution amending the 2024 Capital Projects Budget to increase that budget by \$1.3 million for the Community Center at Hickory Grove project
- E.** Discussion and possible recommendation to Common Council approval of Resolution No. 2024-14, a Resolution amending the 2024 Capital Projects Budget to transfer \$557,000 from the 2024 DPW Garage CIP Account to the 2024 Community Center at Hickory Grove Account
- F.** Discussion and possible recommendation to set a date and time for a Special Common Council meeting to be held the last week of June, along with approval for the meeting to be held electronically

**14. END CONSENT AGENDA-----**

**15. ADJOURN**

**MOTION:** Motion to adjourn at 6:52 pm

**VOTE:** Motion by: Kroupa  
Second by: Maxey  
Motion 6-0



COMMON COUNCIL OF  
CITY OF NEW BERLIN, WISCONSIN

RESOLUTION NO. 2024 - \_\_\_\_\_

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**FINAL RESOLUTION REGARDING  
INDUSTRIAL DEVELOPMENT REVENUE BOND FINANCING  
FOR WENTHE-DAVIDSON ENGINEERING CO. PROJECT**

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BE IT RESOLVED by the Common Council of the City of New Berlin, Wisconsin (the “Issuer”), as follows:

Section 1      Recitals.

1.01      Under Wisconsin Statutes, Section 66.1103, as amended (the “Act”), the Issuer is authorized and empowered to issue revenue bonds to finance eligible costs of qualified “projects” (as defined in the Act), and to enter into “revenue agreements” (as defined in the Act) with “eligible participants” (as defined in the Act).

1.02      Pursuant to an Initial Resolution duly adopted on June 25, 2024, the Issuer expressed its intention to issue industrial development revenue bonds of the Issuer in an amount not to exceed \$4,200,000 (the “Bonds”) to finance a project on behalf of Wenthe-Davidson Engineering Co., a Wisconsin corporation (the “Borrower”) consisting of the construction of an approximately 27,183 square foot addition to the Borrower’s existing approximately 109,283 square foot facility located at 16300 West Rogers Drive in the City of New Berlin, Wisconsin (the “Facility”) which is operated by Wenthe-Davidson Engineering Co. to manufacture custom metal electric motor and generator housing, lock seam tubular products, and metal casings, (ii) acquisition and installation of equipment at the Facility, and (iii) payment of certain professional costs and costs of issuance (collectively, the “Project”). Notice of adoption of the initial resolution adopted on June 25, 2024 was published as provided in the Act, and no petition requesting a referendum upon the question of issuance of the revenue bonds has been filed.

1.03      Pursuant to Wisconsin Statutes, Section 66.1103, as amended, the Issuer may finance a project which is located entirely within the geographic limits of the Issuer.

1.04      Drafts of the following documents have been submitted to this Common Council and are ordered filed in the office of the City Clerk:

- (a)      a Bond Agreement (the “Bond Agreement”), proposed to be entered into among the Borrower, the Issuer, BMO Bank N.A., as trustee (the “Trustee”) and BMO Bank N.A., as original purchaser (the “Original Purchaser”);
- (b)      a Promissory Note from the Borrower to the Issuer, and assigned by the Issuer to the Trustee; and
- (c)      a No Arbitrage Certificate.

## Section 2      Findings and Determinations.

It is hereby found and determined that:

- (a) based on representations of the Borrower, the Project constitutes a “project” authorized by the Act;
- (b) a public hearing has been duly held on July 23, 2024 in accordance with the provisions of Section 147(f) of the Internal Revenue Code of 1986, as amended, at which residents of the City of New Berlin, Wisconsin were given an opportunity to be heard in regard to the proposed issuance of the Bonds and the nature and location of the proposed Project;
- (c) the purpose of the Issuer’s financing costs of the Project is, and the effect thereof will be, to promote the public purposes set forth in the Act;
- (d) it is desirable that a series of revenue bonds in the aggregate principal amount not to exceed \$4,200,000 be issued by the Issuer upon the terms set forth in the Bond Agreement, under the provisions of which the Issuer’s interest in the Bond Agreement (except for certain rights as provided therein) and the loan repayments will be assigned to the Trustee as security for the payment of principal of, and interest on, and premium, if any, on all the Bonds outstanding under the Bond Agreement;
- (e) the loan payments provided for in the Bond Agreement, and the formulas set out for revising those payments under the Bond Agreement as required under the Act, are sufficient to produce income and revenue to provide for prompt payment of principal of, and interest on, and premium, if any, on Bonds issued under the Bond Agreement when due; the amount necessary in each year to pay the principal of, and interest on, the Bonds is the sum of the principal of, and interest on, the Bonds due in such year, whether on a stated payment date, a redemption date, or otherwise; the Bond Agreement provides that the Borrower shall provide for the maintenance of the Project in good repair, keeping it properly insured; and
- (f) under the provisions of the Act, the Bonds shall be limited obligations of the Issuer, and the Bonds do not constitute an indebtedness of the Issuer, within the meaning of any state constitutional or statutory provision, and do not constitute nor give rise to a charge against the Issuer’s general credit or taxing powers or a pecuniary liability of the Issuer.

## Section 3      Approvals and Authorizations.

3.01 This resolution shall constitute the approval of the Bonds within the meaning of Section 147(f) of the Internal Revenue Code of 1986, as amended, and the Bonds are hereby approved. There is hereby approved the issuance by the Issuer of its industrial development revenue bonds (specifically, the Bonds) in an aggregate principal amount not to exceed \$4,200,000 for the purpose of financing the Project.

The Issuer shall proceed to issue its Industrial Development Revenue Bonds, Series 2024 (Wenthe-Davidson Engineering Co. Project), in the aggregate principal amount not to exceed \$4,200,000, in the form and upon the terms set forth in the Bond Agreement, which terms, including without limitation, interest rates, redemption provisions and maturity, are for this purpose

incorporated in this resolution and made a part hereof. The terms are hereby approved without further action by the Issuer, and the Mayor and City Clerk are authorized and directed to execute and deliver the documents listed in Section 1.04 herein, which are hereby approved, together with such subsequent changes as may be requested and approved by bond counsel and the Issuer's attorney, and such other documents, agreements, instruments or certificates as are deemed necessary or desirable by the Issuer's attorney and bond counsel, including an Internal Revenue Service Form 8038.

The Mayor and the City Clerk are authorized and directed to execute and seal the Bonds as prescribed in the Bond Agreement and to deliver them to the Trustee (together with a certified copy of this resolution and any other documents required by the Bond Agreement) for authentication by the Trustee and delivery to the original purchaser. Officers of the Issuer are authorized to take all actions as may be required on the part of the Issuer to carry out, give effect to, and consummate the transactions contemplated by the Bond Agreement.

3.02 The publication in the official newspaper of the Issuer of the notice for the public hearing referred to in Section 2(b) of this resolution, and such notice of public hearing as so published, are hereby ratified.

3.03 The Issuer hereby elects to have the provisions of Section 144(a)(4)(A) of the Internal Revenue Code of 1986, as amended, apply to the Bonds.

3.04 The Mayor and the City Clerk and other officers of the Issuer are authorized to prepare and furnish to the Trustee and bond counsel certified copies of all proceedings and records of the Issuer relating to the Bonds, and such other affidavits and certificates as may be required by the Trustee and bond counsel to show the facts relating to the legality and marketability of the Bonds as such facts appear from the books and records in the officers' custody and control or as otherwise known to them.

3.05 The approval hereby given to the various documents referred to in this resolution includes the approval of such additional details therein as may be necessary and appropriate for their completion and such modifications thereto, deletions therefrom and additions thereto as may be approved by the Issuer's attorney and bond counsel. The execution of any document by the appropriate officer or officers of the Issuer herein authorized shall be conclusive evidence of the approval by the Issuer of such document in accordance with the terms hereof.

3.06 BMO Bank N.A. shall initially assume and perform the duties of Trustee.

3.07 Notice of sale of the Bonds, in the form attached hereto as Exhibit A, shall be published in the official newspaper of the Issuer as a class 1 notice under Chapter 985 of the Wisconsin Statutes as soon as practicable following the closing and funding of the Bonds.

3.08 The Bonds shall be limited obligations of the Issuer payable by it solely from revenues and income derived by or for the account of the Issuer from or for the account of the Borrower pursuant to the terms of the Bond Agreement. As security for the payment of the principal of, premium, if any, and interest on the Bonds, the Issuer shall pledge and assign to the Trustee all of its right, title and interest in and to the trust estate described in the Bond Agreement.

3.09 All out-of-pocket costs of the Issuer, including attorneys' fees, in connection with the issuance and sale of the Bonds shall be paid from the proceeds of the Bonds or by the Borrower.

Passed and adopted at a regular meeting of the Common Council of the City of New Berlin, Wisconsin this 23rd day of July, 2024.

APPROVED:

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David Ament, Mayor

ATTEST:

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Rubina Medina, City Clerk

**CERTIFICATION BY CITY CLERK**

I, Rubina Medina, being first duly sworn, hereby certify that I am the duly qualified City Clerk of the City of New Berlin, Wisconsin (the “Issuer”), and as such I have in my possession, or have access to, the complete corporate records of the Issuer and of its Common Council; that I have carefully compared the transcript attached hereto with the aforesaid records; and that said transcript attached hereto is a true, correct and complete copy of all the records in relation to the adoption of Resolution No. \_\_\_\_ entitled:

FINAL RESOLUTION REGARDING  
INDUSTRIAL DEVELOPMENT REVENUE BOND FINANCING  
FOR WENTHE-DAVIDSON ENGINEERING CO. PROJECT

I hereby further certify as follows:

1. Said Resolution was considered for adoption by the Common Council of the Issuer at a meeting held at \_\_\_\_ p.m. on July 23, 2024 at a regular meeting of the Common Council and was held in open session.

2. Said Resolution was on the agenda for said meeting and public notice thereof was given not less than twenty-four (24) hours prior to the commencement of said meeting in compliance with Section 19.84 of the Wisconsin Statutes, including, without limitation, by posting on the bulletin board in the City Hall, by notice to those news media who have filed a written request for notice of meetings, and by notice to the official newspaper of the Issuer.

3. Said meeting was called to order by \_\_\_\_\_, who chaired the meeting. Upon roll, I noted and recorded that the following alderpersons were present:

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

and that the following alderpersons were absent:

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |

I noted and recorded that a quorum was present. Various matters and business were taken up during the course of the meeting without intervention of any closed session. One of the matters taken up was said Resolution, which was introduced, and its adoption was moved by \_\_\_\_\_ and seconded by \_\_\_\_\_. Following discussion and after all alderpersons who desired to do so had expressed their views for or against said Resolution, the question was called, and upon roll being called and the continued presence of a quorum being noted, the recorded vote was as follows:

AYE:

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NAY:

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ABSTAINED:

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Whereupon the meeting chair declared said Resolution adopted, and I so recorded it.

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the Issuer hereto on this 23rd day of July, 2024.

CITY OF NEW BERLIN, WISCONSIN

[SEAL]

By: \_\_\_\_\_  
Rubina Medina, City Clerk

## **EXHIBIT A**

### **NOTICE TO THE ELECTORS**

On July 23, 2024, a resolution was offered, read, approved and adopted whereby the City of New Berlin, Wisconsin authorized the issuance and sale of its Industrial Development Revenue Bonds, Series 2024 (Wenthe-Davidson Engineering Co. Project) in an amount not to exceed \$4,200,000 (the “Bonds”). The closing of this bond sale was held on \_\_\_\_\_, 2024. A copy of all proceedings had to date with respect to the authorization and sale of said Bonds is on file and may be examined in the office of the City Clerk, 3805 South Casper Drive, New Berlin, Wisconsin.

This notice is given pursuant to Section 893.77, Wisconsin Statutes, which provides that an action or proceeding to contest the validity of such financing, for other than constitutional reasons, must be commenced within 30 days after the date of publication of this notice.

Rubina Medina, City Clerk  
City of New Berlin, Wisconsin

**\$4,200,000**  
**City of New Berlin, Wisconsin**  
**Industrial Development Revenue Bonds, Series 2024**  
**(Wenthe-Davidson Engineering Co. Project)**

**BOND AGREEMENT**

By and Among

**CITY OF NEW BERLIN, WISCONSIN,**  
as Issuer,

**WENTHE-DAVIDSON ENGINEERING CO.,**  
as Borrower

**BMO BANK N.A.,**  
as Trustee

and

**BMO BANK N.A.,**  
as Original Purchaser

Dated as of August 1, 2024



|                    |                                                                                           |    |
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**\$4,200,000**  
**City of New Berlin, Wisconsin**  
**Industrial Development Revenue Bonds, Series 2024**  
**(Wenthe-Davidson Engineering Co. Project)**

**BOND AGREEMENT**

THIS BOND AGREEMENT (the “Bond Agreement”), dated as of August 1, 2024, is by and among the CITY OF NEW BERLIN, WISCONSIN (the “Issuer”), WENTHE-DAVIDSON ENGINEERING CO., a Wisconsin corporation (the “Borrower”), BMO BANK N.A., as original purchaser (the “Original Purchaser”), and BMO BANK N.A., as trustee (the “Trustee”).

Under Section 66.1103 of the Wisconsin Statutes, as amended (the “Statute”), the Issuer is authorized and empowered to issue revenue bonds and loan the proceeds from the sale of said bonds to one or more parties used to defray all or a portion of the cost of acquiring, constructing, improving and equipping a “project” as that term is defined in the Statute.

The Issuer desires to issue the Bonds (hereinafter defined) and to lend the Bond Proceeds (hereinafter defined) to the Borrower for the purpose of financing the Project (hereinafter defined) located in the City of New Berlin, Wisconsin, and the Borrower desires to borrow the Bond Proceeds for the purpose of financing the Project.

Pursuant to its authorizing Resolutions (hereinafter defined), the Issuer has authorized the Bonds to be issued in the aggregate principal amount of \$4,200,000.

The Bonds will be special, limited obligations of the Issuer payable solely from payments derived pursuant to this Bond Agreement and from the property which secures payment of the Bonds, and the Bonds and the interest thereon shall never constitute a debt of the Issuer within the meaning of any constitutional provision or statutory limitation, and shall never constitute or give rise to a pecuniary liability of the Issuer or a charge against the general credit or taxing powers of the Issuer.

In consideration of the premises, the promises of the Issuer, the Borrower, the Original Purchaser and the Trustee set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the payment of the principal of, premium, if any, and interest on all Bonds issued and outstanding under this Bond Agreement, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.01 Definitions** In addition to terms defined herein, the following capitalized terms shall have the respective meanings set forth below:

Authorized Representative of the Borrower: The [\_\_\_\_\_] of the Borrower authorized, even if acting alone, to bind the Borrower to contracts, to execute and deliver Borrower's Requisitions and to give Trust Fund investment directions on behalf of the Borrower.

Benchmark: Initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.03(k).

Benchmark Replacement: The first alternative set forth in the order below that can be determined by the Original Purchaser for the applicable Benchmark Replacement Date

(1) Daily Simple SOFR; or

(2) the sum of: (i) the alternate benchmark rate that has been selected by the Original Purchaser giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Bond Agreement and the other Loan Documents.

Benchmark Replacement Adjustment: With respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Original Purchaser giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities.

Benchmark Replacement Date: The earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein; or
- (2) in the case of clause (3) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness or non-compliance will be

determined by reference to the most recent statement or publication referenced in such clause (3).

Benchmark Transition Event: The occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System of the United States, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all available tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

Bond Amount: \$4,200,000.

Bond Counsel: A law firm whose legal and tax opinion on municipal bond issues is nationally recognized, initially, Husch Blackwell LLP.

Bond Fund: The Trust Fund described in Section 3.03

Bond Proceeds: The proceeds of the sale of the Bonds, namely, such amount of \$4,200,000, as may be advanced hereunder by the Original Purchaser.

Bond Register: The registration books maintained by the Trustee pursuant to Section 2.17.

Bondowners: At the time or times of determination, the Persons who are registered owners of Bonds as shown in the Bond Register maintained by the Trustee pursuant to Section 2.17.

Bonds: The Issuer's \$4,200,000 Industrial Development Revenue Bonds, Series 2024 (Wenthe-Davidson Engineering Co. Project ), issued hereunder.

Borrower: Wenthe-Davidson Engineering Co., a Wisconsin corporation.

Borrower's Address: The address which the Borrower designates for the delivery of notices hereunder. Until changed by notice from an Authorized Representative of the Borrower to the Issuer, the Trustee and the Original Purchaser, the Borrower's address shall be:

Wenthe-Davidson Engineering Co.  
16300 West Rogers Drive  
New Berlin, WI 53151  
Attn: Michael T. Kruck, CFO  
Phone: (262) 782-1550

Borrower's Certificate: A certificate signed on behalf of the Borrower by an Authorized Representative of the Borrower.

Borrower's Organizational Documents: The Articles of Incorporation and the Bylaws of the Borrower.

Borrower's Requisition: A request for a withdrawal from the Project Fund pursuant to Section 4.02, in the form of Exhibit D attached hereto.

Borrower's Tax Matters Closing Certificate: The Borrower's Tax Matters Closing Certificate dated the Original Issue Date and executed by the Borrower.

Business Day: Any day other than a Saturday, Sunday or other day on which banks are required or authorized to remain closed in the city in which the Trustee's Principal Office is located.

Clerk: Clerk means the person at the time incumbent in the office of the City Clerk of the Issuer or, in the event of death, disability or absence of such person, the person duly authorized and legally empowered to perform the duties of such office in such event.

Closing Date: [August 30, 2024].

Code: The Internal Revenue Code of 1986, as amended.

Completion Date: The completion date of the Project established in accordance with Section 4.03.

Conforming Changes: With respect to either the use or administration of the Term SOFR Rate or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "Interest Period," the definition of "U.S. Government Securities Business Day", the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Original Purchaser decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Original Purchaser in a manner substantially consistent with market practice (or, if the Original Purchaser



decides that adoption of any portion of such market practice is not administratively feasible or if the Original Purchaser determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Original Purchaser decides is reasonably necessary in connection with the administration of this Bond Agreement and the other Loan Documents).

Continuing Covenants Agreement: The Continuing Covenants Agreement dated [August 30, 2024] executed by the Borrower and the Original Purchaser, as amended, modified, supplemented or extended from time to time.

Counsel: An attorney acceptable to the Trustee, duly admitted to practice law before the highest court of any state, who may be an attorney for the Borrower, the Original Purchaser, the Trustee or the Issuer.

Daily Simple SOFR: For any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Original Purchaser in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Original Purchaser decides that any such convention is not administratively feasible for the Original Purchaser, then the Original Purchaser may establish another convention in its reasonable discretion.

Default Rate: The default rate shall mean the then-current interest rate on the Bonds, plus [5%].

Defeasance Obligations: Any of the following which are not subject to prepayment in whole or in part or to redemption by the issuer thereof prior to maturity:

(a) Government Obligations;

(b) Evidences of ownership of proportionate interests in future interest and principal payments on Government Obligations held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the Government Obligations, and which underlying Government Obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated; and

(c) Obligations described in Section 103(a) of the Code, which obligations have been assigned the highest rating assigned to legally defeased debt by S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC (“S&P Global Ratings”), and Moody’s Investors Service, Inc. and provision for the payment of the principal of, premium, if any, and interest on which shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee or escrow agent for holders of such obligations of securities described in clauses (a) or (b), the maturing principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, premium, if any, and interest on such obligations, and which securities described in clauses (a) or (b) are not available to satisfy any other claim, including any claim of the trustee or escrow agent or of any person claiming through the trustee or escrow agent or proceedings arising out of such insolvency.

Determination of Taxability: The issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue

Service, or a final decision of a court of competent jurisdiction, or a regulation or revenue ruling issued by the Internal Revenue Service, after the period, if any, for contest or appeal by the taxpayer of such action, ruling or decision has expired without any such contest or appeal having been properly instituted by the taxpayer, or delivery to the Trustee by Bond Counsel of an opinion, which holds or declares in effect that the interest payable on any of the Bonds is includable for federal income tax purposes in the gross income of the Bondowners of such Bonds (other than a Bondowner who is a substantial user of the Project or a related person, as such terms are defined in the Code).

Event of Default: Any of the events described as such in Section 8.01 (a “Bond Default”) or in Section 9.01 (a “Loan Default”).

Event of Taxability: The circumstance of interest paid or payable on any Bond becoming includable (other than for purposes of a tax on preferences of the type imposed by Section 56 of the Code or any successor statute thereto or any similar federal tax on preferences or similar items and other than by reason having to do with the tax status of, or rules applicable to, the particular individual Bondowner rather than the status of, or rules applicable to, all persons generally) for federal income tax purposes in the gross income of any Bondowner (other than a Bondowner who is a “substantial user” or a “related person” within the meaning and for the purposes of Section 147(a) of the Code) as a consequence of any act, omission or event whatsoever; *provided, however*, that a change in the Code enacted after the date of issuance of the Bonds which results in interest on borrowings by state and local governments generally being included in gross income shall not be an Event of Taxability.

Facility: The Borrower’s facility located at 16300 West Rogers Drive in the City of New Berlin, Wisconsin.

GAAP: Those generally accepted accounting principles and practices which are recognized as such by the American Institute of Certified Public Accountants acting through appropriate boards or committees thereof and which are consistently applied for all periods so as to properly reflect the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries.

Government Authority: Any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled through stock or capital ownership or otherwise, by any of the foregoing.

Government Obligations: Securities which are direct full faith and credit obligations of the United States or securities as to which the timely payment of both principal and interest are unconditionally guaranteed by the United States of America.

Highest Elected Official: The Mayor of the Issuer.

Indebtedness: All liabilities or obligations of a Person, whether or not included on the liability portion of a balance sheet, which shall include, without limitation, all (a) indebtedness for borrowed money; (b) indebtedness for the deferred purchase price of property or services for which the Person is liable, contingently or otherwise, as obligor, guarantor or otherwise; (c) any commitment by which the Person assures a creditor against loss, including, without limitation,

contingent reimbursement obligations with respect to letters of credit; (d) obligations which are evidenced by notes, acceptances or other instruments; (e) indebtedness guaranteed in any manner by the Person, including without limitation guaranties in the form of an agreement to repurchase or reimburse; (f) any unfunded obligation of the Person to any pension plan; (g) all liabilities secured by any Lien on any Property owned by the Person, even though it has not assumed or otherwise become liable for the payment thereof; and (h) other liabilities or obligations of the Person and its Subsidiaries which would, in accordance with GAAP, be included on the liability portion of a balance sheet.

Insurance and Condemnation Proceeds Fund: The Trust Fund described in Section 3.05.

Issuer: The City of New Berlin, Wisconsin, its successors and assigns.

Issuer's Address: The address which the Issuer designates for the delivery of notices hereunder. Until changed by notice from the Issuer to the Borrower, the Trustee and the Original Purchaser, the Issuer's Address shall be:

City of New Berlin  
3805 South Casper Drive  
New Berlin, WI 53151  
Attn: City Clerk  
Phone: (262) 754-1838  
Fax: (262) 786-6121

Lien: Any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), deed of trust, charge, preference, priority, security interest or other security agreement or preferential arrangement of any kind or nature whatsoever including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement that is not wrongfully filed under the Uniform Commercial Code of the State of Wisconsin or comparable law of any jurisdiction.

Loan: The Loan of the Bond Proceeds by the Issuer to the Borrower.

Loan Documents: The documents relating to the Bonds and the Loan, including the Resolutions, this Bond Agreement, the Continuing Covenants Agreement, the Security Documents, the Promissory Note, and other documents executed and delivered at the closing.

Loan Repayments: The payments required to be made by the Borrower pursuant to Section 4.06.

Material Adverse Effect: (a) an Event of Default, (b) a material adverse change in the business, prospects or condition (financial or otherwise) of the Borrower or any of its Subsidiaries or in any Property, (c) the termination of any material agreement to which the Borrower is a party, (d) any material impairment of the right to carry on the business as now or proposed to be conducted by the Borrower, or (e) any material impairment of the ability of the Borrower to perform its obligations under this Bond Agreement or the Security Documents.

Net Proceeds: The gross proceeds of an insurance claim or condemnation award with respect to the Project after payment of all expenses (including attorneys' fees and any extraordinary fee or expense of the Trustee) incurred in its collection.

No Arbitrage Certificate: That certain No Arbitrage Certificate dated the Original Issue Date made by the Issuer and acknowledged, with respect to accuracy and reasonableness of certain expectations, facts and estimates contained therein, by the Borrower.

Obligation: Collectively, the Continuing Covenants Agreement, the Promissory Note, all mandatory prepayments, all costs and expenses and all other indebtedness of the Borrower to the Original Purchaser, including, without limitation, all Obligations as defined in the Continuing Covenants Agreement

Opinion of Counsel: A written opinion of Counsel.

Original Issue Date: [August 30, 2024].

Original Purchaser: BMO Bank N.A. and its successors and assigns.

Original Purchaser's Address: The address which the Original Purchaser designates for the delivery of notices hereunder. Until changed by notice from the Original Purchaser to the Borrower, the Issuer and the Trustee, the Original Purchaser's Address is:

BMO Bank N.A.  
3155 North 124<sup>th</sup> Street  
Brookfield, WI 53005  
Attn: Michael Goedheer  
Phone: (262) 783-1007  
Fax: (262) 783-2023

Outstanding Bonds and Outstanding (when used with reference to Bonds): All Bonds which have been authenticated and delivered by the Trustee hereunder, except:

(a) Bonds or portions thereof cancelled by the Trustee or delivered to the Trustee for cancellation; and

(b) Bonds in lieu of which other Bonds have been authenticated and delivered in accordance with Sections 2.15, 2.16 and 2.23.

Paying Agent: Any corporate trustee or bank designated pursuant to this Bond Agreement as the agent of the Issuer to receive and disburse the principal of and interest on the Bonds; initially, the Trustee.

Payment Date: Monthly on the [first] day of each month, commencing [\_\_\_\_\_ 1, 2024], as more fully described in Section 2.03 herein, and any other date that principal, any applicable premium, or interest is due on the Bonds under this Bond Agreement and the Continuing Covenants Agreement.

Person: An individual, partnership, corporation, limited liability company, enterprise, association, business trust, joint stock company, joint venture, trust, unincorporated organization, governmental authority or any agency or political subdivision thereof, or other entity of whatever nature.

Pledged Revenues: All revenues and income derived by or for the account of the Issuer from or for the account of the Borrower pursuant to the terms of this Bond Agreement, including, without limitation (a) all payments by the Borrower on the Loan or pursuant to Section 4.07 and on the Promissory Note, (b) all cash and securities held from time to time in the Trust Funds (with the exception of the Rebate Credit Account) and the investment earnings thereon, and (c) all proceeds of any casualty insurance or condemnation awards payable with respect to the Project.

Project: The project described in Exhibit A attached hereto.

Project Costs:

(a) All legal, abstracting, surveying, financial and accounting and other fees and expenses, printing and engraving costs and expenses incurred in connection with the establishment of title, the authorization, sale and issuance of the Bonds (including any underwriter's or agent's fees, commitment or origination fees, or points in connection with the issuing of the Bonds but, to the extent paid from Bond Proceeds, not to exceed 2% of the face amount of the Bonds), and the preparation of this Bond Agreement, the Loan Documents and all other documents, including filing fees for any financing statements deemed necessary by Counsel;

(b) All costs of acquiring and improving the Project Site;

(c) All costs of acquiring and installing the Project Equipment at the Project Site;

(d) All architectural, engineering, consulting, legal, supervisory and other services incurred and to be incurred in the construction, purchase, acquiring, installing, improving, equipping or furnishing of the Project;

(e) The contract price of all labor, services, materials, supplies and equipment furnished under any contract entered into in connection with the construction, purchase, acquisition, installing, improving, equipping or furnishing of the Project;

(f) The cost of all other labor, services, materials, supplies and equipment necessary to complete the Project;

(g) To the extent permitted by the Statute and not prohibited by rules or regulations of the Internal Revenue Service and not otherwise paid from Bond Proceeds deposited in the Bond Fund, all interest accruing up until and not later than the completion of the Project, on money borrowed by the Borrower for temporary financing of Project Costs if such money was borrowed by the Borrower for the specific purpose of temporarily financing Project Costs and was not part of a general purpose open line of credit, and interest accruing on the Bonds prior to, and up to completion of the Project;

(h) Without limitation by the foregoing, all other expenses which under GAAP constitute necessary capital expenditures for the completion of the construction, acquisition,

purchase, installation, improving, equipping or furnishing of the Project, not including initial working capital or expendable supplies (all of which are nevertheless to be supplied by the Borrower from its own funds without reimbursement);

(i) All advances, payments and expenditures made or to be made by the Issuer, the Trustee or any other person with respect to any of the foregoing expenses; and

(j) Reimbursement of the Borrower for the Borrower's payment of any of the foregoing incurred after April 26, 2024, to the extent such reimbursement is permissible under the Statute.

Project Equipment: The equipment, if any, to be installed by the Borrower at the Project Site as part of the Project.

Project Fund: The Trust Fund described in Section 3.02.

Project Site: The location of the Project and the Project Equipment located 16300 West Rogers Drive in the City of New Berlin, Wisconsin.

Promissory Note: The Promissory Note to the Issuer from the Borrower, dated the Original Issue Date, in the original principal amount of \$4,200,000.

Property: Any interest of the Borrower or its Subsidiaries, if any, of any kind in property or assets, whether real, personal, mixed, tangible or intangible, wherever located, and whether now owned or subsequently acquired or arising and in the products, proceeds, additions and accessions thereof or thereto, including without limitation the Project.

Put Date: [February 28, 2030] and each subsequent Reset Date.

Qualified Investments: Includes any of the following securities, in and to the extent that the Trustee has not been notified that the same have not been disqualified as legal for the investment of the Issuer's moneys: Government Obligations and (a) the obligations, including discount notes, of (i) Federal National Mortgage Association, (ii) Federal Intermediate Credit Banks, (iii) Federal Banks for Cooperatives, (iv) Federal Land Banks, (v) Federal Home Loan Banks, (vi) Federal Financing Bank, (vii) Federal Farm Credit System, (viii) Federal Home Loan Mortgage Corporation, (ix) Government National Mortgage Association, (x) Federal Housing Administration, and (xi) Farmers Home Administration; *provided, however*, that obligations listed in this subpart (a) shall be guaranteed as to the timely payment of principal and interest by the United States of America; (b) unsecured certificates of deposit, demand deposits, including interest bearing money market accounts, trust deposits, time deposits or bankers acceptances (in each case having maturities of not more than 360 days) of any domestic bank (including the Original Purchaser and the Trustee and any bank affiliated with the Trustee) including a branch office of a foreign bank, which branch office is located in the United States, provided that such bank at the time of purchase, has a short-term "Bank Deposit" rating of "Prime-1" or better by Moody's Investors Service, Inc., and a rating of "A-1" or better by S&P Global Ratings; (c) certificates of deposit or time deposits fully collateralized by Government Obligations; (d) any repurchase agreement by the Trustee that is with a bank or institution, which bank, institution or holding company thereof is rated "BAA1" or better by Moody's Investors Service, Inc. or "B+" or better by S&P Global Ratings, provided that such repurchase agreement may not extend more than 30 days beyond its issuance and such repurchase

obligation will be for Government Obligations; and notwithstanding any of the foregoing, to the extent that any obligations described in this definition are repurchase agreements then (i) the Trustee must have perfected a first security interest in such obligations, (ii) the Trustee or a third party acting solely as agent for the Trustee must have possession of such obligations, (iii) such obligations must be free and clear of third party claims, and (iv) any investment in a repurchase agreement will be considered to mature on the date the bank or trust company providing the repurchase agreement is obligated to repurchase the Government Obligations; (e) commercial paper or finance company paper rated not less than A 1 or prime-one or their equivalents by S&P Global Ratings and Moody's Investors Service, Inc., respectively; (f) state and local government obligations, the interest on which is excludable from the gross income of the holder thereof for federal income tax purposes pursuant to Section 103(a) of the Code, provided that such obligations have a rating of "A" or better from S&P Global Ratings or Moody's Investors Service, Inc.; and (g) so long as the Original Purchaser is the Bondowner of all of the Bonds Outstanding, investment agreements or certificates of deposit as may be approved by the Borrower and the Original Purchaser; *provided, however*, that such investment ratings shall apply only at the time of acquisition of such investment.

Rebate Credit Account: The account described in Section 3.06, which account shall not be pledged for the benefit of the Bondowners hereunder.

Record Date: For the interest payable on any Payment Date, means the day (whether or not a Business Day) preceding such Payment Date.

Redemption Date: The date upon which any Bond is to be redeemed prior to maturity.

Redemption Fund: The Trust Fund described in Section 3.04.

Requirements of Law: As to any matter or Person, the articles of organization and the operating agreement, or the articles of incorporation and the bylaws, or other organizational or governing documents of such Person, and any law, ordinance, resolution, treaty, rule, regulation, order, decree, determination or other requirement having the force of law relating to such matter or Person and, where applicable, any interpretation thereof by any Government Authority.

Requisite Consent: Unless all Bonds are then owned by the Borrower, the affirmative written consent of Bondowners owning in aggregate not less than a majority in principal amount of the Bonds (other than Bonds owned by the Borrower or any "related person" as defined in Section 147 of the Code) at the time Outstanding.

Relevant Governmental Body: The Board of Governors of the Federal Reserve System of the United States and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System of the United States and/or the Federal Reserve Bank of New York, or any successor thereto.

Resolutions: The resolutions adopted by the governing body of the Issuer dated June 25, 2024 and July 23, 2024 authorizing the issuance of the Bonds.

Security Documents: The [Loan Documents and the other related documents] as described in the Continuing Covenants Agreement.

Statute: Section 66.1103 of the Wisconsin Statutes, as amended from time to time.

Subsidiary: As to any Person, a corporation or limited liability company of which shares of stock or membership interest having voting power (other than stock or membership interest having such power only by reason of the happening of a contingency that has not occurred) sufficient to elect a majority of the board of directors or other managers of such corporation or limited liability company are at the time owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

Trustee: Initially, BMO Bank N.A., and any successor banking corporation, banking association or trust company at the time serving as corporate trustee hereunder.

Trustee's Address and Trustee's Principal Office: The address or office which the Trustee designates for the delivery of notices or payments hereunder. Until changed by notice from the Trustee to the Borrower, the Issuer and the Original Purchaser, the Trustee's Address and Principal Office is:

BMO Bank N.A.  
3155 North 124<sup>th</sup> Street  
Brookfield, WI 53005  
Attn: Michael Goedheer  
Phone: (262) 783-1007  
Fax: (262) 783-2023

Trust Funds: The trust funds and accounts administered by the Trustee hereunder.

Unadjusted Benchmark Replacement: Means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

Unassigned Rights: The Borrower's obligations to the Issuer under Section 4.07(c), Section 4.13, Section 5.06, Section 6.08, Section 6.15, Section 6.17, Section 9.06 and Section 9.07 and Article X and the rights to receive notices and give consents hereunder.

U.S. Government Securities Business Day: Any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**Section 1.02 Use of Phrases; Rules of Construction**The following provisions shall be applied wherever appropriate herein:

"Herein," "hereby," "hereunder," "hereof" and other equivalent words refer to this Bond Agreement as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in Section 1.01 shall be deemed applicable whether the words defined are herein used in the singular or the plural.

Wherever used herein, any pronoun or pronouns shall be deemed to include both the singular and plural and to cover all genders.



Unless otherwise provided, any determinations or reports hereunder which require the application of accounting concepts or principles shall be made in accordance with GAAP.

## **ARTICLE II**

### **ISSUANCE AND TERMS OF BONDS**

**Section 2.01 Creation of Bonds for Issuance.** There is hereby created for issuance an issue of Bonds to be designated:

\$4,200,000  
City of New Berlin, Wisconsin  
Industrial Development Revenue Bonds, Series 2024  
(Wenthe-Davidson Engineering Co. Project)

The Bonds shall be issued on a draw-down basis in the aggregate principal amount up to FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000) and issued as a single bond certificate. The Bonds shall be numbered in such manner as the Trustee shall deem appropriate, provided that each particular Bond shall have a different identifying number. The Bonds shall be issuable in the form of typewritten or printed, fully registered Bonds. The Bonds shall specify the Original Issue Date as their original issue date, and each particular Bond shall be dated, as its registration date, the date of its authentication. The Bond shall be issued in denominations of \$0.01 and integral multiples thereof.

**Section 2.02 Maturity; Repayment of Principal.** The Bonds will be issued in the aggregate amount up to \$4,200,000 and shall mature on [August 1, 2054]. Principal of the Bonds shall be repaid by the Issuer (solely from payments to be made by the Borrower) on each Payment Date pursuant to optional sinking fund redemptions in such amounts and on such dates as set forth in the Continuing Covenants Agreement.

Notwithstanding anything else herein to the contrary, the principal amount of the Bonds Outstanding shall never exceed the aggregate amounts transferred from the Original Purchaser to the Trustee for deposit into the Project Fund pursuant to Sections 3.01 and 4.02 of the Bond Agreement, less repayments of principal made by the Issuer (solely from payments to be made by the Borrower); provided, however, that nothing herein shall be construed to obligate the Borrower to proceed with the Project, and in the event the Borrower does not proceed with the Project, the Borrower shall have no obligation hereunder, other than the repayment, together with interest for amounts advanced by the Original Purchaser.

Payments of principal in excess of the scheduled installments set forth herein and related payments of premium shall be credited against scheduled installments in inverse order with respect to the Bonds.

**Section 2.03 Interest on the Bonds. [SECTION 2.03 IS SUBJECT TO REVIEW BY BANK]**

(a) Initial Interest Rate - Variable Rate. Commencing on the Original Issue Date through [February 28, 2025], the Bonds shall bear interest at a variable rate, adjusted monthly, calculated pursuant to the following formula:

$$(\text{One-Month Term SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$$

$$\text{Initial variable rate on Original Issue Date: } ([\_\_\_\_\_\_] \% + [1.50] \%) \times 82\% = [\_\_\_\_\_\_] \%$$

(b) Interest Rate Adjustment - Conversion to Fixed Rate. Commencing on [March 1, 2025] (the “Interest Rate Adjustment Date”) through February 27, 2030, the Bonds shall bear interest at a fixed rate of  $[\_\_\_\_\_\_] \%$  for a period of 5 years, which shall be reset on each subsequent Reset Date, calculated pursuant to the following formula:

$$(\text{5-Year SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$$

$$\text{Fixed rate as set on Original Issue Date: } ([\_\_\_\_\_\_] \% + [2.70] \%) \times 82\% = [\_\_\_\_\_\_] \%$$

(c) Interest Rate Resets on Reset Date; Interest Rate Options. Commencing on [February 28, 2030] and on each Reset Date thereafter (which date shall also be a Put Date), the Bonds shall bear interest for such such Reset Period at a variable rate or fixed rate as selected by Borrower in writing, with the consent of the Original Purchaser, and delivered to the Trustee not less than 30 days nor more than 60 days (unless waived by the Borrower and the Original Purchaser) prior to the next succeeding Reset Date (provided that if no election is made by the Borrower during such notice period, then the Borrower shall be deemed to have made an election at the variable rate), which election shall be irrevocable for the applicable Reset Period of 5 years, equal to either:

(1) A variable rate, adjusted monthly, equal to:

$$(\text{One-Month Term SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$$

-OR-

(2) A fixed rate for a period of 5 years, which shall be reset on each Reset Date, calculated pursuant to the following formula:

$$(\text{5-Year SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$$

The Bonds, if bearing interest at the variable rate, shall bear interest at the rate determined according to the above variable rate formula, adjusted monthly, during such Reset Period.

The Bonds, if bearing interest at the fixed rate, shall bear interest at the rate determined according to the above fixed rate formula for such Reset Period. The fixed rate shall be determined not less than two nor more than three Business Days prior to the end of the applicable Reset Period.

Notwithstanding the foregoing, the interest rate on the Bonds shall never exceed the Maximum Rate.

(d) The following definitions are applicable to the foregoing formulas and to the remainder of this Section 2.03 and Section 2.08:

(i) “5-Year SOFR Rate” means for a 5-year tenor, the Term SOFR Rate published by the Term SOFR Administrator on the day (such day, the “*Term SOFR Determination Day*”) that is two (2) U.S. Government Securities Business Days prior to (a) with respect to the 5-Year SOFR Rate, the first day of such applicable Interest Period as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the 5-Year Term SOFR Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the 5-Year SOFR Rate has not occurred, then 5-Year Term SOFR Rate will be the 5-Year Term SOFR Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such 5-Year Term SOFR Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day, provided that, if the 5-Year Term SOFR Rate determined as provided shall ever be less than the Floor, then the 5-Year Term SOFR Rate shall be deemed to be the Floor.

(ii) “Credit Spread” means such Credit Spread as determined by the Original Purchaser for a similarly situated borrower as the Borrower based on the Original Purchaser’s then-current underwriting standards, and with credit committee oversight, including, without limitation, factors such as the current credit profile, market conditions and current and historical operating performance and which Credit Spread in the opinion of Bond Counsel will not adversely affect any exemption from federal income taxation to which the Bonds would otherwise be entitled.

(iii) “Floor” means the rate per annum of interest equal to [\_\_\_\_\_] %.

(iv) “Interest Period” means, initially, the 66-month period from the Closing Date through [February 27, 2030], and thereafter, the period from each Reset Date to but not including the subsequent Reset Date or the Maturity Date, as applicable, during which period the Bonds bear interest at the rates established in accordance with Section 2.03 of the Bond Agreement (subject to redemption or prepayment).

(v) “Interest Rate Adjustment Date” means [February 28, 2025], which date is 6 months from the Original Issue Date at which time the interest rate on the Bonds will adjust from a variable rate to a fixed rate for a term of 5 years.

(vi) “Maximum Rate” means 20% per annum.

(vii) “One-Month Term SOFR Rate” means, for a one-month tenor, the Term SOFR Rate published by the Term SOFR Administrator two (2) U.S. Government Securities Business Days prior to the first day of each month (such day, the “*Periodic Term SOFR Determination Day*”); provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the One-Month Term SOFR Rate has not been published by the Term SOFR

Administrator and a Benchmark Replacement Date with respect to the One-Month Term SOFR Rate has not occurred, then the One-Month Term SOFR Rate will be the One-Month Term SOFR Rate as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such One-Month Term SOFR Rate was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, provided that, if the One-Month Term SOFR Rate determined as provided shall ever be less than the Floor, then the One-Month Term SOFR Rate shall be deemed to be the Floor.

(viii) “Put Date” means, initially, February 28, 2030 and thereafter, each Reset Date.

(ix) “Reset Date” means the first day of each Reset Period (which shall be February 28 or February 29, if a leap year); the initial Reset Date shall be [February 28, 2030].

(x) “Reset Period” means each period of 5 years from each Reset Date, as selected by the Borrower, through the day preceding the next Reset Date or the maturity date of the Bonds (as applicable).

(xi) “SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York or a successor administrator of the secured overnight financing rate.

(xii) “Tax-Exempt Multiplier” means the tax-exempt multiplier determined from time to time by the Original Purchaser or as modified by change in law as shown on its internal pricing sheets for tax-exempt interest rates which are not bank-qualified pursuant to Section 265 of the Code.

(xiii) “Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Rate selected by the Original Purchaser in its reasonable discretion).

(xiv) “Term SOFR Rate” means for the applicable tenor, the Term SOFR Reference Rate on the applicable Term SOFR Determination Day (as it relates to the 5-Year SOFR Rate) or Periodic Term SOFR Determination Day (as it relates to the One-Month Term SOFR Rate).

(xv) “Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

(e) The Original Purchaser shall provide the Borrower and the Trustee with such information as to historical and current interest rates as the Borrower and the Trustee shall reasonably request from time to time.

(f) All determinations of the interest rate hereunder shall be final and conclusive absent manifest error. In connection with the use or administration of the Term SOFR Rate, the Original will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party

to this Bond Agreement or any other Loan Document. The Original Purchaser will promptly notify the Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of the Term SOFR Rate.

(g) Interest on the Bonds shall be payable on the [first] day of each month, commencing on [\_\_\_\_\_ 1, 2024]. Interest on the Bond is computed on a 360-day year, actual days elapsed; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under the Bond is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond.

Interest shall accrue only on principal amounts actually deposited and from the date such amounts are actually deposited into the Project Fund pursuant to Section 3.01 and Section 4.02 of this Bond Agreement.

(h) Interest Rate Adjustment on Bonds in the Event of Change in Corporate Tax Rate. The interest rates on the Bonds shall be subject to adjustment in the event of an increase or decrease in the Corporate Tax Rate of the Original Purchaser after the Original Issue Date, with such change in the interest rate to be effective as of the date of the increase or decrease in the Corporate Tax Rate of the Original Purchaser. The rates of interest on the Bonds (other than the interest rate in effect following a Determination of Taxability) shall be decreased (in the case of an increase in the Corporate Tax Rate) or increased (in the case of a decrease in the Corporate Tax Rate) so that the effective interest rate to the Original Purchaser, after taking into account such increase or decrease in the Corporate Tax Rate shall be the same yield to the Original Purchaser as was in effect prior to such change in the Corporate Tax Rate. “*Corporate Tax Rate*” means the highest stated statutory rate of federal income tax imposed on corporations, disregarding any surcharges or surtaxes.

(i) Principal payments on the Bonds shall be payable as optional sinking fund redemptions as provided in the Continuing Covenants Agreement.

(j) Overdue principal and interest on the Bonds shall (to the extent legally enforceable) bear interest at the Default Rate. Any interest on any Bond which is payable, but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. All unpaid principal and interest shall be paid on [August 1, 2054].

(k) Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) *Benchmark Replacement.* Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Bond Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such

Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Chicago time) on the 5th Business Day after the date notice of such Benchmark Replacement is provided by the Original Purchaser to the Borrower without any amendment to, or further action or consent of any other party to, this Bond Agreement or any other Loan Document.

(ii) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Original Purchaser will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Bond Agreement or any other Loan Document.

(iii) *Notice; Standards for Decisions and Determinations.* The Original Purchaser will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Original Purchaser will promptly notify the Borrower of the removal or reinstatement of any Benchmark pursuant to this Section 2.03(k). Any determination, decision or election that may be made by the Original Purchaser pursuant to this Section 2.03(k), including any determination with respect to a rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Bond Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.03(k).

**Section 2.04 Occurrence of a Determination of Taxability.** The Bonds shall bear interest, payable on the first Payment Date after the occurrence of a Determination of Taxability with respect to all prior periods, computed at the rate set forth in this Section (the “Taxable Interest”) (on a 360-day year, actual days elapsed basis) on the outstanding principal amount of the Bonds (as reduced from time to time) from the date of the Event of Taxability, less any interest already paid, from the date of the Event of Taxability to such Payment Date. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond for Taxable Interest. Thereafter, the Bonds shall bear Taxable Interest as defined in this Section and as provided in this Section on the Bonds Outstanding on each Payment Date. Except for Taxable Interest allocable to the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability (which interest shall be payable on such Payment Date immediately succeeding the Determination of Taxability), Taxable Interest payable under this Section shall be payable with respect to the same period, at the same time and in the same manner as interest payments regularly paid pursuant to this Bond Agreement.

Taxable Interest payable on the Bonds for purposes of this Section shall automatically be adjusted to a rate, as determined by the Original Purchaser in its sole and absolute discretion, equal to the interest rate on the Bonds without application of the Tax-Exempt Multiplier. Such increased rate is to be effective, retroactively, as applicable, as of the date of the Determination of Taxability. The Borrower shall also pay to the Bondowners (and any former Bondowners holding Bonds during

any period subsequent to an Event of Taxability) as additional interest, the amount of penalties, additions to tax (exclusive of any taxes imposed under Section 11 or any successor provision of the Code) or interest assessed against the Bondowners (and former Bondowners) on account of a Determination of Taxability. Taxable Interest to be paid pursuant to this Section for the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability shall be paid immediately following the Determination of Taxability in the same manner as interest is paid to Bondowners in accordance with this Bond Agreement.

Any Bondowner shall have the right, but not the obligation, to arrange for the contest of an allegation that an Event of Taxability has occurred, by appropriate legal proceedings. In the event no Bondowner shall contest the Event of Taxability, the Borrower shall have the option but not the obligation to do so. If (i) the Borrower shall have made any additional payments to a Bondowner or former Bondowner by reason of an Event of Taxability pursuant to this Section, and (ii) it shall be successfully claimed for the taxable year in question that the interest on the Bonds for such taxable year is excluded from the Bondowner's or former Bondowner's taxable income for federal income tax purposes (for this purpose a claim shall be deemed successful only upon the occurrence of a "determination," as defined in Section 1313(a) or any successor provision of the Code) or, if the Bondowner or former Bondowner shall not have included such interest in the Bondowner's or former Bondowner's taxable income for federal income tax purposes upon expiration of the statute of limitations provided by Section 6501 or any successor provision of the Code with respect to such taxable year, then the Bondowner or former Bondowner (as the case may be) shall pay to the Borrower the amount of any such additional payments which had been made by the Borrower to the Bondowner or former Bondowner, less any actual expenses incurred by such Bondowner or former Bondowner as a result of the alleged Event of Taxability. Upon successful challenge of an Event of Taxability, the interest rate on the Bonds shall return to the interest rate ordinarily payable hereunder as if no Event of Taxability had ever been alleged.

**Section 2.05 Prepayment of Bonds.** No Bond may be called for redemption prior to its stated maturity except as provided in Section 2.06, 2.07 or 2.08; *provided, however*, that nothing herein shall be deemed to limit the right of acceleration of Bond maturities upon the occurrence of a Bond Default.

**Section 2.06 Optional Prepayment.** The Bonds are subject to redemption prior to maturity, in whole or in part, at any time, at the option of the Borrower, with such applicable redemption premium, if any, as set forth in the Continuing Covenants Agreement, upon receipt by the Trustee, not less than 45 days prior to the Redemption Date, of a written notice from the Borrower stating that it intends to prepay the Loan on the specified Redemption Date and the giving of notice by the Trustee not less than 30 days prior to the Redemption Date, and thereby effect redemption of the Bonds being redeemed. The notice of optional redemption to be delivered by the Borrower shall describe whether and the conditions under which the call for redemption may be revoked.

Notwithstanding the foregoing, the Borrower is not required to provide notice of redemption pursuant to Section 2.10 of the Bond Agreement to effect optional sinking fund redemptions as required by Section [\_\_\_\_\_] of the Continuing Covenants Agreement.

The Borrower agrees to repay the Loan on the dates and in the amounts required by Section [\_\_\_\_\_] of the Continuing Covenants Agreement and to pay any prepayment penalty therein directly to the Original Purchaser.

**Section 2.07 Optional Redemption of Bonds Upon Occurrence of Certain Extraordinary Events** The Bonds shall be subject to redemption, in whole or in part, without payment of any redemption or prepayment premium, at par plus accrued interest to the Redemption Date at the option of the Borrower, or the Bondowners by Requisite Consent, upon the occurrence of certain extraordinary events as described in this Section 2.07. If the Project is affected as set forth below, each shall have an independent option to have the Loan repaid in whole out of Net Proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project, and to direct the Issuer either (i) to call for redemption and prepayment of all the Outstanding Bonds, or (ii) to call for redemption and prepayment that amount of Outstanding Bonds attributable to debt incurred for the Project as determined by the Trustee, if:

(a) The Project shall have been damaged or destroyed to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and the Original Purchaser, filed with the Trustee and the Original Purchaser, if the Original Purchaser then owns any of the Bonds, following such damage or destruction (i) the completion of the Project will be delayed for at least 6 months, (ii) it is not practicable or desirable to rebuild, repair or restore the Project within a period of 6 consecutive months following such damage or destruction, or (iii) the Borrower is or will be thereby prevented from carrying on its normal operations for a period of at least 6 consecutive months;

(b) Title to or the temporary use of all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any Government Authority to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and, if the Original Purchaser then owns any of the Bonds, the Original Purchaser, (i) the completion of the Project will be delayed for at least 6 months, or (ii) the Borrower is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(c) Any court or administrative body of competent jurisdiction shall enter a final judgment, and not subject to appeal, order or decree requiring the Borrower to cease all or any substantial part of its operations at the Project Site to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of Counsel, who is also acceptable to the Original Purchaser if the Original Purchaser then owns any of the Bonds, filed with the Issuer and the Trustee, the Borrower is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(d) As a result of any changes in the Constitution of Wisconsin or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), this Bond Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the



Borrower including, without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date hereof; or

(e) If it shall be discovered that the Borrower's title to the Project shall be materially defective, and the Borrower's title to the Project shall be lost by reason of such defect.

In any such case, the Borrower or Bondowners shall, to exercise their respective option hereunder, give notice to the Issuer, the Trustee and the Bondowners or the Borrower, as the case may be, in writing of its or their intent to exercise this option and specifying the proposed Redemption Date, within 30 days following discovery of the event by the party determining to exercise its option hereunder. The exercise of either party of its option to redeem the Bonds shall be binding on all parties hereto. Within 60 days after the giving of notice as set forth above, the Borrower shall deposit with the Trustee a sum sufficient, together with other funds held by the Trustee and available for such purpose (i) to redeem the Bonds, in whole or in part, as applicable at a redemption price equal to the principal amount thereof, (ii) to pay the interest which will become due on such Bonds to and including the Redemption Date, and (iii) to pay all expenses of the Issuer and the Trustee accrued and to accrue through the Redemption Date, excluding any redemption or prepayment premium.

If the Borrower shall have received proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project (exclusive of proceeds of business interruption insurance), and such net proceeds exceed the amount necessary to rebuild, repair or restore the Facility, the Borrower agrees to direct the Issuer to call for redemption and prepayment of Outstanding Bonds equal to the amount of such resulting excess net proceeds.

**Section 2.08 Mandatory Redemption at Option of Original Purchaser.** The Bonds shall be subject to mandatory redemption, in whole, but not in part, on a Put Date at the option of the Original Purchaser, so long as the Original Purchaser owns all of the Outstanding Bonds. If the Bonds bear a fixed interest rate, the Borrower may request from the Original Purchaser up to 150 days but no later than 90 days prior to the Put Date the indicative interest rate for the next succeeding Reset Period. Within 60 days of such request, the Original Purchaser shall provide notice to the Borrower of the indicative interest rate for such period. Either the failure of Borrower to accept the Original Purchaser's indicative interest rate within 30 days of notice from the Original Purchaser, or failure of the Original Purchaser to provide such notice, shall be deemed to be an exercise of the Original Purchaser's right to cause a mandatory redemption on the next Put Date. The redemption price in such event shall be 100% of the principal amount of the Bonds so redeemed, plus all accrued interest to the Put Date. In the event that the Original Purchaser has exercised its right under this Section to cause a mandatory redemption of the Bonds on a Put Date and the Borrower has secured a purchaser for the Bonds on such Put Date, the Borrower may elect to have the redemption treated as a mandatory tender, and the Bonds shall be purchased by the purchaser secured by the Borrower at a purchase price equal to 100% of the principal amount of the Bonds so purchased, plus all accrued interest to the Put Date, and upon payment of such purchase price to the Original Purchaser, the Bonds shall be treated as tendered and purchased rather than redeemed.

**Section 2.09 Purchase and Cancellation of Bonds.** The Borrower shall have the right to purchase any outstanding Bond upon agreement with the owner thereof and deliver it to the Trustee for cancellation. Also, the Trustee may purchase any outstanding Bond for cancellation in

accordance with this Bond Agreement. Any such purchase and cancellation of a Bond shall *ipso facto* reduce the unpaid principal balance of the Loan on the date of such cancellation by an amount equal to the principal amount of such Bond. The reduction shall be applied to the principal installment on the Loan having the same maturity as the Bond so purchased and cancelled. Nothing in this Section 2.09 shall require the owner of any Bond to sell such Bond to the Borrower. A purchase and cancellation of Bonds under this Section 2.09 shall be deemed to be an optional prepayment of the Loan subject to Section 2.06 hereof.

**Section 2.10 Notice and Effect of Redemption.** Except for optional redemption of the Bonds pursuant to the Continuing Covenants Agreement, notice of the call for any redemption of Bonds prior to maturity shall be given by the Trustee by mailing a copy of the redemption notice by first-class mail not less than 30 days nor more than 60 days prior to the Redemption Date to the Bondowner of each Bond to be redeemed at the address shown on the Bond Register; *provided, however*, that failure to give any such notice as aforesaid or any defect therein with respect to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bond.

Each redemption notice shall (i) identify the particular Bonds or portions thereof to be redeemed (including, at a minimum, certificate numbers and called amount for each certificate (for partial calls), Redemption Date, Trustee, date of issue, maturity date, and other descriptive information, if any, that accurately identifies the particular Bonds called for redemption), (ii) identify the provisions of this Bond Agreement pursuant to which the Bonds are being redeemed, (iii) identify the place of payment, (iv) state the applicable redemption price, including the premium, if any, (v) state that interest on the Bonds or portions thereof thus called for redemption will cease to accrue from and after the Redemption Date specified therein, and (vi) state that the notice of redemption may be rescinded by the Borrower and the Trustee.

If pursuant to this Bond Agreement the Trustee shall hold funds in the form of cash or Government Obligations which are available and will be sufficient in amount to pay the principal of and premium, if any, on the Bonds or portions thereof thus called for redemption and to pay the interest thereon to the Redemption Date, such Bonds or portions thereof shall cease to bear interest from and after the Redemption Date in question.

**Section 2.11 Bonds to be Limited Obligations of the Issuer.** The Bonds shall be special, limited obligations of the Issuer payable by it solely from the Pledged Revenues. The Bonds do not and shall not constitute the debt or obligation of the Issuer, the State of Wisconsin or any political subdivision thereof and do not and shall not constitute or give rise to charges against its general credit or taxing powers, are not payable in any manner from revenues raised by taxation and do not and shall not constitute an indebtedness of the Issuer, the State of Wisconsin or any political subdivision, within the meaning of any State of Wisconsin constitutional provision or statutory limitation or restriction, and do not constitute or give rise to a charge against the general credit or taxing powers or a pecuniary liability of the Issuer, the State of Wisconsin or any political subdivision thereof. In making the agreements, provisions and covenants set forth in this Bond Agreement, the Issuer has not obligated itself, except to the extent that the Issuer is authorized to act pursuant to the Statute and except with respect to the Pledged Revenues. Neither the Issuer nor any of its officials, officers, employees, Common Council members or agents shall have any monetary liability arising out of the obligations of the Issuer hereunder or in any connection with any covenant, representation or warranty made by the Issuer herein and neither the Issuer nor its

officials shall be obligated to pay any amounts in connection with the transactions contemplated hereby other than from Pledged Revenues or other monies received from the Borrower. No covenant, provision or agreement of the Issuer herein, or in the Bonds or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Bonds, or any obligation herein or therein imposed upon the Issuer or respecting breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any constitutional provisions or statutory limitations, or shall give rise to a pecuniary liability of the Issuer or a charge against the Issuer's general credit or taxing powers, or shall obligate the Issuer, its Common Council members, its officials, its officers, employees or agents financially in any way except with respect to this Bond Agreement and the application of the Pledged Revenues therefrom and the proceeds of the Bonds.

No failure of the Issuer to comply with any term, condition, covenant or agreement herein shall subject the Issuer, its Common Council members, officials, officers, employees or agents to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Bond Agreement or the Pledged Revenues or proceeds of the Bonds. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers, of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Bond Agreement and the application of revenues hereunder as hereinabove provided.

It is further understood and agreed by the Borrower and the Bondowner(s) that the Issuer, its Common Council members, officials, officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower has agreed to pay. If, notwithstanding the provisions of this Section, the Issuer, its Common Council members, its officials, officers, employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower hereby agrees to indemnify and hold harmless the Issuer, its Common Council members, officials, officers, employees or agents from the same and will reimburse the Issuer, its Common Council members, officials, officers, employees or agents for any such expenses, loss, claims, damages or liabilities and all legal or other expenses incurred by the Issuer, its Common Council members, officials, officers, employees or agents in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer, its Common Council members, officials, officers, employees or agents shall survive delivery of and payment for the Bonds and expiration or termination of this Bond Agreement. The liability of the Issuer is further restricted as provided in the Statute.

No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Bond Agreement contained against any past, present or future officer, director, commissioner, Common Council member, official, employee or agent of the Issuer, or any incorporator, officer, director, member, trustee, commissioner, Common Council member, official, employee or agent of any successor corporation or body politic, as such, either directly or through the Issuer or any successor corporation or body politic, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, officers, directors, trustees, commissioners, Common Council members, officials, employees or agents, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Bond Agreement and the issuance of the Bonds.

**Section 2.12 Source of Payment.** The principal of, premium, if any, and interest on the Bonds shall be payable by the Issuer solely from the Pledged Revenues.

**Section 2.13 Pledged Revenues.** The Pledged Revenues are hereby specifically, irrevocably and exclusively pledged by the Issuer to the Trustee to secure the punctual payment of the principal of, premium, if any, and interest on the Bonds, and shall be used for no other purpose except as otherwise expressly authorized herein.

**Section 2.14 Form of Bonds.** The Bonds shall be issuable only as fully registered Bonds substantially in the form set forth in Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Bond Agreement and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with the rules of any securities exchange, or as may, consistently herewith, be determined by the officers executing such Bonds as evidenced by their execution of the Bonds. There may be printed or otherwise reproduced on any Bond form (i) the legal opinion of Bond Counsel, (ii) customary “back panel” summary information, (iii) restrictions on transfer in form approved by the Trustee as required in particular instances, and (iv) any other information deemed necessary or appropriate by the Issuer or the Trustee with the approval of Bond Counsel to give notice of information to Bondowners. Pending the preparation of definitive Bonds the Issuer may execute and the Trustee shall authenticate and deliver temporary Bonds, substantially of the tenor of the definitive Bonds in lieu of which they are issued, in fully registered form, with such appropriate insertions, omissions, substitutions and other variations as the Issuer’s Highest Elected Official and Clerk may determine, as evidenced by their manual signing of such Bonds. If temporary Bonds are issued, the Trustee will cause definitive Bonds to be prepared without unreasonable delay. After the preparation of definitive Bonds, the temporary Bonds shall be exchangeable for definitive Bonds upon surrender of the temporary Bonds at the Trustee’s Principal Office without charge to the Bondowner. Upon surrender for cancellation of any one or more temporary Bonds, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Bonds of authorized denominations. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefits hereunder as definitive Bonds, and the principal of, premium, if any, and interest thereon, when and as payable, shall be paid to the Bondowners of the temporary Bonds.

**Section 2.15 Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by its Highest Elected Official under the official seal of the Issuer attested to by its Clerk. The signatures of the Issuer’s Highest Elected Official and Clerk on the Bonds may be manual or facsimile, so long as at least one of said signatures is manual. The official seal of the Issuer on the Bonds may be actually impressed or imprinted or may be reproduced thereon by facsimile.

Bonds bearing the manual or facsimile signatures of the persons who were the Issuer’s Highest Elected Official and Clerk at the time of the execution thereof shall be valid and sufficient for all purposes notwithstanding that such persons or either of them have ceased to hold such offices prior to the authentication and delivery of the Bonds or did not hold such offices at the date of the Bonds. For this purpose a Bond executed by facsimile signature shall be deemed to have been executed on the date of the printing thereof.

**Section 2.16 Authentication.** No Bond shall be entitled to any benefit hereunder or be valid for any purpose unless there appears on such Bond a certificate of authentication substantially

in the form set forth in Exhibit B, executed on behalf of the Trustee with the manual signature of an authorized signatory of the Trustee. Such certificate of authentication executed as aforesaid on a Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder.

**Section 2.17 Provision for Registration, Transfer and Exchange of Bonds.** The Trustee shall cause a register (herein sometimes referred to as the “Bond Register”) to be kept for the purpose of providing for the registration and transfer of Bonds in accordance with the provisions of this Section 2.17 and such reasonable additional regulations as the Trustee may prescribe. Subject to such regulations, any Bondowner may cause its address on the Bond Register to be changed by giving written notice to the Trustee. At reasonable times and under reasonable regulations established by Trustee, the Bond Register may be inspected and copied by the Borrower, the Issuer or by Bondowners (or a designated representative thereof) of 10% or more in aggregate principal amount of Bonds then Outstanding, the authority of such designated representative to be evidenced to the satisfaction of Trustee.

The Bonds shall be fully negotiable. Any Bond may be transferred, but only by a written assignment duly executed by the Bondowner or by such Bondowner’s duly authorized legal representative. Upon presentation and surrender of the Bond together with said executed form of assignment at the Trustee’s Principal Office, the Trustee shall register the transfer in the Bond Register; *provided, however*, that the Trustee shall have no obligation to register the transfer unless the executed assignment shall be satisfactory to it in form and substance. Upon registration of the transfer of a Bond, the Trustee shall cancel the surrendered Bond and the Issuer shall issue, and the Trustee shall authenticate, one or more new Bonds of authorized denominations of the same maturity and interest rate and in the same aggregate outstanding principal amount as the surrendered Bond.

The Bondowner requesting any registration of transfer or exchange of Bonds shall pay with respect thereto any resulting tax or governmental charge. All such payments shall be conditions precedent to the exercise of the Bondowner’s rights of registration of transfer or exchange. The Trustee shall not be required to register the transfer or to exchange any particular Bond after such Bond has been selected for redemption. All registrations of transfer and exchanges of Bonds shall be accomplished in such manner that no increase or decrease in interest payable on the Bonds results therefrom.

**Section 2.18 Persons Treated as Bondowners.** The Issuer and the Trustee may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of receiving payment of the principal of, premium, if any, and interest thereon and for all other purposes whatsoever, whether or not such Bond is overdue and irrespective of any actual, implied or imputed notice to the contrary.

**Section 2.19 Manner of Payment of Bonds.** Notwithstanding the foregoing or anything to the contrary contained herein, the payment of principal, premium or prepayment penalty, if any, redemption price, and interest on Bonds shall be payable by the Borrower to the Original Purchaser in the manner provided in the Continuing Covenants Agreement or as otherwise agreed to in writing by the Borrower and Original Purchaser and acknowledged by the Trustee, including but not limited to, payments made by the Borrower directly to the Original Purchaser. If payments are made directly by the Borrower to the Original Purchaser, the Original Purchaser shall provide the Trustee with a receipt or other written evidence detailing the date and amount of each payment. The interest

on any Bond and the principal which is payable and is punctually paid or duly provided for, on any Payment Date shall be paid by check or wire transfer drawn by the Borrower payable to the order of the person in whose name that Bond is registered as of the close of business on the Record Date for such interest and mailed to such person at the address shown on the Bond Register, initially, the Original Purchaser. Any interest on any Bond which is payable, but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. The principal of, premium, if any, and interest on all Bonds shall be paid in lawful money of the United States of America.

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be, in the city in which the Trustee's Principal Office is located, a Saturday, Sunday or a legal holiday, the payment of principal, premium, if any, and interest need not be made on such date in such city but may be made on the next succeeding Business Day.

Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Redemption Date that is not a regularly scheduled Payment Date, shall be paid by check or wire transfer drawn by the Borrower, payable to the order of the person in whose name the Bond is registered at the close of business on the day next preceding such Redemption Date, initially the Original Purchaser.

**Section 2.20 Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity and denomination as the Bond mutilated, lost, stolen or destroyed. In the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, the Trustee instead of issuing a substitute Bond may pay the same without surrender thereof. The Issuer and the Trustee may charge the Bondowner of such Bond with their reasonable fees and expenses in this connection.

**Section 2.21 Trustee Designated as Bond Registrar.** The Trustee shall be the bond registrar for and in respect of all Bonds.

**Section 2.22 Disposition of Bonds Upon Payment; Safekeeping of Bonds Surrendered for Exchange.** All Bonds fully paid, fully redeemed or purchased by the Trustee for cancellation under the provisions hereof shall be cancelled when such final payment, redemption or purchase is made, and such cancelled Bonds shall be delivered to the Trustee. All cancelled Bonds shall be destroyed by the Trustee by shredding or other suitable means, and the Trustee shall execute a certificate of destruction in duplicate describing the Bonds so destroyed and one executed certificate shall be filed with the Issuer and the other executed certificate shall be retained by the Trustee.

**Section 2.23 Delivery of Bonds.** Upon the execution and delivery of this Bond Agreement, the Issuer shall issue and execute and deliver the Bonds to the Trustee, and the Trustee shall authenticate such Bonds and deliver them to the purchaser(s) as may be directed by the Issuer.

Prior to the delivery of the Bonds by the Trustee there shall be filed with the Trustee:

- (a) A certified copy of the Resolutions of the Issuer authorizing the issuance of the Bonds and the execution and delivery of this Bond Agreement;
- (b) An original of this Bond Agreement, executed in counterparts; and
- (c) A request and authorization to the Trustee, executed on behalf of the Issuer by its Highest Elected Official or Clerk, to deliver the Bonds to the purchaser(s) therein identified, in the form and amount requested upon payment to the Trustee, for the account of the Issuer, of a specified sum plus accrued interest on the Bonds to date of delivery thereof.

**Section 2.24 Parity.** This Bond Agreement is for the equal and ratable benefit and security of all Bonds issued and to be issued hereunder. All Bonds shall be of equal rank, and no Bondowner shall be accorded a preference or priority over any other Bondowner except as expressly authorized or provided herein.

**Section 2.25 Discharge.** If the Issuer shall pay or cause to be paid from the Pledged Revenues the principal, premium, if any, and interest due or to become due on the Bonds at the times and in the manner stipulated therein, and if the Issuer shall not then be in default in any of the covenants and promises in the Bonds and in this Bond Agreement expressed as to be kept, performed and observed by it or on its part, and shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, terminate and be void, whereupon the Trustee shall cancel and discharge the lien of this Bond Agreement and execute and deliver to the Issuer such instruments in writing as shall be requisite to cancel and discharge the lien hereof, and reconvey, release, assign and deliver unto the Issuer any and all the estate, right, title and interest in and to any and all property conveyed, assigned or pledged to the Trustee or otherwise subject to the lien of this Bond Agreement, except moneys or securities held by the Trustee in separate segregated trust accounts pursuant to this Bond Agreement for the payment of the principal of, premium, if any, and interest on unrepresented Bonds.

Any Bonds shall be deemed to be paid when payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided herein, or otherwise) either (a) shall have been made or caused to be made in accordance with the terms hereof, or (b) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) cash, without regard to any investment or reinvestment thereof, sufficient to make such payment or (ii) Defeasance Obligations which are not callable prior to maturity by the issuer thereof or anyone acting on its behalf maturing as to principal and interest in such amounts and at such times, without regard to any investment or reinvestment thereof, as will provide sufficient moneys, together with any uninvested cash, to make such payment, and all necessary and proper fees and expenses of the Trustee pertaining to the Bond with respect to which such deposit is made. At such time as a Bond shall be deemed to be paid hereunder as aforesaid, it shall no longer be deemed to be outstanding hereunder and shall no longer be secured by or entitled to the benefits hereof, except for the purposes of any such payment from such moneys or Defeasance Obligations.

Notwithstanding the foregoing, no deposit under clause (b) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until:

(a) The deposit shall have been made under the terms of an escrow trust agreement or a supplement to this Bond Agreement in form and substance satisfactory to the Trustee consistent herewith and a verification report with respect to the sufficiency of such deposit prepared by an independent certified public accountant shall have been delivered to the Trustee;

(b) In the case of an escrow trust deposit with respect to Bonds subject to redemption prior to maturity at the option of the Borrower, the Borrower shall have delivered an irrevocable Borrower's Certificate designating when such Bonds are to be paid or redeemed under terms of such escrow trust agreement;

(c) In case of Bonds which are to be redeemed prior to maturity from such escrow trust deposit, a redemption notice meeting the requirements of Section 2.10 and stating that such Bonds are being redeemed from a deposit made pursuant to this Section 2.25 shall either (i) have been given, or (ii) shall have been provided for by delivery to the Trustee of irrevocable instructions for the giving of such notice;

(d) The Trustee shall have been furnished with an opinion of Bond Counsel to the effect that the payment of the Bonds in accordance with said escrow trust agreement will not adversely affect the excludability from gross income of the Bondowners for federal income tax purposes and will not cause the Bonds to be classified as "arbitrage bonds" under Section 148 of the Code; and

(e) The Trustee shall have covenanted to give notice of such deposit to the Bondowner of each Bond outstanding at the address shown on the Bond Register.

All moneys or Defeasance Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including interest and premium thereon, if any) with respect to which such moneys and Defeasance Obligations have been so set aside in trust.

If moneys or Defeasance Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and the interest and premium, if any, thereon and such Bonds and the interest and premium, if any, thereon shall not have in fact been actually paid in full, no amendment to the provisions of this Section 2.25 shall be made without the consent of the Bondowner of each of the Bonds affected thereby.

### **ARTICLE III**

#### **FUNDS AND ACCOUNTS**

**Section 3.01 Application of Proceeds of Bonds.** The Bonds are issued pursuant to a "draw-down loan" within the meaning of Treas. Reg. §1.150-1(c)(4)(i). On the Original Issue Date, the Borrower has requisitioned and the Original Purchaser has approved and disbursed an initial



draw of Bond Proceeds in the amount of [\$\_\_\_\_\_] from the Project Fund, and the Trustee has reflected such disbursements in the Project Fund. On future dates as determined by the Borrower and Original Purchaser thereafter, the Borrower shall submit Borrower's Requisitions meeting the requirements of and submitted in accordance with Section 4.02 of the Bond Agreement to request a draw of Bond Proceeds for payment of eligible Project Costs. The Original Purchaser shall review such Borrower's Requisitions and if, in the Original Purchaser's reasonable discretion the Original Purchaser shall approve a Borrower's Requisition, the Original Purchaser shall advance the amount of such Borrower's Requisition to the Trustee for deposit into the Project Fund.

If the aggregate principal amount of the Bonds up to the Bond Amount has not been funded by December 31, 2024, the Borrower shall submit a Borrower's Requisition requesting that all remaining available amounts desired to be drawn in a cumulative amount up to the Bond Amount be deposited into the Project Fund on or before December 31, 2024.

**Section 3.02 Project Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label "Project Fund." The Trustee shall deposit into the Project Fund, from time to time when and as received, the amounts specified in Section 3.01 and any additional moneys which the Borrower may deliver to the Trustee from time to time with the instruction that such moneys be deposited into the Project Fund.

The Trustee is hereby authorized and directed to disburse moneys from the Project Fund to pay (or reimburse the Borrower for) Project Costs and to make transfers to the Rebate Credit Account in accordance with Section 3.06. Except as otherwise provided below, such disbursements shall be made only upon a Borrower's Requisition made by or on behalf of the Borrower meeting the requirements of and submitted in accordance with Section 4.02.

In addition, disbursements from the Project Fund shall be subject to such further terms and conditions between the Borrower and the Original Purchaser as may be contained in the Continuing Covenants Agreement.

If an Event of Default shall have occurred and be continuing, the Trustee (without any authorization from the Borrower) may, if the Trustee has accelerated the Bonds under Section 8.02, apply moneys in the Project Fund in accordance with Section 8.06.

Upon the closing of the Project Fund in accordance with Section 4.05, any remaining balance in the Project Fund shall be transferred to the Bond Fund.

**Section 3.03 Bond Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label "Bond Fund."

The Trustee shall deposit into the Bond Fund, when and as received:

- (a) All payments from or for the account of the Borrower on the Loan (except prepayments of principal and the premium, if any, thereon required to be deposited into the Redemption Fund pursuant to Section 3.04) pursuant to Section 4.06; and

(b) Moneys required to be transferred to the Bond Fund from other Trust Funds or from Pledged Revenues in accordance with this Bond Agreement.

The Issuer covenants that it will cause to be deposited into the Bond Fund, but solely from Pledged Revenues, amounts sufficient to pay when due the principal of and interest on the Bonds. Except as otherwise expressly provided herein, moneys in the Bond Fund shall be used solely for the payment of principal of and interest on the Bonds when due at stated maturity, upon redemption prior to maturity, upon acceleration of maturity, or otherwise in accordance with the terms hereof and to make transfers to the Rebate Credit Account in accordance with Section 3.06. The Issuer hereby authorizes and directs the Trustee to withdraw sufficient moneys from the Bond Fund to pay the Bonds and the interest thereon as the same become due and payable.

**Section 3.04 Redemption Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label “Redemption Fund.”

The Trustee shall deposit into the Redemption Fund, when and as received:

(a) All prepayments of principal by the Borrower on the Loan pursuant to Section 4.10, together with the premium, if any, thereon; and

(b) Moneys required to be transferred to the Redemption Fund from other Trust Funds in accordance with this Bond Agreement.

The Issuer hereby authorizes and directs the Trustee to (i) transfer funds from the Redemption Fund to the Bond Fund when and as required to pay the principal of any Bonds called for redemption in accordance with this Bond Agreement; (ii) withdraw funds from the Redemption Fund to pay any premiums payable on Bonds called for redemption in accordance with this Bond Agreement; and (iii) transfer funds from the Redemption Fund to the Bond Fund to pay the final payment of principal on the Bonds at the last maturity thereof. Except to the extent moneys in the Redemption Fund are needed for the purposes described in the foregoing clauses (i) and (ii), the Trustee is authorized to use funds in the Redemption Fund for the purchase of Bonds for cancellation; provided that such purchases shall be made only to the extent authorized by the Borrower in a Borrower’s Certificate; and provided further that the purchase price for any Bond so purchased shall not exceed the principal amount thereof plus any accrued and unpaid interest thereon.

**Section 3.05 Insurance and Condemnation Proceeds Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label “Insurance and Condemnation Proceeds Fund.”

The Trustee shall deposit into the Insurance and Condemnation Proceeds Fund, when and as received, the Net Proceeds of title insurance claims, casualty insurance claims and eminent domain awards in accordance with and to the extent provided herein.

The Trustee is hereby authorized and directed to use moneys in the Insurance and Condemnation Proceeds Fund in accordance with directions from the Borrower in a Borrower’s Certificate, with the Original Purchaser’s consent so long as the Original Purchaser owns all of the

Bonds (subject, however, to the rights of the Bondowners to require prepayment on the Bonds pursuant to Section 2.07), for any of a combination of the following purposes:

(a) To pay or reimburse the Borrower for the costs of repairing, restoring, replacing or rebuilding any portion of the Project or the Project Equipment damaged or destroyed by fire or other casualty, provided that such disbursements shall be made only upon a Borrower's Requisition substantially in the same form and manner as provided for disbursements from the Project Fund, *provided, however*, that such new property shall be subject to the Mortgage (as defined in the Continuing Covenants Agreement) to the satisfaction of the Trustee and the Original Purchaser;

(b) To pay or reimburse the Borrower for the costs of acquiring or constructing other land and facilities in the City of New Berlin, Wisconsin to replace any property destroyed by fire or other casualty, taken by eminent domain or lost by reason of title defect, provided that such disbursements shall be made only upon a Borrower's Requisition substantially in the same form and manner as provided for disbursements from the Project Fund; or

(c) To transfer to the Redemption Fund if the Borrower elects to prepay, or the Bondowners elect to require prepayment of, all of the Loan pursuant to Section 2.07.

**Section 3.06 Rebate Credit Account; Arbitrage.** There is hereby created and established a "Rebate Credit Account" which shall be held by the Trustee and which shall be used solely for the purpose of making payments in accordance with the requirements of Section 148 of the Code, and applicable regulations thereunder. Unless the Trustee shall have received a "Notice of Trustee of Exception to Excess Earnings Report Requirement" as described in the Borrower's Tax Matters Closing Certificate, on each Computation Date, the Borrower shall compute or cause to be computed the amount of any rebatable arbitrage incurred during the previous computation period. Computation Dates shall be [August 30, 2029] (or such other date as the Borrower may elect as permitted by Section 148 of the Code and applicable regulations) and each fifth anniversary of such date thereafter (each a "Computation Date") so long as any of the Bonds are outstanding after such Computation Date. The final Computation Date shall be the date the last Bond is paid for and redeemed. The computation period shall be, as of each Computation Date, the period from the next previous Computation Date (or from the Original Issue Date, for the first computation period).

The amount computed to be rebatable arbitrage as of each Computation Date (the "Rebate Credit Amount") shall be paid by the Borrower to the Trustee for deposit to the Rebate Credit Account as of such Computation Date. The Borrower has agreed in Section 4.07 to fund the deficiency if the amounts on deposit in the funds and accounts created by this Bond Agreement and available for this purpose are less than the Rebate Credit Amount. The Trustee is authorized to hire such experts as it deems necessary to make this calculation, which shall be an expense of the Trustee paid by the Borrower under Section 4.07. All earnings from the reinvestment of any amounts in the Rebate Credit Account shall remain in the Rebate Credit Account.

Within 60 days of each Computation Date, the Borrower shall cause the Trustee to pay to the United States at least 90% of the rebatable arbitrage as of such Computation Date, and within 60 days of the final Computation Date, the Borrower shall cause the Trustee to pay to the United States all of the rebatable arbitrage as of the final Computation Date and any income attributable to such rebatable arbitrage; *provided, however*, that no such income shall be included in the final rebate

payment if such income is less than \$300. The Trustee shall pay such amounts by check or draft to the United States; and file a copy of the Form 8038 received from the Borrower with respect to the Bonds and a statement summarizing the determination of the amount required to be paid to the United States with the Internal Revenue Service Center, Ogden, Utah 84201.

Notwithstanding anything to the contrary in this Section, rebatable arbitrage shall be calculated and paid as provided in Section 148(f) of the Code and applicable regulations thereunder. In the event either the Issuer or the Borrower is of the opinion (supported by an opinion of Bond Counsel) that it is necessary or advisable to restrict or limit the yield on the investment of any moneys held in any Trust Fund in order to avoid the Bonds being considered “arbitrage bonds” within the meaning of Section 148(f) of the Code, the Issuer may (and shall if so requested by the Borrower) issue to the Trustee a written certificate to such effect together with appropriate written instructions, in which event the Trustee shall take such action as is necessary so to restrict or limit the yield on such investment in accordance with such certificate and instructions, irrespective of whether the Trustee shares such opinion.

**Section 3.07 Trust Funds Held in Trust.** All Trust Funds shall be held in trust in the custody of the Trustee, subject to the provisions hereof which permit disbursements from the Trust Funds. All moneys and securities held in Trust Funds, except the Rebate Credit Account, shall be subject to the first lien of this Bond Agreement thereon and shall not be subject to lien, attachment, garnishment or other claims or proceedings by other creditors of the Borrower or the Issuer (other than the Original Purchaser and the Trustee for the benefit of the Bondowners).

**Section 3.08 Permitted Investment of Trust Funds.** Moneys held in the Trust Funds, upon the direction of the Borrower, shall be separately invested and reinvested by the Trustee in accordance with this Article. Each investment shall be held by or under the control of the Trustee and shall be deemed at all times to be part of the particular Trust Fund in which such moneys were held. Income, profit and loss from any such investment shall be credited or charged to the particular Trust Fund for whose account the investment was made.

All such investments and reinvestments shall be made in Qualified Investments having a maturity not later than the estimated time when the moneys so invested will be needed for the purposes of the Trust Fund of which they are a part.

The Trustee may make and execute any such investment through its own bond department, money center or other investment operation or through the bond department, money center or investment operation of any affiliated bank.

The Issuer and the Borrower acknowledge that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of security transactions at no additional cost, the Issuer waives receipt of such confirmations. Trustee shall furnish to the Borrower periodic statements which include detail of all investment transactions made by the Trustee.

## **ARTICLE IV**

### **TERMS OF LOAN**

**Section 4.01 Amount and Source of Loan.** The Issuer will lend to the Borrower and the Borrower will borrow from the Issuer, upon the terms and conditions specified herein, the Bond Proceeds by causing such Bond Proceeds to be credited to the Project Fund under Section 3.01 for disbursement in accordance with Section 4.02. The Issuer shall be obligated to lend only moneys transferred to the Trustee from the Original Purchaser for deposit in the Project Fund, as evidenced by the Original Purchaser's approval of a Borrower's Requisition in the form set forth in Exhibit D attached hereto. The outstanding principal amount of the Loan shall at all times be in balance with the principal amount of the Bonds Outstanding.

**Section 4.02 Withdrawals from the Project Fund.** As limited by Section 3.02, the Issuer has authorized and directed the Trustee to disburse money from the Project Fund in payment or reimbursement of Project Costs certified by the Borrower, or otherwise satisfactorily established, to be due and payable or to have been paid or incurred by or on behalf of the Borrower. The Trustee shall not disburse any funds from the Project Fund except upon receipt of a Borrower's Requisition in the form attached hereto as Exhibit D, approved and funded by the Original Purchaser.

In addition, the Borrower recognizes the right of the Trustee or the Original Purchaser to require additional documentation regarding the progress of the Project, absence of liens, percentage of completion, incurrence of costs and similar matters prior to disbursing moneys from the Project Fund, where deemed reasonably necessary. Such documents may include without limitation:

- (a) Evidence (which may be in the form of acknowledgments of governmental authorities having jurisdiction over the Project, or of public utilities) that all off-site and on-site utilities, including without limitation those for electricity, natural gas, water and sewage, are available to the Project;
- (b) Copies of licenses, permits and all certificates required by any governmental authority in connection with the construction of the Project; and
- (c) If requested by the Trustee, a statement by the Borrower and any subcontractor as to its subcontract, in form and in substance satisfactory to the Trustee, setting forth the names, addresses and amounts due or to become due, the amounts previously paid to every subcontractor, person, firm or corporation furnishing materials or performing labor entering into the construction of any part of the Project and lien waivers duly executed in a form acceptable to the Trustee, delivered before or contemporaneously with the Trustee's disbursement of Bond Proceeds.

**Section 4.03 Establishment of Completion Date.** The Completion Date shall be the date on which the Trustee shall acknowledge receipt of the following items, which the Borrower shall furnish to the Trustee with respect to the Project:

- (a) A certificate signed by the Borrower or an independent architect stating, or other satisfactory evidence establishing, that the construction, acquisition, purchase, improving, equipping, furnishing or installation of the Project has been completed, but that the certificate is

given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being;

(b) A certificate signed by the Borrower stating, or other satisfactory evidence establishing, that the entire Project Costs have been paid or are then due and payable pursuant to Section 4.02;

(c) If necessary, a certificate of occupancy for the Project issued by the governmental authority having jurisdiction; and

(d) Any other documents required by the Continuing Covenants Agreement.

**Section 4.04 Completion Date.** The Project shall be completed within [ ] months of the Original Issue Date, and all amounts in the Project Fund shall be expended within [ ] months of the Original Issue Date.

**Section 4.05 Distribution of Project Fund on Completion Date.** The Project Fund will be funded in accordance with Section 3.01 and disbursed in accordance with Section 3.02; therefore, it is not expected that there will be any proceeds of the Bonds in the Project Fund on the Completion Date. However, on the Completion Date, any balance remaining in the Project Fund shall be disbursed by the Trustee to or for the benefit of the Borrower or on its order in such amount as may be necessary (and all thereof shall be disbursed if necessary) to pay, or to reimburse the Borrower for the payment of, any Project Costs which have not been paid previously by the Borrower or have not been reimbursed to the Borrower, as the case may be, in accordance with the provisions of Section 4.02. Any balance then remaining in the Project Fund in excess of amounts, if any, disbursed as provided above, shall be transferred to the Bond Fund and shall be used to pay principal and interest on the Bonds as same shall become due and payable within 90 days of the Completion Date.

**Section 4.06 Repayment of Loan.** The Borrower will pay to the Trustee at the Trustee's Principal Office for the account of the Issuer, and for deposit in the Bond Fund, in immediately available funds on each Payment Date, the exact amount of interest and principal payable on the Bonds on that Payment Date. This provision shall be construed so that the obligation of the Borrower shall never be greater than to have on deposit in the Bond Fund on any Payment Date the exact amount of principal and interest due on the Bonds on that Payment Date (in addition to the amount of additional payments required by Section 2.04 and Section 4.07 and amounts necessary to provide for the mandatory redemption of Bonds at the time and in the manner provided herein). In the event the Borrower should fail to make any of the payments required in this Section 4.06, the item so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay such amount with interest thereon (including, to the extent permitted by law, interest on the overdue installments of interest) at the Default Rate on those Bonds as to which such default exists. The parties agree that, provided that the Original Purchaser then owns 100% in principal amount of the Bonds Outstanding, any payment of interest and principal on the Bonds, or the purchase price in case of an optional or mandatory redemption of Bonds, that is made by the Borrower directly to the Original Purchaser shall be deemed to have been made in accordance with the first sentence of this Section 4.06. The Borrower will at all applicable times pay all amounts due hereunder sufficient to pay the principal, premium, if any, and

interest on, and the purchase price of, the Bonds when due, at maturity, upon redemption prior to maturity, acceleration or otherwise.

**Section 4.07 Additional Payments.** The Borrower will also pay the following amounts to the following persons:

- (a) To the Trustee, when due, all fees of the Trustee for services rendered hereunder and all reasonable fees and charges of counsel, accountants, engineers, consultants and others incurred in the performance on request of the Trustee of any and all services hereunder and under the No Arbitrage Certificate for which the Trustee and such other persons are entitled to payment or reimbursement; and
- (b) To the Trustee, for deposit into the Rebate Credit Account, the amount needed to be paid to comply with Section 148 of the Code and Section 3.06; and
- (c) To the Issuer, all amounts due to the Issuer pursuant to Section 4.13 of the Bond Agreement; and
- (d) To the Original Purchaser, all amounts due to the Original Purchaser hereunder and under the Continuing Covenants Agreement.

**Section 4.08 Borrower's Obligations Unconditional.** The Borrower's obligations under Section 4.06 shall be in the nature of a Loan and shall be evidenced by a Promissory Note in the form set forth in Exhibit C attached hereto. All payments required of the Borrower hereunder shall be paid without notice or demand and without set-off, counterclaim, abatement, deduction or defense. Except as expressly provided herein, the Borrower will not suspend or discontinue any Loan Repayments, will perform and observe all of its other agreements in this Bond Agreement, and will not terminate this Bond Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer, the Trustee or the Original Purchaser, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State of Wisconsin or any political subdivision thereof or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Bond Agreement.

**Section 4.09 Credit for Accrued Interest and Investment Earnings on Bond Fund.** The accrued interest, if any, deposited in the Bond Fund pursuant to Section 3.01 shall be credited against the first payment of interest due hereunder. Any earnings from the investments of Bond Fund balances shall be applied to the payment of interest on the Bonds and credited against payments of interest hereunder at the earliest opportunity.

**Section 4.10 Prepayment of Loan.** Subject to the provisions of Section 2.09, the Borrower may at any time transmit funds directly to the Trustee, for deposit in the Redemption Fund, in addition to amounts, if any, otherwise required at that time pursuant to this Bond Agreement, and direct that the money be utilized by the Trustee to:

- (a) Provide for the redemption of Bonds as provided in Section 2.05, Section 2.06, Section 2.07 and Section 2.08; or

(b) Purchase Bonds, in accordance with the provisions of Section 2.09, which Bonds shall be cancelled by the Trustee.

**Section 4.11 Other Security.** In addition to the revenues set forth in this Bond Agreement out of which the Bonds shall be payable, the Bonds shall be secured as otherwise described herein and in the Security Documents.

**Section 4.12 Nature of Borrower's Obligations** Notwithstanding anything in this Bond Agreement or the Promissory Note to the contrary, the obligations of the Borrower hereunder and under the Promissory Note shall be absolute and unconditional; the Borrower unconditionally and irrevocably waives each and every defense which, under principles of guarantee or suretyship law, would operate to impair or diminish such liability; and nothing whatever except actual full payment and performance to the Original Purchaser of such obligations shall operate to discharge the liability of the Borrower hereunder.

(b) Borrower's obligations hereunder include any payments required hereunder or under any of the Security Documents (including the disbursement of Bond Proceeds and the return of any deposits or other collateral) from the Original Purchaser to the Borrower.

**Section 4.13 Fees and Expenses of Issuer.** The Borrower covenants and agrees to pay to or on behalf of the Issuer the reasonable fees and expenses, including reasonable attorneys' fees, of the Issuer in connection with this Bond Agreement, the Project or the Bonds, including, without limitation, any and all fees and expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds and the administration of the Bonds, any examination, investigation or audit of the Bonds, and any assessments, levies, fines, fees or penalties assessed by any governmental agency or authority in connection with the Bonds, and the performance by the Issuer of its obligations and duties under this Bond Agreement.

## **ARTICLE V**

### **ISSUER'S REPRESENTATIONS AND COVENANTS**

**Section 5.01 Payment of Principal and Interest.** The Issuer covenants that it will promptly pay or cause to be paid, the principal of, and interest and premium, if any, on every Bond issued hereunder at the place, on the dates and in the manner and solely from the source provided herein and in the Bonds, according to the terms thereof. Notwithstanding the foregoing, the principal of, premium, if any, and interest on the Bonds are payable solely from the Pledged Revenues, which Pledged Revenues are hereby specifically assigned and pledged to the payment thereof in the manner and to the extent herein specified and from funds provided by the Borrower as provided herein.

**Section 5.02 Performance of and Authority for Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained herein, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its governing body pertaining thereto, and it is duly authorized under the Constitution and laws of the State of Wisconsin to issue the Bonds authorized hereby, to make a loan for the purpose of financing Project Costs, and to assign and pledge the Pledged Revenues, in



the manner and to the extent herein set forth; and that all action on its part for the issuance of the Bonds and the execution and delivery of this Bond Agreement has been duly and effectively taken.

**Section 5.03 Right to Payments; Instruments of Further Assurance.** The Issuer covenants that it will defend against the claims and demands of all persons whomsoever its right to the payment of amounts due from the Borrower under this Bond Agreement and the Promissory Note, for the benefit of the Bondowners. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the rights assigned hereby and the amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the revenues and receipts from this Bond Agreement and the Promissory Note nor its rights under this Bond Agreement and the Promissory Note.

**Section 5.04 Title to Project.** The Issuer acknowledges that, as between the Issuer and the Borrower, neither the Issuer nor the Trustee shall be entitled to or have any security interest in or lien upon the Project or the Borrower's title to and interest in the Project other than pursuant to the Security Documents.

**Section 5.05 Cooperation of the Issuer and Trustee.** So long as no Event of Default has occurred and is continuing and subject to the provisions in the Security Documents, the Issuer and Trustee will cooperate fully with the Borrower in filing any proof of loss with respect to any insurance policy covering casualties referred to in Section 6.05 and in the handling and conduct of any litigation arising with respect thereto, and will, to the extent they may lawfully do so, permit the Borrower to litigate in any such litigation or proceeding in the name and on behalf of the Trustee, provided that the Issuer will not be required to prosecute any such litigation. So long as no Event of Default has occurred and is continuing, the Trustee will cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings affecting the Project, and will, to the extent it may lawfully do so, permit the Borrower to litigate in any such litigation or proceeding in the name and on behalf of the Trustee. So long as no Event of Default has occurred and is continuing, in no event will the Issuer or Trustee voluntarily settle or consent to the settlement of any proceeding arising out of any insurance claim, or any prospective or pending condemnation proceeding, with respect to the Project without the written consent of the Borrower, which consent shall not be unreasonably withheld.

**Section 5.06 Performance by Issuer.** Notwithstanding anything in this Bond Agreement to the contrary, the Issuer shall be under no obligation to take any action or execute, prepare or deliver any instrument or document until it shall have been requested to do so by the Borrower or the Trustee and shall have received assurances satisfactory to it that the Borrower or the Trustee shall pay in advance or reimburse it (at the Issuer's option) for its reasonable expenses incurred or to be incurred in connection with the taking of such action, (including reasonable attorneys' fees) and shall be indemnified against any possible liability arising out of the taking of such action. The Issuer shall not be under any obligation to perform any administrative service with respect to the Bonds or the Project, including, without limitation, record keeping and administrative services, it being understood that such services shall be performed or provided by the Borrower or the Trustee.

## ARTICLE VI

### **BORROWER'S REPRESENTATIONS AND COVENANTS**

**Section 6.01 Representations by the Borrower.** Except as stated herein, the Borrower makes the following representations as the basis for its covenants:

(a) The Borrower is a corporation duly organized and validly existing under the laws of the State of Wisconsin.

(b) The Borrower is authorized to execute, deliver and perform its obligations hereunder and to execute, deliver, file or record this Bond Agreement, the Promissory Note, the Continuing Covenants Agreement, the Security Documents and such other papers, document or instruments as shall be necessary to carry out the intent and purposes hereof.

(c) The execution and delivery of this Bond Agreement, the Promissory Note, the Continuing Covenants Agreement and the Security Documents, the consummation of the transactions contemplated by such instruments, and the fulfillment of the terms and conditions of such instruments do not and will not conflict with or result in a breach of any of the terms or conditions of the Borrower's Organizational Documents, or any mortgage, indenture, loan agreement or other restriction or of any agreement or instrument to which the Borrower is now a party or to which any property of the Borrower is subject and which breach would cause a Material Adverse Effect, and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which any of its property or assets is bound and which breach would cause a Material Adverse Effect.

(d) The assistance in the financing of the Project by the Issuer has been and is a substantial inducement to the Borrower to undertake the Project.

(e) The Bond Proceeds to be credited to the Project Fund in accordance with Section 3.02 are estimated, on the date hereof, to be sufficient, with other amounts to be provided by the Borrower, to pay Project Costs.

(f) The Borrower does not rely on any warranty of the Issuer, the Trustee or the Original Purchaser either express or implied, that the Project will be suitable to the Borrower's needs.

(g) There is not pending any suit, action or proceeding against or affecting the Borrower before or by any court, arbitrator, administrative agency or other governmental authority which materially and adversely affects the validity, as to the Borrower, of any of the transactions contemplated by this Bond Agreement, the Promissory Note, the Continuing Covenants Agreement and the Security Documents or the ability of the Borrower to perform its obligations hereunder or as contemplated by this Bond Agreement.

(h) To the best of Borrower's knowledge after due inquiry, the Project as designed and proposed to be operated meets, on the date hereof, all material Requirements of Law, including requirements of any federal, state, county, city or other governmental authority

having jurisdiction over the Borrower, the Project or its use and operation, including, without limitation, any zoning, land use or similar laws and regulations.

(i) As of the date hereof, the Borrower has, or will obtain, as required throughout the construction, equipping and operation of the Project, and will obtain all necessary approvals, whether legal or administrative, from all applicable federal, state or local entities or agencies required, for the purchase, construction, equipping and operation of the Project.

**Section 6.02 Completion of Project by the Borrower.** The Borrower agrees that once the Project has been commenced the Borrower will complete the Project as promptly as practicable, as described on Exhibit A attached hereto, subject to events of Force Majeure. “Force Majeure” shall mean any act, event or cause, except in relation to obligation to make payments under this Bond Agreement, beyond the reasonable control of the party affected by such act, event or cause, including but not limited to, by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required to complete the Project, as described on Exhibit A attached hereto.

**Section 6.03 Payment of Project Costs by the Borrower.** The Borrower agrees that it will provide promptly any and all sums of money required to complete the Project, including without limitation all of the Project Costs, which the Issuer agrees shall be payable or reimbursable to the extent and in the manner provided in Section 4.02.

**Section 6.04 Sums for Completion.** The Issuer, the Trustee and the Original Purchaser make no representation or warranty, express or implied, that the moneys on deposit in the Project Fund will be sufficient to pay the entire Project Costs. If the Project Fund is not sufficient to pay the entire Project Costs, the Borrower shall nonetheless complete the construction, equipping, improving and installation of the Project and pay all costs incurred therefor without further reimbursement from the Issuer, the Trustee or the Original Purchaser. No payments by the Borrower under this Section 6.04 shall reduce the obligations of the Borrower or offset any other payment required to be made by the Borrower hereunder.

**Section 6.05 Borrower to Repair, Replace, Rebuild or Restore.** If there are any Outstanding Bonds when all or any part of the Project is taken by eminent domain, or destroyed or damaged, and unless the Borrower exercises its independent options to direct the redemption of any or all Outstanding Bonds pursuant to Section 2.06, the following subsections shall apply:

(a) The Borrower shall proceed promptly, subject to the provisions of subsection (b) of this Section 6.05, to replace, repair, rebuild and restore the Project to substantially the same condition as existed before the taking or event causing the damage or destruction, with such changes, alterations and modifications (including substitution or addition of other property) as may be desired by the Borrower and will be suitable for continued operation of the Project for the business purpose of the Borrower, and the Borrower will pay all costs thereof.

(b) Any condemnation award or insurance claim shall be treated in accordance with the Mortgage.

(c) All buildings, improvements and equipment acquired in the repair, rebuilding, replacement or restoration of the Project, together with any interests in land acquired by the Borrower necessary for such restoration, shall be deemed a part of the Project and available for use and occupancy by the Borrower without the payment of any additional amounts other than those provided herein.

(d) The Net Proceeds of any (i) insurance attributable to damage or destruction separately incurred by property of the Borrower not comprising part of the Project, (ii) condemnation award separately awarded for damages to or taking of the property of the Borrower not comprising part of the Project, or for damages on account of the taking of or interference with the Borrower's rights to possession, use or occupancy of any property of the Borrower not constituting the Project, or (iii) title insurance insuring title to land not comprising part of the Project, shall be and remain at all times the property of the Borrower, subject to such other agreements as the Borrower may have in place with the Original Purchaser or other creditors.

**Section 6.06 Maintenance of Property; Insurance.** The Borrower shall:

(a) Keep all Property useful and necessary in its business, whether leased or owned, in all material respects in good condition, repair and working order (ordinary wear and tear excepted) and from time to time make or cause to be made all needed and proper repairs, renewals, replacements, additions and improvements so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(b) Maintain with good, reputable and financially sound insurance underwriters insurance of such nature and in such amounts as is customarily maintained by companies engaged in the same or similar business and such other insurance as may be required by law or as may be required in the Security Documents.

(c) Have the Original Purchaser named as an additional insured.

**Section 6.07 Compliance with Zoning Laws.** The use of the Project shall at all times be and continue to be in material compliance with all applicable zoning laws and ordinances. The Borrower shall not initiate or acquiesce in any zoning reclassification, or seek any conditional use permit or variance without the written consent of the Trustee and the Original Purchaser while it remains a Bondowner.

**Section 6.08 Indemnification and Non-Liability of the Issuer.** The Borrower agrees to indemnify and save harmless the Issuer, the Original Purchaser and the Trustee and each of their respective officers, commissioners, Common Council members, officials, agents and employees and any other person who controls or is controlled by or is under common control with the Issuer, the Original Purchaser or the Trustee within the meaning of the 1933 Act (as hereinafter defined) (collectively, the "Indemnified Parties") from and against any and all losses, damages, costs, charges, expenses (including attorney's fees), causes of action, suits, claims, demands, judgments and liabilities arising from:

(a) Any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, nonuse, condition or occupancy of the Project;

(b) Violation of any agreement, warranty, covenant or condition of this Bond Agreement, except those knowingly violated by such Indemnified Party;

(c) Violation of any contract, agreement or restriction by the Borrower relating to the Project which shall have existed at the commencement of the term of this Bond Agreement;

(d) Violation of any law, ordinance, regulation or court order by the Borrower affecting the Project or a part thereof or the ownership, occupancy or use of the Project;

(e) Any statement or information relating to the expenditure of the Bond Proceeds contained in the "Borrower's Tax Matters Closing Certificate" or similar document furnished by the Borrower to the Issuer, the Original Purchaser or the Trustee which, at the time made, is misleading, untrue or incorrect in any material respect;

(f) Any audit or investigation of the Bonds by the Internal Revenue Service or the United States Department of the Treasury or the Securities and Exchange Commission, except (with respect to the Trustee or the Original Purchaser) for the gross negligence or willful misconduct of the Trustee or the Original Purchaser and each of their respective officers, commissioners, agents and employees and any other person who controls or is controlled by or is under common control with the Trustee or the Original Purchaser within the meaning of the 1933 Act;

(g) Any statement or information furnished to the Original Purchaser of the Bonds or any other owner of the Bonds by the Borrower; and

(h) Any other event or circumstance relating to the Project or the Bonds not described above not resulting from the gross negligence or willful misconduct of such Indemnified Party.

The Borrower also agrees to indemnify, defend and hold harmless the Indemnified Parties against any and all losses, claims, damages or liability to which the Indemnified Parties may become subject under any law in connection with the issuance and sale of the Bonds, including without limitation the violation of any securities laws, the carrying out of the transactions contemplated by this Bond Agreement, and the conduct of any activity in connection with the Project, including claims for which the Indemnified Parties may be or may be claimed to be liable, and to reimburse the Indemnified Parties for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the Indemnified Parties in connection with investigating any such losses, claims, damages or liabilities, or in connection with defending any actions relating thereto, except for the gross negligence or willful misconduct of the Trustee or the Original Purchaser and each of their respective officers, commissioners, agents and employees and any other person who controls or is controlled by or is under common control with the Trustee or the Original Purchaser within the meaning of the 1933 Act. The Indemnified Parties agree, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses identified in writing by the

Borrower which may be available to the Indemnified Parties. These provisions shall survive payment of the Bonds and termination of this Bond Agreement.

In the event of settlement of any litigation commenced or threatened, such indemnity shall be limited to the aggregate amount paid under a settlement effected with the written consent of the Borrower, plus costs.

The obligations of the Issuer created by or arising out of this Bond Agreement shall not be general obligations of the Issuer, do not constitute or give rise to charges against its general credit, and are not payable in any manner from revenues raised by taxation.

Whether or not caused in whole or in part by the action or inaction of any indemnified party, the Borrower will pay, and will protect, indemnify and save the Issuer, the Trustee and their respective officers and employees harmless from and against any and all liabilities, losses, damages, costs and expenses (including attorneys' fees and expenses of the Issuer and the Trustee), causes of action, suits, claims, demands and judgments of whatever kind and nature (including those arising or resulting from any injury to or death of any person or damage to property) arising from or in any manner directly or indirectly growing out of or connected with the following:

- (i) the use, non-use, condition or occupancy of any of the Project, any repair, construction, alteration, renovation, relocation, remodeling and equipping thereof or thereto, or the condition of any of the Project, including adjoining sidewalks, streets or alleys and any equipment at any time located on the Project or used in connection therewith, but which are not the result of the negligence or willful misconduct of the Issuer;
- (ii) violation of any agreement, warranty, covenant or condition of this Bond Agreement;
- (iii) violation of any contract, agreement or restriction by the Borrower relating to the Project;
- (iv) violation of any law, ordinance, regulation or court order affecting any of the Project or the ownership, occupancy or use thereof;
- (v) any state or federal audit, examination or investigation of the Bonds;
- (vi) the administration or enforcement of any of the provisions of the Bond Agreement; and
- (vii) any other event or circumstance relating to the Project or the Bonds.

Such indemnity shall extend to each person, if any, who "controls" the Issuer, as that term is defined in Section 15 of the Securities Act of 1933, as amended.

The Issuer shall promptly notify the Borrower in writing of any claim or action brought against the Issuer, or any controlling person, as the case may be, in respect of which indemnity may be sought against the Borrower, setting forth the particulars of such claim or action, and the Borrower will assume the defense thereof, including the employment of counsel reasonably

satisfactory to the Issuer, or such controlling person, as the case may be, and the payment of all expenses.

In its discretion, the Issuer or any such controlling person shall have the right to employ separate counsel in any circumstances described in this Section 6.08. The fees and expenses of such legal counsel shall be included within the costs indemnified pursuant to this Section, irrespective of whether the Borrower shall have consented to such separate representation or any settlement of any such action.

All amounts payable to or with respect to the Issuer under this Section shall be deemed to be fees and expenses of the Issuer for purposes of the provisions hereof.

The obligations of the Borrower under this Section 6.08 shall survive the termination of this Bond Agreement.

Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Issuer created by or arising out of this Bond Agreement do not give rise to a pecuniary liability of the Issuer or a charge against its general credit or the Issuer's taxing powers, including, but not limited to (i) liability for failure to investigate or negligence in the investigation of the financial position or prospects of the Borrower, a user of the Project or any other person or for failure to consider, or negligence concerning, the adequacy of terms of, or collateral security for, the Bonds or any related agreement to protect interests of holders of the Bonds; and (ii) any liability in connection with the issuance or sale of the Bonds. In addition, this Bond Agreement shall not give rise to any personal liability of any member of the Issuer's governing body or of any officers, agents, employees or officials of the Issuer of the Bonds or for any act or omission related to the authorization or issuance of the Bonds.

**Section 6.09 Assurance of Tax Exemption.** In order to assure that the interest on the Bonds shall at all times be free from Federal income taxation, the Borrower covenants with the Issuer, the Trustee and all Bondowners that it will:

(a) Not use the proceeds of the Bonds in such a manner as to cause the Bonds to be classified “arbitrage bonds” under Section 148 of the Code and applicable regulations.

(b) Comply with and fulfill all other requirements and conditions of the Code and regulations and rulings relating to the Project and not take any action, or refrain from taking any action, or permit others to take any action or refrain from taking any action if the result thereof would be to cause the interest on the Bonds to be included in the gross income of a Bondowner.

**Section 6.10 Nondiscrimination; Compliance with Wisconsin Statutes Section 66.1103(11)(b)1m.** The Borrower agrees that all contracts and subcontracts for construction of the Project shall include a clause prohibiting discrimination in employment and subcontracting. The Project shall not be used for any purpose which includes any act of employment discrimination as specified under Section 111.322 of the Wisconsin Statutes.

**Section 6.11 Position Openings; Compliance with Section 66.1103(6m) of the Wisconsin Statutes.** The Borrower shall comply with Section 66.1103(6m) of the Wisconsin Statutes relating to notification of position openings.

**Section 6.12 Job Shifting Requirements; Compliance with Section 66.1103(4s)(b) of the Wisconsin Statutes.** The Borrower shall comply with the requirements of Section 66.1103(4s)(b) of the Wisconsin Statutes with respect to offers of employment at the Project Site.

**Section 6.13 Job Protection Estimates; Reporting Compliance with Section 66.1103(4m)(b) of the Wisconsin Statutes.** The Borrower shall submit to the Wisconsin Economic Development Corporation, within twelve (12) months after the Project is completed or two (2) years after the Bond is issued, whichever is sooner, a report regarding the net number of jobs eliminated, created or maintained on the Project Site and elsewhere in the State as a result of the Project, as required by Section 66.1103(4m)(b) of the Wisconsin Statutes.

**Section 6.14 Legal Existence; Compliance with Laws; Maintenance of Business; Taxes.** The Borrower shall maintain its legal existence as a corporation and the Borrower will not dissolve or otherwise dispose of all or substantially all its assets or consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it, except that the Borrower may, without violating the foregoing, consolidate with or merge into any other legal entity, or permit one more other legal entities to consolidate with or merge into it, or transfer all or substantially all its assets to another such legal entity (and thereafter be released of all further obligation under this Bond Agreement and dissolve or not dissolve as the Borrower may elect) if (i) the resulting, surviving or transferee legal entity, as the case may be, is a legal entity established and duly existing under the laws of one of the states of the United States of America, (ii) such resulting, surviving or transferee legal entity expressly assumes in writing all of the obligations of the Borrower contained in this Bond Agreement, the Promissory Note, the Loan Documents, the Continuing Covenants Agreement and the Security Documents, (iii) the Original Purchaser while it remains a Bondowner shall have consented in writing to such transaction, which consent shall not be unreasonably withheld, conditioned or delayed, and (iv) the resulting, surviving or transferee entity shall have net assets immediately following such transaction at least equal to or greater than that of the Borrower immediately prior to such transaction.

**Section 6.15 Financial Statements.** The Borrower shall maintain a standard and modern system of accounting in accordance with sound accounting practice, and furnish to the Issuer and the Original Purchaser such information respecting the business, assets and financial condition of the Borrower as the Issuer may reasonably request and, without request furnish to the Original Purchaser such financial statements and other information as and when required under the terms of the Continuing Covenants Agreement.

**Section 6.16 Certain Covenants.** The Borrower shall timely perform and observe the covenants, affirmative and negative, set forth in the Continuing Covenants Agreement, the Promissory Note and any Obligation of the Borrower, whether existing on the date of this Bond Agreement or hereafter entered into, all as such covenants may be amended and restated from time to time. If at any time, there is no such Continuing Covenants Agreement, Promissory Note or Obligation in effect, then the foregoing sentence shall apply with respect to such covenants as are



contained in the last such Continuing Covenants Agreement, Promissory Note or Obligation to have been in effect.

**Section 6.17 Inspection of Property and Records.** At any reasonable time following reasonable notice, as often as may be reasonably desired and at the Borrower's expense after an Event of Default which is continuing, the Borrower shall permit representatives of the Issuer, the Trustee, and the Original Purchaser to visit its Property, examine its books and records and discuss its affairs, finances and accounts with its officers and independent certified public accountants (who shall be instructed by the Borrower to make available to the Issuer, the Trustee, and the Original Purchaser or their agents the work papers of such accountants) and the Borrower shall facilitate such inspection and examination.

**Section 6.18 Appraisals.** If and to the extent at any time required of the Original Purchaser by any Government Authority or Requirements of Law, the Borrower shall permit an independent appraiser selected by the Original Purchaser to conduct appraisals of the Property at any reasonable time following reasonable notice, at the Borrower's reasonable expense. The Borrower shall facilitate such appraisals and may obtain copies of, but may not rely, on such appraisals for any purpose.

**Section 6.19 Covenants.** During the term of this Bond Agreement, the Borrower shall comply with all covenants in the Continuing Covenants Agreement.

**Section 6.20 Approval of Borrower's Requisitions.** The Borrower hereby acknowledges and agrees that the approval required of the Original Purchaser to funding transfers, as provided in Sections 3.01, 3.02, 4.01 and 4.02, and as provided in Exhibit D (Form of Borrower's Requisition) to the Bond Agreement, shall be solely within the Original Purchaser's discretion, provided that such approval shall not be unreasonably withheld.

## **ARTICLE VII** **POWERS AND DUTIES OF TRUSTEE**

**Section 7.01 Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Bond Agreement, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Bond Agreement against the Trustee:

(a) The Trustee, prior to the occurrence of any Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth herein. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Bond Agreement, and use the same degree of care and skill in its exercise, as a reasonable and prudent person would exercise or use under the circumstances in the conduct of personal affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to act upon the opinion or advice of its Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents and employees

as may reasonably be employed in connection with the trust hereof. Such reasonable compensation for counsel shall be paid by the Borrower. The Trustee may act upon an opinion of independent counsel and shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion of independent Counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of authentication of the Trustee endorsed on the Bonds) or for the validity of the execution by the Issuer of this Bond Agreement or of any supplements hereto or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Borrower in connection with this Bond Agreement, except as hereinafter set forth; and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 3.08.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become a Bondowner with the same rights which it would have if not Trustee. The Trustee may in good faith buy, sell, own and deal in any of the Bonds and may join in any action which any Bondowner may be entitled to take with like effect as if the Trustee were not a party to this Bond Agreement.

(e) The Trustee shall be protected in acting in good faith upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Bond Agreement upon the request, authority or consent of any person who at the time of making such request or giving such authority or consent is the Bondowner of any Bond, shall be conclusive and binding upon all future Bondowners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by its Highest Elected Official or Clerk or such other person as may be designated for such purpose in writing and signed by the Highest Elected Official and the Clerk or such other person as may be designated for such purpose by resolution of the Issuer as sufficient evidence of the facts therein contained; and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section 7.01, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept and rely upon a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer's Clerk under the Issuer's seal, if any, to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted, and is in full force and effect. The resolutions, orders, opinions, certificates and other instruments provided for herein may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the withdrawal of cash and the taking or omitting of any other action hereunder.

(g) The permissive right of the Trustee to do things enumerated herein shall not be construed as a duty unless failure to take such action would be a violation of the Trustee's duty to mitigate damages, and the Trustee shall not be answerable for other than its gross negligence, willful default or willful misconduct.

(h) The Trustee shall not be presumed to have knowledge of any default or Event of Default hereunder except failure to pay the principal of, premium, if any, and interest on the Bonds, unless the Trustee shall be specifically notified in writing of such default by the Borrower, the Issuer, the Original Purchaser or the Bondowners of at least 25% in aggregate principal amount of Bonds Outstanding.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect all books, papers and records of the Issuer pertaining to the Bonds and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything contained elsewhere herein, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Bond Agreement, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking any action hereunder, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default, by reason of any action so taken.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Bond Agreement or law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

**Section 7.02 Specific Duty of Trustee to File Continuation Statements.** The Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Bond Agreement. The Trustee shall file continuation statements with respect to each Uniform Commercial Code financing statement relating to the Trust Funds filed at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Issuer that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant

to this Section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder.

**Section 7.03 Notice to Bondowners if an Event of Default Occurs.** If a default occurs of which the Trustee is by Section 7.01(h) presumed to have knowledge, then the Trustee shall give written notice thereof by first-class mail to the Bondowners of all Bonds then Outstanding.

**Section 7.04 Intervention by Trustee.** In any judicial proceedings to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Bondowners of the Bonds, the Trustee may intervene on behalf of Bondowners and shall do so if requested in writing by the Bondowners of at least 25% in aggregate principal amount of all Bonds then Outstanding, provided that the Trustee shall first have been offered such reasonable indemnity against such liability as it may incur in or by reason of such proceedings. The rights and obligations of the Trustee under this Section 7.04 are subject to the approval of a court of competent jurisdiction.

**Section 7.05 Successor Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become a successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 7.06 Resignation by Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' prior written notice to the Issuer and the Borrower, and by first-class mail to each Bondowner. Such resignation shall take effect, however, only upon the appointment of a successor Trustee (or a temporary Trustee as provided in Section 7.08) by the Bondowners or by the Issuer and the acceptance of such appointment. If a successor Trustee has not been appointed by the end of the 30-day period, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee, and the costs, expenses and reasonable attorneys' fees which are incurred in connection with such a proceeding shall be paid by the Borrower.

**Section 7.07 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer, and signed by the Bondowners of a majority in aggregate principal amount of Bonds then Outstanding.

**Section 7.08 Appointment of Successor Trustee by Bondowners; Temporary Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Bondowners of a majority in aggregate principal amount of Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondowners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of

such vacancy the Issuer by an instrument executed and signed by the Issuer's Highest Elected Official and attested to by its Clerk under its seal may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondowners in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondowners. Every such Trustee appointed pursuant to the provisions of this Section 7.08 shall be a trust company or bank organized and in good standing under the laws of the United States of America or any state of the United States of America having the power and any authority to assume the duties and trusts hereby created and having a reported capital, surplus and undivided profits of not less than \$5,000,000 or assets under administration of not less than \$100,000,000 if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. If a successor Trustee has not been appointed and has not accepted such appointment within 30 days of the resignation or removal of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee, and the costs, expenses and attorneys' fees which are incurred in connection with such a proceeding shall be paid by the Borrower as provided in Section 7.12.

**Section 7.09 Concerning Any Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all of the properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the properties, rights, powers, and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the properties, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing, shall, on request, be executed, acknowledged and delivered by the Issuer.

**Section 7.10 Acquisition of Conflicting Interests by Trustee.** If the Trustee has or shall acquire any conflicting interest, the Trustee shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate the same or resign by giving notice in accordance with Section 7.06 to the Issuer, the Borrower and Bondowners within such period, provided that such resignation shall become effective upon the appointment of a successor Trustee and such successor's acceptance of such appointment, and the Issuer and the Trustee agree to take prompt steps to have a successor appointed in the manner herein provided.

The Trustee shall be deemed to have a conflicting interest hereunder if it has a "conflicting interest" within the meaning of Section 3.10(b)(1) to (9), inclusive, of the Trust Indenture Act of 1939, as amended, except that the Trustee shall not be deemed to have a conflicting interest solely by reason of its having for itself or as a banker become a purchaser, seller or pledgee of the Bonds, it being understood that the Trustee may so deal with Bonds with the same rights that it would have if it were not Trustee and without liability or accountability to the Issuer or Bondowners on account thereof. Also, it may act as depositary for any purpose for any committee formed to protect the rights of Bondowners or effect or aid in any reorganization growing out of or involving the enforcement of the Bonds or this Bond Agreement whether or not any such committee shall

represent the Bondowners of a majority in aggregate principal amount of the Bonds Outstanding hereunder.

In the event that the Trustee shall fail to comply with the provisions of this Section 7.10, the Trustee shall within 10 days after the expiration of such 90-day period, transmit notice of such failure to the Bondowners.

Any Bondowner who has been a bona fide Bondowner of a Bond or Bonds for at least six months may, on behalf of himself, herself or itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor, if the Trustee fails, after written request therefor by such Bondowner, to comply with the provisions of this Section.

**Section 7.11 Requirement of a Corporate Trustee.** BMO Bank N.A. shall initially assume and perform the duties of Trustee, so long as it is the sole Bondowner. If the Original Purchaser shall cease to be the sole Bondowner, then a third-party Trustee shall be appointed. There shall at all times be one or more Trustees hereunder. One of the Trustees hereunder shall at all times be a corporate Trustee, and the corporate Trustee and any successor to the corporate Trustee, appointed as hereinbefore provided, shall be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof, or of the District of Columbia, and shall be authorized under such laws to exercise corporate trust powers and be subject to supervision or examination by federal, state, territorial or District of Columbia authority and have a combined capital, surplus and undivided profits of not less than the \$5,000,000, or assets under administration of not less than \$100,000,000; *provided, however*, that the preceding combined capital, surplus and undivided profits test or assets under administration test shall not apply to the initial Trustee hereunder. If such corporate Trustee publishes reports of its condition at least annually, pursuant to law or to the requirements of any supervising or examining authority hereinbefore referred to, then for the purposes of this Section 7.11, the combined capital, surplus and undivided profits of the corporate Trustee shall be deemed its combined capital, surplus and undivided profits as the same is set forth in such corporate Trustee's most recent report of condition so published.

**Section 7.12 Trustee's Fees.** The Borrower has agreed herein to pay certain fees and expenses of the Trustee for acting as Trustee hereunder. The Trustee shall not be entitled to any payment from the Issuer for fees or expenses of the Trustee. During the continuance of an Event of Default, the Trustee shall have a first lien on Pledged Revenues, for payment of its fees and expenses in accordance with this Bond Agreement, with a right of payment therefrom prior to payment of any principal, premium, or interest on the Bonds. The Trustee shall not be entitled to any payments of fees or reimbursements of expenses which result from the negligence or willful default of the Trustee.

## **ARTICLE VIII**

### **BOND DEFAULTS AND REMEDIES**

**Section 8.01 Bond Defaults Defined.** If any of the following events occur, it is hereby defined as and declared to be and to constitute a "Bond Default":

(a) Failure to make payment of any interest on any Bond when and as that interest shall become due and payable;

(b) Failure to make payment of the principal of or any premium, to the extent applicable, on any Bond when and as that principal or premium shall become due and payable, whether at stated maturity, by redemption, pursuant to any mandatory sinking fund requirements, by acceleration or otherwise, as further provided in the Continuing Covenants Agreement;

(c) A “Loan Default” shall occur under Section 9.01; or

(d) The Borrower shall fail to pay any obligation otherwise due to the Trustee or Original Purchaser (including, without limitation, the Promissory Note and the payments required by Section 4.07 and the Continuing Covenants Agreement) when and as the same become due and payable, whether upon demand, at maturity, by acceleration or otherwise.

**Section 8.02 Acceleration.** Upon the occurrence of a Bond Default set forth in Section 8.01 while the Original Purchaser holds any of the Bonds, unless waived in writing by the Original Purchaser, the Trustee shall, by notice in writing delivered to the Issuer and the Borrower, declare the principal of all Bonds then Outstanding and the accrued interest thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon the occurrence of a Bond Default set forth in Section 8.01 when the Original Purchaser no longer holds any of the Bonds, the Trustee may, and upon the written request of the Bondowners of not less than 25% in the aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Borrower, declare the principal of all Bonds then Outstanding and the accrued interest thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

**Section 8.03 Remedies.** Upon the occurrence of a Bond Default, the Trustee, may, in addition to acceleration as provided in Section 8.02, pursue any available remedy by action at law or suit in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds. In exercising the rights given the Trustee under this Article, the Trustee shall take such action as, in the judgment of the Trustee applying the standards described in Section 7.01, would best serve the interests of the Bondowners.

If any Bond Default shall have occurred, and if requested so to do by the Bondowners of at least 25% in aggregate principal amount of Bonds then Outstanding and if indemnified as provided in Section 7.01, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondowners.

No remedy by the terms of this Bond Agreement conferred upon or reserved to the Trustee (or to the Bondowners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondowners hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default

or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed reasonable or prudent.

No waiver of any default or Bond Default hereunder, whether by the Trustee pursuant to the provisions of Section 8.10 or by the Bondowners, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

**Section 8.04 Right of Bondowners to Direct Proceedings.** Anything herein to the contrary notwithstanding, the Bondowners of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement by the Trustee of the terms and conditions hereof, or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Bond Agreement. The foregoing shall not prevent the Original Purchaser from enforcing its rights hereunder.

**Section 8.05 Waiver of Certain Rights.** Upon the occurrence of a Bond Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it, shall set up, claim or seek to take advantage of any moratorium, stay, extension or redemption laws now or hereafter in force to prevent or hinder the enforcement of this Bond Agreement, but the Issuer, for itself and all who may claim through or under it hereby waives, to the extent that it lawfully may do so, the benefit of all such laws to which it may be entitled by law.

**Section 8.06 Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer in connection with the performance of its powers or duties under this Bond Agreement (including reasonable fees and disbursements of its counsel), be deposited into the Bond Fund and all moneys held or deposited in the Bond Fund during the continuance of a Bond Default shall be applied as follows:

(a) Unless the principal of all the Bonds has become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest including interest (to the extent permitted by law) on overdue installments of interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto without any discrimination or privilege; and

Second: To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions hereof), in the order of their due dates, with interest (to the extent permitted by law) on such Bonds from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to



the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

Third: To the payment to the Persons entitled thereto of the unpaid premium, if any on any of the Bonds which have been called for redemption, in the order of the redemption dates, with interest (to the extent permitted by law) on such premiums from the respective dates on which such premiums became due, and, if the amount available shall not be sufficient to pay in full the premiums due on any particular redemption date, together with such interest, then to the payment ratably, according to the premium due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to the payment of the principal and interest then due and unpaid upon all of the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege, and secondly to the payment of the premium, if any, then due, ratably to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.06, such moneys shall be applied at such times from time to time as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit and shall not be required to make payment to the Bondowner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 8.07 Remedies Vested in Trustee.** All rights of action (including the right to file proof of claims) under this Bond Agreement or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Bondowners appertaining thereto, and any recovery of judgment shall, subject to the provisions of Section 8.06, be for the equal and ratable benefit of the Bondowners of the Bonds Outstanding.

**Section 8.08 Rights and Remedies of Bondowners.** No Bondowner, other than the Original Purchaser, shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Bond Agreement or for the execution of any trust thereof or for the

appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in Section 7.01(h), or of which by said subsection it is deemed to have notice, nor unless also such default shall have become a Bond Default and the Bondowners of at least a majority in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name nor unless also they have offered to the Trustee indemnity as provided in Section 7.01 nor unless also the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trust of this Bond Agreement, and to any action or cause of action for the enforcement of this Bond Agreement, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Bondowners shall have any right in any manner whatsoever to affect, disturb or prejudice the security of this Bond Agreement by its, his or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Bondowners of all Bonds then Outstanding. Nothing herein contained shall, however, affect or impair (a) the right of any Bondowner to enforce the payment of the principal of and interest on any Bond at and after the stated maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Bondowners at the time, place, from the source and in the manner herein and in said Bonds expressed or (b) the right of the Original Purchaser to enforce its rights hereunder.

**Section 8.09 Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right hereunder and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Borrower and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 8.10 Waivers of Bond Defaults.** The Trustee shall waive any Bond Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the Bondowners of a majority in aggregate principal amount of all of the Bonds then Outstanding; *provided, however,* that there shall not be waived without the consent of the Bondowners of all the Bonds Outstanding (i) any Bond Default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein or at the date fixed for the redemption thereof, or (ii) any Bond Default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission, all arrears of interest, with interest (to the extent permitted by law) on overdue installments of interest at the Default Rate as provided in the Bonds, and/or all arrears of payments of principal, with interest (to the extent permitted by law) on overdue principal at the rate per annum provided in the Bonds, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for; and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## **ARTICLE IX**

### **LOAN DEFAULTS AND REMEDIES**

**Section 9.01 Loan Defaults Defined.** If any of the following events occur, it is hereby defined as and declared to be and to constitute a “Loan Default”:

(a) Default in the due and punctual payment of any installment of principal or any payment of interest or premium on the Loan or any obligation (including, without limitation, the Promissory Note and the payments required by Section 4.07 and the Continuing Covenants Agreement) otherwise due hereunder when and as the same shall become due and payable, whether upon demand, at maturity, by acceleration or otherwise;

(b) The Borrower shall fail to observe or perform any of the covenants, agreements or conditions of the Borrower contained in this Bond Agreement (including the occurrence of a Bond Default) or in the Security Documents or in any provision of the Continuing Covenants Agreement, which failure continues for 30 days (or the applicable cure period in such documents) following notice from the Trustee or Original Purchaser of such default;

(c) Any representation or warranty made by the Borrower herein or in any of the Loan Documents or the Security Documents or in any certificate, document or financial statement delivered to the Issuer, the Trustee or the Original Purchaser shall prove to have been incorrect in any material adverse respect as of the time when made or given;

(d) The Borrower shall (i) become insolvent or take or fail to take any action which constitutes an admission of inability to pay its debts as they mature; (ii) make an assignment for the benefit of creditors; (iii) petition or apply to any tribunal for the appointment of a custodian, receiver or any trustee for the Borrower or a substantial part of its assets; (iv) suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of 30 days or more; (v) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (vi) by any act or omission indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties; or (vii) adopt a plan of liquidation of its assets;

(e) Any Person shall (i) petition or apply to any tribunal for the appointment of a custodian, receiver or any trustee for the Borrower or a substantial part of its assets which continues undischarged for a period of 30 days or more; or (ii) commence any proceeding against the Borrower under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, in which an order for relief is entered or which remains undismissed for a period of 30 days or more; or

(f) A Bond Default shall occur under Section 8.01 or an Event of Default shall occur under the Continuing Covenants Agreement or any Loan Document or any Security Document.

**Section 9.02 Certain Notices to Borrower.** In the event that the Trustee fails to receive when due any payment of principal or interest by the Borrower on the Loan, the Trustee shall promptly give written notice thereof by facsimile transmission or other similar unsecured electronic methods or if such methods are not available then by registered or certified mail, postage prepaid, or by messenger to the Borrower specifying such failure. Such notice shall be a condition precedent to the exercise of any remedy hereunder.

**Section 9.03 Acceleration Upon Certain Circumstances.** Upon the occurrence of a Loan Default, the Trustee may, by written notice to the Borrower, declare the Loan to be immediately due and payable and/or may pursue any available remedy by suit at law or in equity to insure or realize the payment of the principal of, premium, if any, and interest under this Bond Agreement. In the event that the Trustee shall accelerate the Bonds pursuant to Section 8.02, the Trustee shall, by written notice to the Borrower, declare the entire outstanding principal balance of the Loan and the Promissory Note together with all interest accrued thereon to be due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

**Section 9.04 Remedies.** Whenever any Loan Default shall have happened, the Trustee may declare all Loan Repayments for the remainder of the term of this Bond Agreement (being an amount equal to that necessary to pay in full all Outstanding Bonds, assuming acceleration of the Bonds hereunder, and all other indebtedness hereunder) to be immediately due and payable by the Borrower and may declare the entire outstanding principal balance of the Loan, together with all interest accrued thereon, to be due and payable, *provided, however*, that there may be no acceleration of the Loan unless there is an acceleration of the Bonds hereunder; and any acceleration of the Bonds hereunder shall result in an acceleration of the Loan. Upon the occurrence of a Loan Default, the Trustee may also take whatever action at law or in equity may appear necessary or appropriate to collect the Loan Repayments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

**Section 9.05 Disposition of Funds.** Any amounts collected pursuant to action taken under Section 9.03 and Section 9.04 shall be paid into the Bond Fund and applied in accordance with the provisions of Section 8.06.

**Section 9.06 Manner of Exercise.** No remedy conferred upon or reserved to the Issuer, the Trustee or the Original Purchaser hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee or the Original Purchaser to exercise any remedy reserved to it in this Article, it shall be necessary to give only such notice as may be herein expressly required. The Issuer retains the right to exercise any right or remedy at law or in equity to restore its unassigned rights under this Bond Agreement.

**Section 9.07 Attorneys' Fees and Expenses.** In the event the Borrower should default under any of the provisions hereof and the Issuer, the Original Purchaser or the Trustee should employ attorneys or incur other expenses (including the costs and expenses of the Issuer's attorney and/or Original Purchaser's attorney) for the collection of the Loan or the enforcement of

performance of any obligation or agreement on the part of the Borrower hereunder, the Borrower shall pay to the Issuer, the Original Purchaser or the Trustee the reasonable fees of such attorneys and such other expenses so incurred.

**Section 9.08 Effect of Waiver.** In the event any agreement contained herein should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

**Section 9.09 Waiver of Stay or Extension Laws.** The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Bond Agreement; and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power granted herein to the Issuer or the Trustee, but will permit the execution of every such power as though no such law had been enacted.

## **ARTICLE X**

### **AMENDMENTS**

**Section 10.01 Amendments Without Bondowners' Consent.** The Issuer, the Original Purchaser, the Borrower and the Trustee may, without the consent of or notice to the Bondowners, agree to any supplement, amendment, change or modification of this Bond Agreement and the Promissory Note in connection with any change therein for any of the following purposes:

- (a) To add additional covenants of the Issuer or to surrender any right or power herein conferred upon the Issuer;
- (b) To add additional covenants of the Borrower or to surrender any right or power therein conferred upon the Borrower or to add additional security for the performance of its obligations;
- (c) For any purpose not inconsistent with the terms hereof or to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising hereunder which shall not be inconsistent with the provisions hereof and which, in the judgment of the Trustee, shall not materially adversely affect the interests of the Bondowners; and
- (d) To make such other provisions in regard to matters or questions arising thereunder which shall not be inconsistent with the provisions hereof and which, in the judgment of the Trustee, shall not materially adversely affect the interests of the Bondowners.

**Section 10.02 Amendments With Bondowners' Consent.** Except as provided above, no amendment to this Bond Agreement, the Promissory Note or the Security Documents may be entered into except when consented to by the Borrower and approved by Requisite Consent of Bondowners, provided that no amendment shall be made that materially adversely affects the rights

of some but less than all the outstanding Bonds without the Requisite Consent of Bondowners so affected; and provided further that unanimous written consent of the Bondowners shall be required for any amendment with respect to (i) the amount or due date of any principal or interest payment upon any Bonds or the Loan, (ii) the mandatory redemption provisions of any Bonds, and (iii) this ARTICLE X.

If at any time the Issuer shall request the Trustee to enter into any amendment for any of the purposes of this Section 10.02, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, mail a copy of the notice by first-class mail to each Bondowner 30 days prior to entering into any amendment. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file at the Trustee's Principal Office for inspection by all Bondowners. If thereafter any such amendment shall have been consented to and approved as herein provided, no Bondowner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment as in this Section permitted and provided, this Bond Agreement shall be and be deemed to be modified and amended in accordance therewith.

**Section 10.03 Consent of Borrower.** Anything herein to the contrary notwithstanding, no amendment, change or modification under this Article affecting the rights or obligations of the Borrower shall be effective unless the Borrower shall have consented in writing thereto.

## **ARTICLE XI**

### **ASSIGNMENT**

In consideration of the premises, the acceptance by the Trustee of the trusts hereby created, and the purchase and acceptance of delivery of the Bonds by the Original Purchaser, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the payment of the principal of, premium, if any, and interest on all Bonds at any time issued and outstanding hereunder according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants contained in the Bonds and in this Bond Agreement, the Issuer does hereby convey, transfer, set over, pledge, assign, and grant a security interest in and confirm unto the Trustee, its successors and assigns forever, all and singular the properties, revenues and rights hereinafter described and the proceeds thereof (collectively called the "Trust Estate"), to wit:

- (a) All right, title and interest of the Issuer in, to and under this Bond Agreement and the right to receive revenues and payments from the Borrower under this Bond Agreement (except as otherwise provided herein);
- (b) All right, title and interest of the Issuer in and to the Pledged Revenues;
- (c) All right, title and interest of the Issuer in and to the Promissory Note;
- (d) All right, title and interest of the Issuer, if any, in and to the Security Documents;

(e) All right, title and interest of the Issuer in and to the Trust Funds (with the exception of the Rebate Credit Account) and the cash, securities and investments of which they are comprised; and

(f) All property which by the express provisions of this Bond Agreement is required to be subjected to the lien hereof, and any additional property that may from time to time hereafter be made subject to the lien of this Bond Agreement by the Issuer or by anyone on its behalf;

IN TRUST, for the equal and ratable benefit and security of the Bondowners without preference, priority or distinction as to lien or otherwise of any particular Bond over any other Bond, except as otherwise expressly provided herein;

PROVIDED, HOWEVER, that the Issuer reserves the right to enforce the Unassigned Rights in its own name and for its own account; and

PROVIDED, FURTHER, that if the Issuer shall pay, cause to be paid or provide for the payment of the principal of, premium, if any, and interest on the Bonds in accordance with Section 2.25, and if the Issuer shall promptly, faithfully and strictly keep, perform and observe all of its representations, covenants and agreements contained herein, then in such event this Bond Agreement and the rights hereby granted (excepting Bondowners' rights theretofore vested) shall cease, terminate and be void, otherwise to remain in full force and effect upon the trusts and subject to the conditions hereinafter set forth.

All Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all Trust Funds, revenues and income hereby pledged are to be dealt with and disposed of under and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes herein expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Bondowners from time to time of the Bonds, as set forth herein.

## **ARTICLE XII**

### **GENERAL**

**Section 12.01 Notices.** Unless otherwise expressly provided herein, all notices, certificates or other communication hereunder shall be sufficiently given and shall be deemed given when hand delivered, sent via facsimile transmission with evidence of receipt or when mailed by first class mail, postage prepaid, or by e-mail addressed as follows: (i) if to the Issuer, at the Issuer's Address; (ii) if to the Borrower, at the Borrower's Address; (iii) if to the Trustee, at the Trustee's Address; and (iv) if to the Original Purchaser, at the Original Purchaser's Address.

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Trustee shall also be concurrently given to the Borrower at the Borrower's Address.

Whenever the Trustee is required hereunder to give notice to Bondowners, it shall give such notice by first class mail to each person on the Bond Register whose Bond is affected thereby.

**Section 12.02 Consent of Bondowners.** Any consent, request, direction, approval, objection or other instrument required by this Bond Agreement to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof, and shall be conclusive in favor of the Trustee with regard to any action taken under such request for other instrument, namely: The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law had power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

**Section 12.03 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Bond Agreement or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Borrower and the Bondowners any legal or equitable right, remedy or claim under or in respect to this Bond Agreement, or any covenants, conditions and provisions hereof, which are and are intended to be for the sole and exclusive benefit of the parties hereto, the Borrower and the Bondowners as herein provided.

**Section 12.04 Captions.** The captions or headings in this Bond Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions hereof.

**Section 12.05 Execution Counterparts.** This Bond Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.06 Severability.** In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

**Section 12.07 Binding Effect.** This Bond Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Original Purchaser and the Borrower and their respective heirs, successors and assigns.

**Section 12.08 Governing Law.** This Bond Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Wisconsin.

## **ARTICLE XIII**

### **AGREEMENT TO PURCHASE BONDS AND FUND BORROWER'S REQUISITIONS**

Subject to the conditions set forth in the Continuing Covenants Agreement, the Original Purchaser agrees to purchase the Bonds, and to fund Borrower's Requisitions as provided in Sections 3.01, 3.02, 4.01 and 4.02 of this Bond Agreement; *provided, however*, that the Original Purchaser shall be required to fund a Borrower's Requisition only if no Event of Default is



continuing hereunder and if the Borrower has submitted to the Original Purchaser for approval a Borrower's Requisition in the form set forth in Exhibit D attached hereto.

IN WITNESS WHEREOF, the Issuer, the Borrower, the Trustee and the Original Purchaser have caused this Bond Agreement to be executed and delivered as of the date first above written.

**CITY OF NEW BERLIN, WISCONSIN**

[SEAL]

By: \_\_\_\_\_  
Name: David Ament  
Title: Mayor

By: \_\_\_\_\_  
Name: Rubina Medina  
Title: City Clerk

**WENTHE-DAVIDSON ENGINEERING CO.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BMO BANK N.A., as Trustee**

By: \_\_\_\_\_  
Name: Michael Goedheer  
Title: Director

**BMO BANK N.A., as Original Purchaser**

By: \_\_\_\_\_  
Name: Michael Goedheer  
Title: Director

EXHIBIT A

PROJECT DESCRIPTION; PROJECT BUDGET

Project Description

The project consists of financing the (i) construction of an approximately 27,183 square foot addition to the Borrower's existing approximately 109,283 square foot facility located at 16300 West Rogers Drive in the City of New Berlin, Wisconsin which is operated by Wenthe-Davidson Engineering Co. to manufacture custom metal electric motor and generator housing, lock seam tubular products, and metal casings, (ii) acquisition and installation of equipment at the Facility, and (iii) payment of certain professional costs and costs of issuance.

Project Budget Financed with Bonds

|                   | <u>Financed with Tax-<br/>Exempt Bonds</u> |
|-------------------|--------------------------------------------|
| Building          | \$                                         |
| Equipment         | \$                                         |
| Costs of Issuance | \$                                         |
| TOTAL             | \$4,200,000                                |

EXHIBIT B

FORM OF BOND

REGISTERED  
NO. 1

UNITED STATES OF AMERICA  
STATE OF WISCONSIN

REGISTERED  
\$4,200,000.00

CITY OF NEW BERLIN, WISCONSIN  
INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2024  
(WENTHE-DAVIDSON ENGINEERING CO. PROJECT)

Maturity Date

[August 1, 2054]

Original Issue Date

[August 30, 2024]

REGISTERED OWNER:      BMO BANK N.A.

PRINCIPAL AMOUNT:      FOUR MILLION TWO HUNDRED THOUSAND DOLLARS  
AND NO/100 (\$4,200,000.00)

KNOW ALL MEN BY THESE PRESENTS that the City of New Berlin, Wisconsin, a municipal corporation organized under the laws of the State of Wisconsin (the “Issuer”), for value received, promises to pay, but solely from the source and as hereinafter provided and not otherwise, to the above-named registered owner, or registered assigns principal and interest hereon as provided below. Capitalized terms not defined herein shall have the same meanings as in the Bond Agreement dated as of August 1, 2024 (the “Bond Agreement”) among Wenthe-Davidson Engineering Co., a Wisconsin corporation (the “Borrower”), the Issuer, BMO Bank N.A., as original purchaser (the “Original Purchaser”) and BMO Bank N.A., as trustee (the “Trustee”).

1.      Maturity; Repayment of Principal.

The Bonds will be issued in the aggregate principal amount of up to \$4,200,000.00 and shall mature on [August 1, 2054]. Principal of the Bonds shall be repaid by the Issuer (solely from payments to be made by the Borrower) on each Payment Date pursuant to optional sinking fund redemption in such amounts and on such dates as set forth in the Continuing Covenants Agreement.

Notwithstanding anything else herein to the contrary, the principal amount of the Bonds outstanding shall never exceed the aggregate amounts transferred from the Original Purchaser to the Trustee for deposit into the Project Fund pursuant to Sections 3.01 and 4.02 of the Bond Agreement, less repayments of principal made by the Issuer (solely from payments to be made by the Borrower); provided, however, that nothing in the Bond Agreement shall be construed to obligate the Borrower to proceed with the Project, and in the event the Borrower does not proceed with the Project, the Borrower shall have no obligation under the Bond Agreement, other than the repayment, together with interest for amounts advanced by the Original Purchaser.

Payments of principal in excess of the scheduled installments set forth herein and related payments of premium shall be credited against scheduled installments in inverse order with respect to the Bonds.

2. Interest on the Bonds. **[SECTION 2 IS SUBJECT TO REVIEW BY BANK.]**

(a) Initial Interest Rate - Variable Rate. Commencing on the Original Issue Date through [February 28, 2025], the Bonds shall bear interest at a variable rate, adjusted monthly, calculated pursuant to the following formula:

$(\text{One-Month Term SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$

Initial variable rate on Original Issue Date:  $([\text{---}] \% + [1.50] \%) \times 82 \% = [\text{---}] \%$

(b) Interest Rate Adjustment - Conversion to Fixed Rate. Commencing on [March 1, 2025] (the "Interest Rate Adjustment Date") through February 27, 2030, the Bonds shall bear interest at a fixed rate of  $[\text{---}] \%$  for a period of 5 years, which shall be reset on each subsequent Reset Date, calculated pursuant to the following formula:

$(\text{5-Year SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$ :

Fixed rate as set on Original Issue Date:  $([\text{---}] \% + [2.70] \%) \times 82 \% = [\text{---}] \%$

(c) Interest Rate Resets on Reset Date; Interest Rate Options. Commencing on [February 28, 2030] and on each Reset Date thereafter (which date shall also be a Put Date), the Bonds shall bear interest for such such Reset Period at a variable rate or fixed rate as selected by Borrower in writing, with the consent of the Original Purchaser, and delivered to the Trustee not less than 30 days nor more than 60 days (unless waived by the Borrower and the Original Purchaser) prior to the next succeeding Reset Date (provided that if no election is made by the Borrower during such notice period, then the Borrower shall be deemed to have made an election at the variable rate), which election shall be irrevocable for the applicable Reset Period of 5 years, equal to either:

(1) A variable rate, adjusted monthly, equal to:

$(\text{One-Month Term SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$

-OR-

(2) A fixed rate for a period of 5 years, which shall be reset on each Reset Date, calculated pursuant to the following formula:

$(\text{5-Year SOFR Rate} + \text{Credit Spread}) \times \text{Tax-Exempt Multiplier}$

The Bonds, if bearing interest at the variable rate, shall bear interest at the rate determined according to the above variable rate formula, adjusted monthly, during such Reset Period.

The Bonds, if bearing interest at the fixed rate, shall bear interest at the rate determined according to the above fixed rate formula for such Reset Period. The fixed rate shall be determined not less than two nor more than three Business Days prior to the end of the applicable Reset Period.

Notwithstanding the foregoing, the interest rate on the Bonds shall never exceed the Maximum Rate.

(d) The following definitions are applicable to the foregoing formulas and to the remainder of this Section 2 and Section 8:

(i) “5-Year SOFR Rate” means for a 5-year tenor, the Term SOFR Rate published by the Term SOFR Administrator on the day (such day, the “*Term SOFR Determination Day*”) that is two (2) U.S. Government Securities Business Days prior to (a) with respect to the 5-Year SOFR Rate, the first day of such applicable Interest Period as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the 5-Year Term SOFR Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the 5-Year SOFR Rate has not occurred, then 5-Year Term SOFR Rate will be the 5-Year Term SOFR Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such 5-Year Term SOFR Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day, provided that, if the 5-Year Term SOFR Rate determined as provided shall ever be less than the Floor, then the 5-Year Term SOFR Rate shall be deemed to be the Floor

(ii) “Credit Spread” means such Credit Spread as determined by the Original Purchaser for a similarly situated borrower as the Borrower based on the Original Purchaser’s then-current underwriting standards, and with credit committee oversight, including, without limitation, factors such as the current credit profile, market conditions and current and historical operating performance and which Credit Spread in the opinion of Bond Counsel will not adversely affect any exemption from federal income taxation to which the Bonds would otherwise be entitled.

(iii) “Floor” means the rate per annum of interest equal to [\_\_\_\_%].

(iv) “Interest Period” means, initially, the 66-month period from the Closing Date through [February 27, 2030], and thereafter, the period from each Reset Date to but not including the subsequent Reset Date or the Maturity Date, as applicable, during which period the Bonds bear interest at the rates established in accordance with Section 2.03 of the Bond Agreement (subject to redemption or prepayment).

(v) “Interest Rate Adjustment Date” means [February 28, 2025], which date is 6 months from the Original Issue Date at which time the interest rate on the Bonds will adjust from a variable rate to a fixed rate for a term of 5 years.

(vi) “Maximum Rate” means 20% per annum.

(vii) “One-Month Term SOFR Rate” means, for a one-month tenor, the Term SOFR Rate published by the Term SOFR Administrator two (2) U.S. Government Securities Business Days prior to the first day of each month (such day, the “*Periodic Term SOFR Determination Day*”); provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the One-Month Term SOFR Rate has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the One-Month Term SOFR Rate has not occurred, then the One-Month Term SOFR Rate will be the One-Month Term SOFR Rate as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such One-Month Term SOFR Rate was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, provided that, if the One-Month Term SOFR Rate determined as provided shall ever be less than the Floor, then the One-Month Term SOFR Rate shall be deemed to be the Floor.

(viii) “Put Date” means, initially, February 28, 2030 and thereafter, each Reset Date.

(ix) “Reset Date” means the first day of each Reset Period (which shall be February 28 or February 29, if a leap year); the initial Reset Date shall be [February 28, 2030].

(x) “Reset Period” means each period of 5 years from each Reset Date, as selected by the Borrower, through the day preceding the next Reset Date or the maturity date of the Bonds (as applicable).

(xi) “SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York or a successor administrator of the secured overnight financing rate.

(xii) “Tax-Exempt Multiplier” means the tax-exempt multiplier determined from time to time by the Original Purchaser or as modified by change in law as shown on its internal pricing sheets for tax-exempt interest rates which are not bank-qualified pursuant to Section 265 of the Code.

(xiii) “Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Rate selected by the Original Purchaser in its reasonable discretion).

(xiv) “Term SOFR Rate” means for the applicable tenor, the Term SOFR Reference Rate on the applicable Term SOFR Determination Day (as it relates to the 5-Year SOFR Rate) or Periodic Term SOFR Determination Day (as it relates to the One-Month Term SOFR Rate).

(xv) “Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

(e) The Original Purchaser shall provide the Borrower and the Trustee with such information as to historical and current interest rates as the Borrower and the Trustee shall reasonably request from time to time.

(f) All determinations of the interest rate hereunder shall be final and conclusive absent manifest error. In connection with the use or administration of the Term SOFR Rate, the Original will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Bond Agreement or any other Loan Document. The Original Purchaser will promptly notify the Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of the Term SOFR Rate.

(g) Interest on the Bonds shall be payable on the [first] day of each month, commencing on [\_\_\_\_\_ 1, 2024]. Interest on the Bond is computed on a 360-day year, actual days elapsed; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under the Bond is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond.

Interest shall accrue only on principal amounts actually deposited and from the date such amounts are actually deposited into the Project Fund pursuant to Section 3.01 and Section 4.02 of this Bond Agreement.

(h) Interest Rate Adjustment on Bonds in the Event of Change in Corporate Tax Rate. The interest rates on the Bonds shall be subject to adjustment in the event of an increase or decrease in the Corporate Tax Rate of the Original Purchaser after the Original Issue Date, with such change in the interest rate to be effective as of the date of the increase or decrease in the Corporate Tax Rate of the Original Purchaser. The rates of interest on the Bonds (other than the interest rate in effect following a Determination of Taxability) shall be decreased (in the case of an increase in the Corporate Tax Rate) or increased (in the case of a decrease in the Corporate Tax Rate) so that the effective interest rate to the Original Purchaser, after taking into account such increase or decrease in the Corporate Tax Rate shall be the same yield to the Original Purchaser as was in effect prior to such change in the Corporate Tax Rate. “*Corporate Tax Rate*” means the highest stated statutory rate of federal income tax imposed on corporations, disregarding any surcharges or surtaxes.

(i) Principal payments on the Bonds shall be payable as optional sinking fund redemptions as provided in the Continuing Covenants Agreement.

(j) Overdue principal and interest on the Bonds shall (to the extent legally enforceable) bear interest at the Default Rate. Any interest on any Bond which is payable, but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. All unpaid principal and interest shall be paid on [August 1, 2054].

(k) Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

- (i) *Benchmark Replacement.* Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then
- (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark



Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, the Bond Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Chicago time) on the 5th Business Day after the date notice of such Benchmark Replacement is provided by the Original Purchaser to the Borrower without any amendment to, or further action or consent of any other party to, the Bond Agreement or any other Loan Document.

(ii) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Original Purchaser will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to the Bond Agreement or any other Loan Document.

(iii) *Notice; Standards for Decisions and Determinations.* The Original Purchaser will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Original Purchaser will promptly notify the Borrower of the removal or reinstatement of any Benchmark pursuant to this Section 2(k). Any determination, decision or election that may be made by the Original Purchaser pursuant to this Section 2(k), including any determination with respect to a rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to the Bond Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2(k).

3. Authority. This Bond has been issued pursuant to and in full compliance with the Constitution and laws of the State of Wisconsin, particularly Section 66.1103 of the Wisconsin Statutes, as amended from time to time, and by authority of resolutions adopted by the Issuer’s governing body in connection with a project and activity undertaken pursuant to said section of the Wisconsin Statutes. **THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE AS HEREINAFTER PROVIDED, AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION. THE BONDS DO NOT CONSTITUTE OR GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE ISSUER, THE STATE OF WISCONSIN OR ANY POLITICAL SUBDIVISION THEREOF OR IMPOSE PECUNIARY LIABILITY UPON THE ISSUER, THE STATE OF WISCONSIN OR ANY POLITICAL SUBDIVISION THEREOF. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS IS PAYABLE BY THE ISSUER SOLELY FROM**

**“PLEDGED REVENUES” AS DEFINED IN THE BOND AGREEMENT (DESCRIBED BELOW), INCLUDING ALL PAYMENTS BY THE BORROWER UNDER THE BOND AGREEMENT. THE BONDS ARE A SPECIAL, LIMITED OBLIGATION OF THE ISSUER AND NEITHER THE ISSUER NOR ANY OF ITS OFFICIALS, OFFICERS, EMPLOYEES, COMMON COUNCIL MEMBERS OR AGENTS SHALL HAVE ANY MONETARY LIABILITY ARISING OUT OF THE OBLIGATIONS OF THE ISSUER HEREUNDER OR IN ANY CONNECTION WITH ANY COVENANT, REPRESENTATION OR WARRANTY MADE BY THE ISSUER HEREIN AND NEITHER THE ISSUER NOR ITS OFFICIALS, OFFICERS, EMPLOYEES, COMMON COUNCIL MEMBERS OR AGENTS SHALL BE OBLIGATED TO PAY ANY AMOUNTS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OTHER THAN FROM PLEDGED REVENUES OR OTHER MONIES RECEIVED FROM THE BORROWER.**

No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Bond Agreement contained, against any past, present or future Common Council member, officer, agent or employee of the Issuer, or any incorporator, Common Council member, officer, employee, director or trustee of any successor body, as such, either directly or through the Issuer or any successor body, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, Common Council member, officer, employee, director, agent or trustee, as such, is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Agreement and the issuance of any of the Bonds.

The Bond is a duly authorized issue of Bonds of the Issuer, limited in aggregate principal amount up to \$4,200,000.00, issued and authorized to be issued for the purpose of providing financing to the Borrower. The Bonds are all issued under and are equally and ratably secured and entitled to the protection and benefits given by and the financing is accomplished under the terms of a Bond Agreement to finance a project on behalf of the Borrower consisting of the (i) construction of an approximately 27,183 square foot addition to the Borrower’s existing approximately 109,283 square foot facility located at 16300 West Rogers Drive in the City of New Berlin, Wisconsin (the “Facility”) which is operated by Wenthe-Davidson Engineering Co. to manufacture custom metal electric motor and generator housing, lock seam tubular products, and metal casings, (ii) acquisition and installation of equipment at the Facility, and (iii) payment of certain professional costs and costs of issuance (the “Project”), which Bond Agreement provides for principal and interest payments sufficient to provide the Issuer with revenues to pay when due the principal of and interest on the Bonds. All of the Issuer’s right, title and interest in and to the Bond Agreement (except for Unassigned Rights) has been pledged and assigned to the Trustee as security for the payment of the Bonds.

4. Occurrence of a Determination of Taxability. The Bonds shall bear interest, payable on the first Payment Date after the occurrence of a Determination of Taxability with respect to all prior periods, computed at the rate set forth in this Section (the “Taxable Interest”) (on a 360-day year, actual days elapsed basis) on the outstanding principal amount of the Bonds (as reduced from time to time) from the date of the Event of Taxability, less any interest already paid, from the date of the Event of Taxability to such Payment Date. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond for Taxable Interest.

Thereafter, the Bonds shall bear Taxable Interest as defined in this Section and as provided in this Section on the Bonds Outstanding on each Payment Date. Except for Taxable Interest allocable to the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability (which interest shall be payable on such Payment Date immediately succeeding the Determination of Taxability), Taxable Interest payable under this Section shall be payable with respect to the same period, at the same time and in the same manner as interest payments regularly paid pursuant to the Bond Agreement.

Taxable Interest payable on the Bonds for purposes of this Section shall automatically be adjusted to a rate, as determined by the Original Purchaser in its sole and absolute discretion, equal to the interest rate on the Bonds without application of the Tax-Exempt Multiplier. Such increased rate is to be effective, retroactively, as applicable, as of the date of the Determination of Taxability. The Borrower shall also pay to the Bondowners (and any former Bondowners holding Bonds during any period subsequent to an Event of Taxability) as additional interest, the amount of penalties, additions to tax (exclusive of any taxes imposed under Section 11 or any successor provision of the Code) or interest assessed against the Bondowners (and former Bondowners) on account of a Determination of Taxability. Taxable Interest to be paid pursuant to this Section for the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability shall be paid immediately following the Determination of Taxability in the same manner as interest is paid to Bondowners in accordance with the Bond Agreement.

Any Bondowner shall have the right, but not the obligation, to arrange for the contest of an allegation that an Event of Taxability has occurred, by appropriate legal proceedings. In the event no Bondowner shall contest the Event of Taxability, the Borrower shall have the option but not the obligation to do so. If (i) the Borrower shall have made any additional payments to a Bondowner or former Bondowner by reason of an Event of Taxability pursuant to this Section, and (ii) it shall be successfully claimed for the taxable year in question that the interest on the Bonds for such taxable year is excluded from the Bondowner's or former Bondowner's taxable income for federal income tax purposes (for this purpose a claim shall be deemed successful only upon the occurrence of a "determination," as defined in Section 1313(a) or any successor provision of the Code) or, if the Bondowner or former Bondowner shall not have included such interest in the Bondowner's or former Bondowner's taxable income for federal income tax purposes upon expiration of the statute of limitations provided by Section 6501 or any successor provision of the Code with respect to such taxable year, then the Bondowner or former Bondowner (as the case may be) shall pay to the Borrower the amount of any such additional payments which had been made by the Borrower to the Bondowner or former Bondowner, less any actual expenses incurred by such Bondowner or former Bondowner as a result of the alleged Event of Taxability. Upon successful challenge of an Event of Taxability, the interest rate on the Bonds shall return to the interest rate ordinarily payable hereunder as if no Event of Taxability had ever been alleged.

5. Prepayment of Bonds. No Bond may be called for redemption prior to its stated maturity except as provided in paragraphs 6, 7 and 8 herein; *provided, however*, that nothing herein shall be deemed to limit the right of acceleration of Bond maturities upon the occurrence of a Bond Default.

6. Optional Prepayment. The Bonds are subject to redemption prior to maturity, in whole or in part, at any time, at the option of the Borrower, with such applicable redemption premium, if any, as set forth in the Continuing Covenants Agreement, upon receipt by the Trustee,

not less than 45 days prior to the Redemption Date, of a written notice from the Borrower stating that it intends to prepay the Loan on the specified Redemption Date and the giving of notice by the Trustee not less than 30 days prior to the Redemption Date, and thereby effect redemption of the Bonds being redeemed. The notice of optional redemption to be delivered by the Borrower shall describe whether and the conditions under which the call for redemption may be revoked.

Notwithstanding the foregoing, the Borrower is not required to provide notice of redemption pursuant to Section 2.10 of the Bond Agreement to effect optional sinking fund redemptions as required by Section [\_\_\_\_\_] of the Continuing Covenants Agreement.

The Borrower agrees to repay the Loan on the dates and in the amounts required by Section [\_\_\_\_\_] of the Continuing Covenants Agreement and to pay any prepayment penalty therein directly to the Original Purchaser.

7. Optional Redemption of Bonds Upon Occurrence of Certain Extraordinary Events. The Bonds shall be subject to redemption, in whole or in part, without payment of any redemption or prepayment premium, at par plus accrued interest to the Redemption Date at the option of the Borrower, or the Bondowners by Requisite Consent, upon the occurrence of certain extraordinary events as described in this Section 7. If the Project is affected as set forth below, each shall have an independent option to have the Loan repaid in whole out of Net Proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project, and to direct the Issuer either (i) to call for redemption and prepayment of all the Outstanding Bonds, or (ii) to call for redemption and prepayment that amount of Outstanding Bonds attributable to debt incurred for the Project as determined by the Trustee, if:

(a) The Project shall have been damaged or destroyed to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and the Original Purchaser, filed with the Trustee and the Original Purchaser, if the Original Purchaser then owns any of the Bonds, following such damage or destruction (i) the completion of the Project will be delayed for at least 6 months, (ii) it is not practicable or desirable to rebuild, repair or restore the Project within a period of 6 consecutive months following such damage or destruction, or (iii) the Borrower is or will be thereby prevented from carrying on its normal operations for a period of at least 6 consecutive months;

(b) Title to or the temporary use of all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any Government Authority to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and, if the Original Purchaser then owns any of the Bonds, the Original Purchaser, (i) the completion of the Project will be delayed for at least 6 months, or (ii) the Borrower is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(c) Any court or administrative body of competent jurisdiction shall enter a final judgment, and not subject to appeal, order or decree requiring the Borrower to cease all or any substantial part of its operations at the Project Site to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of Counsel, who is also acceptable to the Original Purchaser if the Original Purchaser then owns any of the Bonds, filed

with the Issuer and the Trustee, the Borrower is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(d) As a result of any changes in the Constitution of Wisconsin or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), the Bond Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the Borrower including, without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date hereof; or

(e) If it shall be discovered that the Borrower's title to the Project shall be materially defective, and the Borrower's title to the Project shall be lost by reason of such defect.

In any such case, the Borrower or Bondowners shall, to exercise their respective option hereunder, give notice to the Issuer, the Trustee and the Bondowners or the Borrower, as the case may be, in writing of its or their intent to exercise this option and specifying the proposed Redemption Date, within 30 days following discovery of the event by the party determining to exercise its option hereunder. The exercise of either party of its option to redeem the Bonds shall be binding on all parties hereto. Within 60 days after the giving of notice as set forth above, the Borrower shall deposit with the Trustee a sum sufficient, together with other funds held by the Trustee and available for such purpose (i) to redeem the Bonds, in whole or in part, as applicable at a redemption price equal to the principal amount thereof, (ii) to pay the interest which will become due on such Bonds to and including the Redemption Date, and (iii) to pay all expenses of the Issuer and the Trustee accrued and to accrue through the Redemption Date, excluding any redemption or prepayment premium.

If the Borrower shall have received proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project (exclusive of proceeds of business interruption insurance), and such net proceeds exceed the amount necessary to rebuild, repair or restore the Facility, the Borrower agrees to direct the Issuer to call for redemption and prepayment of Outstanding Bonds equal to the amount of such resulting excess net proceeds.

8. Mandatory Redemption at Option of Original Purchaser. The Bonds shall be subject to mandatory redemption, in whole, but not in part, on a Put Date at the option of the Original Purchaser, so long as the Original Purchaser owns all of the Outstanding Bonds. If the Bonds bear a fixed interest rate, the Borrower may request from the Original Purchaser up to 150 days but no later than 90 days prior to the Put Date the indicative interest rate for the next succeeding Reset Period. Within 60 days of such request, the Original Purchaser shall provide notice to the Borrower of the indicative interest rate for such period. Either the failure of Borrower to accept the Original Purchaser's indicative interest rate within 30 days of notice from the Original Purchaser, or failure of the Original Purchaser to provide such notice, shall be deemed to be an exercise of the Original Purchaser's right to cause a mandatory redemption on the next Put Date. The redemption price in such event shall be 100% of the principal amount of the Bonds so redeemed, plus all accrued interest to the Put Date. In the event that the Original Purchaser has exercised its right under this Section to cause a mandatory redemption of the Bonds on a Put Date and the Borrower has secured a purchaser for the Bonds on such Put Date, the Borrower may elect to have the redemption treated

as a mandatory tender, and the Bonds shall be purchased by the purchaser secured by the Borrower at a purchase price equal to 100% of the principal amount of the Bonds so purchased, plus all accrued interest to the Put Date, and upon payment of such purchase price to the Original Purchaser, the Bonds shall be treated as tendered and purchased rather than redeemed.

9. Notice and Effect of Redemption. Except for optional redemption of the Bonds pursuant to the Continuing Covenants Agreement, notice of the call for any redemption of Bonds prior to maturity shall be given by the Trustee by mailing a copy of the redemption notice by first-class mail not less than 30 days nor more than 60 days prior to the Redemption Date to the Bondowner of each Bond to be redeemed at the address shown on the Bond Register; *provided, however*, that failure to give any such notice as aforesaid or any defect therein with respect to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bond.

Each redemption notice shall (i) identify the particular Bonds or portions thereof to be redeemed (including, at a minimum, certificate numbers and called amount for each certificate (for partial calls), Redemption Date, Trustee, date of issue, maturity date, and other descriptive information, if any, that accurately identifies the particular Bonds called for redemption), (ii) identify the provisions of the Bond Agreement pursuant to which the Bonds are being redeemed, (iii) identify the place of payment, (iv) state the applicable redemption price, including the premium, if any, (v) state that interest on the Bonds or portions thereof thus called for redemption will cease to accrue from and after the Redemption Date specified therein, and (vi) state that the notice of redemption may be rescinded by the Borrower and the Trustee.

If pursuant to the Bond Agreement the Trustee shall hold funds in the form of cash or Government Obligations which are available and will be sufficient in amount to pay the principal of and premium, if any, on the Bonds or portions thereof thus called for redemption and to pay the interest thereon to the Redemption Date, such Bonds or portions thereof shall cease to bear interest from and after the Redemption Date in question.

10. Other Provisions. Except as provided in the Bond Agreement, the owners of the Bonds shall have no right to enforce the provisions of the Bond Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereto. In certain events, on the conditions, in the manner and with the effect set forth in the Bond Agreement, the principal of all Bonds issued under the Bond Agreement and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued therein. Amendments, supplements, modifications and alterations of the Bond Agreement may be made only to the extent and in the circumstances permitted by the Bond Agreement.

This Bond may be transferred in whole or in part and may be transferred only in compliance with existing state and federal securities laws, and only by a written assignment duly executed by the registered owner hereof or by such owner's duly authorized legal representative. Upon presentation and surrender of this Bond together with said executed form of assignment at the principal corporate trust office of the Trustee, the Trustee shall register the transfer of this Bond in the Bond register maintained by the Trustee; *provided, however*, that the Trustee shall have no obligation to register the transfer unless the executed assignment shall be satisfactory to it in form and substance.

Upon registration of the transfer of this Bond, the Trustee shall cancel this Bond, and the Issuer shall issue, and the Trustee shall authenticate, one or more new Bonds of authorized denominations of the same maturity and interest rate and in the same aggregate outstanding principal amount as this Bond. The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest due hereon and for all other purposes, and neither the Issuer, nor the Trustee nor any alternate paying agent shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part has been duly authorized by the Issuer and does not exceed or violate any constitutional or statutory limitation. This Bond is issued with the intent that the laws of the State of Wisconsin will govern its construction. This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Agreement until the certificate of authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the signatures of its Mayor and City Clerk, and its corporate seal to be hereunto impressed.

**CITY OF NEW BERLIN, WISCONSIN**

[SEAL]

By: \_\_\_\_\_  
David Ament, Mayor

By: \_\_\_\_\_  
Rubina Medina, City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Bond Agreement.

**BMO BANK N.A.,** as Trustee

Date of Authentication:

[August 30, 2024]

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

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

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



ASSIGNMENT

SOCIAL SECURITY OR FEDERAL  
EMPLOYER IDENTIFICATION  
NUMBER: \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_  
attorney-in-fact to transfer the within Bond on the books kept for registration thereof, with full  
power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by a member firm of the New York Stock  
Exchange or a commercial bank or trust  
company.

\_\_\_\_\_  
NOTICE: The signature to this assignment  
must correspond with the name as it appears  
upon the face of the within Bond in every  
particular, without alteration or enlargement  
or change whatsoever.

EXHIBIT C

FORM OF PROMISSORY NOTE

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE APPLICABLE STATE “BLUE SKY” LAWS AND REGULATIONS OF ANY STATE AND MAY NOT BE DISPOSED OF TO ANY PERSON OTHER THAN BMO BANK N.A., UNLESS IT IS REGISTERED THEREUNDER OR THERE IS DELIVERED TO BMO BANK N.A., OR ITS SUCCESSOR AS TRUSTEE UNDER A BOND AGREEMENT DATED AS OF AUGUST 1, 2024, AN OPINION OF RECOGNIZED COUNSEL SATISFACTORY TO BMO BANK N.A. OR ITS SUCCESSOR AS TRUSTEE, TO THE EFFECT THAT IT MAY BE RESOLD OR OTHERWISE DISPOSED OF PURSUANT TO EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS.

PROMISSORY NOTE

Principal Amount

Original Issue Date

Maturity Date

\$4,200,000.00

[August 30, 2024]

[August 1, 2054]

FOR VALUE RECEIVED, the undersigned, WENTHE-DAVIDSON ENGINEERING CO., a Wisconsin corporation (the “Borrower”, which term shall be construed to include the heirs, personal representatives, and successors and assigns of the Borrower), hereby promises to pay to the order of the CITY OF NEW BERLIN, WISCONSIN, a municipality existing under the laws of the State of Wisconsin (the “Issuer”), the principal sum of FOUR MILLION TWO HUNDRED THOUSAND DOLLARS AND NO/100 (\$4,200,000.00) (or so much as may have been requisitioned under that certain Bond Agreement (the “Bond Agreement”) dated as of August 1, 2024 by and among the Issuer, the Borrower, BMO Bank N.A., as Trustee, and BMO Bank N.A., as Original Purchaser, which Bond Agreement secures the Bonds), payable in the same installments of principal and interest, due on the same dates and at the same interest rates and premiums, as are set forth for the Bonds in the Bond Agreement.

This Promissory Note constitutes the Promissory Note issued under the Bond Agreement, which Bond Agreement is hereby incorporated herein by this reference. Reference is hereby made to the Bond Agreement for a statement of the terms and conditions on which the Loan evidenced hereby was made, for a description of the circumstances under which there shall be credits allowed against the installments of principal and interest on this Promissory Note, and for a description of the terms and conditions upon which this Promissory Note may be prepaid or its maturity accelerated.

**WENTHE-DAVIDSON ENGINEERING CO.**

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

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

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

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned, City of New Berlin, Wisconsin, hereby assigns, without recourse, all its right, title and interest in and to the above Promissory Note to BMO Bank N.A. or its successor or successors, as Trustee under the Bond Agreement referenced above.

Dated: [August 30, 2024].

**CITY OF NEW BERLIN, WISCONSIN**

By: \_\_\_\_\_  
David Ament, Mayor

By: \_\_\_\_\_  
Rubina Medina, City Clerk

EXHIBIT D

FORM OF BORROWER'S REQUISITION

Borrower's Requisition No. \_\_\_\_\_

BMO Bank N.A., as Trustee  
3155 North 124<sup>th</sup> Street  
Brookfield, WI 53008  
Attn: Michael Goedheer

Re: \$4,000,000 City of New Berlin, Wisconsin  
Industrial Development Revenue Bonds, Series 2024  
(Wenthe-Davidson Engineering Co. Project)

This Borrower's Requisition is delivered to you pursuant to Sections 4.02 and 6.03 of the Bond Agreement dated August 1, 2024 (the "Bond Agreement") by and among the City of New Berlin, Wisconsin (the "Issuer"), Wenthe-Davidson Engineering Co., a Wisconsin corporation (the "Borrower"), BMO Bank N.A., as trustee (the "Trustee"), and BMO Bank N.A., as original purchaser (the "Original Purchaser"). Reference is made to the Project Fund and Project Accounts created in Section 3.02 of the Bond Agreement. Any capitalized terms not defined herein shall have the same meaning as in the Bond Agreement.

The Borrower hereby requisitions an aggregate amount of \$\_\_\_\_\_ from the Project Fund. The Trustee is directed to disburse such amounts.

In support of the Borrower's Requisition, the undersigned hereby certifies as follows:

1. The amounts for which payment is being requisitioned:
  - (a) Have been incurred by the Borrower and paid (or are presently due and owing) for the specific purposes to the specific suppliers (copies of invoices, lien waivers, and certificate from project inspector, are submitted herewith) and in the specific component amounts listed in Schedule A attached hereto;
  - (b) Have been incurred by the Borrower for land or property of a character subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1986, as amended (the "Code"), except as otherwise indicated in Schedule A attached hereto;
  - (c) Were incurred by the Borrower after April 26, 2024;
  - (d) Are chargeable to the capital account of the Project or would be so chargeable either with a proper election of the Borrower or but for a proper election by the Borrower to deduct such amounts; and
  - (e) Will not result in less than 95% of the Bond Proceeds being used for the acquisition or improvement of land, or acquisition, construction, reconstruction or improvement of property of

a character subject to the allowance for depreciation under Section 167 of the Code as required by and within the meaning of Section 144(a) of the Code and the regulations under that Section.

2. The amounts, if any, requisitioned for payment of issuance expenses:

(a) Have been incurred by the Borrower and paid (or are presently due and owing) for the specific purposes to the specific persons and in the amounts listed in Schedule B attached hereto; and

(b) Have been or will be capitalized by the Borrower for federal income tax purposes.

3. The estimated completion date of the Project now is \_\_\_\_\_.

The Borrower is not in default under the Bond Agreement, except as follows (if no default exists, so state):

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4. Nothing has occurred to the knowledge of the undersigned which will prevent the performance by the Borrower of its obligations under the Bond Agreement, except as follows (if none, so state):

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5. The Borrower certifies either (check appropriate paragraph):

☐ (a) That each item of cost included in this requisition was included in the list of Project Costs as stated in the Borrower's Certificate dated the Original Issue Date, upon which the determination of the weighted average reasonably expected economic life of the Project was made; or

☐ (b) That the reasonably expected economic life to the Borrower of the property for which payment is being requested, determined as of the later of the date on which the Bonds were issued or the date on which that property was or is expected to be placed in service, will not cause the average maturity of the Bonds to exceed 120% of the weighted average reasonably expected economic life of the property, taking into account the substituted or additional property, to be financed or refinanced, directly or indirectly, with the Bond Proceeds, determined in accordance with Section 147(b) of the Code.

6. No Borrower's Requisition has previously been submitted in respect of the costs which form a basis for this Borrower's Requisition.

7. To Borrower's knowledge, all disbursement procedures required by the Original Purchaser have been completed.

8. You are hereby requested to pay the amount requisitioned in the following manner:

(a) To the Borrower by check; or

(b) To the Borrower by deposit in its general account (No. \_\_\_\_\_)  
maintained at \_\_\_\_\_; or

(c) Other: \_\_\_\_\_  
\_\_\_\_\_.

Executed by the undersigned on \_\_\_\_\_

**WENTHE-DAVIDSON ENGINEERING CO.**

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

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

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

Approved and funded by the transfer of \$\_\_\_\_\_ to the Trustee, as provided in Sections  
3.01, 3.02, 4.01 and 4.02 of the Bond Agreement, by the undersigned on \_\_\_\_\_.

**BMO BANK N.A.,**  
as Original Purchaser

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

Its Authorized Representative

**\$4,200,000**  
**City of New Berlin, Wisconsin**  
**Industrial Development Revenue Bonds, Series 2024**  
**(Wenthe-Davidson Engineering Co. Project)**

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**NO ARBITRAGE CERTIFICATE**

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1. The undersigned are, respectively, the Mayor and the City Clerk of the City of New Berlin, Wisconsin (the “Issuer”) and are delegated with the responsibility of issuing the Bonds.

2. This certificate (the “Certificate”) is executed for the purpose of establishing the reasonable expectations of the Issuer as to future events regarding the Issuer’s \$4,200,000 City of New Berlin, Wisconsin Industrial Development Revenue Bonds, Series 2024 (Wenthe-Davidson Engineering Co. Project), dated [August 30, 2024] (the “Bonds”). The proceeds of the Bonds shall be used by Wenthe-Davidson Engineering Co., a Wisconsin corporation (the “Borrower”), to finance the (i) construction of an approximately 27,183 square foot addition to the Borrower’s existing approximately 109,283 square foot facility located at 16300 West Rogers Drive in the City of New Berlin, Wisconsin (the “Facility”) which is operated by the Borrower to manufacture custom metal electric motor and generator housing, lock seam tubular products, and metal casings, (ii) acquisition and installation of equipment at the Facility, and (iii) payment of certain professional costs and costs of issuance (the “Project”).

3. The Issuer and its signatories have made no independent investigation of the matters stated herein. The expectations of the Issuer described herein are based on the provisions of the Bond Agreement and upon the representations of the Borrower and BMO Bank N.A., as original purchaser (the “Original Purchaser”).

4. To the best of our knowledge, information and belief, the expectations contained in this Certificate are reasonable. The Issuer has relied on the attached Borrower’s Tax Matters Closing Certificate and the representations of the Borrower set forth on the Borrower’s signature page to this Certificate in making the representations herein.

5. The facts and estimates in this Certificate are based on representations made by the Borrower. The Issuer is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by the Borrower.

6. The Bonds are being issued pursuant to a Bond Agreement dated as of August 1, 2024 (the “Bond Agreement”) by and among the Issuer, the Borrower, the Original Purchaser, and BMO Bank N.A., as trustee, in order to finance the Project, which Project will be owned and operated by the Borrower. The Bonds are deemed to be a single issue for purposes of the arbitrage and arbitrage rebate requirements.

7. The Bonds are being issued to finance the costs of the Project and not for any other project. There are no other obligations that, together with the Bonds, are issued at substantially the same time, or sold pursuant to a common plan of financing, or will be paid out of substantially the same source of funds.

8. The Bonds will be sold to the Original Purchaser.

9. Capitalized terms used herein and not defined in this Certificate shall have the meanings set forth in the Bond Agreement.

10. The Bonds are issued pursuant to a “draw-down loan” within the meaning of Treas. Reg. §1.150-1(c)(4)(i), and the date of issue of the Bonds is the Original Issue Date. The proceeds of the Bonds requisitioned on [August 30, 2024], that is, [\$\_\_\_\_\_] will be wire transferred to the Trustee to be deposited in the Project Fund created under the Bond Agreement.

Amounts deposited in the Project Fund, along with investment earnings, will be expended for payment of Project Costs, including issuance costs, within 36 months of the date hereof. The amount of proceeds of the Bonds disbursed to pay or reimburse issuance costs (a) will not exceed 2% of the total proceeds of the Bonds and (b) shall at no time exceed 2% of the aggregate amount of Bond Proceeds requisitioned by the Borrower. No investments made from money on deposit in the Project Fund and Bond Fund shall be purchased or sold other than on an established market in arms-length transactions at a price equal to its fair market value and no amount shall have been paid to reduce the yield on the investment, unless such investment shall be in U.S. Treasury Obligations-State and Local Government Series. The Bond Fund and, prior to [August 30, 2027], the Project Fund, may be invested to produce a yield greater than the yield on the Bonds. Notwithstanding the foregoing, the proceeds of the Bonds are expected to be requisitioned as needed to fund reimbursements of Project Costs and to pay current Project Costs and will not be invested. Therefore, no earnings are expected.

11. The Bond Fund was created to achieve a proper matching of payments by the Borrower with debt service payments on the Bonds within each year. The Bond Fund and interest earned thereon will be depleted at least once a year except for a reasonable carry-over amount (not to exceed the greater of (a) the previous year’s earnings on the Bond Fund, or (b) one-twelfth of the previous year’s debt service on the Bonds).

12. The Redemption Fund provided for by the Bond Agreement was created to provide for a fund and account in which to deposit moneys in the event of a mandatory or optional redemption of the Bonds, but it is expected that no amounts will be contributed to the Redemption Fund.

13. No reserve or replacement fund has been or is expected to be established and funded with regard to the Bonds. Other trust funds are created under the Bond Agreement, but it is expected that no amounts will be contributed to these funds. Other than the Bond Fund and the Redemption Fund, no fund has been created that is expected to contain funds that will be used to pay principal or interest on the Bonds.

14. The loan repayments paid by the Borrower under the Bond Agreement, plus any interest earned thereon, will be equal to the payments of principal, purchase price, premium, if any, and interest on, the Bonds. The loan repayment due on any interest payment date will be reduced by any



amount held in the Bond Fund on that date and available for such purpose. The yield on the Bond Agreement does not exceed the yield on the Bonds by as much as one-eighth of one percent per annum.

15. The principal and interest on the Bonds will be paid when due (whether by scheduled payment, purchase or redemption) as provided in the Bond Agreement by the Borrower by payment into the Bond Fund or the Redemption Fund, as the case may be. The principal of, purchase price, premium, if any, and interest on the Bonds are payable from the applicable Bond Fund or the Redemption Fund and the Issuer and the Borrower reasonably expect that there will be no other funds that will be so used.

16. Amounts deposited in the Project Fund, along with investment earnings, if any, will be expended for payment of Project Costs, including issuance costs, within 36 months of the date hereof.

17. To the best of our knowledge and belief, the information contained in the attached Information Return (Form 8038) with respect to the Bonds is complete and accurate.

18. The Borrower has entered or will within six months enter into contracts constituting binding obligations to third parties for the acquisition and construction of the Project, obligating the Borrower to expend in excess of 5% of the proceeds of the Bonds under such contracts, and will proceed with due diligence to completion, which is anticipated to be within 36 months of today's date.

19. Any moneys held in the applicable Bond Fund Accounts created in the Bond Agreement which are reasonably expected to be used to pay principal, interest or call premium on the Bonds within 13 months of the receipt thereof, may be invested in obligations that bear a yield that is higher than the yield on the Bonds.

20. The portions of the proceeds of the Bonds representing amounts used to pay the expenses of issuing the Bonds will be expended prior to the end of the 13-month temporary period applicable to them.

21. None of the obligations is a "yield-to-call" bond within the meaning of Treas. Reg. §1.148-3(b)(4).

22. The Bonds are not and will not be part of a transaction or series of transactions that attempt to circumvent the provisions of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations of the United States Department of Treasury issued thereunder (the "Regulations"), (a) enabling the Issuer to exploit the difference between tax-exempt and taxable interest rate to gain a material financial advantage and (b) increasing the burden on the market for tax-exempt obligations. No device has been employed in connection with the issuance of the Bonds to obtain a material financial advantage (based on arbitrage) apart from the savings attributable to lower interest rates.

23. The yield on the Bonds and any acquired obligations will be calculated at that yield which, when used in computing the present worth of all payments of principal and interest to be paid on the obligations, produces an amount equal to the purchase price, calculated on the basis of monthly compounding using a 360-day year. In the case of the Bonds, the purchase price is the initial purchase

price paid by the Original Purchaser. Administrative costs will not be taken into account in determining such yield.

24. In determining the amount in any fund or account (or portion of such fund or account) for purposes of this Certificate, the amount of any obligation allocable to such fund or account shall be equal to the purchase price of such obligation plus the amount of any discount below par, or the amount of any interest payment for any year over the amount of any interest payment for the preceding annual period, which discount or excess amount shall be taken into account over the life of such obligation.

25. Section 3.06 of the Bond Agreement contains requirements and procedures designed to provide for continuing compliance with the requirements of Section 148(f) of the Code, and is incorporated by reference herein in its entirety. Upon the retirement of the Bonds, if directed by the Issuer as instructed by the Borrower, the Trustee shall calculate or cause to be calculated the amount of “rebtable arbitrage” (as defined in Treas. Reg. §1.148-2) with respect to the Bonds. The Trustee may calculate or cause to be calculated the amount of “rebtable arbitrage” on interim dates, if directed by the Issuer as instructed by the Borrower. The Borrower has agreed that it will comply with the arbitrage rebate requirements set forth in the Code and Regulations. As part of its compliance with these requirements, the Borrower will make or cause to be made determinations at the times and in the manner required by the Code and Regulations of the amount (if any) required to be paid to the United States Treasury, as provided above, and pay such amounts on the dates and in the manner required by law.

26. It is expected by the Borrower that at least 95% of the spendable proceeds of the issue will be used to carry out the governmental purpose of the issue within a three-year period beginning on the date of issuance of such issue.

27. On the basis of the foregoing facts, estimates and circumstances, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates, or circumstances that would materially change such expectations.

28. In issuing this Certificate, the Issuer is relying upon the facts set forth in the attached Closing Certificate of Original Purchaser and the Borrower’s Tax Matters Closing Certificate.

29. Notwithstanding anything in this Certificate to the contrary, the Issuer shall be under no obligation to take any action or execute, prepare, deliver or file any instrument or document until it shall have received assurances satisfactory to it that the Borrower or the Trustee shall pay in advance or reimburse it (at the Issuer’s option) for its reasonable expenses incurred or to be incurred in connection with the taking of such action (including reasonable attorneys’ fees) and shall be indemnified against any possible liability arising out of the taking of such action.

The terms used in this Certificate shall have such meanings as are provided by the Treasury Regulations issued by the Department of Treasury pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the Bond Agreement.

[SIGNATURE PAGE TO FOLLOW]

Date: [August 30, 2024]

**CITY OF NEW BERLIN, WISCONSIN**

By: \_\_\_\_\_  
David Ament, Mayor

By: \_\_\_\_\_  
Rubina Medina, City Clerk

The Borrower represents that the expectations contained in the foregoing No Arbitrage Certificate are accurate and reasonable, and further represents that the facts and estimates contained in the foregoing No Arbitrage Certificate are true, correct, accurate and complete.

Dated: [August 30, 2024]

**WENTHE-DAVIDSON ENGINEERING CO.**

By: \_\_\_\_\_  
Michael T. Kruck, Chief Financial Officer

## **ATTACHMENTS**

- IRS Form 8038 appears at Tab #8 of this transcript
- Closing Certificate of Original Purchaser appears at Tab #20 of this transcript
- Borrower's Tax Matters Closing Certificate appears at Tab #14 of this transcript



# MOTION SHEET

**TO:** Common Council  
Mayor Ament  
Ald. Stribl

**FROM:** Code Committee

**DATE:** July 23, 2024

**RE:** June 27, 2024, Code Committee items requiring Common Council action

|                               |                                                                                                                                                                                                                                                                             |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A.                            | KH DCD1-2302102 Municipal Code Updates - Chapter 152                                                                                                                                                                                                                        |
| <b><u>Council Motion:</u></b> |                                                                                                                                                                                                                                                                             |
|                               | <b>This item was considered at the Code Committee meeting on June 27, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval Municipal Code Updates – Chapter 152, as presented.</b> |

**ORDINANCE NO. 2689****ORDINANCE TO AMEND CHAPTER 152 (LICENSES AND PERMITS) OF THE  
MUNICIPAL CODE OF THE CITY OF NEW BERLIN**

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The Common Council of the City of New Berlin do ordain as follows:

**SECTION I**

Section 152-4H(5) of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- (5) Abandonment of license. Any licensee granted or issued a license to sell alcoholic beverages who abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or nonrenewal of any alcohol beverage license. For purposes of this section, "abandon" and "abandonment" shall be defined as a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the Common Council for a period of 180 days or more individually or in the aggregate during the course of any one twelve-month period. In order for the licensee to avoid a finding of abandonment their establishment must be actively operated for the sale of alcoholic beverages for consumption on site as provided for in the Class B License issued to the owner/operator, specifically the establishment shall be open for sale of alcohol to the public for consumption on site a minimum of 25 hours per week and the licensee must main stock of alcohol to operate the bar as a going concern and such beer/liquor shall be purchased from a wholesaler. The Common Council may, for good cause shown, extend the period of permitted nonuse.

**SECTION II**

Section 152-4L of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- L. City Clerk to conduct investigation of applicants. Upon receipt of each application, the Clerk will make and complete an investigation of the statements in such application and an investigation of each applicant within reasonable dispatch after the application has been filed with the City Clerk. The City Clerk shall endorse his findings upon the application.

**SECTION III**

Section 152-4M(2)(b) of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- (b) Application. The application for the temporary extension of licensed premises shall be filed not less than 30 days prior to the date upon which the applicant wishes the matter to be considered by the Common Council, which date shall be not less than two weeks prior to the proposed special event. Applications shall be made on forms provided by the City Clerk and must be signed and sworn to by the applicant, if an individual, one partner of a partnership or by a duly authorized agent, officer

or member of a corporation or limited liability company. The application shall include the following:

- [1] The name, business address and telephone number of the applicant.
- [2] The address of the existing licensed premises.
- [3] The type of license currently held.
- [4] Specific description of the site for which the temporary extension is sought, including the dimensions of the area.
- [5] The location of exits.
- [6] The manner in which the licensed premises area will be restricted and screened from underage persons.
- [7] The name of the particular event or function for which the temporary extension of the licensed premises is sought.
- [8] The date and period of time for which the particular event or function will be operated.
- [9] Such other reasonable and pertinent information as the Common Council may require.

#### **SECTION IV**

Section 152-4O of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- O. Reserve licenses. If an applicant applies for less than a full license year or terminates their license before the end of a license year, the reserve license fee and any portions thereof will not be refunded, nor will they be prorated.

#### **SECTION V**

Section 152-4Q of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- Q. Alcoholic beverages on City property or public rights-of-way.
  - (1) The sale of alcoholic beverages on City property or public rights-of-way is hereby prohibited except with an approved Special Event Permit. The sale of alcoholic beverages on City property for City-run events (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) does not require a Special Event Permit.
  - (2) An exception to this prohibition would be sales by City of New Berlin Staff in Municipal Parks as permitted pursuant to Wisconsin Statute Sec. 125.06(6).
  - (3) The public consumption of alcoholic beverages on City property and public rights-of-way is prohibited, except where the City has issued an Extension of Premise Permit to a Class B alcohol beverage seller or where a Temporary Class B License has been issued.

#### **SECTION VI**

Section 152-4R(2) of the Municipal Code of the City of New Berlin is hereby amended to read as



follows:

- (2) Abandonment of license. Any licensee granted or issued a license to sell alcoholic beverages who abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or nonrenewal of any alcohol beverage license. For purposes of this section, "abandon" and "abandonment" shall be defined as a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the Common Council for a period of 180 days or more individually or in the aggregate during the course of any one twelve-month period. In order for the licensee to avoid a finding of abandonment their establishment must be actively operated for the sale of alcoholic beverages for consumption on site as provided for in the Class B License issued to the owner/operator, specifically the establishment shall be open for sale of alcohol to the public for consumption on site a minimum of 25 hours per week and the licensee must main stock of alcohol to operate the bar as a going concern and such beer/liquor shall be purchased from a wholesaler. The Common Council may, for good cause shown, extend the period of permitted nonuse.

## **SECTION VII**

Section 152-5A of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- A. License required. No direct seller, or an employee of a direct seller, shall engage in direct sales within the City without being licensed for that purpose as provided herein. A copy of the direct sellers permit and mobile retail license shall be posted on the mobile unit for public view.

## **SECTION VIII**

Section 152-5B of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

### **CLERK**

The City Clerk.

### **DIRECT SELLER**

A person who sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such person, partnership, association or corporation.

### **GOODS**

Personal property of any kind and provided incidental to services offered or sold.

### **MOBILE VENDOR**

A person who offers goods or services for sale to the public without a permanently built structure but with a self-contained static structure by way of a vehicle or other transportation. Food trucks are considered mobile vendors.

#### **PERMANENT MERCHANT**

A direct seller who, for at least one year prior to the consideration of the application of this section to such merchant, has continuously operated an established place of business in this City or has continuously resided in this City and now does business from his residence.

### **SECTION IX**

Section 152-5C(13) of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- (13) Any charitable organization, society, association or corporation which is recognized as a tax-exempt charitable organization by federal and state authorities.

### **SECTION X**

Section 152-5D of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

#### **D. License requirement.**

- (1) Direct Sellers Permit. All mobile vendors doing business in the City will be required to obtain a direct sellers permit. The following information shall be provided:
  - (a) Application. A completed application shall contain the following information:
    - [1] Name, including middle initial, permanent address and telephone number and, if any, temporary address and telephone number.
    - [2] Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by or whose merchandise is being sold.
    - [3] Contact information for the business, including temporary address, phone number and/or website.
    - [4] Nature of business to be conducted and a brief description of the goods and any services offered.
    - [5] Proposed method of delivery of goods, if applicable.
    - [6] Make, model and license number of any vehicle to be used by the applicant in the conduct of his/her business.
    - [7] Last cities, villages and/or towns, not to exceed three, where the applicant conducted similar business.
    - [8] Place where the applicant can be contacted for at least seven days after leaving this City.
    - [9] Statement as to whether the applicant has been charged or convicted of any crime or ordinance violation related to the applicant's transient merchant business, or any crime or ordinance violation pertinent to the

safety of citizens, including, or of a similar nature to, fraud, burglary, robbery, assault or sexual assault, within the last five years, and a detailed explanation of the nature of the offense and place of conviction.

- (b) Driver's license, or other proof of identity.
- (c) Fees. At the time the registration is returned, a fee to cover the cost of processing the registration, as well as the required annual license fee, shall be paid to the Clerk. Such fees are on file with the Clerk's Office.
  - [1] An additional fee shall be collected for Direct Sellers operating on or along City property for non-City sponsored events.
- (2) Obtain a mobile retail license from either the State of Wisconsin or another jurisdiction. A copy of this license shall be on file with the City of New Berlin Clerk's Office.

## **SECTION XI**

Section 152-5E of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

### **E. General regulations for Mobile vendors.**

- (1) Parking.
  - (a) Vendors must follow all City parking regulations and posted signage. Overnight parking within the city limits is not permitted unless the mobile vendors place of business is a registered New Berlin business.
  - (b) Vendors cannot block or restrict an individual's access to a business or residence or the driveways, alleys, or access points to the parking areas for such locations.
  - (c) Operating within the public right-of-way.
    - [1] Vendors are prohibited from selling along the following rights-of-way, arterials and major thoroughfares at all times: Calhoun Road, Cleveland Avenue, Greenfield Avenue, Lincoln Avenue, Moorland Road, National Avenue, Howard Avenue, Beloit Road, Coffee Road, Lawnsdale Road, Janesville Road, Racine Avenue, College Avenue, Sunny Slope Road, 124<sup>th</sup> Street, Small Road, and Grange Avenue.
    - [2] Vendors are prohibited from selling within public right-of-way along single family residential streets without a special event permit.
  - (d) Operating on or along City property.
    - [1] Approval from the Parks, Buildings and Grounds Commission is required for Direct Sellers operating on or along City property. Direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt.
    - [2] An additional fee shall be collected for each event the Direct Seller is operating on or along City property. This additional fee shall not apply to direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.).
  - (e) Operating on private property.
    - [1] No more than 2 mobile vendors are allowed to operate on private property at any given time, unless approved as part of a special event permit.
    - [2] For properties directly adjacent to single family residential zoning districts, excluding the right-of-way, no more than 1 mobile vendor is

allowed to operate on private property at any given time, unless approved as part of a special event permit.

(2) Sales.

- (a) It is prohibited to make any sales from the roadway median strip, safety island or on foot into any street or roadway, including any alleys where there is vehicular traffic.
- (b) Food cannot be sold door to door.
- (c) Mobile vendors may only operate between 7:00 a.m. and 10:00 p.m. Direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt.
- (d) Vendors cannot place coolers on the ground or provide tables or chairs for their customers. Direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt.
- (e) No vendor shall use a power source from an adjacent building, and vendors must be self-contained.
- (f) All waste shall be disposed of properly by the vendor; no organic waste shall be deposited into the City sanitary sewer system.
- (g) The vehicle shall provide a trash receptacle and remove all trash from the site upon the conclusion of the event.

## **SECTION XII**

Section 152-6 of the Municipal Code of the City of New Berlin is hereby repealed.

## **SECTION XIII**

Section 152-9 of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- A. Noise shall comply with the standards set forth in Chapter 275-60 of the Zoning Code and/or the Special Event Permit.

## **SECTION XIV**

Section 152-23 of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

**CLASS I**

A special event as outlined in DHS 110.44(20r) with more than 5,000 people, including personnel, volunteers, vendors, and attendees. Some of the following may also occur:

- City resources and/or staff are to be utilized beyond their normal required duties
- alcohol is sold or served as a publicly open event
- the event will include amplified music or outdoor entertainment
- any direct or indirect charge for food, merchandise or services
- donations are solicited/collected

**CLASS II**

A special event with 501-5,000 people, including personnel, volunteers, vendors, and attendees. Some of the following may also occur:

- City resources and/or staff are to be utilized beyond their normal required duties
- alcohol is sold or served as a publicly open event
- the event will include amplified music or outdoor entertainment
- any direct or indirect charge for food, merchandise or services
- donations are solicited/collected

**CLASS III**

A special event with 151-500 people, including personnel, volunteers, vendors, and attendees. Some of the following may also occur:

- alcohol is sold or served as a publicly open event
- the event will include amplified music or outdoor entertainment
- any direct or indirect charge for food, merchandise or services
- donations are solicited/collected

**CLASS IV**

A special event with 150 people or less, including personnel, volunteers, vendors, and attendees.

**SPECIAL EVENT**

An event held in the City that requires the use of public streets, rights-of-way or sidewalks, or are otherwise likely at the discretion of the City to create substantial impacts on the operations of the City, surrounding neighbors or neighborhoods. Special events include but are not limited to sporting events, festivals, fairs, parades, walks, runs/marathons, bike-a-thons, races, markets, block parties, exhibitions, motion picture filming and other events similar in nature. Special events can also be classified as any event that may require public safety and City services above and beyond their normal functions. Events held on private property that are open to the public may be classified as a special event if there is a significant impact on the City's operations and residents.

- B. Special Event Permit. No person or organization shall conduct a special event as defined herein within the City of New Berlin without first having obtained a Special Event Permit. Permits are valid only for the dates, times and locations specified in the permit application. This provision shall apply to all events proposed after the date of the adoption of this section, regardless of if the event is a reoccurring event within the City.
- C. Application.
- (1) Application requirements. An application will be considered complete if it contains all the information required under this section.

- (a) Application timing.
  - [1] Class I Special Event Permits shall be filed with the City Clerk's office at least 120 days prior to the proposed event.
  - [2] Class II Special Event Permits shall be filed with the City Clerk's office at least 90 days prior to the proposed event.
  - [3] Class III Special Event Permits shall be filed with the City Clerk's office at least 45 days prior to the proposed event.
  - [4] Class IV Special Event Permits shall be filed with the City Clerk's office at least 14 days prior to the proposed event.
- (b) Fees. Fees are established by the Common Council and shall be on file in the City Clerk's Office. The City Clerk may waive the permit fees for public agencies, nonprofit agencies or as deemed appropriate by the City Clerk.
- (c) Deposits for Class I Events. Application fee in the form of a deposit shall be submitted to the City for all Class I events. The deposit shall be used to cover City staff review, planning time and coordination to review the application itself and through the completion of the event. Staff will use their direct billable hours to debit the submitted deposit amount. Should the deposit itself go down to zero, the applicant shall replenish the deposit to the original amount. Any remaining deposit funds after the permit is issued or denied shall be returned to the applicant. The deposit will start at \$1,000.
- (d) The application shall include the following:
  - [1] The name, address and phone number of the person, entity or organization sponsoring the event.
  - [2] The name and address of the special event sponsor's contact or agent.
  - [3] The name, date, time and location of the event in question.
    - [a] Special events in residential neighborhoods may require notification of adjacent neighbors.
  - [4] A description of the event and its purpose.
  - [5] The estimated maximum number of participants, spectators and vendors at the proposed event. If the event is a multi-day event, it should be noted the estimated attendance per day.
  - [6] Whether alcohol will be sold or served at the event.
  - [7] Whether food and/or merchandise will be sold at the event.
  - [8] Plans and description of the following, as necessary for the event:
    - [a] Amplified music or entertainment and the hours;
    - [b] Fireworks;
    - [c] Closure of public streets or rights-of-way meeting the requirements of §230-6 of the Municipal Code;
    - [d] Parking size and location;
    - [e] Electricity and lighting plan;
    - [f] Erecting tents, canopies or temporary structures;
    - [g] Temporary fencing locations;
    - [h] Waste/recycling collection and disposal;
    - [i] Portable restrooms and hand wash stations.
  - [9] Additional items to consider:

- [a] Additional security personnel;
  - [b] Emergency plan for inclement weather;
  - [c] Potable water for consumption on site;
  - [d] Medical/first aid kits.
- [10] Certification that by signing the application, the applicant is authorized to act on behalf of the event sponsor(s).
- [11] Applicant's acknowledgement that by signing and submitting the application, they accept and comply with the provisions of § 152-23D.
- (2) Application process.
  - (a) Facility Rental Permit.
    - [1] Special events held on City Property shall obtain a Facility Rental Permit from the Recreation Department prior to applying for a Special Event Permit.
    - [2] Approval from the Parks, Buildings and Grounds Commission is required for Facility Rentals requiring a Special Event Permit.
  - (b) Temporary Use Approval Permit.
    - [1] Special events on private property may require a Temporary Use Approval Permit from the Department of Community Development prior to applying for a Special Event Permit. Applicants shall abide by the provisions of §275-43 of the Municipal Code.
    - [2] Approval from the Plan Commission/CDA may be required.
  - (c) Special Event Permit.
    - [1] Within three business days of receipt of an application, the City Clerk shall distribute the complete application to the following departments for review and recommendation: City Attorney, Police, Fire, Public Works, and Community Development. Department review and comments shall be returned to the City Clerk within 14 days of distribution of the application.
    - [2] Common Council approval may be required depending on the size and scope of the special event.
  - (d) Direct Sellers Permit.
    - [1] All vendors, including mobile vendors, operating on City Property, public rights-of-way, and/or private property shall obtain a Direct Sellers Permit from the Clerk's Office. The permit shall be displayed. Vendors shall abide by the provisions of §152-5 of the Municipal Code.
    - [2] Approval from the Parks, Buildings and Grounds Commission is required for Direct Sellers operating on City property.
  - (e) Temporary Class B Retailer's License.
    - [1] The sale of beer and/or wine on City Property, public rights-of-way, and/or private property is prohibited unless the applicant can secure a Temporary Class B Retailer's License from the Clerk's Office. There must be either a licensee or a person holding an operator's license on site in accordance with §§ 125.17(1), 125.32(2), and 125.68(2), Wis. Stats. Applicants shall abide by the provisions of §152-4 of the Municipal Code.
    - [2] Approval from the Parks, Buildings and Grounds Commission is required for all vendors selling beer and/or wine on City property.
  - (f) Fireworks Permit.

[1] Special events using fireworks on City Property, public rights-of-way, and/or private property shall obtain a Fireworks Permit from the Fire Department. Applicants shall abide by the provisions of §124-12G of the Municipal Code.

[2] Approval from the Common Council is required for fireworks.

(g) Sign Permit.

[1] Signs on City Property, public rights-of-way, and/or private property shall obtain a Sign Permit from the Department of Community Development. Applicants shall abide by the provisions of §275-61 of the Municipal Code.

[2] Approval from the Plan Commission/CDA is required for any sign waivers.

(h) Inspection Permits.

[1] Obtain the necessary building, plumbing and electric permits from the Department of Community Development.

(i) Fire Department Permits.

[1] Obtain necessary permits for tents, canopies, and temporary structures over 120 square feet from the Fire Department.

D. Permit conditions.

(1) Liability insurance. For a Class I or Class II event, the group sponsoring the event is required to supply the City with a certificate of liability insurance at least 30 days prior to the event. The certificate shall be written on a per-occurrence basis, and while the amount of coverage will vary depending on the size and nature of the event, the minimum coverage required by the City is \$1,000,000 and \$2,000,000 in the aggregate. The City also requires evidence of a policy endorsement naming the City of New Berlin and any and all of its officers and employees as an additional insured on a primary and noncontributory basis.

(2) Indemnification. The applicant and event sponsor(s) shall agree to hold the City, its officers, employees, agents and contractors harmless against all claims, liability, loss, damage or expense (including but not limited to actual attorney's fees) incurred by the City for any damage or injury to person or property caused by or resulting directly or indirectly from the activities for which the permit is granted. Any change to coverage requires City approval.

(3) City services. All requests by the applicants for City services must be made at the time of application. The applicant shall be responsible for reimbursement to the City for any city personnel, services, equipment, and facilities provided for the special event. Reimbursement costs shall be calculated to include wages, overtime and fringe benefits and is due within 30 days of receipt of invoice. The City reserves the right to require full or partial payment of estimated costs in advance. All permit, signage and barricade costs are due prior to the special event. City Clerk will prepare an invoice based on the City resources required for the event.

(4) Cleaning/damage deposit. The applicant may be required to submit to the City a deposit depending on the size and number of attendees. The deposit will be refunded to the applicant after an inspection of the premises is conducted and the City determines there is no loss or cleaning costs. The applicant shall be fully responsible for necessary cleanup associated with the permitted event, which must be completed no later than 12 hours after the conclusion of the event. The City reserves the right to retain the entire deposit if cleanup is not satisfactorily completed in the time frame specified.

(a) A deposit of \$5,000 shall be submitted for a Class I Special Event.

(b) A deposit of \$200 shall be submitted for a Class II Special Event.

(5) Site requirements.



- (a) All tents, canopies or temporary structures over 120 square feet require approval from the Department of Community Development and must apply for a permit with the Fire Department.
  - (b) Electricity requirements will be reviewed by the Department of Community Development to determine if an inspection is needed. Electric service must meet all City of New Berlin Code requirements.
  - (c) Attendees and staffing shall not exceed the maximum number which can reasonably attend at the location of the special event.
  - (d) It is the responsibility of the special event sponsor for arranging any inspections required to meet these standards or requirements prior to the event. Any fees for such inspections shall be the responsibility of the special event sponsor.
  - (e) No staking or poles other than fasteners may be placed in any City street.
  - (f) Special events requiring a road closure shall comply with §230-6 of the Municipal Code.
- (6) Notification to residents. The City may require that the permit holder provide written notice 15 days in advance of the special event to any property owners or tenants as determined during the City department's review. Notice shall include the type of event, name of the special event sponsor(s), date, time and location, event coordinator's name and contact information during the event.
- (7) Special Events requiring a road closure, except for City run events, shall comply with the following standards:
- (a) A public street shall not be barricaded for recreational purposes for more than 12 hours.
  - (b) The applicant shall provide evidence of written consent of not less than 80% of the property owners abutting the portion of the street to be closed. The applicant is also required to provide evidence that all abutting property owners have been advised of the request for closure.
  - (c) Road closures are only permitted for local streets that are public, not arterial streets that are public. The applicant shall be required to provide a map showing the portion of the street to be closed and where the barricades will be placed.
  - (e) The applicant must be the owner of a property on the street where the event is to be held and shall assume responsibility under the permit for the event, which includes compliance with all City Ordinances, the clean-up of the public right of way, and the return of all City barricades within 48 hours of the event.
  - (f) Barricades to close the street must remain in place for the duration of the event. The applicant must ensure that a drive lane through the blockaded street area of not less than 15' in width shall be provided so that all City emergency service vehicles are able to access properties within the blocked street.
  - (g) If alcohol is being served at the event, it may only be to persons of age and may not be provided to any uninvited guests. Alcohol cannot be sold.
  - (h) Grills may be permitted in the right-of-way, subject to the limitations of this section. Smokers, fireplaces, fire pits, chimineas, and inflatable play structures are prohibited in the right-of-way.
  - (i) All waste and debris must be cleaned up and properly disposed of after the event ends. Public rights-of-way must be restored to the condition that existed prior to the commencement of the event.
  - (j) If complaints are received by the Police Department which are not satisfactorily resolved, the Police Department shall have the authority to revoke the permit and to terminate the event.
  - (k) A permit request may be denied if complaints have been received regarding

Special Events on the same street in the past, or if the applicant has failed to comply with the requirements of any City Permits in the past.

- (l) Special Events requiring a road closure shall not occur on holidays.
- E. Termination of an event. The City reserves the right to shut down a special event that is in progress if it is deemed a public safety hazard and/or public nuisance by police services and/or Fire Department and/or Emergency Management and/or there is a violation of City ordinances, state statutes or the terms of the applicant's permit. The City Clerk and/or his/her designee may revoke an approved special event permit. Note: there are also revocation, enforcement and penalties provided for in Article X in § 275-66, 275-67, 275-68, and 275-69. If the zoning permit/temporary use permit is revoked, there ceases to be an event.
- F. Denial of permit. No permit will be issued unless it is approved by all departments.
  - (1) The event will disrupt traffic within the City beyond practical solution.
  - (2) The event will create a likelihood of endangering the public.
  - (3) The event will interfere with access to emergency services.
  - (4) The location or time of the special event will cause undue hardship or excessive noise levels to adjacent businesses or residents.
  - (5) The event will require the diversion of City resources that would unreasonably affect the maintenance of regular City service levels.
  - (6) The application contains incomplete or false information.
  - (7) The application fails to provide proof of insurance when required.
  - (8) Inadequate provision for garbage or debris removal.
  - (9) Inadequate provision of temporary restroom facilities.
  - (10) Inadequate provisions for parking.
  - (11) A denial of a permit by the Parks Buildings and Grounds Commission where the event is no longer viable.
  - (12) A denial of a temporary use permit by the Department of Community Development or the Plan Commission/Community Development Authority.
  - (13) Applicant fails to submit the required fees and/or deposit.

## **SECTION XV**

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

## **SECTION XVI**

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

## **SECTION XVII**

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

**PASSED AND ADOPTED** by the Common Council this 23<sup>rd</sup> day of July, 2024.

APPROVED:

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David Ament, Mayor

Countersigned:

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Rubina Medina, City Clerk

**§ 152-4. Intoxicating liquor and fermented malt beverages.**

- A. State statutes adopted.
  - (1) The provisions of Ch. 125, Wis. Stats., describing and defining regulations with respect to alcohol beverages, exclusive of any provisions thereof relating to the penalty to be imposed, are hereby adopted and made a part of this section by reference. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this section. Any future amendments, revisions or modifications of the statutes incorporated herein are intended to be made a part of this section to secure uniform statewide regulation of alcoholic beverages. [Amended 8-22-2006 by Ord. No. 2328]
  - (2) The City Clerk is authorized to issue temporary Class "B" licenses, pursuant to § 125.26(6), Wis. Stats., to the Chamber of Commerce as defined under § 125.02(3u), Wis. Stats.; bona fide clubs; county or local fair associations or agricultural societies, churches, lodges or societies that have been in existence for at least six months before the date of application; and posts of veteran's organizations. The fee for such license shall be set by the Common Council. Application for temporary Class "B" shall be filed at least three days prior to issuance of the license. [Amended 11-10-2015 by Ord. No. 2556]
- B. License fees. [Amended 8-27-2013 by Ord. No. 2508; 11-10-2015 by Ord. No. 2556]
  - (1) Fermented malt beverages: see § 152-2.
  - (2) Fermented fruit beverages: see § 152-2.
  - (3) Intoxicating liquor: see § 152-2.
  - (4) Late filing fee. Any renewal liquor license application which is submitted after April 30 of the licensing year shall be assessed, in addition to any other fee provided for under this section, a late fee of \$100.
- C. Election to permit volume liquor sales. The City elects to come under the provision of § 125.51(3)(b), Wis. Stats.
- D. Premises must be business property. No license shall be issued hereunder for any premises which is not improved as business property, having a store or business front.
- E. Disclosure of offenses required. Every applicant for a retail Class "B" license and for an operator's license shall make full disclosure to the Council of any prior conviction of any violation of any state or federal law or any municipal ordinance, and applicants may be required to submit to fingerprinting at the option of the Police Department after that Department has conducted a background check.
- F. Closing hours.
  - (1) Sections 125-32(3) and 125.68(4), Wis. Stats., shall apply except that no premises for which a retail Class A intoxicating liquor license has been issued shall be permitted to remain open for the sale of intoxicating liquor between 9:00 p.m. and 8:00 a.m. The owner of the premises shall implement electronic cash register restrictions to preclude the sale of Class A intoxicating liquor during these hours and also shall establish procedures to require the verification of the age eligibility of each purchaser. [Amended 4-12-2011 by Ord. No. 2450]

- (2) Hotels and restaurants whose principal business is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, may remain open for the conduct of their regular business, but no intoxicating liquors or fermented malt beverages shall be sold or consumed during prohibited hours as specified in Subsection F(1).
- (3) Except as provided in Subsection F(2) above, no person other than employees of the licensee or persons performing business or repair services for the licensee shall remain on the licensed premises during any of the time during which the premises are required to be closed as provided in Subsection F(1). No open containers containing alcoholic beverages shall be permitted on the licensed premises during those hours the premises are required to be closed.

G. Regulation of underage persons.

- (1) Definition. An underage person is a person who has not attained the legal drinking age. [Amended 6-19-2001 by Ord. No. 2142]
- (2) Sale of liquor or beer to underage persons prohibited. No person shall sell or give any fermented malt beverage or intoxicating liquor to any underage person unless accompanied by an adult parent, guardian or spouse of legal drinking age.
- (3) Purchase or possession of beer or liquor by underage persons prohibited. No underage person shall purchase or receive, or have in his possession, any fermented malt beverage or intoxicating liquor unless accompanied by an adult parent, guardian or spouse of legal drinking age.

H. Prohibited practices and places of sale.

- (1) (Reserved)
- (2) No retail Class A license for the sale of intoxicating liquor beverages shall be used for any premises upon which fuel for motor vehicles is sold and directly dispensed into such motor vehicle. The retail Class A license for the sale of fermented malt beverages and intoxicating liquor may be issued for such a premises, provided the license holder submits a plan of operation at the time of the initial application or renewal thereof with a diagram or photograph of the proposed display area for fermented malt beverages and intoxicating liquor on premises upon which fuel for motor vehicles is sold. Such plan of operation shall be reviewed by the Committee of the Whole, which shall approve or disapprove of the same without referral to the Common Council. In addition to the other grounds for revocation set forth in this chapter, the failure to obtain approval of the plan of operation required hereunder shall be grounds for license revocation. It shall further be grounds for revocation if the holder of the liquor license fails to implement electronic cash register restrictions to preclude the sale of intoxicating liquor beverages after 9:00 p.m. and before 8:00 a.m. [Amended 1-23-2007 by Ord. No. 2337; 4-12-2011 by Ord. No. 2450]
- (3) No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway which serves as a safety exit and is not the primary entrance to the Class "B"

premises. No other business may be conducted on premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:

- (a) A hotel.
  - (b) A restaurant, whether or not it is a part of or located in any mercantile establishment.
  - (c) A combination grocery store and tavern.
  - (d) A combination sporting goods store and tavern in Towns, villages and fourth class cities.
  - (e) A combination novelty store and tavern.
  - (f) A bowling alley or recreation premises.
  - (g) A club, society or lodge that has been in existence for six months or more prior to the date of filing application for the Class "B" license or permit.
  - (h) A movie theater. [Added 11-10-2015 by Ord. No. 2556]
  - (i) A painting studio. [Added 11-10-2015 by Ord. No. 2556]
  - (j) Premises for which a temporary Class "B" license is issued under § 125.26(6), Wis. Stats.; if the license is one of multiple licenses issued by the municipality to the same licensee for the same date and times, the license is the sponsor of an event held at multiple locations within the municipality on this date and at these times, and an admission fee is charged for participation in the event and no additional fee is charged for service of alcohol at the event. [Added 11-10-2015 by Ord. No. 2556]
- (4) Restriction on sales in residential property. No license shall be issued to any person or entity for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling, house, flat or residential apartment. [Added 8-27-2013 by Ord. No. 2508]
- (5) ~~Abandonment of license. Any licensee granted or issued a license to sell alcohol beverages who abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or nonrenewal of any alcohol beverage license. In this section, "abandon" and "abandonment" shall mean a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the City Council for a period of one year. The Common Council may, for good cause shown, extend the period of permitted nonuse. [Added 8-27-2013 by Ord. No. 2508]~~ Abandonment of license. Any licensee granted or issued a license to sell alcoholic beverages who abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or nonrenewal of any alcohol beverage license. For purposes of this section, "abandon" and "abandonment" shall be defined as a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the Common Council for a period of 180 days or more individually or in the aggregate during the course of any one twelve-month period. In order for the

licensee to avoid a finding of abandonment their establishment must be actively operated for the sale of alcoholic beverages for consumption on site as provided for in the Class B License issued to the owner/operator, specifically the establishment shall be open for sale of alcohol to the public for consumption on site a minimum of 25 hours per week and the licensee must main stock of alcohol to operate the bar as a going concern and such beer/liquor shall be purchased from a wholesaler. The Common Council may, for good cause shown, extend the period of permitted nonuse.

- (6) Code compliance. No Class B license may be issued unless the premises in which the sale shall occur comply with and conform to all ordinances and health, sanitation and building regulations of the City, as well as the State of Wisconsin. [Added 8-27-2013 by Ord. No. 2508]
- I. Partnership and corporate licensees. Each application for a retail liquor license or a renewal thereof shall include, if a partnership, the names of all partners whether general or limited. Corporate applications shall include the exact name of the corporation, its principal place of business, its registered address, its registered agent, the names of its officers and all members of its board of directors. Each such partner, officer and director shall comply with the disclosure provisions of Subsection E of this section.
- J. Compliance. [Amended 8-27-2013 by Ord. No. 2508; 12-12-2017 by Ord. No. 2598]
  - (1) Prior to acting upon any application or renewal of an intoxicating liquor or fermented malt beverage license, the applicant shall have fully paid all personal property taxes, real property taxes, assessments and fees of the City, and the premises to be licensed shall fully comply with all applicable codes, ordinances, rules and regulations regarding building, electrical and plumbing components thereof. In addition, the applicant shall obtain all other permits required to occupy the licensed premises or to conduct the operations permitted under the license from any and all City departments or other governmental entities with jurisdiction.
  - (2) All applicants for renewal under this section shall, on or before April 30 of each year, demonstrate to the City's Committee of the Whole that such premises are fully in compliance with all applicable electrical, plumbing, building and zoning codes. Should the applicant fail to bring the building into compliance or fail to have scheduled a code inspection on or before April 30 of each year, in addition to nonrenewal of such license, the applicant shall pay an additional applicant fee as set by the Common Council prior to the application for renewal being considered by the Committee of the Whole.
- K. Certification. [Amended 8-28-2007 by Ord. No. 2355]
  - (1) Definition. For the purpose of this section, "premises" shall mean that portion of a building with an entrance and an exit to a public walkway or parking area for all or a portion of which a "Class A" intoxicating liquor license has been granted.
  - (2) Required. All holders of "Class A" liquor licenses shall be required, upon initial application and thereafter upon application for renewal, to certify to the City Clerk that percentage of the licensee's retail sales for the license holder which involves sales other than intoxicating liquors and fermented malt beverages.
  - (3) (Reserved)

(4) Partition and plan of operation.

(a) Partition. A license holder subject to the requirements of this section shall implement a crowd-control or other suitable barrier to preclude access to the merchandise area for the sale of intoxicating liquor and/or fermented malt beverage between the hours of 9:00 p.m. and 8:00 a.m. The license holder shall further be required to implement electronic cash register restrictions to preclude the sale of intoxicating liquor products during these hours, as well as procedures to require the verification of the age eligibility of the purchaser. [Amended 4-12-2011 by Ord. No. 2450]

(b) Plan of operation.

[1] All intoxicating liquor license holders shall submit a plan of operation at the time of initial application or renewal thereof, with a diagram or photograph of the proposed display area for intoxicating liquor. Such plan of operation shall be reviewed by the Committee of the Whole, which shall approve or disapprove the same, without reference to the City Council.

[2] In addition to other grounds for revocation as set forth in this chapter, failure to obtain approval of the plan of operation required hereunder shall be grounds for license revocation.

L. ~~Chief of Police~~ City Clerk to conduct investigation of applicants. Upon receipt of each application, the Clerk ~~will refer it immediately to the Chief of Police, who~~ will make and complete an investigation of the statements in such application and an investigation of each applicant within reasonable dispatch after the application has been filed with the ~~Chief of Police~~ City Clerk. The ~~Chief of Police~~ City Clerk shall endorse his findings upon the application ~~and deliver the application to the City Clerk.~~

M. Temporary extension of licensed premises for special event. [Added 5-28-2013 by Ord. No. 2502]

(1) The granting of a temporary extension of licensed premises for special events shall authorize the licensee to sell or serve intoxicating liquors or fermented malt beverages as permitted by the specific license held during the period of time and in the area described in the application for such temporary extension as expressly approved by the Common Council. Such authority is contingent upon and subject to the licensee obtaining any and all other special privileges and permits required for the conduct of the special event for which the temporary extension of the licensed premises is sought.

(2) Any person holding a valid Class "B" fermented malt beverage license, Class B tavern license or "Class C" wine license may apply for the temporary extension of such licensed premises for a special event. The area which the licensee wishes to include in a temporary extension of licensed premises must be owned by or under the control of the licensee. The signature of both the licensee and the owner of the property must both appear on the application. If the applicant seeks a temporary extension of the licensed premises such that the extended licensed premises would extend into or encroach upon any public property or public right-of-way, the applicants shall also be required to obtain the applicable special privilege for use of



said public property or right-of-way for the document authorized in the temporary extension of the licensed premises to be issued by the City Clerk. The applicant shall also be required to comply with all other applicable statutes and ordinances.

- (a) Applicant's responsibility. Application for the temporary extension of licensed premises for special events shall be made by an individual, or an authorized agent, in the case of a corporation, partnership or limited liability company, who shall be personally responsible for compliance with all of the terms and provisions of this section.
- (b) Application. The application for the temporary extension of licensed premises shall be filed not less than 15 days prior to the date upon which the applicant wishes the matter to be considered by the Common Council, which date shall be not less than two weeks prior to the proposed special event. Applications shall be made on forms provided by the City Clerk and must be signed and sworn to by the applicant, if an individual, one partner of a partnership or by a duly authorized agent, officer or member of a corporation or limited liability company. The application shall include the following:
  - [1] The name, business address and telephone number of the applicant.
  - [2] The address of the existing licensed premises.
  - [3] The type of license currently held.
  - [4] Specific description of the site for which the temporary extension is sought, including the dimensions of the area.
  - [5] The location of exits.
  - [6] The manner in which the licensed premises area will be restricted and screened from underage persons.
  - [7] The name of the particular event or function for which the temporary extension of the licensed premises is sought.
  - [8] The date and period of time for which the particular event or function will be operated.
  - [9] Such other reasonable and pertinent information as the Common Council may require.
- (c) The completed application should be submitted to the Common Council, which shall consider the matter. As part of the consideration process, the Common Council will consider:
  - [1] The appropriateness of the location site for which the permit is sought; and whether the event for which the permit is sought will create undesirable neighborhood problems.
  - [2] The hours during which the event will be operated at the site and the likely effect of the event on the surrounding area.

**Commented [KH1]:** Change from 15 days to 30 days

- [3] Whether previous permits granted to the same applicant or to other applicants for the same site have resulted in neighborhood problems, including, but not limited to, complaints of loud music, noise, litter, disorderly conduct, loitering, public urination or drunkenness, excessive refuse, parking in unpermitted locations, or such other factors as may reasonably relate to the public health, safety and welfare of the community.
- (d) If the Common Council approves the application for the temporary extension of licensed premises, the City Clerk shall issue a permit to the applicant confirming that fact and specifying the date, period of time and specific location for which the temporary extension shall be in effect. The document may also contain any restrictions or conditions which the Council may place on such approval. The City Clerk shall not issue the permit if the applicant has not obtained all of the required permits for the premises or final inspection of the premises has not yet occurred.
- (e) The licensee granted a temporary extension of licensed premises for special events may not sell any alcohol or non-alcohol beverages for consumption in bottles and glass containers at the location of the extension of licensed premises. Beverages may only be sold in single-service cups or cans for on-premises consumption in the location of the temporary extension of the licensed premises. [Amended 4-12-2016 by Ord. No. 2563]
- (f) The permit for the temporary extension of licensed premises may only be issued during the time that the applicant holds a valid liquor license otherwise from the City of New Berlin.
- (g) Each application for extension of licensed premises will be viewed upon its own merit, and the granting of the existing alcohol beverage license or previous temporary extension to the licensed premises will not guarantee the issuance of a new temporary extension of licensed premises.
- (h) The applicant shall obtain liability insurance coverage for the event and such coverage shall provide for the City of New Berlin to be named as an additional insured, which coverage shall be evidenced by a policy endorsement. Said endorsement shall be filed with the Municipal Clerk and shall evidence the liability insurance limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (i) In such instances where the event is recurring and there has been a previous approved extension of premises permit issued, the applicant may simply provide an application noting the fact that this is a recurring, previously approved event, and giving the basic information about the event, the date, location and specifics, together with a certificate of liability insurance.
- (j) Failure to comply with the terms of the extension of premises permit may result in revocation of the license by the Common Council and prosecution of any ordinance violations and a denial of all future applications for extension of premises. Such circumstances will be considered at the time of renewal of the existing underlying alcohol beverage permit.

- (k) Any request for reconsideration of the denial of the extension of premises permit must be submitted to the City Clerk and be made within five days of the date of denial.

N. Catering services. Those alcohol beverage licensees who operate what are commonly known as catering services shall comply with the following: [Added 8-27-2013 by Ord. No. 2508]

- (1) The licensee shall deliver alcohol beverages to an event only when the licensee supplies full food catering service for all guests or participants in the event.
- (2) No licensee shall deliver alcohol beverages for an event that is held upon the premises of another alcohol beverage licensee.
- (3) No licensee shall sell, deal or traffic any alcohol beverages except face-to-face with the purchaser on the licensed premises of the licensee. This provision shall not prevent nor prohibit the licensee from delivering goods to the buyer as an accommodation.
- (4) The licensee may supply personnel to dispense alcohol beverages at the catered event.
- (5) No person shall engage in the individual sale of alcohol beverages to be consumed by the glass at a catered event (cash bar) when the alcohol beverages have been supplied by a retail licensee.
- (6) The event where catering occurs shall not occur over a period exceeding three days.
- (7) The distribution of alcohol beverages at the catered event is subject to all the provisions of this section.

O. Reserve licenses. ~~[Added 8-27-2013 by Ord. No. 2508] If an applicant applies for less than a full license year or terminates their license before the end of a license year, the reserve license fee and any portions thereof will not be refunded, nor will they be prorated.~~

- ~~(1) Applicants for Class B reserve liquor licenses may also apply for a grant from the City to cover part of the cost of licensure. The amount of grant money any one applicant may receive, if any, is in the discretion of the Common Council, but in no event shall exceed \$9,500. Grants shall be considered a community development grant to promote businesses within the City of New Berlin that apply for and receive Class B reserve liquor licenses.~~
- ~~(2) Applicants for Class B reserve liquor licenses seeking said grant must submit a completed application to the City Clerk's Office. Said application must be signed and notarized and the application fee must be included. Notarized signatures are required of an individual applicant, a partner, a partnership or an agent or owner if it is a corporation or LLC. The applicant shall be required to explain how the grant will be used to benefit the economic climate of the City of New Berlin and to be eligible for a grant, an applicant must meet all standard requirements for liquor license approvals including obtaining an occupancy permit from the Department of Community Development.~~

~~(3) — Payment of reserve license fees. If an applicant applies for less than a full license year or terminates their license before the end of a license year, the reserve license fee and any portions thereof will not be refunded nor will they be prorated.~~

P. Provisional retailer licenses. [Added 1-13-2015 by Ord. No. 2535]

- (1) The City Clerk may issue, upon application, a provisional retailer license to a person who has applied for a retailer license for the sale of fermented malt beverages, intoxicating liquor or wine, Class A, Class B or Class C. Such provisional license shall only authorize those activities that the type of retailer license applied for authorizes and shall be subject to the applicant meeting all licensing requirements set forth in this chapter and Wis. Stats. § 125.185, as amended. A provisional license shall expire 60 days after its issuance or when the alcohol beverage retailer establishment license is issued to the holder, whichever is sooner. Such provisional license may not be renewed and may be revoked by the City Clerk if the Clerk determines that a false statement was made on the application. The issuance of a provisional Class B license is subject to the availability of the license based upon the quota limitations of Wis. Stats. § 125.51.

Q. ~~Sales of beer at City parks. Officers and employees of the City are authorized to sell beer in municipal parks operated by the City pursuant to the authority granted under § 125.06(6) of the Wisconsin Statutes. [Added 7-25-2023 by Ord. No. 2680] Alcoholic beverages on City property or public rights-of-way.~~

- ~~(1) — The sale of alcoholic beverages on City property or public rights-of-way is hereby prohibited except with an approved Special Event Permit. The sale of alcoholic beverages on City property for City-run events (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) does not require a Special Event Permit.~~
- ~~(2) — An exception to this prohibition would be sales by City of New Berlin Staff in Municipal Parks as permitted pursuant to Wisconsin Statute Sec. 125.06(6).~~
- ~~(3) — The prohibition against public consumption on City property and public rights-of-way is further limited where the City has issued an Extension of Premise Permit to a Class B alcohol beverage seller or where a Temporary Class B License has been issued.~~

Commented [KH2]: Reword for clarification

R. Initiation of license use and abandonment of licenses. [Added 7-25-2023 by Ord. No. 2680]

- (1) Initiation of license use. Within 180 days from the issuance of a Class B License, the licensee shall be open for business with adequate stock and equipment. If the business does not commence within such time, the license shall be subject to revocation by the Common Council after a public hearing. The Common Council may, for good cause shown, extend the deadline for initiation of the use of the license for up to a ninety-day period. Failure to commence doing business within 180 days (and any extension permitted by the Council thereto) from the issuance of the license constitutes cause for revocation under this chapter.
- (2) ~~Abandonment of license. Any licensee granted or issued a license to sell alcoholic beverages who abandon such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or nonrenewal of any alcohol beverage license. For purposes of this section, "abandonment" shall be defined as a continuing refusal or~~

~~failure of a licensee to use the license for the purpose or purposes for which the license was granted by the Common Council, which abandonment continues for a period of 180 days. The Common Council may, for good cause shown, extend the period of permitted nonuse. Abandonment of license. Any licensee granted or issued a license to sell alcoholic beverages who abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or nonrenewal of any alcohol beverage license. For purposes of this section, "abandon" and "abandonment" shall be defined as a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the Common Council for a period of 180 days or more individually or in the aggregate during the course of any one twelve-month period. In order for the licensee to avoid a finding of abandonment their establishment must be actively operated for the sale of alcoholic beverages for consumption on site as provided for in the Class B License issued to the owner/operator, specifically the establishment shall be open for sale of alcohol to the public for consumption on site a minimum of 25 hours per week and the licensee must main stock of alcohol to operate the bar as a going concern and such beer/liquor shall be purchased from a wholesaler. The Common Council may, for good cause shown, extend the period of permitted nonuse.~~

**§ 152-5. Direct sellers.**

- A. License required. No direct seller, or an employee of a direct seller, shall engage in direct sales within the City without being licensed for that purpose as provided herein. A copy of the direct sellers permit and mobile retail license shall be posted on the mobile unit for public view.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated: [Amended 6-19-2001 by Ord. No. 2142; 10-9-2018 by Ord. No. 2605]

**CLERK**

The City Clerk.

**DIRECT SELLER**

A person who sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such person, partnership, association or corporation, and failure to obtain approval of the plan of operation required hereunder shall be grounds for license revocation.

Commented [KH3]: Delete

**GOODS**

Personal property of any kind and provided incidental to services offered or sold.

**MOBILE VENDOR**

A person who offers goods or services for sale to the public without a permanently built structure but with a self-contained static structure by way of a vehicle or other transportation. Food trucks are considered mobile vendors.

**PERMANENT MERCHANT**

A direct seller who, for at least one year prior to the consideration of the application of this section to such merchant, has continuously operated an established place of business in this City or has continuously resided in this City and now does business from his residence.

- C. Exemptions. The following shall be exempt from all provisions of this section:
- (1) Any person delivering newspapers or selling newspaper subscriptions, fuel, dairy products or bakery goods to regular customers on established routes.
  - (2) Any person selling goods at wholesale to dealers in such goods.
  - (3) Any person selling agricultural products which such person has grown.
  - (4) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in his or her regular course of business.
  - (5) Any person who has an established place of business in the City where the goods being sold are offered for sale on a regular basis and in which the buyer has initiated contact with, and specifically requested a home visit by, such person.
  - (6) Any person who has had or represents a company which has had a prior business transaction, such as a prior sale or credit arrangements, with the prospective customer.

- (7) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (8) Any person who claims to be a permanent merchant but against whom complaint has been made to the Clerk that such person is a transient merchant, provided that there is submitted to the Clerk proof that such person has leased for at least one year, or purchased, the premises from which he/she is conducting business or proof that such person has conducted such business in this City for at least one year prior to the date complaint was made.
- (9) Any ex-soldier of the United States and any other disabled person who meets the requirements of § 440.51, Wis. Stats.
- (10) Any person selling Christmas trees.
- (11) Boy Scouts or Girl Scouts soliciting money or donations of money.
- (12) Any students, up to and through the 12th grade of primary or secondary school, who reside in Milwaukee and Waukesha Counties, in connection with authorized school programs and activities.
- (13) Any charitable organization, society, association or corporation which is recognized as a tax-exempt charitable organization by federal and state authorities. ~~Such charitable organizations, societies, associations or corporations shall be regulated as provided in § 152-6 of this chapter. [Amended 1-23-2007 by Ord. No. 2335]~~

~~D. Mobile vendors. [Amended 10-9-2018 by Ord. No. 2605]~~

~~(1) License requirement.~~

- ~~(a) All mobile vendors doing business in the City will be required to obtain a direct sellers permit.~~
- ~~(b) Obtain a mobile retail license from either the State of Wisconsin or from Waukesha County. A copy of this license shall be on file with the City of New Berlin Clerk's Office.~~
- ~~(c) A copy of the direct sellers permit and mobile retail license shall be posted on the mobile unit for public view.~~

~~(2) Parking.~~

- ~~(a) Vendors must follow all City parking regulations and posted signage.~~
- ~~(b) Vendors cannot block or restrict an individual's access to a business or residence or the driveways, alleys or access points to the parking areas for such locations.~~
- ~~(c) Vendors are prohibited from setting along the following rights-of-way, arterials and major thoroughfares at all times: Cathoun Road, Cleveland Avenue, Greenfield Avenue, Lincoln Avenue, Moorland Road, National Avenue, Howard Avenue, Beloit Road, Coffee Road, Lawnsdale Road, Janesville Road, Racine Avenue, College Avenue, Sunny Slope Road, 124<sup>th</sup> Street, Small Road, and Grange Avenue.~~

- ~~(d) Vendors are prohibited from selling within or along any City parks without the permission of the Parks, Buildings and Grounds Commission.~~~~(e) Vendors are prohibited from selling along residential streets without the permission of the City.~~

~~(3) Sales.~~

- ~~(a) It is prohibited to make any sales from the roadway median strip, safety island or on foot into any street or roadway, including any alleys where there is vehicular traffic.~~
- ~~(b) Food cannot be sold door to door.~~
  - ~~(c) Food cannot be sold between the hours of 10:00 p.m. and 7:00 a.m.~~
  - ~~(d) Vendors cannot place coolers on the ground or provide tables or chairs for their customers.~~
- ~~(e) No vendor shall use a power source from an adjacent building, and vendors must be self-contained.~~
- ~~(f) All waste shall be disposed of properly by the vendor; no organic waste shall be deposited into the City sanitary sewer system.~~

- ~~(4) Exemptions. Direct seller applicants wishing to sell on City property for City-run events (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt from the following provisions set forth in this chapter: § 152-5D(2)(d), (3)(c) and (3)(d). [Added 1-25-2022 by Ord. No. 2658]~~

~~E. Registration for license. [Amended 8-28-2007 by Ord. No. 2355; 10-9-2018 by Ord. No. 2605]~~

- ~~(1) Application. Applicants for a license shall complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:~~
  - ~~(a) Name, including middle initial, permanent address and telephone number and, if any, temporary address and telephone number.~~
  - ~~(b) Age, date of birth, height, weight and color of hair and eyes.~~
  - ~~(c) Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by or whose merchandise is being sold.~~
  - ~~(d) Temporary address and telephone number from which business will be conducted, if any.~~
  - ~~(e) Nature of business to be conducted and a brief description of the goods and any services offered.~~
  - ~~(f) Proposed method of delivery of goods, if applicable.~~
  - ~~(g) Make, model and license number of any vehicle to be used by the applicant in the conduct of his/her business.~~
  - ~~(h) Last cities, villages and/or towns, not to exceed three, where the applicant conducted similar business.~~



- ~~(i) Place where the applicant can be contacted for at least seven days after leaving this City.~~
- ~~(j) Statement as to whether the applicant has been charged or convicted of any crime or ordinance violation related to the applicant's transient merchant business, or any crime or ordinance violation pertinent to the safety of citizens, including, or of a similar nature to, fraud, burglary, robbery, assault or sexual assault, within the last five years, and a detailed explanation of the nature of the offense and place of conviction.~~
- ~~(2) Required documents. Applicants shall present the following to the Clerk for examination:~~
  - ~~(a) A driver's license, the number of which shall be recorded by the Clerk, or some other proof of identity as may be reasonably required.~~
  - ~~(b) A state certificate of examination and approval from the Sealer of Weights and Measures where the applicant's business requires use of weighing and measuring devices approved by state authorities.~~
  - ~~(c) (Reserved)~~
  - ~~(d) The applicant shall be given a copy of this section and shall sign a receipt therefor.~~
- ~~(3) Fee. At the time the registration is returned, a fee to cover the cost of processing the registration, as well as the required annual license fee, shall be paid to the Clerk. Such fees are stated in § 152-2 of this chapter.~~

D. License requirement.

- ~~(1) Direct Sellers Permit. All mobile vendors doing business in the City will be required to obtain a direct sellers permit. The following information shall be provided:~~
  - ~~(a) Application. A completed application shall contain the following information:~~
    - ~~[1] Name, including middle initial, permanent address and telephone number and, if any, temporary address and telephone number.~~
    - ~~[2] Age, date of birth, height, weight and color of hair and eyes.~~
    - ~~[3] Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by or whose merchandise is being sold.~~
    - ~~[4] Contact information for the business, including temporary address, phone number and/or website.~~
    - ~~[5] Nature of business to be conducted and a brief description of the goods and any services offered.~~
    - ~~[6] Proposed method of delivery of goods, if applicable.~~
    - ~~[7] Make, model and license number of any vehicle to be used by the applicant in the conduct of his/her business.~~

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- [8] Last cities, villages and/or towns, not to exceed three, where the applicant conducted similar business.
- [9] Place where the applicant can be contacted for at least seven days after leaving this City.
- [10] Statement as to whether the applicant has been charged or convicted of any crime or ordinance violation related to the applicant's transient merchant business, or any crime or ordinance violation pertinent to the safety of citizens, including, or of a similar nature to, fraud, burglary, robbery, assault or sexual assault, within the last five years, and a detailed explanation of the nature of the offense and place of conviction.

(b) Driver's license, or other proof of identity.

(c) Fees. At the time the registration is returned, a fee to cover the cost of processing the registration, as well as the required annual license fee, shall be paid to the Clerk. Such fees are stated in § 152-2 of this chapter.

Commented [KH5]: Reword for clarification

[1] An additional fee shall be collected for Direct Sellers operating on or along City property for non-City sponsored events.

(2) Obtain a mobile retail license from either the State of Wisconsin or another jurisdiction. A copy of this license shall be on file with the City of New Berlin Clerk's Office.

E. General regulations for Mobile vendors.

(1) Parking.

(a) Vendors must follow all City parking regulations and posted signage. Overnight parking within the city limits is not permitted unless the mobile vendors place of business is a registered New Berlin business.

(b) Vendors cannot block or restrict an individual's access to a business or residence or the driveways, alleys, or access points to the parking areas for such locations.

(c) Operating within the public right-of-way.

[1] Vendors are prohibited from selling along the following rights-of-way, arterials and major thoroughfares at all times: Calhoun Road, Cleveland Avenue, Greenfield Avenue, Lincoln Avenue, Moorland Road, National Avenue, Howard Avenue, Beloit Road, Coffee Road, Lawnsdale Road, Janesville Road, Racine Avenue, College Avenue, Sunny Slope Road, 124<sup>th</sup> Street, Small Road, and Grange Avenue.

[2] Vendors are prohibited from selling within public right-of-way along single family residential streets without a special event permit. Mobile vendors shall be limited to operate a maximum of 6 days per year along such streets. Vendors must provide written evidence of the consent of all immediately adjacent property owners.

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(d) Operating on or along City property.

- [1] ~~Approval from the Parks, Buildings and Grounds Commission is required for Direct Sellers operating on or along City property. Direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt.~~
- [2] ~~An additional fee shall be collected for each event the Direct Seller is operating on or along City property. This additional fee shall not apply to direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.).~~
- (e) ~~Operating on private property.~~
  - [1] ~~No more than 2 mobile vendors are allowed to operate on private property at any given time, unless approved as part of a special event permit.~~
  - [2] ~~For properties directly adjacent to single family residential zoning districts, excluding the right-of-way, no more than 1 mobile vendor is allowed to operate on private property at any given time, unless approved as part of a special event permit. Mobile vendors shall be limited to operate a maximum of 6 days per year on such property. Vendors must provide written evidence of the consent of all immediately adjacent property owners.~~
  - [3] ~~The vehicle utilized by mobile vendors shall be setback a minimum of 50' from the lot line, excluding the right-of-way, of a lot with an existing restaurant or business which sells food prepared on site. The vehicle shall provide a trash receptacle and remove all trash from the site upon the conclusion of the event.~~
- (2) ~~Sales.~~
  - (a) ~~It is prohibited to make any sales from the roadway median strip, safety island or on foot into any street or roadway, including any alleys where there is vehicular traffic.~~
  - (b) ~~Food cannot be sold door to door.~~
  - (c) ~~Mobile vendors may only operate between 7:00 a.m. and 10:00 p.m. Direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt.~~
  - (d) ~~Vendors cannot place coolers on the ground or provide tables or chairs for their customers. Direct seller applicants operating on City property as part of a City-run event (i.e., Fourth of July Festival, Beer Gardens, Winterfest, etc.) shall be exempt.~~
  - (e) ~~No vendor shall use a power source from an adjacent building, and vendors must be self-contained.~~
  - (f) ~~All waste shall be disposed of properly by the vendor; no organic waste shall be deposited into the City sanitary sewer system.~~

Commented [KH7]: Delete

Commented [KH8]: Delete

(g)

**Commented [KH9]:** Add "The vehicle shall provide a trash receptacle and remove all trash from the site upon the conclusion of the event."

- F. Investigation. [Amended 10-9-2018 by Ord. No. 2605]
- (1) City Clerk to conduct. Upon receipt of each application, the Clerk will conduct a background check via the background check vendor as approved by the City Clerk. The City Clerk will review the findings upon the application and shall issue or deny the license in accordance with such findings. When the license is issued, the applicant shall pay an annual license fee as set by the Common Council, and the license shall be valid for one year from the date of issue. [Amended 1-25-2022 by Ord. No. 2658]
  - (2) Denial of license. The Clerk shall refuse to issue a license to the applicant if it is determined, pursuant to the investigation above, that:
    - (a) The application contains any material omission or materially inaccurate statement.
    - (b) Complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three, in which the applicant conducted similar business.
    - (c) The applicant was convicted of a crime, statutory or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling or is a violation pertinent to the safety of citizens, including, or of a similar nature to, fraud, burglary, robbery, theft, assault and sexual assault.
    - (d) The applicant failed to comply with any applicable provision of Subsection D(2) above.
- G. Appeals. Any person denied a license may appeal the denial to the City Council. [Amended 10-9-2018 by Ord. No. 2605]
- H. Regulation of direct sellers. [Amended 8-12-2008 by Ord. No. 2384; 10-9-2018 by Ord. No. 2605]
- (1) Prohibited practices.
    - (a) A direct seller shall be prohibited from calling at any dwelling or other place between 8:00 p.m. and 9:00 a.m., except by appointment.
    - (b) A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents.
    - (c) No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
    - (d) No direct seller shall make any loud noises or use any sound-amplifying device to attract customers if the noise produced is capable of being plainly heard outside a 100-foot radius of the source.

- (e) No direct seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
- (f) No permit holder under this section shall call at any dwelling or in any way solicit at a dwelling where a sign has been posted indicating that solicitation is generally not permitted or is restricted to particular hours. Such sign shall be placed in a location reasonably calculated to provide notice of this restriction to the direct seller. [Amended 9-24-2019 by Ord. No. 2623]

(2) Disclosure requirements.

- (a) After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.
- (b) If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction if it involves the extension of credit or is a cash transaction of more than \$25; in accordance with the procedure as set forth in § 423.203, Wis. Stats., the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of § 423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.
- (c) If the direct seller takes a sales order for the later delivery of goods, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement; the amount paid in advance, whether full, partial or no advance payment is made; the name, address and telephone number of the seller; the delivery or performance date; and whether a guaranty or warranty is provided and, if so, the terms thereof.
- (d) Any person licensed under this section shall carry his license with him while engaged in licensed activities and shall display such license to any police officer or citizen upon request.

I. Records. The Chief of Police shall report to the Clerk all convictions for violation of provisions of this section and the Clerk shall note any such violation on the record of the registrant convicted. [Amended 10-9-2018 by Ord. No. 2605]

J. Revocation of license. [Amended 10-9-2018 by Ord. No. 2605]

- (1) Registration may be revoked by the City Council, after notice and hearing, if the registrant made any material omission or materially inaccurate statement in the application for registration; made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales; violated any provisions of this section; or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling or is a violation pertinent to the safety of citizens, including, or of a similar nature to, fraud, burglary, robbery, theft, assault and sexual assault.

- (2) Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.
- K. Minor employment laws adopted. Except as otherwise specifically provided in this chapter, the statutory provisions in §§ 103.21, 103.23 and 103.25, Wis. Stats., describing and defining regulations with respect to the employment of minors are hereby adopted and by reference made a part of this chapter as if fully set forth herein. [Amended 10-9-2018 by Ord. No. 2605]
- L. Use and occupancy. If a direct seller shall occupy or use vacant land or a building, use and occupancy permits shall be obtained pursuant to the provisions of Chapter 275, Zoning, of this Code. [Amended 10-9-2018 by Ord. No. 2605]
- M. Term. The term of the direct seller license shall be one year from the date of its issuance. Any renewal of the license shall require reapplication and review as provided for hereunder. [Added 8-28-2007 by Ord. No. 2355; 10-9-2018 by Ord. No. 2605]
- N. Suspensions of license. Registration may be suspended by the City Clerk pending the determination by the Common Council of the revocation of a license where the City Clerk has credible evidence that the registrant is engaged in conduct which has or may jeopardize the safety of citizens such as perpetrating a fraud or commitment of a burglary, robbery, theft, assault or sexual assault. Written notice of the suspension shall be served personally upon the registrant or, if the registrant cannot be found despite reasonable attempts to serve him/her, the notice may be tendered the registrant at the address given in its application for the direct seller license. [Added 9-27-2016 by Ord. No. 2574; amended 10-9-2018 by Ord. No. 2605]



**§ 152-6. ~~Charitable solicitors. Reserved.~~**

A. ~~Permit required. Any charitable organization, society, association or corporation may solicit upon obtaining a permit subject to the regulations and conditions herein provided. Such solicitation may be for money, donations of money or property, in public places, or in private places that are not posted against such solicitation. The applicant shall furnish the City Clerk a sworn application which shall give the following information:~~

- ~~(1) Name of the organization.~~
- ~~(2) Proof that the applicant is recognized as a tax-exempt charitable organization by federal and state authorities.~~
- ~~(3) The name and address of the officers of the organization.~~
- ~~(4) The dates during which the solicitation is to be conducted.~~
- ~~(5) If an organization, a copy of the resolution authorizing the solicitation.~~
- ~~(6) Total amount of funds proposed to be raised and the use and disposition thereof.~~
- ~~(7) Identity and address of person in charge.~~
- ~~(8) Name and address of person who will disburse receipts.~~
- ~~(9) Outline of method of solicitation.~~
- ~~(10) Estimated cost of solicitation in dollars and percentage of amount collected.~~
- ~~(11) (Reserved)[1]~~

~~[1] Editor's Note: Subsection A(11), amount of wages and fees, was repealed 1-23-2007 by Ord. No. 2335.~~

- ~~(12) Financial statement for last preceding fiscal year.~~
- ~~(13) Documents showing the amounts distributed in the last fiscal year by the organization for its charitable purposes as well as the percentage that amount represents of the total amounts collected. If the organization has been in operation less than one year, a statement of the preceding operating month may be substituted in its place.~~
- ~~(14) A statement that the license will not be used or in any way represented as an endorsement by the City.~~

B. ~~Processing procedure.~~

- ~~(1) At the time the application is submitted to the City Clerk, a fee shall be paid to the Clerk to cover the cost of processing the application. Such fee may be waived by the City Council.~~
- ~~(2) The applicant shall be given a copy of this section and shall sign a receipt therefor.~~



(3) ~~Chief of Police to conduct investigation of solicitors. Upon receipt of each application, the Clerk will refer it immediately to the Chief of Police, who will make and complete an investigation of the statements in such application and an investigation of each representative of the organization and each solicitor within one week after the application has been filed with the Chief of Police. The Chief of Police shall endorse his findings upon the application and deliver the application to the City Clerk.~~

~~C. Issuance of permit. Upon being satisfied that the applicant is a qualified charitable organization, that the costs of solicitation do not exceed 50% of the total collected and that none of the solicitors have been convicted of a felony, misdemeanor or other offense, the circumstances of which substantially relate to the activity of engaging in charitable solicitations, the City Clerk shall issue a license without charge except for the application fee. If not so satisfied, the City Clerk shall, within 10 days of filing, refer the application to the Common Council. Upon being satisfied that the applicant is a qualified charitable organization, that the costs of solicitation do not exceed 50% of the total collected and that none of the solicitors have been convicted of a felony, misdemeanor or other offense, the circumstances of which substantially relate to the activity of engaging in charitable solicitations, the Common Council shall order the City Clerk to issue the license. If not so satisfied, the Common Council shall deny the application.~~

~~D. Regulations for charitable solicitors. No charitable solicitor shall solicit:~~

~~(1) In groups of more than two persons for each residence called upon;~~

~~(2) By holding out that the City permit is an endorsement of the solicitation in any way;~~

~~(3) On the traveled portion of any public street;~~

~~(4) Before 9:00 a.m. or after 9:00 p.m., but in no situation shall a charitable solicitor solicit for more than 14 nonconsecutive days in a calendar year;~~

~~(5) On any premises, whether residential, commercial or industrial, that is posted in such a manner as to prohibit solicitation. Any sign or poster that contains the words "No Soliciting," "No Peddlers" or "No Peddlers or Solicitors," or a combination thereof, shall constitute a prohibition under this section;~~

~~(6) By remaining on premises after being requested to leave by the owner or occupant, or any member of his family. The solicitor shall leave immediately and without protest;~~

~~(7) On the grounds or in the buildings of any private or public school without the prior consent of the school authorities;~~

~~(8) Outside of the authorized solicitation period, nor within 12 months thereafter;~~

~~(9) By affixing a flower, pin or medallion, or similar device, to the person of another without the prior consent of such person;~~

- ~~(10) By refusing to make change for a bill or coin of a larger denomination than the donor wishes to contribute, or by keeping more than the donor wishes to contribute.~~
- ~~(11) Inside the public library, police station or fire station.~~
- ~~(12) Inside the City Hall, in City parks or in or upon any other City-owned or -operated property, without the permission of the Mayor and City Council, who shall designate the areas, times and duration of solicitation, which shall not exceed two weeks for any one organization in a calendar year.~~
- ~~(13) At a dwelling where a sign has been posted indicating that solicitation is generally not permitted or is restricted to particular hours. Such sign shall be placed either below the house street number or attached to or suspended from the mail box.~~



**§ 152-9. Loudspeakers.**

- A. No person shall operate any loudspeakers or sound-amplifying devices in open-air theaters, places of amusement, upon the public highways or elsewhere within the City without first obtaining a permit therefor from the ~~Chief of Police City Clerk~~.
- B. Application for such permit shall be made in writing to the ~~Chief of Police City Clerk, and if he is satisfied that such~~. If the loudspeaker and sound-amplifying device will be operated at such volume and be so located as not to constitute a public nuisance, ~~he may issue a permit therefor a permit may be issued~~.
- C. This section does not apply to public address systems and sound amplifiers operated within buildings which are completely enclosed so that the sound amplification does not cause disturbance outside of the building.
- D. Any amendment to a permit issued under this section shall require Common Council approval. In the event that any amendment to an existing permit is issued, City Clerk shall so advise the Chief of Police of that change. [Added 8-28-2007 by Ord. No. 2355]
- E. Loudspeaker Permits may only be issued for use between the hours of 9:00 a.m. and 11:00 p.m. Loudspeaker Permits outside of these hours may only be issued with the approval of the Common Council.
- F. Amplified music or noise being generated pursuant to a Permit under this Section shall only be permitted to the extent that it does not cause unreasonable disturbance to residents and businesses in the surrounding area. In the event the Police Department determines, in its reasonable discretion, that noise or music is causing an unreasonable disturbance to residents and businesses in the surrounding area, the Police Department shall have the authority to revoke the Permit and the noise/music being generated under the Permit must immediately cease.
- A. \_\_\_\_\_

Commented [KH10]: Delete

Commented [KH11]: Add "Noise shall comply with the standards set forth in Chapter 275-60 of the Zoning Code and/or the Special Event Permit."



**§ 152-23. Special event permit.** [Added 7-24-2018 by Ord. No. 2610]

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

**~~CLASS I~~**

~~A special event which may have the attributes of a Class II event but in addition meet the following criteria: more than 500 people (any/all personnel, including volunteers, vendors and attendees) attend; one or more roadways will need to be blocked off (The City Clerk may determine the event to be a Class II depending on the closure and the size of the event); City resources and/or staff are to be utilized beyond their normal required duties. Any activities under Class II permits are permissible under the Class I permit.~~

**CLASS I**

A special event as outlined in DHS 110.44(20r) with more than 5,000 people, including personnel, volunteers, vendors, and attendees. Some of the following may also occur:

- City resources and/or staff are to be utilized beyond their normal required duties
- alcohol is sold or served as a publicly open event
- the event will include amplified music or outdoor entertainment
- any direct or indirect charge for food, merchandise or services
- donations are solicited/collected

**~~CLASS II~~**

~~A special event in which more than 150 people (This includes any/all personnel, volunteers and attendees.) and any of the following occurs: alcohol is sold or served as a publically open event; the event will include amplified music or outdoor entertainment; any direct or indirect charge for food, merchandise or services; donations are solicited/collected:~~

**CLASS II**

A special event with 501-5,000 people, including personnel, volunteers, vendors, and attendees. Some of the following may also occur:

- City resources and/or staff are to be utilized beyond their normal required duties
- alcohol is sold or served as a publicly open event
- the event will include amplified music or outdoor entertainment
- any direct or indirect charge for food, merchandise or services
- donations are solicited/collected

**CLASS III**

A special event with 151-500 people, including personnel, volunteers, vendors, and attendees. Some of the following may also occur:

- alcohol is sold or served as a publicly open event
- the event will include amplified music or outdoor entertainment
- any direct or indirect charge for food, merchandise or services
- donations are solicited/collected

**CLASS IV**

A special event with 150 people or less, including personnel, volunteers, vendors, and attendees.

#### **SPECIAL EVENT**

Is any event held in the City that requires the use of public streets, rights-of-way, sidewalks or City property or are otherwise likely at the discretion of the City to create substantial impacts on the operations of the City, surrounding neighbors or neighborhoods. Special events include but are not limited to sporting events, festivals, fairs, parades, walks, runs/marathons, bike-a-thons, races, markets, block parties, exhibitions, motion picture filming and other events similar in nature. "Special events" can also be classified as any event that may require public safety and City services above and beyond their normal functions. Events held on private property that are open to the public may require a special event permit if the event has a significant impact on the City's operations and residents:

#### **SPECIAL EVENT**

An event held in the City that requires the use of public streets, rights-of-way or sidewalks, or are otherwise likely at the discretion of the City to create substantial impacts on the operations of the City, surrounding neighbors or neighborhoods. Special events include but are not limited to sporting events, festivals, fairs, parades, walks, runs/marathons, bike-a-thons, races, markets, block parties, exhibitions, motion picture filming and other events similar in nature. Special events can also be classified as any event that may require public safety and City services above and beyond their normal functions. Events held on private property that are open to the public may be classified as a special event if there is a significant impact on the City's operations and residents.

- B. Permits required: Special Event Permit. No person or organization shall conduct a special event as defined herein within the City of New Berlin without first having obtained a Special Event Permit. Permits are valid only for the dates, times and locations specified in the permit application. This provision shall apply to all events proposed after the date of the adoption of this section, regardless of if the event is a reoccurring event within the City.
- (1) — No person or organization shall conduct a special event as defined herein within the City of New Berlin without first having obtained a special event permit. Permits are valid only for the dates, times and locations specified in the permit application. This provision shall apply to all events proposed after the date of the adoption of this section, whether or not the event in question has been a reoccurring event within the City.
  - (2) — A park rental permit may be required depending on the special event location and is available through the Recreation Department.
  - (3) — Permits for vendors. All vendors operating as part of a special event permit obtained under this section shall obtain and display a direct sellers permit and abide by the provisions under § 152-5 of the Municipal Code. Food trucks and mobile vendors are also required to obtain a direct sellers permit under this section.
  - (4) — Charitable solicitors. All charitable solicitors operating as part of a special event permit obtained under this section shall obtain and display a charitable solicitors permit and abide by the provisions under § 152-6 of the Municipal Code.
  - (5) — Permits for sale of beer/wine. The sale of beer and/or wine requires a temporary Glass "B" license available through the City Clerk's office and there must be either a licensee or a person holding an operator's license on site in accordance with §§ 125.17(1), 125.32(2), and 125.68(2), Wis. Stats.

- ~~(6) — Loudspeaker permit. Special events containing amplified music are required to obtain a loudspeaker permit from the Police Department and abide by the provisions under § 152-9 of the Municipal Code. Any variance to the hours outlined in this permit must be approved by the Common Council.~~
- ~~(7) — Fireworks. Special events using fireworks must obtain a permit from the Fire Department and requires Common Council approval. Fireworks permit applicants must abide by the provisions under § 124-121 of the Municipal Code.~~
- ~~(8) — Road closures. Special events requiring a road closure must obtain a road closure permit from the Police Department.~~
- ~~(9) — A zoning permit from the department of Community Development and/or the Plan Commission to the extent required under Chapter 275 of the Municipal Code.~~
- ~~(10) — Sign permit(s) shall be applied for with the department of Community Development pursuant to Municipal Code § 275-61.~~

C. Application.

- (1) Application requirements. An application will be considered complete if it contains all the information required under this section.
  - ~~(a) — Application for a Class I special event permit shall be filed with the City Clerk's office at least 90 days prior to the proposed event. (An application will not be deemed to have been filed until it is complete and contains all of the information required under this section.)~~
  - ~~(b) — Application for a Class II special event permit shall be filed with the City Clerk's office at least 45 days prior to the proposed event.~~
  - ~~(c) — Permit fees shall be set from time to time by resolution of the Common Council.~~
  - ~~(a) — Application timing.~~
    - ~~[1] — Class I Special Event Permits shall be filed with the City Clerk's office at least 120 days prior to the proposed event.~~
    - ~~[2] — Class II Special Event Permits shall be filed with the City Clerk's office at least 90 days prior to the proposed event.~~
    - ~~[3] — Class III Special Event Permits shall be filed with the City Clerk's office at least 45 days prior to the proposed event.~~
    - ~~[4] — Class IV Special Event Permits shall be filed with the City Clerk's office at least 14 days prior to the proposed event.~~
  - ~~(b) — Fees. Fees are established by the Common Council and shall be on file in the City Clerk's Office. The City Clerk may waive the permit fees for public agencies, nonprofit agencies or as deemed appropriate by the City Clerk.~~
  - ~~(c) — Deposits for Class I Events. Application fee in the form of a deposit shall be submitted to the City for all Class I events. The deposit shall be used to cover City staff review, planning time and coordination to review the application itself and through the completion of the event. Staff will use their direct billable hours to debit the submitted deposit amount. Should the~~



deposit itself go down to zero, the applicant shall replenish the deposit to the original amount. Any remaining deposit funds after the permit is issued or denied shall be returned to the applicant. The deposit will start at \$1,000.

- (d) The application shall include the following:
- [1] The name, address and phone number of the person, entity or organization sponsoring the event.
  - [2] The name and address of the special event sponsor's contact or agent.
  - [3] The name, date, time and location of the event in question.
    - [a] Special events in residential neighborhoods may require notification of adjacent neighbors.
  - [4] A description of the event and its purpose.
  - [5] The estimated maximum number of participants, spectators and vendors at the proposed event. If the event is a multi-day event, it should be noted the estimated attendance per day.
  - [6] Whether alcohol will be sold or served at the event.
  - [7] Whether food and/or merchandise will be sold at the event.
  - [8] Plans and description of the following, as necessary for the event:
    - [a] Amplified music or entertainment and the hours;
    - [b] Fireworks;
    - [c] Closure. ~~The use~~ of public streets or rights-of-way meeting the requirements of §230-6 of the Municipal Code;
    - [d] Parking size and location;
    - [e] Electricity and lighting plan;
    - [f] Erecting tents, canopies or temporary structures;
    - [g] Temporary fencing locations;
    - [h] Waste/recycling collection and disposal;
    - [i] Portable restrooms and hand wash stations.
  - [9] Additional items to consider:
    - [a] Additional security personnel;
    - [b] Emergency plan for inclement weather;
    - [c] Potable water for consumption on site;
    - [d] Medical/first aid kits.
  - [10] Certification that by signing the application, the applicant is authorized to act on behalf of the event sponsor(s).

- [11] Applicant's acknowledgement that by signing and submitting the application, they accept and comply with the provisions of § 152-23D.

(2) Application process.

~~(a) Upon receipt of an application for a permit, the City Clerk shall immediately distribute the complete application to the following departments for review: Police, Fire, Buildings and Grounds, Recreation, Community Development and Streets. Department review and comments shall be returned to the City Clerk within 15 days of distribution of the application.~~

~~(b) Permit review:~~

- ~~[1] The City Clerk shall review all comments and recommendations provided by the departments and determine if the event requires Board or Commission approvals. The City Clerk will follow up with the applicant to ensure the appropriate licenses and permits are obtained for the event.~~
- ~~[2] The Department of Community Development will review applications to determine if a temporary use permit may be required according to Chapter 275 of the Municipal Code. Additionally, Plan Commission or the Community Development Authority approval may be required for an event that is not customarily a permitted use under the current zoning of the property.~~
- ~~[3] The City Clerk will send any permits that pertain to the sale of alcohol, merchandise, or food on City property to the Parks, Buildings and Grounds Commission for approval.~~
- ~~[4] Common Council approval may be required depending on the size and scope of the special event.~~
- ~~[5] The City Clerk will issue or deny the permit dependent on whether the applicant has fulfilled the requirements as set forth by the Departments and, if applicable, the boards and commissions.~~

~~(a) Facility Rental Permit.~~

- ~~[1] Special events held on City Property shall obtain a Facility Rental Permit from the Recreation Department prior to applying for a Special Event Permit.~~
- ~~[2] Approval from the Parks, Buildings and Grounds Commission is required for Facility Rentals requiring a Special Event Permit.~~

~~(b) Temporary Use Approval Permit.~~

- ~~[1] Special events on private property may require a Temporary Use Approval Permit from the Department of Community Development prior to applying for a Special Event Permit. Applicants shall abide by the provisions of §275-43 of the Municipal Code.~~
- ~~[2] Approval from the Plan Commission/CDA may be required.~~

(c) Special Event Permit.

- [1] Within three business days of receipt of an application, the City Clerk shall distribute the complete application to the following departments for review and recommendation: City Attorney, Police, Fire, Public Works, and Community Development. Department review and comments shall be returned to the City Clerk within 15 days of distribution of the application.
- [2] Common Council approval may be required depending on the size and scope of the special event.

(d) Direct Sellers Permit.

- [1] All vendors, including mobile vendors, operating on City Property, public rights-of-way, and/or private property shall obtain a Direct Sellers Permit from the Clerk's Office. The permit shall be displayed. Vendors shall abide by the provisions of §152-5 of the Municipal Code.
- [2] Approval from the Parks, Buildings and Grounds Commission is required for Direct Sellers operating on City property.

(e) Temporary Class B Retailer's License.

- [1] The sale of beer and/or wine on City Property, public rights-of-way, and/or private property is prohibited unless the applicant can secure a Temporary Class B Retailer's License from the Clerk's Office. There must be either a licensee or a person holding an operator's license on site in accordance with §§ 125.17(1), 125.32(2), and 125.68(2), Wis. Stats. Applicants shall abide by the provisions of §152-4 of the Municipal Code.
- [2] Approval from the Parks, Buildings and Grounds Commission is required for all vendors selling beer and/or wine on City property.

(f) Loudspeaker Permit.

- [1] Special events containing amplified music on City Property, public rights-of-way, and/or private property shall obtain a Loudspeaker Permit from the Clerk's Office. Applicants shall abide by the provisions of §152-9 of the Municipal Code.
- [2] Approval from the Common Council is required for any variance to the hours outlined in this permit.

Commented [KH12]: Delete

(g) Fireworks Permit.

- [1] Special events using fireworks on City Property, public rights-of-way, and/or private property shall obtain a Fireworks Permit from the Fire Department. Applicants shall abide by the provisions of §124-12G of the Municipal Code.
- [2] Approval from the Common Council is required for fireworks.

(h) Sign Permit.

[1] ~~Signs on City Property, public rights-of-way, and/or private property shall obtain a Sign Permit from the Department of Community Development. Applicants shall abide by the provisions of §275-61 of the Municipal Code.~~

[2] ~~Approval from the Plan Commission/CDA is required for any sign waivers.~~

(i) ~~Inspection Permits.~~

[1] ~~Obtain the necessary building, plumbing and electric permits from the Department of Community Development.~~

(j) ~~Fire Department Permits.~~

[1] ~~Obtain necessary permits for tents, canopies, and temporary structures over 120 square feet from the Fire Department.~~

D. Permit conditions.

- (1) Liability insurance. ~~For a Class I or Class II event, the~~ group sponsoring the event is required to supply the City with a certificate of liability insurance at least 30 days prior to the event. The certificate shall be written on a per-occurrence basis, and while the amount of coverage will vary depending on the size and nature of the event, the minimum coverage required by the City is \$1,000,000 and \$2,000,000 in the aggregate. The City also requires evidence of a policy endorsement naming the City of New Berlin and any and all of its officers and employees as an additional insured on a primary and noncontributory basis. ~~The City Clerk may waive the insurance requirement depending on the size and scope of the event.~~
- (2) Indemnification. The applicant and event sponsor(s) shall agree to hold the City, its officers, employees, agents and contractors harmless against all claims, liability, loss, damage or expense (including but not limited to actual attorney's fees) incurred by the City for any damage or injury to person or property caused by or resulting directly or indirectly from the activities for which the permit is granted. Any change to coverage requires City approval.
- (3) City services. All requests by the applicants for City services must be made at the time of application. The applicant shall be responsible for reimbursement to the City for any city personnel, services, equipment, and facilities provided for the special event. Reimbursement costs shall be calculated to include wages, overtime and fringe benefits and is due within 30 days of receipt of invoice. The City reserves the right to require full or partial payment of estimated costs in advance. All permit, signage and barricade costs are due prior to the special event. ~~City Clerk will prepare an invoice based on the City resources required for the event.~~
- (4) Cleaning/damage deposit. The applicant may be required to submit to the City a deposit ~~of \$200 for a Class I event~~ depending on the size and number of attendees. The deposit will be refunded to the applicant after an inspection of the premises is conducted and the City determines there is no loss or cleaning costs. The applicant shall be fully responsible for necessary cleanup associated with the permitted event, which must be completed no later than 12 hours after the conclusion of the

event. The City reserves the right to retain the entire deposit if cleanup is not satisfactorily completed in the time frame specified.

(a) A deposit of \$5,000 shall be submitted for a Class I Special Event.

(b) A deposit of \$200 shall be submitted for a Class II Special Event.

(5) Site requirements.

(a) All tents, canopies or temporary structures over 120 square feet require approval from the Department of Community Development ~~Department approval~~ and must apply for a permit with the Fire Department.

(b) Electricity requirements will be reviewed by the Department of Community Development ~~Department's Inspection Services~~ to determine if an inspection is needed. Electric service must meet all City of New Berlin Code requirements.

(c) Attendees and staffing shall not exceed the maximum number; which can reasonably attend at the location of the special event.

(d) It is the responsibility of the special event sponsor for arranging any inspections required to meet these standards or requirements prior to the event. Any fees for such inspections shall be the responsibility of the special event sponsor.

(e) No staking or poles other than fasteners may be placed in any City street.

(f) Special events requiring a road closure shall comply with §230-6 of the Municipal Code.

(6) Notification to residents. The City may require that the permit holder provide written notice 15 days<sup>1</sup> in advance of the special event to any property owners or tenants as determined during the City department's<sup>2</sup> review. Notice shall include the type of event, name of the special event sponsor(s), date, time and location, event coordinator's name and contact information during the event.

(7) Class IV Special Events. The following regulations shall apply for Class IV Special Events, including Neighborhood Block Parties:

(a) An applicant that requests the blockading of a public street, but only for a period of less than 12 hours and for recreational purposes.

(b) The applicant shall provide evidence of written consent of not less than 80% of the property owners abutting the portion of the street to be closed. The applicant is also required to provide evidence that all abutting property owners have been advised of the request for closure.

(c) The blockade of a public street may only be of a neighborhood street, not City arterials. The applicant shall be required to provide a map showing the portion of the City street to be closed and where the barricades will be placed.

(e) Applicant must be the owner of a property on the street where the block party is to be held and must assume responsibility under the permit for the event and compliance with all City Ordinances, the clean-up of the public

right of way after the event and that all City barricades are returned within 48 hours of the end of the event.

- (f) Barricades to close the street must remain in place at all times during the block party; however, the applicant must ensure that a drive lane through the blockaded street area of not less than 15' in width shall be provided so that all City emergency service vehicles are able to access property within the blocked street.
- (g) If alcohol is being served at the event, it may be to only persons of age and there must be no providing of alcohol to any uninvited guests. No alcohol can be sold to any person.
- (h) Grills may be permitted in the right-of-way subject to the other limitations of this section. However, smokers, fireplaces, fire pits and chimineas are prohibited. Inflatable play structures are also prohibited from being within the public right-of-way.
- (i) All waste and debris must be cleaned up and properly disposed of after the event ends. Public rights-of-way must be restored to the condition that existed prior to the commencement of the event.
- (j) If complaints are received by the Police Department which are not satisfactorily resolved, the Police Department shall have the authority to revoke the permit and to terminate the event.
- (k) A permit request may be denied if complaints have been received regarding Class IV Special Events on the same street in the past, or if the applicant has failed to comply with the requirements of any City Permits in the past.
- (l) Class IV Special Events shall not occur on holidays.

**Commented [KH13]:** Reword for clarification for any special event requiring a road closure

- E. Termination of an event. The City reserves the right to shut down a special event that is in progress if it is deemed a public safety hazard and/or public nuisance by police services and/or Fire Department and/or Emergency Management and/or there is a violation of City ordinances, state statutes or the terms of the applicant's permit. The City Clerk and/or his/her designee may revoke an approved special event permit. Note: there are also revocation, enforcement and penalties provided for in Article X in § 275-66, 275-67, 275-68, and 275-69. If the zoning permit/temporary use permit is revoked, there ceases to be an event.
- F. Denial of permit. No permit will be issued unless it is approved by all departments.
  - (1) The event will disrupt traffic within the City beyond practical solution.
  - (2) The event will create a likelihood of endangering the public.
  - (3) The event will interfere with access to emergency services.
  - (4) The location or time of the special event will cause undue hardship or excessive noise levels to adjacent businesses or residents.
  - (5) The event will require the diversion of City resources that would unreasonably affect the maintenance of regular City service levels.
  - (6) The application contains incomplete or false information.

- (7) The application fails to provide proof of insurance when required.
- (8) Inadequate provision for garbage or debris removal.
- (9) Inadequate provision of temporary restroom facilities.
- (10) Inadequate provisions for parking.
- (11) A denial of a permit by the Parks Buildings and Grounds Commission where the event is no longer viable.
- (12) A denial of a temporary use permit by the Department of Community Development or the Plan Commission/Community Development Authority.
- (13) Applicant fails to submit the required fees and/or deposit.



# Code Committee MEETING MINUTES

June 27, 2024 - 2:30 PM  
Council Chambers  
3805 S. Casper Dr.

*Please note: Minutes are unofficial until approved at the next scheduled meeting.*

## MINUTES

### 1. CALL MEETING TO ORDER

Mayor Ament called the meeting to order at 2:44PM

### 2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Community Relations Specialist Joelle Erickson took the roll call as follows:

Present: Mayor Ament, Commissioner McGrath

Excused: Alderperson Joseph Stribl

Staff Present: Deputy Director of Community Development Nikki Jones, Principal Planner Kristen Hogan, City Clerk Rubina Medina, Community Relations Specialist Joelle Erickson, Deputy City Clerk Megan Godshall, Director of Community Development Greg Kessler

### 3. APPROVAL OF MINUTES

#### A. December 6, 2023 Meeting Minutes

**MOTION:** Motion to Approve Minutes

**VOTE:** Motion by: Mayor Ament  
Second by: Commissioner McGrath  
Motion Passes 2-0

### 4. NEW BUSINESS

#### A. KH DCD1-2302102 Municipal Code Updates - Chapter 152

The following edits were made by the Code Committee to Chapter 152 of the Municipal Code:

152-4M(2)(b):

- Change from 15 days to 30 days

152-4Q(3):

- Reword for clarification

152-5B:

- Remove "and failure to obtain approval of the plan of operation required hereunder shall be grounds for license revocation" from the definition of a direct seller.

152-5D(1)(a)(2):



- Remove

152-5D(1)(c):

- Reword for clarification

152-5E(1)(c)(2):

- Remove "Mobile vendors shall be limited to operate a maximum of 6 days per year along such streets. Vendors must provide written evidence of the consent of all immediately adjacent property owners."

152-5E(1)(e)(2):

- Remove "Mobile vendors shall be limited to operate a maximum of 6 days per year on such property. Vendors must provide written evidence of the consent of all immediately adjacent property owners."

152-5E(1)(e)(3):

- Remove

152-5E(2)(g):

- Add "The vehicle shall provide a trash receptacle and remove all trash from the site upon the conclusion of the event."

152-9:

- Eliminate A through F
- Add "Noise shall comply with the standards set forth in Chapter 275-60 of the Zoning Code and/or the Special Event Permit."

152-23C(2)(f):

- Eliminate

152-23D(7):

- Reword for clarification for any special event requiring a road closure

**MOTION:** Motion to Approve as presented with changes

**VOTE:** Motion by: Commissioner McGrath  
Second by: Mayor Ament  
Motion Passes 2-0

## 5. OLD BUSINESS

None

## 6. ADJOURN

**MOTION:** Motion to Adjourn at 4:06PM

**VOTE:** Motion by: Commissioner McGrath  
Second by: Mayor Ament  
Motion Passes 2-0

***Respectfully Submitted,  
Joelle Erickson, Community Relations Specialist***



# MOTION SHEET

**TO:** Common Council  
Mayor Ament  
Ald. Stribl

**FROM:** Plan Commission

**DATE:** July 23, 2024

**RE:** July 15, 2024, Plan Commission items requiring Common Council action

|    |                                                                                                                                                                                                  |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. | (5) NJ LD-2400261 City of New Berlin - 15321 W. National Avenue (Tax Key #: 1207.965.003) - Discussion and possible action to recommend to Common Council approval of 2-Lot Certified Survey Map |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Council Motion:**

**This item was considered at the Plan Commission meeting on July 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to Common Council approval of the 2-Lot Certified Survey Map for the properties located 15321 W. National Avenue (Tax Key #: 1207.965.003) subject to the application, plans on file and the conditions per the Staff Report**

|    |                                                                                                                                                                                                                                      |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B. | (5) NJ LD-2401009 Daniel Meier with Lynch & Associates on behalf of Debra Bitz - 4310 S. Moorland Road (Tax Key #: 1243.997) - Discussion and possible action to recommend to Common Council approval of 2-Lot Certified Survey Map. |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Council Motion:**

**This item was considered at the Plan Commission meeting on July 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to Recommend to Common Council approval of the 2-Lot Certified Survey Map located at 4310 S. Moorland Road (Tax Key #: 1243.997) subject to the application, plans on file and the conditions per the Staff Report.**

|    |                                                                                                                                                                                                                                                                              |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C. | (4) KH UA-2300546 John Holborow with Rock Ridge Developers, LLC – 5276 S. Moorland Road – Use, Site and Architectural approval for Caribou Coffee - Request for site modifications, release of the Cross Access Easement, and amendment to CSM No. 12233 (Approved 5/8/2023) |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



**Council Motion:**

**This item was considered at the Plan Commission meeting on July 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to Recommend DENIAL of the site modifications, release of the Cross Access Easement, and amendment to CSM No. 12233 for Caribou Coffee located at 5276 S. Moorland Road subject to the application, plans on file and the reasons per the Staff Report.**

---

# STAFF REPORT EXECUTIVE SUMMARY

---

**APPLICANT/PROJECT:** City of New Berlin / CSM

**LOCATION:** 15321 W. National Avenue (Tax Key #: 1207.965.003)

**REQUEST:** 2-Lot Certified Survey Map

**REVIEW SCHEDULE:** CSM Received:  
Completeness Determination:  
90-day time limit expires:  
Final Common Council Action (expected):

**D.R.C. RECOMMENDATION:** Recommend to Common Council approval of the 2-Lot Certified Survey Map for the properties located 15321 W. National Avenue (Tax Key #: 1207.965.003) subject to the application, plans on file and the following conditions:

1. Applicant shall correct all drafting, technical errors and requested changes identified by Staff on the final CSM prior to the City signing.
2. A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
3. Waukesha County approval required.
4. The CSM shall be recorded with Waukesha County Register of Deeds prior to the issuance of any new zoning or building permits.
5. Applicant and/or new property owners shall apply for and obtain appropriate building, plumbing and electrical permits prior to any construction on any parcel.
6. All easements that need to be added, relocated or vacated shall be reflected on the CSM where appropriate before recording.
7. Per PUD Ordinance # 2631, Section III, (9) (c) There is shared parking amongst the parcels owned respectively by Burghardt LLC and the City even though each use would have dedicated parking as identified by their own lot configuration and plan of operation. Said shared parking shall be subject to a separate reciprocal easement and maintenance agreement between the parties. This agreement shall be amended to include a parking allocation for this parcel. Parking will be reviewed at the time of future Use, Site and Architecture applications on the new parcel.
8. Direct access to National Avenue is restricted.

**DETAILS IN ATTACHED STAFF REPORT:**

**CITY OF NEW BERLIN**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**PLAN COMMISSION STAFF REPORT**

Meeting of July 15, 2024

---

**City of New Berlin, 2-Lot Certified Survey Map**  
**15321 W. National Avenue (Tax Key #: 1207.965.003)**

---

**DATE STAFF REPORT PREPARED:** June 7, 2024

**APPLICANT / OWNER(S):** City of New Berlin

**REQUEST / DESCRIPTION OF PROJECT:** Approval of the 2-Lot Certified Survey Map located at 15321 W. National Avenue (Tax Key #: 1207.965.003).

**DATE OF APPLICATION / DATE FILED WITH CITY CLERK:** June 7, 2024

**DATE OF COMPLETENESS DETERMINATION:** June 26, 2024

**PRE-APPLICATION CONFERENCE HELD:** Yes

(Date(s) of Meeting(s): several meetings, counter visits and phone calls / Staff Site Visit: Numerous site visits.

**CONCEPTUAL PLAN:** CSM attached.

**SIZE OF DEVELOPMENT / PARCEL(S):** Current Lot: 4.005 Acres

**CURRENT ZONING:** B-1/PUD

**CURRENT LAND USE:** City of New Berlin Activity and Recreation Center

**PROPOSED ZONING:** N/A

**PROPOSED LAND USE:** Commercial Development

**PROPOSED LOT SIZES:** Current Lot: 4.0050 Acres

Lot #1: 3.756 Acres (City of New Berlin Activity and Recreation Center)

Lot # 2: 0.273 Acres

**PROPOSED DENSITY:** N/A

**ADJACENT ZONING AND LAND USE:**

|                              |                                                                  |
|------------------------------|------------------------------------------------------------------|
| North: Zoning: B-1/B-2       | Land Use: Shopping Center (US Bank/Sendik's Shopping Center)     |
| South: Zoning: B-1 & B-1/PUD | Land Use: Commercial (Burghardt Sporting Goods/ Moorland Square) |
| East: Zoning: B-2/PUD        | Land Use: Commercial/Residential (Residences at City Center)     |
| West: Zoning: B-1            | Land Use: Commercial (Several Banks/Office Space)                |

**CONFORMANCE WITH THE 2030 COMPREHENSIVE PLAN AND MUNICIPAL CODE:** Yes

**Chapter 15: Neighborhood "E": City Center Mixed Use Commercial:** Yes, this request meets the intent of this Chapter. Planning Context / Vision / Development Policies:

***Vision:***

- *National Avenue should be an exemplary model of a suburban commercial corridor. Vehicular and pedestrian traffic should coexist in a safe and efficient manner through prominent pedestrian facilities and managed vehicular access.*
- *Public streetscape improvements should be coordinated with private landscaping and site design.*

**Development Policies:**

- *Emphasize building and parking orientation, with more uniform setbacks and at least some parking encouraged on the side or to the rear of buildings.*
- *Focus on completing the “retrofit” of the National Avenue/Moorland Road intersection to provide a mixed use, central point for the city. Retrofitting refers to the gradual upgrading of an area, without wholesale demolition. For example, new sidepaths, crosswalks, lighting and landscaping can be installed to enhance existing sites. Existing buildings can be renovated, and new buildings can be constructed as infill.*

**Land use:**

- Future Land Use Map: City Center Mixed Use Commercial

**ZONING CODE (Chapter 275):** Yes, this request is consistent with Sections 275-34B(1) and 275-39B(1) of the Zoning Code.

**PUD Ordinance # 2631 – City of New Berlin Redevelopment Plan / Burghardt LLC PUD):** Yes

**DEVELOPMENT CODE (CHAPTER 235):** Yes

**REZONING REQUIRED:** No

**CONDITIONAL USE REQUIRED:** No

**PUBLIC HEARING REQUIRED:** No

**USE / SITE / ARCHITECTURAL REVIEW:**

**Use Approval Required:** No, the applicant is not proposing any changes at this time.

**Site Plan Required:** Yes, a Certified Survey Map was submitted.

**Architectural Review Required:** No

**PROPOSED ARCHITECTURE:** N/A

**UNIQUE SITE CHARACTERISTICS:**

**Environmental Corridor:** No

**Wetland On Property:** No

**Conservancy Districts (C-1, C-2):** No

**NRCS Map Classification:** Not inventoried.

**Floodplain:** No

**Topography / Geologic:** The overall site is flat. There is a steep grade change from National Avenue to the parking lot.

**BIKE & PEDESTRIAN FACILITIES PLAN:** Yes, an existing sidepath is located along National Avenue.

**PARK & OPEN SPACE PLAN:** None identified.

**NATURAL RESOURCES PROTECTION:**

**Limits of Disturbance (LOD):** N/A

**Woodland, Tree, and Vegetation Protection:** N/A

**Wildlife Habitat Protection:** N/A

**Wildlife Management Plan:** N/A

**STORMWATER MANAGEMENT / DRAINAGE PLAN:** Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development. No proposed changes at this time.

**SANITARY SEWER PROVISION:**

**Within Current Sewer Service Area:** Yes

**Basin Capacity Available:** Yes  
**Adequate Linkage:** Yes  
**Onsite System Required:** No

**WATER USAGE CALC.:** Not applicable.

**TRAFFIC IMPACT:** A Traffic Impact Study was not required for this CSM.

**SCHOOL DISTRICT IMPACT:** N/A

**PREVIOUS ACTION:**

|            |                                                                                                                                                       |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9/29/2003  | Walmart re-occupied the space and added onto the building. Zoning Permit #U-45-03 was issued on this date. Prior to that Kmart occupied the building. |
| 4/13/2020  | Plan Commission held a public hearing on the PUD Rezoning (Ordinance # 2631).                                                                         |
| 5/4/2020   | Plan Commission approved PUD Rezoning (Ordinance # 2631). (Application File #: RZ-2000329)                                                            |
| 5/4/2020   | Plan Commission approved the CSM between the City of New Berlin and Burghardt Sporting Goods. (Application File #: LD-2000328).                       |
| 5/12/2020  | Common Council approved the CSM between the City of New Berlin and Burghardt Sporting Goods. (Application File #: LD-2000328).                        |
| 5/12/2020  | Common Council approved PUD Rezoning (Ordinance # 2631). (Application File #: RZ-2000329)                                                             |
| 12/14/2020 | Plan Commission approved Phase I of the ARC.                                                                                                          |
| 2/7/2022   | Plan Commission approved Phase II of the ARC.                                                                                                         |

**CONSISTENCY WITH PREVIOUS ACTION:** Yes

**FINDINGS:**

1. Per PUD Ordinance #2631, Section III (4) Parcels of land subject to this PUD Ordinance may be configured in any manner by Subdivision, CSM or meets and bounds transfer subject to city review and approval.
2. Per PUD Ordinance #2631, Section III (9)(2) Parking & Circulation:
  - a. There is shared parking amongst the parcels owned respectively by Burghardt LLC and the City even though each use would have dedicated parking as identified by their own lot configuration and plan of operation. Said shared parking shall be subject to a separate reciprocal easement and maintenance agreement between the parties. These agreements are being updated to provide parking for this proposed new lot. Parking will be located on the City's lot (Lot 1).
3. Per the Reciprocal Easement, Party Wall and Maintenance Agreement recorded as document number 4504051 on 8/24/2020, Section 4.3:
  - b. *The parties acknowledge that the Parcel 1 Owner may develop or allow to be developed the area depicted on the Site Plan, Exhibit 2 as "Future Building Area" for an additional structure on Parcel 1. As set forth on the Site Plan, Exhibit 2, the footprint of such additional structure shall not exceed five thousand square feet and the height of such additional structure shall not exceed two stories or twenty feet above the existing grade of National Avenue. The Parcel 1 Owner agrees to harmonize the size and architecture of said structure with the existing buildings on the site.*
4. The City of New Berlin is proposing to sell ~11,892 square feet of land for commercial development.

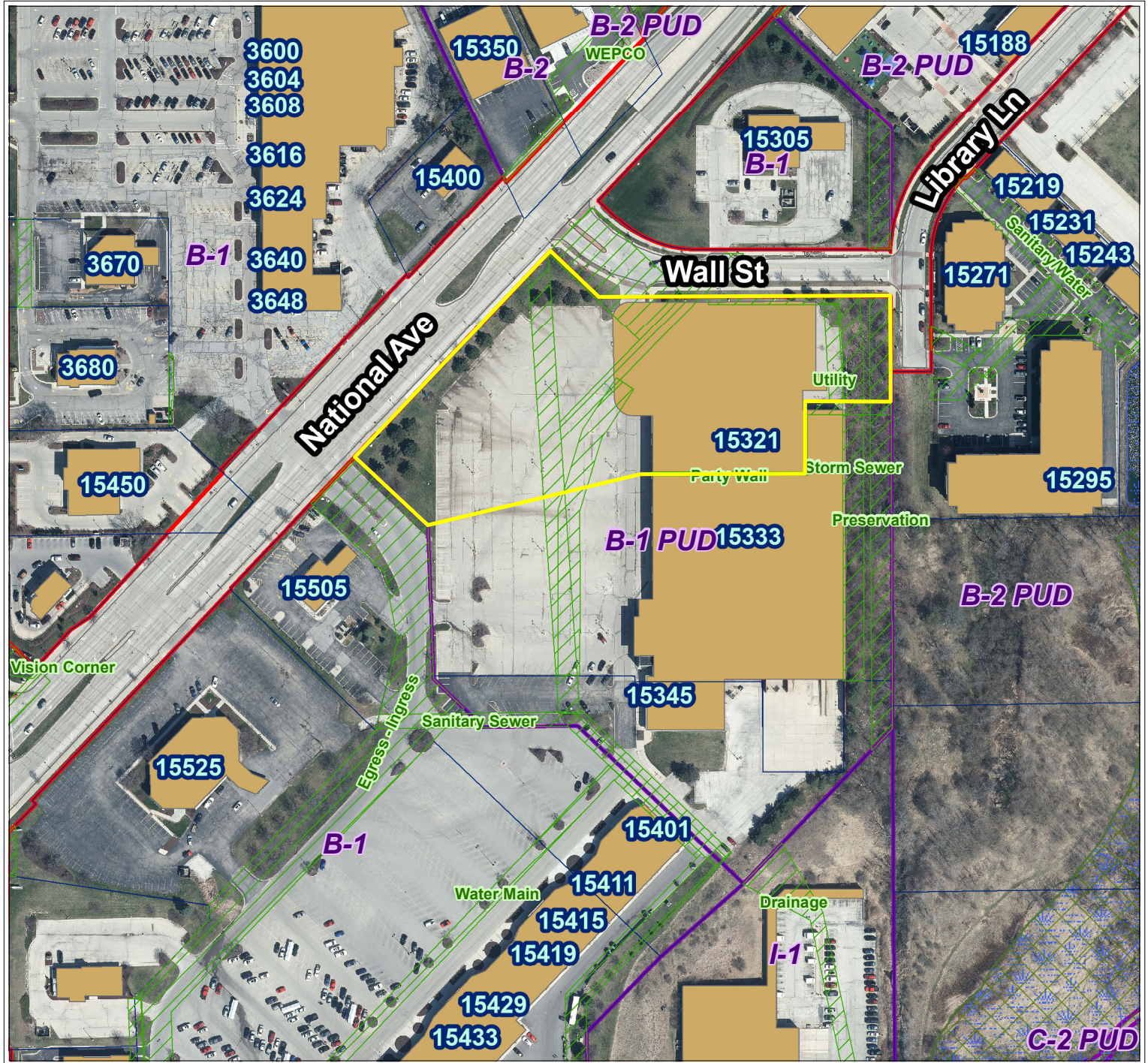
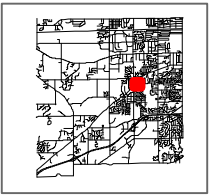
**STAFF RECOMMENDATION:** Recommend to Common Council approval of the 2-Lot Certified Survey Map for the property located 15321 W. National Avenue (Tax Key #: 1207.965.003), subject to the application, plans on file and the following conditions: **See Executive Summary.**

**ATTACHMENTS:**

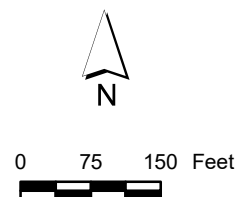
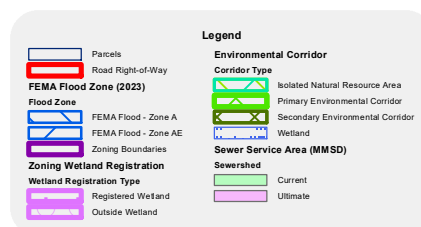
Location Map  
CSM



LD-2400261  
City of New Berlin 2-Lot CSM  
15321 W. National Ave.



City of New Berlin  
Department of Community Development  
3805 S Casper Dr.  
New Berlin WI 53151  
(262) 797-2445  
www.newberlin.org



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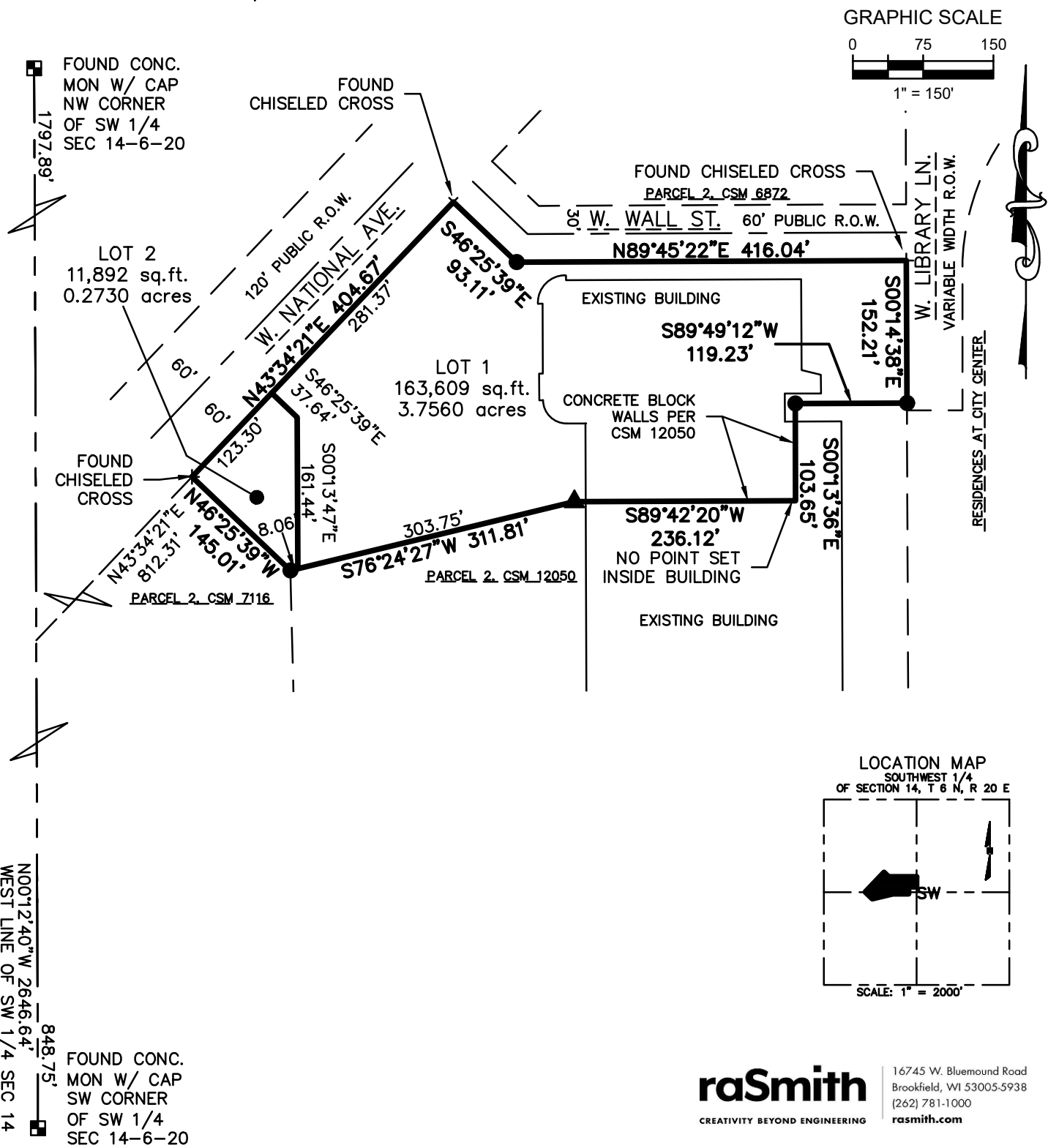


CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

- ▲ INDICATES FOUND MAG NAIL
- INDICATES FOUND 1" IRON PIPE

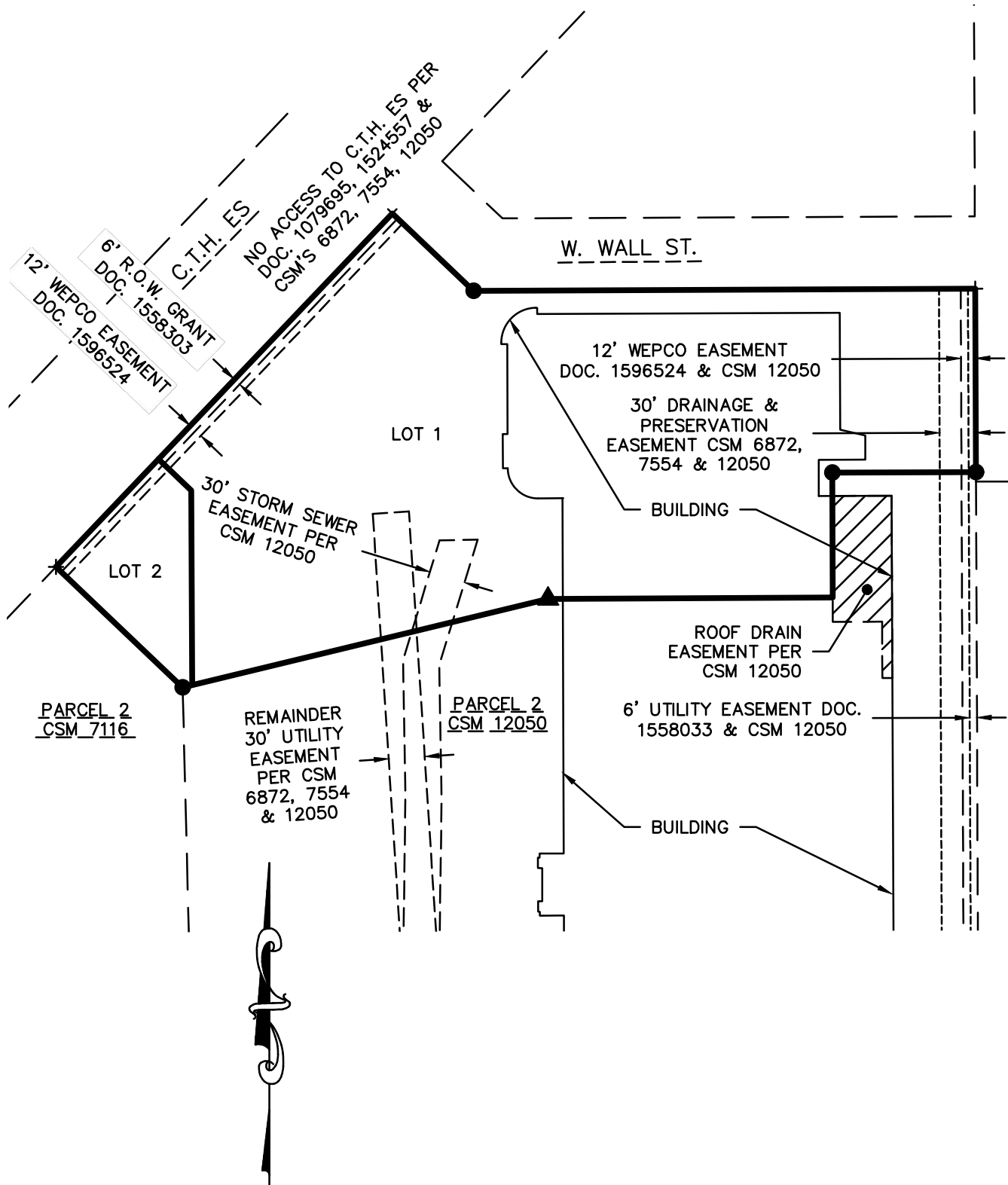
ALL DIMENSIONS SHOWN ARE MEASURED TO THE NEAREST HUNDREDTH OF A FOOT.  
ALL BEARINGS ARE REFERENCED TO THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 14, T 6 N, R 20 E, WHICH BEARS NORTH 00°12'40" WEST. WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE.



CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

Dimensioning of existing Easements are required by Wisconsin State Statute 236.20(2)(c) per 236.34(c). Easements dimensions are approximate, and are not intended to supersede the intent, location or verbiage as stated in the original Easement creation documents.



## GRAPHIC SCALE


$$1'' = 120'$$

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**raSmith**  
CREATIVITY BEYOND ENGINEERING

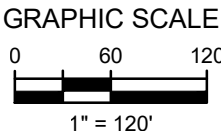
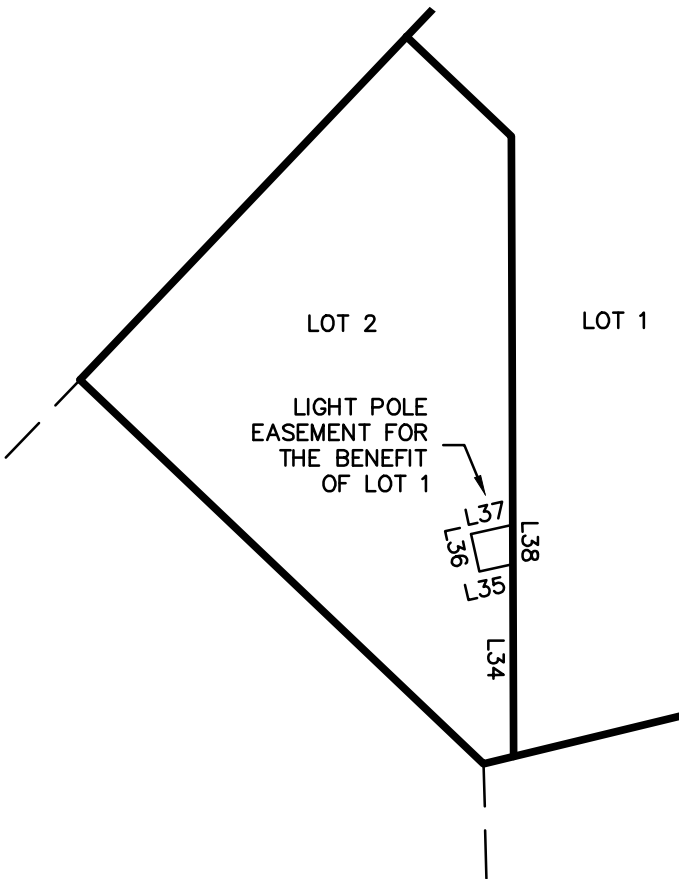
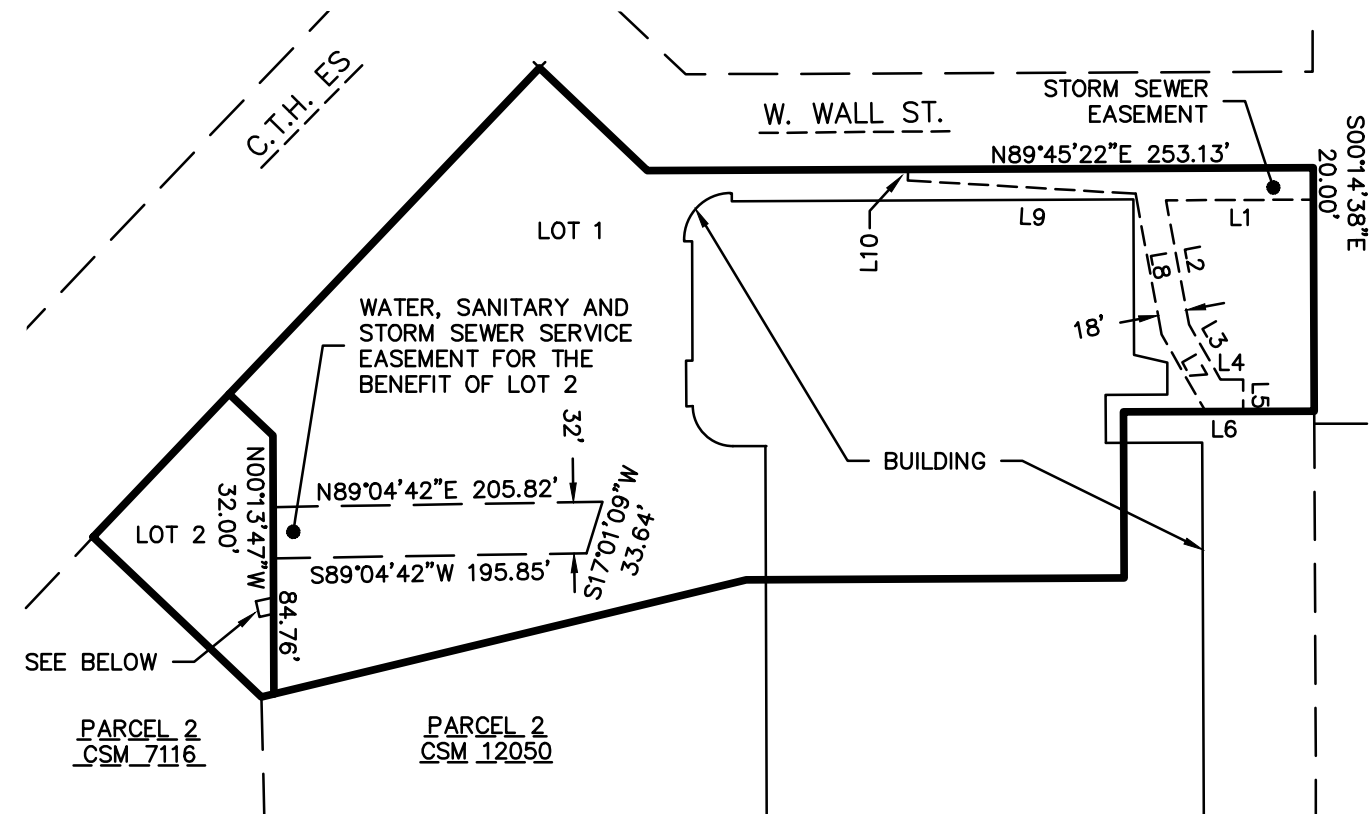
16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000  
**rasmith.com**

Sheet 2 of 8 Sheets

7

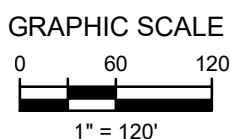
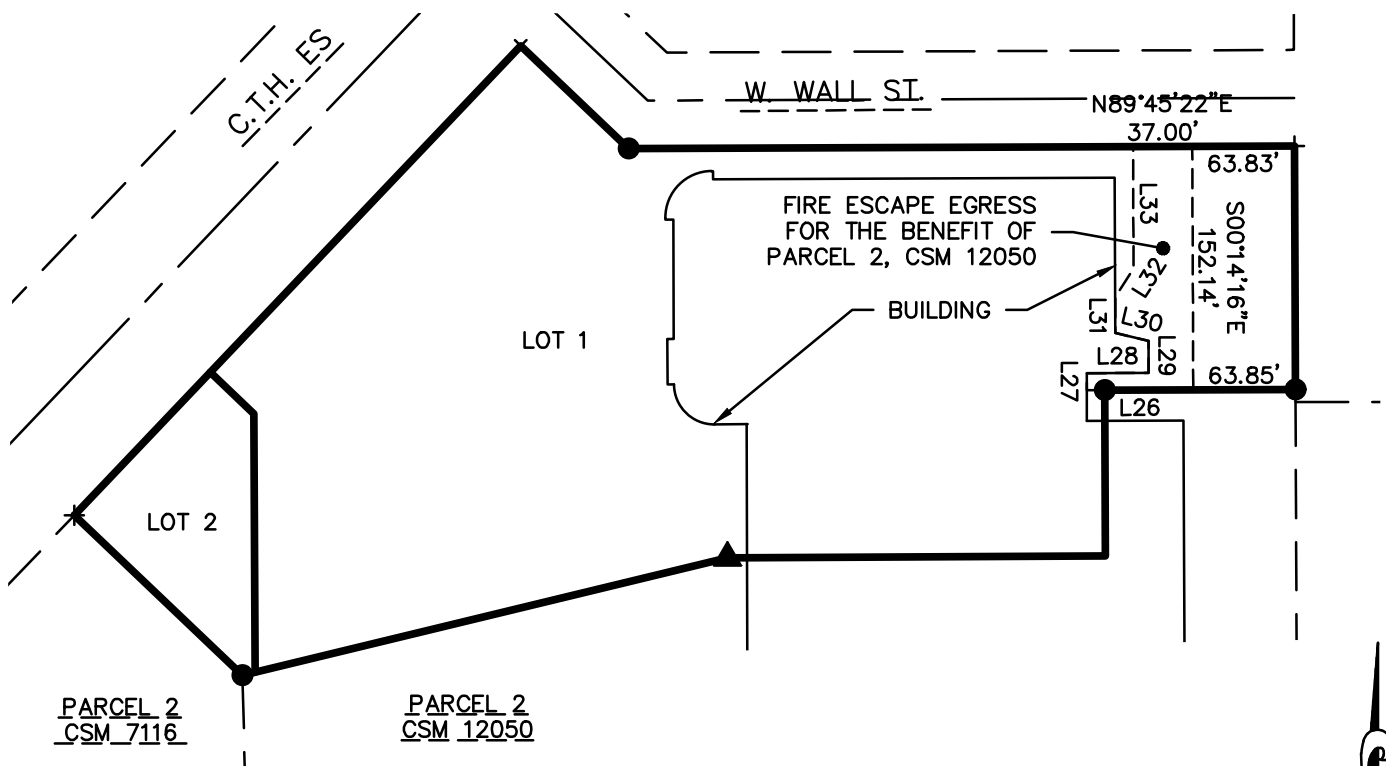
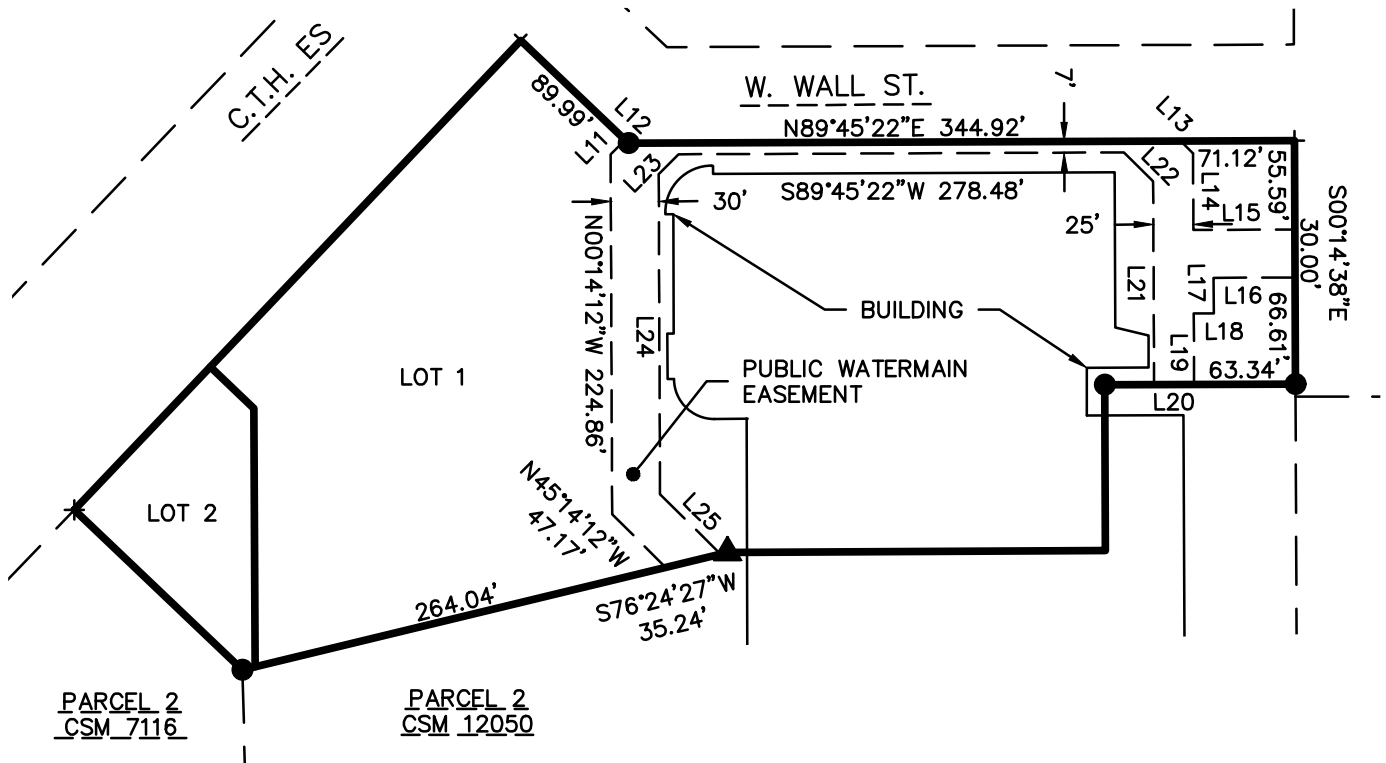
CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

| Line Table |             |        |
|------------|-------------|--------|
| Line #     | Direction   | Length |
| L1         | S89°45'22"W | 92.05  |
| L2         | S10°29'14"E | 78.90  |
| L3         | S29°44'30"E | 39.63  |
| L4         | S89°57'55"E | 14.21  |
| L5         | S00°05'28"E | 19.96  |
| L6         | S89°49'12"W | 23.52  |
| L7         | N29°44'30"W | 55.48  |
| L8         | N10°29'14"W | 89.42  |
| L9         | N86°38'34"W | 142.50 |
| L10        | N01°13'48"E | 6.90   |
| L11        | N44°45'48"E | 12.79  |
| L12        | S46°25'38"E | 3.12   |
| L13        | S45°14'38"E | 10.97  |
| L14        | S00°15'04"E | 47.90  |
| L15        | N89°42'11"E | 63.35  |
| L16        | S89°42'11"W | 50.86  |
| L17        | S00°17'49"E | 22.16  |
| L18        | S89°44'56"W | 12.51  |
| L19        | S00°15'04"E | 44.34  |
| L20        | S89°49'12"W | 25.00  |

| Line Table |             |        |
|------------|-------------|--------|
| Line #     | Direction   | Length |
| L21        | N00°15'04"W | 126.92 |
| L22        | N45°14'38"W | 25.72  |
| L23        | S44°45'48"W | 17.41  |
| L24        | S00°14'12"E | 200.01 |
| L25        | S45°14'12"E | 53.23  |
| L26        | S89°49'12"W | 66.50  |
| L27        | N00°14'12"W | 10.62  |
| L28        | N89°45'48"E | 38.67  |
| L29        | N00°14'12"W | 20.00  |
| L30        | N76°38'11"W | 21.26  |
| L31        | N00°14'12"W | 22.17  |
| L32        | N32°17'52"E | 21.38  |
| L33        | N00°14'12"W | 76.24  |
| L34        | N00°13'47"W | 50.04  |
| L35        | S77°29'20"W | 8.92   |
| L36        | N12°30'40"W | 10.00  |
| L37        | N77°29'20"E | 11.09  |
| L38        | S00°13'47"E | 10.23  |

CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

## SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN }  
:SS  
WAUKESHA COUNTY }

I, WILLIAM J. HENRICHS, Professional Land Surveyor, do hereby certify:

THAT I have surveyed, divided and mapped a division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

Said land contains 175,501 square feet or 4.0290 acres.

THAT I have made the survey, land division and map by the direction of: CITY OF NEW BERLIN

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with Chapter 236 of the Wisconsin Statutes and the Land Division and Ordinances of the City of New Berlin in surveying, dividing, and mapping the same.

Field date

\_\_\_\_\_(SEAL)  
WILLIAM J HENDRICHS  
PROFESSIONAL LAND SURVEYOR S-2419

CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

## OWNER'S CERTIFICATE

CITY OF NEW BERLIN, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, certifies that said corporation has caused the land described on this map to be surveyed, divided, dedicated and mapped in accordance with the requirements of Chapter 236 of the Wisconsin Statutes and the Land Division and Ordinances of the City of Oconomowoc.

CITY OF NEW BERLIN, does further certify that this map is required by S.236.10 or 236.12 to be submitted to the following for approval or objection: City of Oak Creek

IN Witness Whereof, CITY OF NEW BERLIN has caused these presents to

be signed by \_\_\_\_\_, its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF NEW BERLIN

[illegible]

PERSONALLY came before me this                      day of                      , 2024,

\_\_\_\_\_ of the above named CITY OF NEW BERLIN, to me known to be the person who executed the foregoing instrument, and to me known to be the \_\_\_\_\_ of said municipal corporation, and acknowledged that he executed the foregoing instrument.

(SEAL)

Notary Public, State of

## My Commission Expires



CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A division of Parcel 1 of Certified Survey Map No. 12050, being in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 14, in Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

PLAN COMMISSION APPROVAL

APPROVED by the Planning Commission of the City of New Berlin on this \_\_\_\_\_,  
day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nikki Jones, Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Ament, Mayor

COMMON COUNCIL APPROVAL

APPROVED by the Common Council of the City of New Berlin on this \_\_\_\_\_, day  
of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rubina R. Medina, City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Ament, Mayor

THIS INSTRUMENT WAS DRAFTED BY JOHN P. CASUCCI  
PROFESSIONAL LAND SURVEYOR S-2055

**raSmith**

CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000  
**rasmith.com**

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# STAFF REPORT EXECUTIVE SUMMARY

---

**APPLICANT/PROJECT:** Daniel Meier with Lynch & Associates on behalf of Debra Bitz / 2-Lot Certified Survey Map (CSM)

**LOCATION:** 4310 S. Moorland Road (Tax Key #: 1243.997)

**REQUEST:** 2-Lot Certified Survey Map

|                         |                                         |            |
|-------------------------|-----------------------------------------|------------|
| <b>REVIEW SCHEDULE:</b> | CSM Received:                           | 05/29/2024 |
|                         | Completeness Determination:             | 05/29/2024 |
|                         | 90-day time limit expires:              | 08/27/2024 |
|                         | Final Common Council Action (expected): | 07/23/2024 |

**D.R.C. RECOMMENDATION:** Recommend to Common Council approval of the 2-Lot Certified Survey Map located at 4310 S. Moorland Road (Tax Key #: 1243.997) subject to the application, plans on file and the following conditions:

1. Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
2. A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
3. The CSM shall be recorded with Waukesha County Register of Deeds prior to the issuance of any new Zoning or Building Permits.
4. The following notes shall be placed on the face of the CSM:
  - a. No access from Adell Avenue until such time that the road is extended.
  - b. No buildings shall be constructed within the road reservation area.
  - c. The 60' road reservation shall be extended and shown on the face of the CSM.
5. Applicant shall apply for and obtain appropriate building, plumbing and electrical permits prior to any construction on any parcel.

**DETAILS IN ATTACHED STAFF REPORT:**

**CITY OF NEW BERLIN**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**PLAN COMMISSION STAFF REPORT**

Meeting of July 15, 2024

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**Daniel Meier with Lynch & Associates on behalf of Debra Bitz / 2-Lot Certified Map (CSM)**  
**4310 S. Moorland Road (Tax Key #: 1243.997)**

---

**DATE STAFF REPORT PREPARED:** May 29, 2024

**APPLICANT / OWNER(S):** Debra Bitz

**REQUEST / DESCRIPTION OF PROJECT:** Approval of the 2-Lot Certified Survey Map located at 4310 S. Moorland Road (Tax Key #: 1243.997).

**DATE OF APPLICATION / DATE FILED WITH CITY CLERK:** 05/29/2024

**DATE OF COMPLETENESS DETERMINATION:** 05/29/2024

**PRE-APPLICATION CONFERENCE HELD:** Yes, multiple meetings were held at the DCD front counter.  
Date(s) of Meeting(s): several meetings and numerous phone calls and emails exchanged prior to submittal.  
Staff Site Visit: 6/5/2024

**CONCEPTUAL PLAN:** Yes, CSM attached.

**SIZE OF DEVELOPMENT / PARCEL(S):** 1.3034 Acres

**CURRENT ZONING:** R-5 (Medium-Density Single-Family Residential District)

**CURRENT LAND USE:** Single-family home

**PROPOSED ZONING:** N/A

**PROPOSED LAND USE:** Continue use as single-family residential parcel.

**PROPOSED LOT SIZES:**

Lot #1: 19,258 Square Feet (0.4421 Acres)

Lot #2: 27,278 Square Feet (0.6262 Acres)

**PROPOSED DENSITY:** N/A

**ADJACENT ZONING AND LAND USE:**

North: Zoning: R-5

Land Use: Single Family Residential (Regal Manors Subdivision)

South: Zoning: R-5

Land Use: Single Family Residential

East: Zoning: R-5

Land Use: Single Family Residential / (Regal Manors Subdivision)

West: Zoning: I-1

Land Use: Crossroads Community Church

**CONFORMANCE WITH COMPREHENSIVE PLAN AND MUNICIPAL CODE:** Yes

**Chapter 16: Neighborhood F: Urban Neighborhood South:** The submittal meets the intent of this Chapter.

**Planning Context / Vision / Development Policies:**

- The Urban Neighborhood South shall continue to be a series of well maintained, single-family neighborhoods served by neighborhood amenities such as parks, pedestrian connections to adjacent neighborhoods and nearby shopping areas. Both the public infrastructure and the private housing stock should be maintained. New development and redevelopment should complement the residential character of the area. In compliance with the State Smart Growth Legislation, the City should also encourage infill residential development of quarter acre or larger lots to match the existing character of the neighborhood.

**Land Use:**

- *Future Land Use Map: Urban Residential*

**ZONING CODE (Chapter 275):** Yes, this request is consistent with Section 275-33B(6).

**DEVELOPMENT CODE (CHAPTER 235):** Yes

**REZONING REQUIRED:** Not applicable

**CONDITIONAL USE REQUIRED:** Not applicable

**PUBLIC HEARING REQUIRED:** Not applicable

**USE / SITE / ARCHITECTURAL REVIEW:**

Use Approval Required: No

Site Plan Required: Yes, see 2-Lot CSM attached.

Architectural Review Required: No

**PROPOSED ARCHITECTURE:** Not applicable

**UNIQUE SITE CHARACTERISTICS:**

Environmental Corridor: No

Wetland on Property: No

Conservancy Districts (C-1, C-2): No

NRCS Map Classification: Not Inventoried

Floodplain: No

Topography / Geologic: Site slopes generally from the west to the east.

**BIKE & PEDESTRIAN FACILITIES PLAN:** No improvements identified.

**PARK & OPEN SPACE PLAN:** No improvements identified.

**NATURAL RESOURCES PROTECTION:**

Limits of Disturbance (LOD): Not applicable for a CSM

Woodland, Tree & Vegetation Protection: Not applicable for a CSM

Wildlife Habitat Protection: Not applicable for a CSM.

Wildlife Management Plan: Not applicable for a CSM.

**ENVIRONMENTAL IMPACT:** No impact.

**STORMWATER MANAGEMENT / DRAINAGE PLAN:** Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development.

**SANITARY SEWER PROVISION:**

**Within Current Sewer Service Area:** Yes

**Basin Capacity Available:** Yes

**Adequate Linkage:** Yes

**Onsite System Required:** No

**WATER USAGE CALC.:** N/A

**TRAFFIC IMPACT:** A net increase of one lot will occur with the proposed land division. The ITE estimates the following for one single-family lot:

Weekday AM Peak – 0.77 trips per unit

Weekday PM Peak – 1.02 trips per unit

Weekend Peak – 0.93 trips per unit

**SCHOOL DISTRICT IMPACT:** 0.46 total estimated students

Elementary – 0.23 students (1 lot \* 0.23 students)

Middle – 0.11 students (1 lot \* 0.11 students)

High School – 0.12 students (1 lot \* 0.12 students)

Notice Sent to Affected School District(s): No

**PREVIOUS ACTION:**

Home was built in 1960.

Land was previously part of concept developments, none of which came to fruition.

**CONSISTENCY WITH PREVIOUS ACTION:** Yes

**FINDINGS:**

1. Applicant shall dedicate 32 feet to Waukesha County for right-of-way, as shown on the CSM.
2. The lots are zoned R-5, Medium-Density Single-Family Residential District. Under Section 275-33D(2), In the R-5 District, the minimum lot area and lot width shall meet the minimum lot area (15,000 Sq. Ft.) and width (100') requirements of the R-4.5 District when the lot is created after January 1, 2004. Lot depth shall adhere to the R-5 requirement of 110'. The proposed lot meets these requirements.
3. There is a road reservation on the lot directly to the south (4320 S. Moorland Road). The 60' road reservation shall be extended and shown on the face of the CSM.

**D.R.C. RECOMMENDATION:**

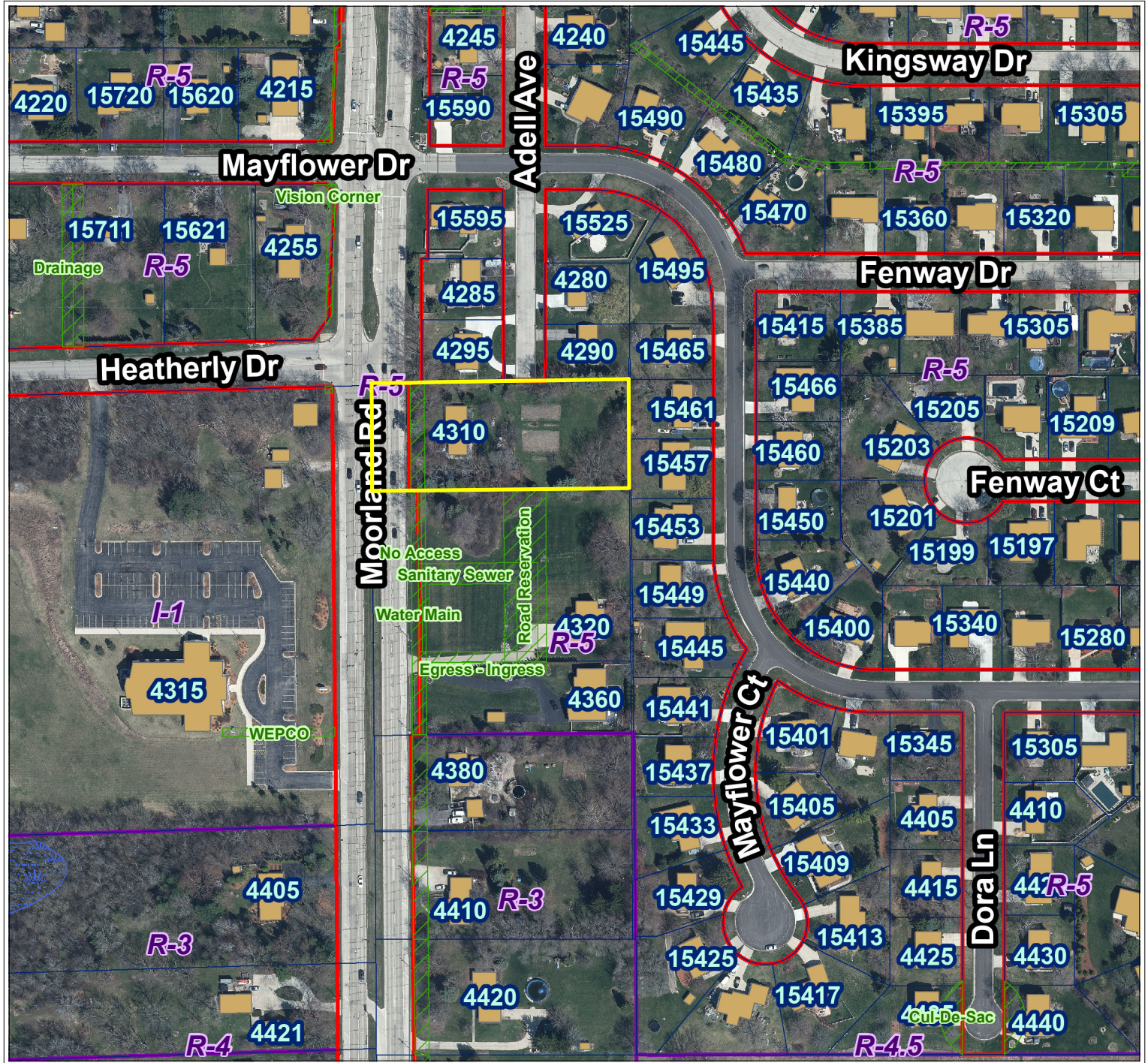
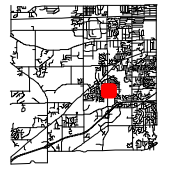
Recommend to Common Council approval of the 2-Lot Certified Survey Map located at 4310 S. Moorland Road (Tax Key #: 1243.997) subject to the application, plans on file and the following conditions: **See Executive Summary.**

**ATTACHMENTS:**

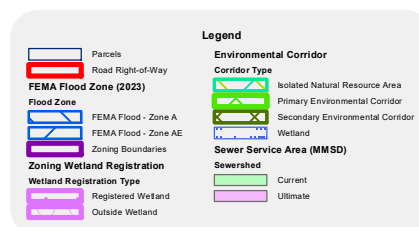
Location Map

Proposed CSM





City of New Berlin  
Department of Community Development  
3805 S Casper Dr.  
New Berlin WI 53151  
(262) 797-2445  
www.newberlin.org



0 75 150 Feet



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SURVEYOR:  
CHRISTOPHER A. HODGES  
5482 S. WESTRIDGE DR.  
NEW BERLIN, WI 53151  
Phone: (262) 402-5040  
info@Lynch-Engineering.com

OWNER/SUBDIVIDER:  
DEBRA A BITZ  
P.O. BOX 510681  
NEW BERLIN, WI 53151

CERTIFIED SURVEY MAP NO. \_\_\_\_\_

A Redivision of Lot 1 of Certified Survey Map No. 888 being a part of the Northwest 1/4 of the Southwest 1/4 of Section 23, Township 6 North, Range 20 East, located in the City of New Berlin, Waukesha County, Wisconsin.

LYNCH & ASSOCIATES  
ENGINEERING CONSULTANTS, LLC  
5482 S. WESTRIDGE DRIVE  
NEW BERLIN, WI 53151  
440 MILWAUKEE AVENUE  
BURLINGTON, WI 53105  
(262) 402-5040



Southwest Corner of  
Section 23-6-20  
(Found Conc Mon.)

S. MOORLAND ROAD

Shaded Area  
is an area  
Dedicated to  
the Public for  
Road Way  
Purposes  
(4,928 S.F.)

West 1/4 Corner of  
Section 23-6-20  
(Found Conc Mon.)

S00°26'02"W  
30.05'  
N89°20'26"E  
33.00'

LOT 3, Block 15, Regal  
Manors Subdivision

N89°20'26"E  
334.19'

S. ADELL AVENUE

LOT 1

Block 16  
Regal Manors Subdivision

LOT 5

LOT 6

LOT 7

LOT 2  
27278 S.F.  
0.6262 ACRES

LOT 1  
19,258 S.F.  
0.4421 ACRES

EX  
Res.

SHED

SHED

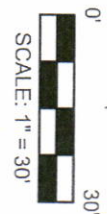
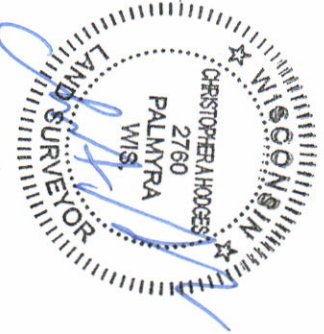
S89°20'26"W 334.19'

LOT 1

S00°26'09"E 154.00'

ACCEPTED AS BEING  
THE SOUTHWEST  
CORNER OF LOT 7,  
BLOCK 16, REGAL  
MANORS SUBDIVISION

VICINITY MAP  
SW 1/4 SEC. 23  
T6N, R20E.



- Legend:
- Found Iron Rod
  - Found 1" Iron Pipe unless Noted
  - Set 3/4"x18" Iron Rod
  - Weighing 1.18 lbs./Ft
  - Found Monument

IRON ROD FOUND AND  
ACCEPTED AS BEING  
THE SOUTHEAST CORNER  
OF CERTIFIED SURVEY  
MAP NO.: 10650

IRON PIPE FOUND AND  
ACCEPTED AS BEING  
THE SOUTHWEST  
CORNER OF LOT 1  
CERTIFIED SURVEY  
MAP NO.: 10451

INSTRUMENT DRAFTED BY CHRISTOPHER A. HODGES, P.L.S. S-2760

Revision Date: 05/13/2024  
Date: 04/11/2024  
SHEET 1 OF 4

**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**

A Redivision of Lot 1 of Certified Survey Map No. 888 being a part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 23, Township 6 North, Range 20 East, located in the City of New Berlin, Waukesha County, Wisconsin.

**SURVEYOR'S CERTIFICATE:**

I Christopher A. Hodges, Professional Land Surveyor, do hereby certify:

That I have surveyed, divided and mapped a parcel of land being a Re-Division of Lot 1 of Certified Survey Map No.: 888, being a part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 23, Township 6 North, Range 20 East, located in the City of New Berlin, Waukesha County, Wisconsin bound and described as follows:

Commencing at the West  $\frac{1}{4}$  Corner of said Section, thence South 00°26'02" East on and along the West line of said  $\frac{1}{4}$  Section, 30.05 feet to the Northwest corner of said Certified Survey Map, thence North 89°20'26" East on and along the North line of said Certified Survey Map 33.00 feet to the Northwest Corner of said Lot 1, said point is also the Point of Beginning of this Description;

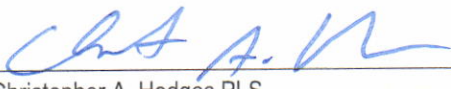
thence on and along said Lot 1 the following course;

Thence North 89°20'26" East 334.19 feet;  
thence South 00°26'09" East , 154.00 feet;  
thence South 89°20'26" West, 334.19 feet;  
thence North 00°26'09" West, 154.00 feet to the Place of Beginning of this Description.

The gross area of said parcel contains 51,464 Square feet or 1.1815 Acres of land more or less.

That I have made such survey, land division and map by the direction of Debra A. Bitz, owner of said land. That such map is a correct representation of all exterior boundaries of land surveyed and land division made thereof. That I have fully complied with the provision of chapter 236.34 of the Wisconsin Statutes and the Platting ordinance of the City of New Berlin surveying, dividing and mapping same, .

Dated this 16 day of MAY, 2023.

  
Christopher A. Hodges PLS  
Professional Land Surveyor S-2760



**LYNCH & ASSOCIATES**  
ENGINEERING CONSULTANTS, LLC

5482 S. WESTRIDGE DRIVE  
NEW BERLIN, WI 53151

440 MILWAUKEE AVENUE  
BURLINGTON, WI 53105

(262) 402-5040

INSTRUMENT DRAFTED BY CHRISTOPHER A. HODGES, P.L.S. S-2760

Revision Date: 05/13/2024

Date: 04/11/2024

SHEET 2 OF 4



**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**

A Redivision of Lot 1 of Certified Survey Map No. 888 being a part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 23, Township 6 North, Range 20 East, located in the City of New Berlin, Waukesha County, Wisconsin.

**OWNER'S CERTIFICATE:**

As owner, I hereby certify that I have caused the land described on this map to be surveyed, divided, dedicated and mapped as represented on this map in accordance with the provisions of Chapter 236.34 of the Wisconsin State Statutes and ordinances of the City of New Berlin, this 28<sup>th</sup> day of May, 2024.

Debra A. Bitz  
Debra A Bitz

STATE OF WISCONSIN )  
County of Milwaukee ) SS

Personally came before me this 28<sup>th</sup> day of May, 2024, the above named Debra A. Bitz, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Kathleen S. Rivedal

Print Name Kathleen S. Rivedal

Notary Public, Milwaukee County, WI.

My Commission Expires: 06/16/2027



**LYNCH & ASSOCIATES**  
ENGINEERING CONSULTANTS, LLC

5482 S. WESTRIDGE DRIVE  
NEW BERLIN, WI 53151

440 MILWAUKEE AVENUE  
BURLINGTON, WI 53105

(262) 402-5040



INSTRUMENT DRAFTED BY CHRISTOPHER A. HODGES, P.L.S. S-2760

Revision Date: 05/13/2024

Date: 04/11/2024

SHEET 3 OF 4

**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**

A Redivision of Lot 1 of Certified Survey Map No. 888 being a part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 23, Township 6 North, Range 20 East, located in the City of New Berlin, Waukesha County, Wisconsin.

**COMMON COUNCIL APPROVAL:**

Approved by the Common Council of the City of New Berlin on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Dave Ament, Mayor

\_\_\_\_\_  
Rubina R. Medina, City Clerk

**PLANNING COMMISSION APPROVAL:**

Approved by the Planning Commission of the City of New Berlin on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Dave Ament, Mayor

\_\_\_\_\_  
Nikki Jones, Secretary

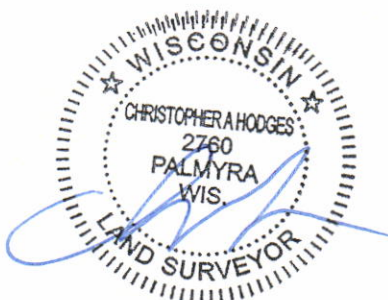


**LYNCH & ASSOCIATES**  
ENGINEERING CONSULTANTS, LLC

5482 S. WESTRIDGE DRIVE  
NEW BERLIN, WI 53151

440 MILWAUKEE AVENUE  
BURLINGTON, WI 53105

(262) 402-5040



INSTRUMENT DRAFTED BY CHRISTOPHER A. HODGES, P.L.S. S-2760

Date: 05/13/2024  
SHEET 4 OF 4

---

# STAFF REPORT

## EXECUTIVE SUMMARY

---

**APPLICANT/PROJECT:** John Holborow with Rock Ridge Developers, LLC / Caribou Coffee

**LOCATION:** 5276 S. Moorland Road

**REQUEST:** Approval of the site modifications, release of the Cross Access Easement, and amendment to CSM No. 12233 for Caribou Coffee located at 5276 S. Moorland Road.

**D.R.C. RECOMMENDATION:** Recommend denial of the site modifications, release of the Cross Access Easement, and amendment to CSM No. 12233 for Caribou Coffee located at 5276 S. Moorland Road subject to the application, plans on file and the following reasons:

1. The developer is requesting the Plan Commission to review the revised site plan that would eliminate the proposed driveway connecting 5276 S. Moorland Road (Caribou Coffee) to 5320 S. Moorland Road (former Stonefire Pizza). Eliminating this connection would require the release of Cross Access Easement (Document # 4553655) and an amendment to CSM No. 12233 (Document # 4623815) that requires this Cross Access Easement in this location.
2. The developer stated that poor soil would make the construction of a driveway in this location difficult.
  - a. Grading is being done as part of the necessary sitework for the benefit of Caribou Coffee on the west side of the site that is at a lower elevation than the proposed driveway within the cross-access easement that is on the east side of the site and would have similar soil conditions. The driveway connection area is not unique to the site.
3. The developer stated that a connected driveway would not have a significant impact on traffic flows and the existing intersections operate at acceptable levels.
  - a. The purpose of the driveway connection was to provide better circulation between parcels and provide an additional option for ingress and egress out to adjacent public roadways. Secondary access is imperative here due to the roundabout.
4. The developer stated that the change order for a reengineered connected driveway would be costly.
  - a. Cost is not a factor in the completion of the work in accordance with the approved plans.
5. The Plan Commission released the 80' wide road reservation 10/5/2020. A smaller land area (lot area less the 80' wide road reservation) and the location of wetlands would limit the total developable area for this site. Fire required the driveway connection.

**6. The Plan Commission required a Cross Access Easement 10/5/2020.**

- a. Dating back to the dedication of Rock Ridge Rd, a secondary access point shall be extended to Small Rd. An interconnected driveway would allow for better circulation amongst the parcels and would provide an additional option for ingress and egress out to adjacent public roadways.**

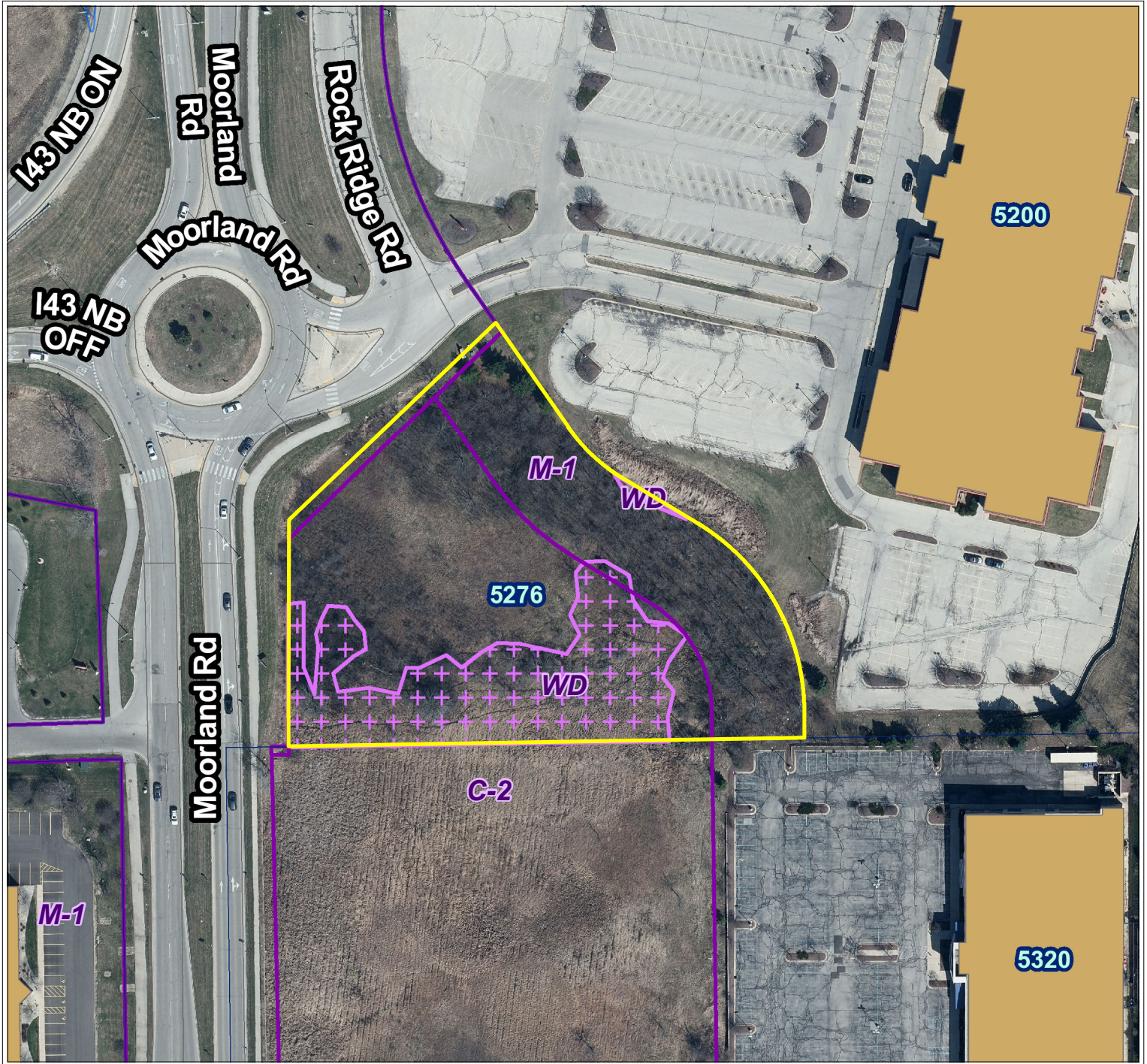
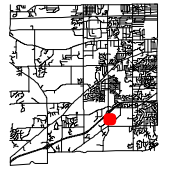
**BACKGROUND:**

- 1. The Plan Commission recommended approval of the release of the road reservation and 1-Lot CSM approval on October 5, 2020. The Common Council approved these requests on October 13, 2020.**
- 2. The Plan Commission approved the Use, Site and Architecture for Caribou Coffee on May 8, 2023.**

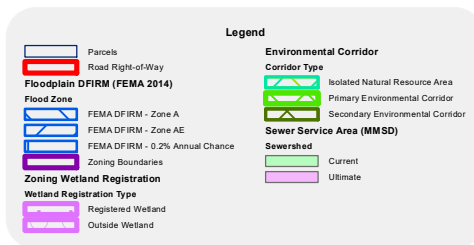
**ATTACHMENTS:**

Location Map  
Amendment Request  
Revised Civil Plans  
Resolution No. 20-32  
Cross Access Easement  
CSM No. 12233





City of New Berlin  
Department of Community Development  
3805 S Casper Dr.  
New Berlin WI 53151  
(262) 797-2445  
www.newberlin.org



0 50 100 Feet

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June 10, 2024

**Site Plan Amendment Request**  
**Rock Ridge Developers, LLC**  
**Caribou Coffee: 5276 S Moorland Rd.**

City of New Berlin – Community Development  
c/o: Kristen Hogan – Principal Planner  
3805 S Casper Dr.  
New Berlin, WI 53151

**RE: Request to Amend the Site Plan as approved May 8, 2023 and record a mutual easement release related to the Access Easement Agreement recorded on 2/2/2021 as Document No. 4553655.**

Kristen,

On behalf of Rock Ridge Developers, LLC, I am requesting that the site plan, as approved by the City of New Berlin Plan Commission, on May 8, 2023, be amended to remove the driveway connection between Rock Ridge Rd. and the former StoneFire Pizza parking lot. In addition, at the request of the City of New Berlin Attorney, we would like to enter into a mutual release of easement related to the Access Easement Agreement recorded by the previous owner on 2/2/2021.

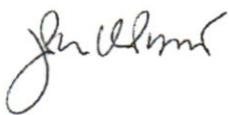
Rock Ridge Developers, LLC purchased the Property located at 5276 S Moorland Rd. on September 29, 2023. Plans to construct a new Caribou Coffee store were approved by the City of New Berlin Plan Commission on May 8, 2023. The Property was purchased subject to an Access Easement Agreement that was recorded on 2/2/2021 as Doc. No. 4553655. The easement was to be constructed at the time that the Property was redeveloped. The Access Easement Agreement was intended to connect Rock Ridge Rd. (in front of the Rock Ridge Cinema) to the former StoneFire Pizza parking lot to the south. The area in which the driveway connection is to be constructed does include/did include wetlands. An updated wetland delineation was completed in September 2017 and updated in August 2022 showing that enough wetland area had attenuated to redevelop the Property. Construction for a new Caribou Coffee commenced in October 2023. It was quickly noted that the sub-surface soils in the areas of the new driveway connection area were unsuitable for construction as detailed in the plans. The sub-surface soils in this area contain major amounts of organic, decomposing material and peat along with elevated levels of ground water. It was also discovered that a drain pipe was installed from the Marcus Property to the northeast onto this Property where portions of stormwater/snow melt were being collected and moved to this area. All of this contributed to the fact that the sub-surface soils are unstable and unsuitable for construction as is. After discussing preliminary options it was determined early on that a "wait and see" approach might be suitable in hopes that stripping the top layers of vegetation off this area would allow for it to dry out and stabilize more quickly. However, this has not been the case. It was later determined that a full scale engineered approach would need to be taken. On May 8, 2024 Tim

Anderson of United Engineering Consultants visited the site to review current conditions and make recommendations to stabilize the sub-surface for construction. Based on Tim's recommendations the excavator priced out time and materials to complete the driveway. This included removing 2' of soils BELOW subgrade, installing geo-grid at subgrade, raising the excavated area by an estimated 18"-2' using 3" breaker run or equivalent, followed by 6" of aggregate base on top of the breaker run. In addition, a geotextile fabric should be placed between the aggregate and the breaker run so that the fines do settle into the larger sub-base (email dated 5/9/24 attached as EXHIBIT A). The excavator estimated the additional cost of construction in a range of \$150,000.00 - \$175,000.00 based on final time and material amounts.

In addition to the exorbitant cost overrun installation of the driveway creates for this project, Rock Ridge Developers, LLC would like to point out that the driveway connection doesn't improve traffic flows in any meaningful way. The connection was originally thought of as part of the larger Westridge development but over time the connection didn't materialize as having any significant impact on traffic flows. The roundabout connections to Moorland Rd. and the signalized intersections to the south at Small Rd. and Westridge Rd. operate at acceptable levels without any failing movements. This was discussed in a conversation with Traffic Analysis and Design (TADI - John Bieberitz - engineer) and detailed in an email to Kristen Hogan dated 12/17/2018 as part of the consideration for developing the Property (EXHIBIT B). TADI completed extensive work along Moorland Rd. as a consultant and had sufficient data to make this assumption without needing to complete a full scale TIA.

Based on the factors listed above, we do not believe removing the driveway connection and releasing the Access Easement Agreement will have any sort of negative impact on the project or traffic flows for the Property or any other surrounding properties. Rather, enforcing the driveway connection will push this project far beyond the limits of financial viability forcing Rock Ridge Developers into a decision on whether or not to continue constructing it. With this in mind, Rock Ridge Developers has submitted revised plans for consideration by Staff and Plan Commission. It is our hope and desire to have these plans approved so that we can complete construction in the very near future.

Sincerely,



John Holborow  
Member  
Rock Ridge Developers, LLC



## **EXHIBT A**

**From:** United Engineering Tim Anderson <[tauec@sbcglobal.net](mailto:tauec@sbcglobal.net)>  
**Sent:** Thursday, May 9, 2024 3:31 PM  
**To:** Scott Christianson <[scottc@kvgbuilding.com](mailto:scottc@kvgbuilding.com)>; Dennis Somers <[dsomers@kvgbuilding.com](mailto:dsomers@kvgbuilding.com)>  
**Cc:** Mike Reyer <[mreyer@kvgbuilding.com](mailto:mreyer@kvgbuilding.com)>  
**Subject:** Pavement Subgrade Evaluation - Proposed Caribou Coffee Store - 5276 S. Moorland Road New Berlin, Wisconsin 53151

Scott,

Per our meeting yesterday, we recommend the removal of approximately two (2) feet of soil below the planned subgrade elevation. Geo-grid should then be placed on the exposed subgrade and the excavation brought to grade with approximately eighteen (18) inches of three (3) inch breaker run or equivalent followed by six (6) inches of crushed aggregate base. A non-woven geotextile fabric should be placed between the breaker run and the crushed aggregate base course to provide separation and prevent intrusion of fines into the breaker run void space. As we discussed with the excavator, the breaker run should be placed without equipment or truck impact to the geo-grid and exposed subgrade.

Tim

**Timothy J. Anderson, P.E.**  
**Principal**

**UNITED ENGINEERING CONSULTANTS, INC**  
2938 S. 166th Street, New Berlin, WI 53151  
Office (262)-785-1447



EXHIBIT B

**Hogan, Kristen**

---

**From:** John Holborow <jholborow@evodevoinc.com>  
**Sent:** Monday, December 17, 2018 4:59 PM  
**To:** Hogan, Kristen  
**Cc:** Brian Riordan; Nathan Powers  
**Subject:** Re: Susnar/Yee Trust Property

Hi Kristen,

I just spoke to John Bieberitz (Traffic Analysis and Design). They did not complete a full detailed study on behalf of Steve Doran. However, general perceptions and assumptions based on the data they did collect were as follows:

- Based on observation, the weekday morning and evening peak volumes at the round about appear to operate at acceptable levels with no major concerns.
- With Moorland Rd. being signalized at Westridge & Small Rd (south of the round about) it is expected the signal could handle additional traffic without significant modifications (in essence, the signal works just fine and could handle additional volume without failing).

Please let me know if you have any additional questions/concerns. We will wait to hear from you.

Thank you,

John



**JOHN HOLBOROW**

O: (414) 393-1800

C: (708) 828-3791

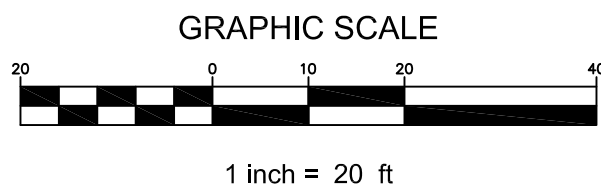
[jholborow@evodevoinc.com](mailto:jholborow@evodevoinc.com)

**Confidentiality Notice:** This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

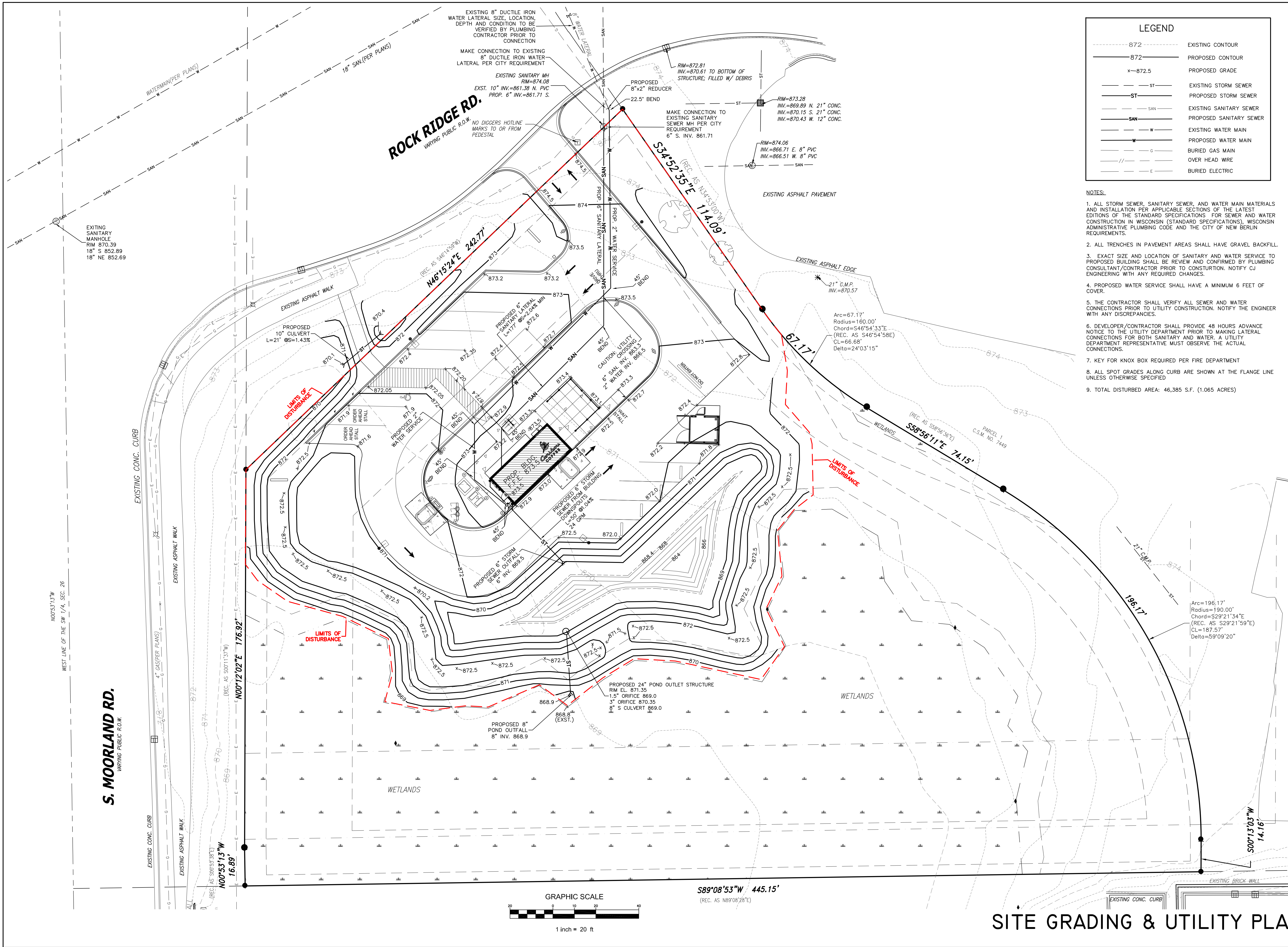


CJE NO.: 2308R7  
MARCH 23, 2023  
REV.: 06/07/2023  
REV.: 06/19/2023  
REV.: 07/26/2023  
REV.: 11/03/2023  
REV.: 12/13/2023  
REV.: 06/07/2024

8  
Page 194 of 325







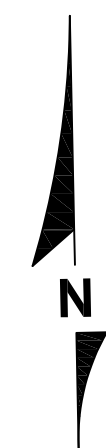
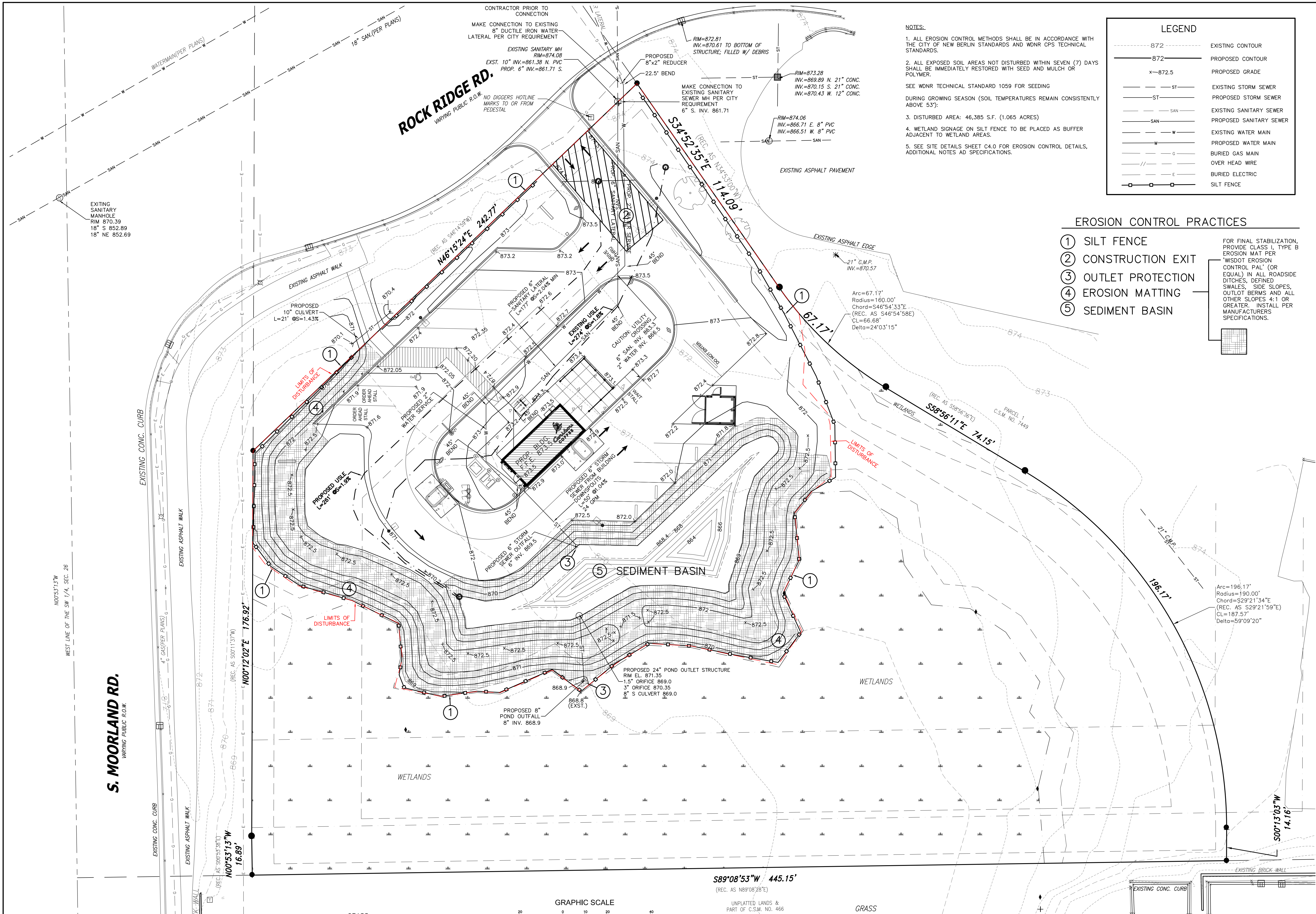
- NOTES:
1. ALL STORM SEWER, SANITARY SEWER, AND WATER MAIN MATERIALS AND INSTALLATION PER APPLICABLE SECTIONS OF THE LATEST EDITIONS OF THE STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN (STANDARD SPECIFICATIONS), WISCONSIN ADMINISTRATIVE PLUMBING CODE AND THE CITY OF NEW BERLIN REQUIREMENTS.
  2. ALL TRENCHES IN PAVEMENT AREAS SHALL HAVE GRAVEL BACKFILL.
  3. EXACT SIZE AND LOCATION OF SANITARY AND WATER SERVICE TO PROPOSED BUILDING SHALL BE REVIEW AND CONFIRMED BY PLUMBING CONSULTANT/CONTRACTOR PRIOR TO CONSTRUCTION. NOTIFY C.J. ENGINEERING WITH ANY REQUIRED CHANGES.
  4. PROPOSED WATER SERVICE SHALL HAVE A MINIMUM 6 FEET OF COVER.
  5. THE CONTRACTOR SHALL VERIFY ALL SEWER AND WATER CONNECTIONS PRIOR TO UTILITY CONSTRUCTION. NOTIFY THE ENGINEER WITH ANY DISCREPANCIES.
  6. DEVELOPER/CONTRACTOR SHALL PROVIDE 48 HOURS ADVANCE NOTICE TO THE UTILITY DEPARTMENT PRIOR TO MAKING LATERAL CONNECTIONS FOR BOTH SANITARY AND WATER. A UTILITY DEPARTMENT REPRESENTATIVE MUST OBSERVE THE ACTUAL CONNECTIONS.
  7. KEY FOR KNOX BOX REQUIRED PER FIRE DEPARTMENT
  8. ALL SPOT GRADES ALONG CURB ARE SHOWN AT THE FLANGE LINE UNLESS OTHERWISE SPECIFIED
  9. TOTAL DISTURBED AREA: 46,385 S.F. (1.065 ACRES)

**CARIBOU COFFEE**  
5276 S MOORLAND ROAD NEW BERLIN, WI

CJE NO.: 2308R7  
MARCH 23, 2023  
REV.: 06/07/2023  
REV.: 06/19/2023  
REV.: 07/26/2023  
REV.: 11/03/2023  
REV.: 12/13/2023  
REV.: 06/07/2024

**SITE GRADING & UTILITY PLAN C2.0**



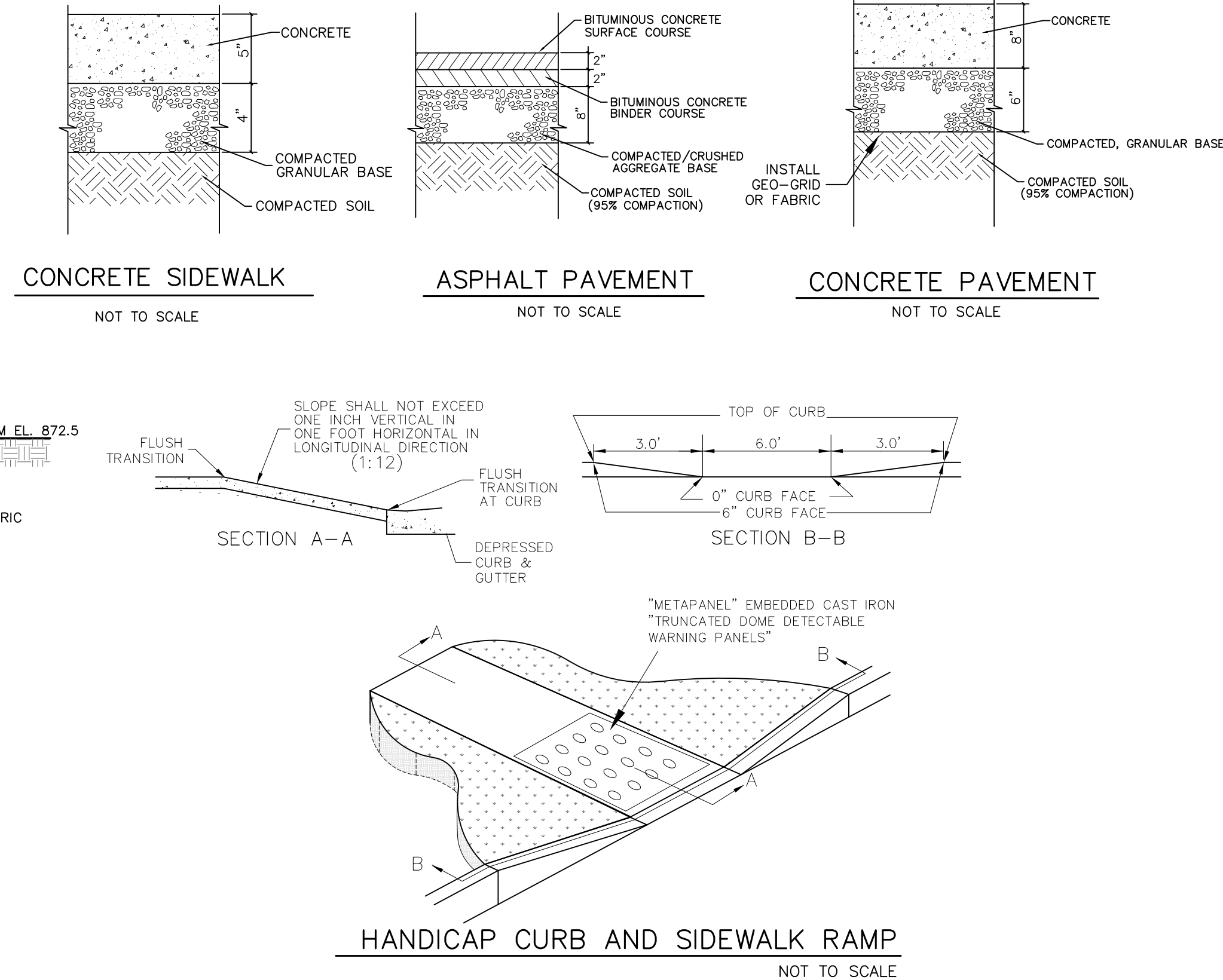


**CARIBOU COFFEE**  
5276 S MOORLAND ROAD NEW BERLIN, WI

CJE NO.: 2308R7  
MARCH 23, 2023  
REV.: 06/07/2023  
REV.: 06/19/2023  
REV.: 07/26/2023  
REV.: 11/03/2023  
REV.: 12/13/2023  
REV.: 06/07/2024

# SITE EROSION CONTROL PLAN C3.0





# EROSION CONTROL DETAILS & NOTES

**SILT FENCE TIE BACK**  
PER DNR CPS (1056)

**TRENCH DETAIL**  
PER DNR CPS (1056)

**Jointing Two Lengths of Silt Fence**  
PER DNR CPS (1056)

**SILT FENCE**  
PER WDNR TECHNICAL STANDARD 1056  
NOT TO SCALE

**CONSTRUCTION EXIT**  
PER WDNR TECHNICAL STANDARD 1057  
NOT TO SCALE

**CONSTRUCTION SPECIFICATIONS PER DNR CPS (1056)**

1. CONSTRUCTION SILT FENCE AROUND THE DISTURBED AREAS AS SHOWN ON EROSION CONTROL PLAN, TO PREVENT SEDIMENT FROM BEING WASHED INTO THE DRAINAGE SYSTEM.
2. LOCATE POSTS PER DNR CPS (1056)
3. WHEN JOINTS ARE NECESSARY REFER, TO DNR CPS (1056)
4. FILTER FABRIC TO BE OF NYLON, POLYESTER, PROPYLENE OR ETHYLENE YARN WITH EXTRA STRENGTH – 50 LB/(LIN. IN. (MIN.) – AND WITH A FLOW RATE OF AT LEAST 0.3 GAL./SQ. FT./MIN. FABRIC SHOULD CONTAIN ULTRAVIOLET RAY INHIBITORS AND STABILIZERS.
5. THE FILTER FABRIC SHALL BE ANCHORED BY SPREADING AT LEAST 8 INCHES OF FABRIC IN A 4" x 6" TRENCH
6. THE FILTER FABRIC SHALL BE STAPLED AND/OR NAILED TO THE UPSLOPE SIDE OF THE POSTS.
7. POST TO BE 1 1/8" X 1 1/8" HICKORY OR OAK, 3 FEET LONG, SPACED A MAXIMUM OF 3 FEET APART.
8. USE WIRE REINFORCEMENT IN UNSTABILIZED MINOR SWALES, DITCHES AND DIVERSIONS.
9. USE WSDOT APPROVED SILT FENCE

**BURY UPSLOPE END OF BLANKET IN TRENCH 6" WIDE BY 6" DEEP**

**OVERLAP BLANKETS SIDE BY SIDE USING A 4" OVERLAP WITH UPSLOPE BLANKET LAID OVER DOWNSLOPE BLANKET**

**OVERLAP END OF UPSLOPE BLANKET 4" OVER DOWNSLOPE BLANKET AND SECURE WITH STAPLES**

**BURY TOE OF BLANKET IN TRENCH 6" WIDE BY 6" DEEP**

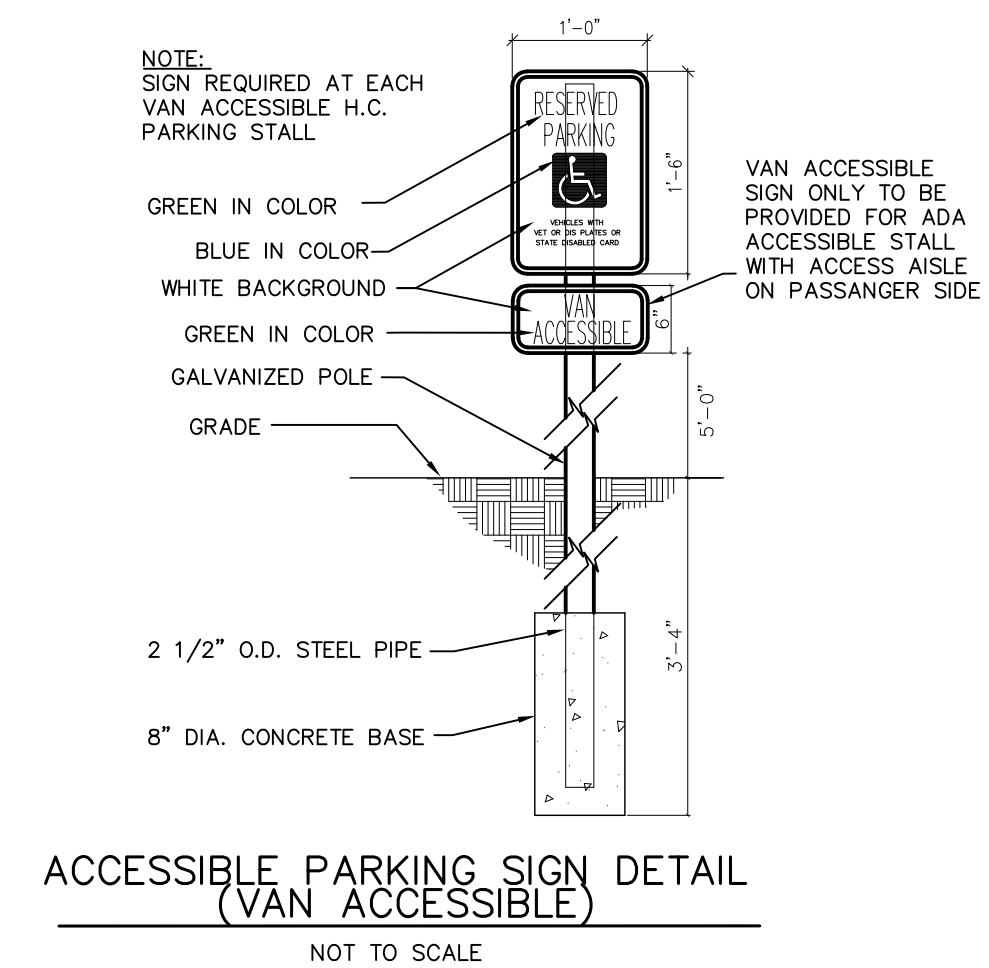
**DETAIL 1**  
Anchor Stake, Tamp Soil Firmly, Staples, 12" width, 6" depth

**DETAIL 2**  
Single Joint, 4" Min overlap, Staples

**DETAIL 3**  
Parallel Overlaps, 4" Min overlap, Staple

**EROSION MATTING TYPICAL INSTALLATION**  
PER WDNR TECHNICAL STANDARD 1053 FOR CLASS 1, TYPE B EROSION MAT  
INSTALL PER MANUFACTURERS SPECIFICATIONS  
NOT TO SCALE

1. ALL EROSION AND SEDIMENT CONTROL PRACTICES WILL BE CHECKED FOR STABILITY AND OPERATION FOLLOWING EVERY 1/2" RUNOFF-PRODUCTION RAINFALL BUT IN NO CASE LESS THAN ONCE EVERY WEEK. ANY NEEDED REPAIRS WILL BE MADE IMMEDIATELY TO MAINTAIN ALL PRACTICES AS DESIGNED.
2. SEDIMENT WILL BE REMOVED FROM BEHIND THE SILT FENCE WHEN IT BECOMES ABOUT 0.5 FT. DEEP AT THE FENCE. THE SILT FENCE WILL BE REPAIRED AS NECESSARY TO MAINTAIN A BARRIER.
3. ALL SEEDED AREAS WILL BE WATERED, FERTILIZED, RESEED AS NECESSARY, AND MULCHED TO MAINTAIN A VIGOROUS, DENSE VEGETATIVE COVER.
4. ANY SEDIMENT REACHING A PUBLIC OR PRIVATE ROAD SHALL BE REMOVED BY STREET CLEANING BEFORE THE END OF EACH DAY.



TEMPORARY SEEDING:  
DURING GROWING SEASON (MAY 2 - OCTOBER 31) TEMPORARY  
SEEDING (COVER CROP) TO BE USED FOR TEMPORARY STABILIZATION  
DURING SITE CONSTRUCTION.

LAND APPLICATION OF ADDITIVES:  
DURING NONGROWING SEASON (NOVEMBER 1 – MAY 1) CONTRACTOR TO PROVIDE TYPE B SOIL STABILIZER DURING SITE CONSTRUCTION. STABILIZER TO BE POLYACRYLAMIDE (PAM) PER LATEST WDOT PAL (UPDATED 11/2/2017) – SEE WDNR TECHNICAL STANDARD 1050.

STABILIZATION SHOULD BE COMPLETED WITHIN 7 DAYS OF ESTABLISHING FINAL GRADE OR THAT WILL OTHERWISE EXIST FOR MORE THAN 14 DAYS.

DURING WINTER CONSTRUCTION (NOVEMBER 1 TO MAY 1), CONTRACTOR TO PROVIDE TYPE B SOIL STABILIZER, POLYACRYLAMIDE (PAM) PER LATEST WDOT PAL (UPDATED 11/2/2017) ON ALL DISTURBED AREAS THAT ARE NOT TO BE DISTURBED BEYOND 7 DAYS. CONTRACTOR TO INSTALL PAM PER WDN TECHNICAL STANDARD 1050 AND THE MANUFACTURERS SPECIFICATIONS.

|                                                                                                  |                                                         |                                                       |
|--------------------------------------------------------------------------------------------------|---------------------------------------------------------|-------------------------------------------------------|
| PER WDNR NR151.11 WS. ADM. CODE<br>MAXIMUM PERIOD OF BARE SOIL EXPOSURE FOR SLOPES EXCEEDING 20% |                                                         |                                                       |
| SLOPE AREA DRAINS TO<br>SEDIMENT BASIN OR<br>SEDIMENT TRAP                                       | MAXIMUM PERIOD OF BARE SOIL EXPOSURE<br>(CALENDAR DAYS) |                                                       |
|                                                                                                  | LAND DISTURBANCE<br>BETWEEN SEPT. 16TH<br>AND MAY 1ST.  | LAND DISTURBANCE<br>BETWEEN MAY 2ND<br>AND SEPT. 15TH |

# SITE DETAILS C4.0

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**RESOLUTION NO. 20-32****RESOLUTION OF THE CITY OF NEW BERLIN  
TO RELEASE ROAD RESERVATION**

---

WHEREAS, the City of New Berlin is a Wisconsin municipal corporation; and

WHEREAS, the City of New Berlin has received a request from the Susnar / Yee Trust owner of the property located at 5276 S. Moorland Road and represented by Brian Riordan with the Boerke Company, Inc. for the City of New Berlin to release a 80' wide road reservation that appears on Certified Survey Map No. 7449 (a copy of which is attached hereto and marked Exhibit A) as recorded with the Waukesha County Register of Deeds Office as Document No. 1987210 on August 15, 1994; and

WHEREAS, the City of New Berlin Staff has reviewed this request and the necessity for the maintenance of such road reservation in the future; and

WHEREAS, Staff has concluded that there is no longer a need for this road reservation as the lands to the south now have direct access to Small Road but the City will require an internal private driveway connection instead to create a circulation pathway for this parcel to the property located at 5320 S. Moorland Road (Tax Key #: 1255990001 - currently Stonefire Pizza Company) and the property located at 5200 Moorland Road (Tax Key: 1255991014 - currently Marcus Ridge Theater) for any future development plans for Outlot 1 as it appears on the CSM No. 7449 (Exhibit A - current address of 5276 S. Moorland Road / Tax Key #: 1255990001); and

WHEREAS, on Monday, October 5, 2020, the Plan Commission of the City of New Berlin considered the request to release the road reservation and on October 13, 2020 recommended to the City Common Council that this be accomplished; and

WHEREAS, the road reservation was never accepted for dedication by the City of New Berlin; and

WHEREAS, the City does believe that a future interconnected driveway via parking lots would allow for better circulation amongst the parcels and an additional option for ingress and egress out to adjacent public roadways. The City will require the owner add a note to the CSM requiring a cross access easement. The easement shall be recorded against the burdened and benefited properties.

WHEREAS, the Common Council of the City of New Berlin has carefully reviewed the request of the Susnar / Yee Trust, Staff, and the Plan Commission recommendation and has therefore determined that the proposed request to release the road reservation as found on CSM

No. 7449 as recorded with the Waukesha County Register of Deeds Office as Document No. 1987210 is in the best interest of the City and therefore, should be approved.

NOW, THEREFORE, BE IT RESOLVED that the proposed request by the Susnar / Yee Trust to release the road reservation as provided for in CSM No. 7449 (Exhibit A) is hereby approved.

BE IT FURTHER RESOLVED that City Staff is directed to take such actions as are necessary to effectuate the intention of this Resolution and to see that the Resolution is recorded with the Waukesha County Register of Deeds Office.

Dated at New Berlin, Wisconsin this 13<sup>th</sup> day of October, 2020.

APPROVED:

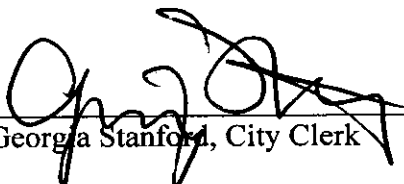
  
David Ament, Mayor

Countersigned:

  
Georgia Stanford, City Clerk

#### CERTIFICATION

I hereby certify that this is a true and correct copy of the Resolution adopted by the City of New Berlin on the 13<sup>th</sup> day of October, 2020.

  
Georgia Stanford, City Clerk

WAUKESHA COUNTY, WI  
REGISTER OF DEEDS  
James R Behrend

Recorded On: 02/02/2021 1:28:08 PM

Total Fee: \$30.00 Page(s): 10  
Transfer Tax: \$0.00

## ACCESS EASEMENT AGREEMENT

DOCUMENT NO. \_\_\_\_\_

The above recording information verifies that  
this document has been electronically  
recorded and returned to the submitter.

This Access Easement Agreement ("Agreement") is made and entered into as of the 27<sup>th</sup> day of January, 2021, by and among **Westridge Development Properties, LLC**, a Wisconsin limited liability company (as to an undivided 65% interest) and **The King J. and Stella C. Yee Joint Revocable Trust Dated May 14, 2004** (as to an undivided 35% interest) ("Owner") and **CT Investments III, LTD.** a Wisconsin Corporation ("Grantee").

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Daniel D. Seibel  
Seibel & Falkner, LLP  
2060 N. Humboldt Ave., Suite 225  
Milwaukee, WI 53212

### RECITALS:

A. Owner is the fee simple owner of certain real property described on **Exhibit A** (the "Owner Property").

B. Grantee is the fee simple owner of certain real property described on **Exhibit B** attached hereto (the "Grantee Property"), and which property lies adjacent to the Owner Property.

Parcel Identification Number \_\_\_\_\_

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

1. **Grant of Access Easement.** Owner hereby grants, creates and establishes for the benefit of the Grantee Property a perpetual, non-exclusive easement over and across a portion of the Owner Property in a location determined by Owner, in Owner's sole discretion (the "Easement Area") for the purpose of providing pedestrian and vehicular access over and across the Owner Property to and from the Grantee Property, subject to the terms and conditions of this Agreement as provided below (the "Easement"). The Easement is appurtenant to the Grantee Property and shall run with the land. Upon development of the Owner Property, the owner of the Owner Property at the time of development of the Owner Property shall determine the exact location and size of the Easement Area and record a document establishing the Easement Area. There shall be no time frame required as to when the Owner Property is developed and the actual Easement Area is determined. If at any time the Owner receives approval from governmental authorities to not have this Easement, the Owner may terminate this Easement without receiving approval from Grantee. At the time the Owner Property gets developed, unless the Owner has received approval from governmental authorities that the Easement is not necessary, the Owner at its expense shall create and pave the Easement Area to the point south of the northerly lot line of the Grantee Property as described below. Grantee shall have no obligation for any costs associated with building the Easement Area including any future maintenance of the Easement Area. Owner is obligated, at Owner's expenses, to pave the area on the Grantee Property that is necessary for the existing asphalt on the Grantee Property to connect to the Easement Area





With a copy to:

Daniel D. Seibel  
Seibel & Falkner, LLP  
2060 N. Humboldt Blvd., Suite 225  
Milwaukee, WI 53212

To Grantee:

CT Investments  
N 8 W 22520-L Johnson Drive  
Waukesha, WI 53186

(e) Governing Law and Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

(f) Amendments to be in Writing. No amendment to this Agreement shall be effective to add to, change, modify, waive or discharge this Agreement in whole or in part, unless such amendment is in writing pursuant to a recorded instrument and which is signed by (i) either the Owner or the successor owner of Owner Property, and (ii) Grantee or the successor owner of the Grantee Property. The exceptions to the above are the Owner recording a document as to the Easement Area and the termination allowed in section 1 above, which documents only have to be signed by Owner.

(g) Partial Invalidity. If any provisions, or portions thereof, of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) Public Record. This Agreement shall be recorded with the Register of Deeds for Waukesha County, Wisconsin.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

(j) Successors. The Agreement shall be binding on and benefit any successors to Owner and/or Grantee.

**[Signatures begin on following page]**

Page 203 of 325

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

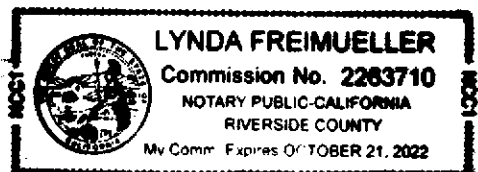
COUNTY OF RIVERSIDE

On JANUARY 25, 2021, before me, LYNDA FREIMUELLER, NOTARY PUBLIC, personally appeared MICHAEL J. BRABO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Lynda Freimueller



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**OWNER:**

The King J. and Stella C. Yee Joint  
Revocable Trust Dated May 14, 2004

By: Stella Yee  
Name: Stella Yee  
Its: Trustee

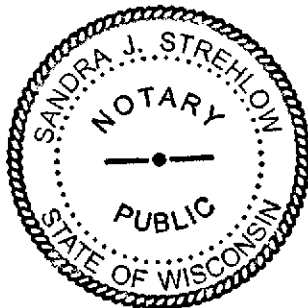
STATE OF WISCONSIN     )  
                                          ) ss  
COUNTY OF Waukesha )

Personally came before me this 27<sup>th</sup> day of January, 2021, the  
above-named Stella Yee, to me known to be the Trustee  
of \_\_\_\_\_, and to me known to be the person who executed the  
foregoing instrument and acknowledged the same.

The King J and Stella C. Yee Joint  
Revocable Trust Dated May 14, 2004

Sandra J. Strehlow  
Notary Public, State of Wisconsin

My Commission Expires: 11/6/2021





**EXHIBIT "A"**  
Legal Description

Outlot 1 of Certified Survey Map No. 7449, recorded on August 15, 1994 in Volume 63 of Certified Survey Maps, on Pages 193-199, as Document No. 1987210, as corrected by Affidavit of Correction dated September 8, 1995 and recorded on December 5, 1995 on Reel 2149, Image 170, as Document No. 2085123, being a part of the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 26, in Township 6 North, Range 20 East, in the City of New Berlin, County of Waukesha, State of Wisconsin.

EXCEPTING lands taken by the State of Wisconsin by Award of Damages recorded on January 31, 2007 as Document No. 3454475.

Tax Key No. NBC 1255.991.003

EXHIBIT "B"

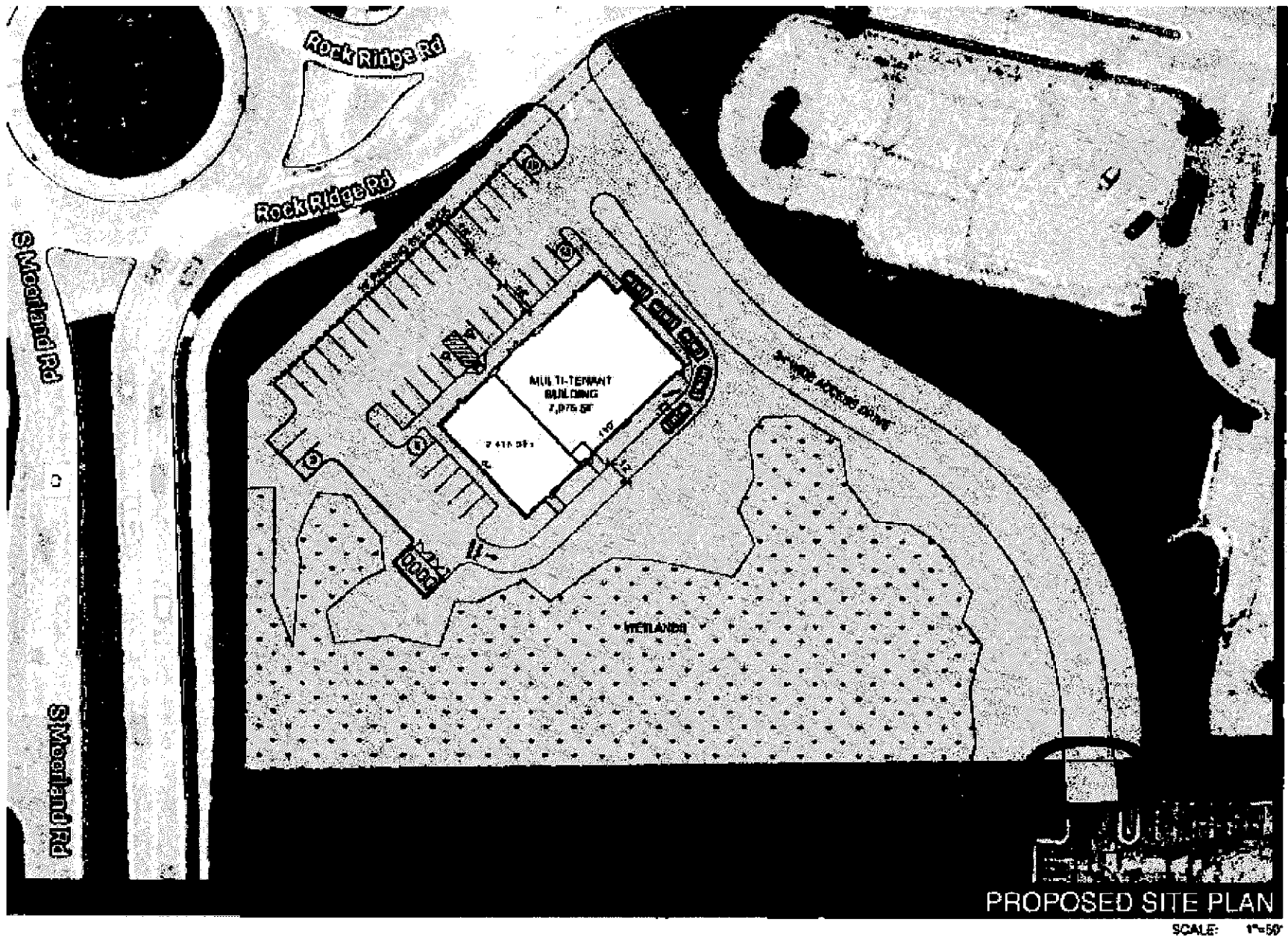
That part of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, County of Waukesha, State of Wisconsin, bounded and described as follows:

Commencing at a point on the West line of said 1/4 Section distant due South 1320.00 feet from the Northwest corner of said Section to the place of beginning; thence continuing due South 1235.26 feet to the center line of C.T.H. "HI", also known as Small Road; thence North 52° 05' East 549.65 feet to a point; thence due North 897.50 feet to a point; thence due West 433.62 feet to the point of beginning.

ALSO,

Certified Survey Map No. 466, recorded July 20, 1966 in Volume 3 of Certified Survey Maps, as Document No. 666698, of the West 6.9763 acres of 11.0 acre tract recorded in Volume 262 of Deeds, at Page 158, as Document No. 210592 of Waukesha County Records, a part of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, County of Waukesha, State of Wisconsin. Except lands lying South of the North line of property described in Document No. 2446924 and excepting lands lying West of the East line of property described in Document No. 2446922.





Area to be paved by Owner (Grantee Property)

4623815

REGISTER OF DEEDS  
WAUKESHA COUNTY, WI  
RECORDED ON

Book 125 Page 263-268



# CERTIFIED SURVEY MAP NO. 12233

Part of Outlot 1 of Certified Survey Map No. 7449, as corrected by Affidavit of Correction recorded as Document No. 2085123, in the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

Owner : Westridge Dev-Yee Trust  
1111 E Tahquitz CYN WY  
#203  
Palm Springs, CA 92262

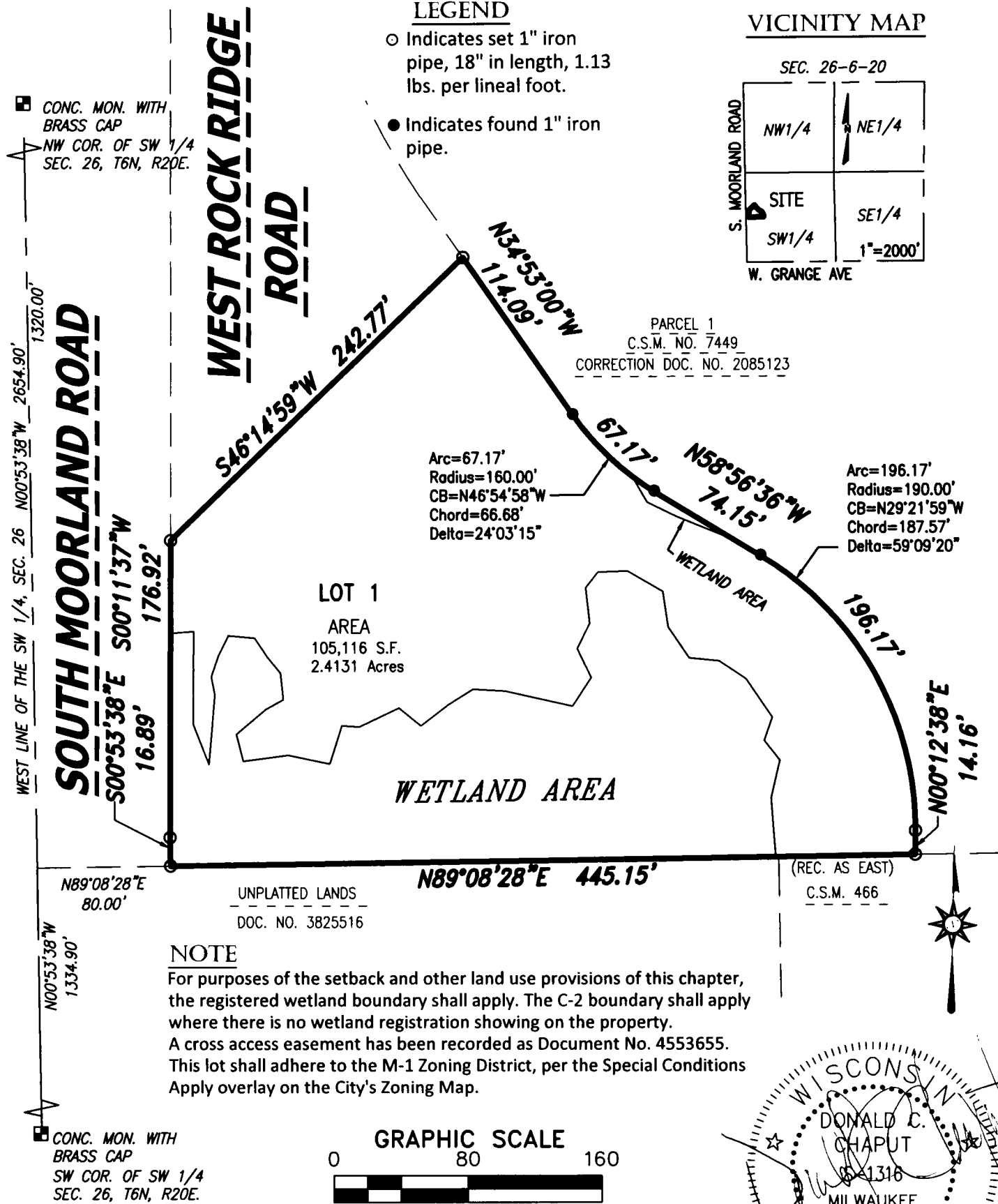
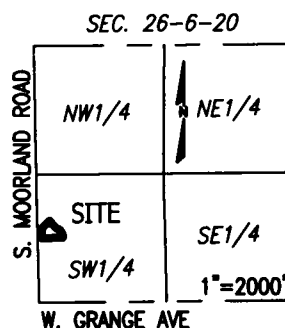
## BASIS OF BEARINGS

All bearings are referenced to the Wisconsin State Plane Coordinate System (South zone) dated Sep., 2017 in which the West line of the SW 1/4, Sec. 26 bears N00°53'38"W.

## LEGEND

- Indicates set 1" iron pipe, 18" in length, 1.13 lbs. per lineal foot.
- Indicates found 1" iron pipe.

## VICINITY MAP



**CHAPUT**  
LAND SURVEYS

234 W. Florida Street  
Milwaukee, WI 53204

414-224-8068  
www.chaputlandsurveys.com

This instrument was drafted by Donald C. Chaput  
Professional Land Surveyor S-1316

Dwg. No. 3276.02-dzb  
Sheet 1 of 6 Sheets  
24

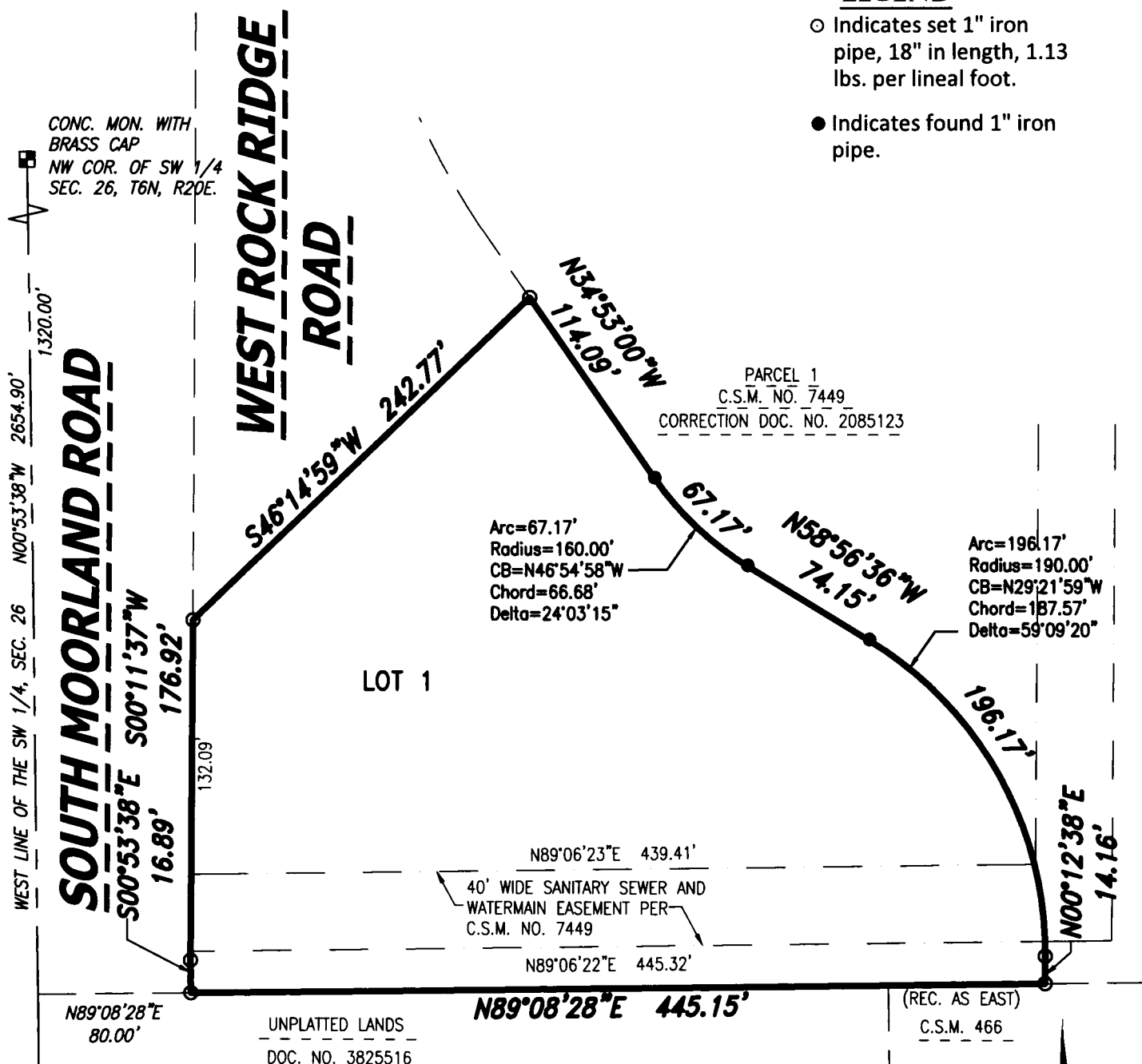
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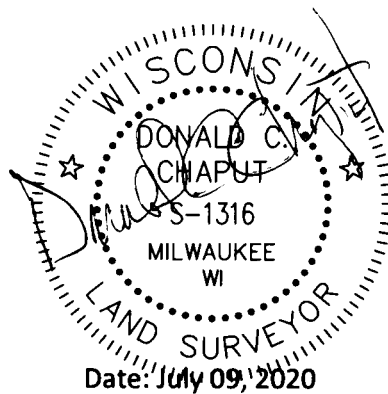
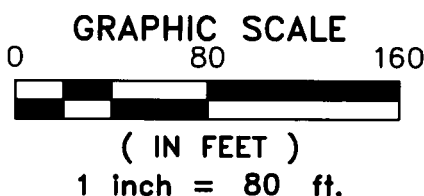
## EASEMENT DETAIL

### LEGEND

- Indicates set 1" iron pipe, 18" in length, 1.13 lbs. per lineal foot.
- Indicates found 1" iron pipe.



The City of New Berlin hereby releases any and all rights regarding the 80' Road Reservation as shown on Certified Survey Map No. 7449 recorded as Document No. 1987210 and corrected by Affidavit of Correction recorded as Document No. 2085123.



**CHAPUT**  
LAND SURVEYS

234 W. Florida Street  
Milwaukee, WI 53204

414-224-8068  
www.chaputlandsurveys.com

This instrument was drafted by Donald C. Chaput  
Professional Land Surveyor S-1316

Dwg. No. 3276.02-dzb  
Sheet 2 of 6 Sheets  
25

# CERTIFIED SURVEY MAP NO. 12233

Part of Outlot 1 of Certified Survey Map No. 7449, as corrected by Affidavit of Correction recorded as Document No. 2085123, in the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

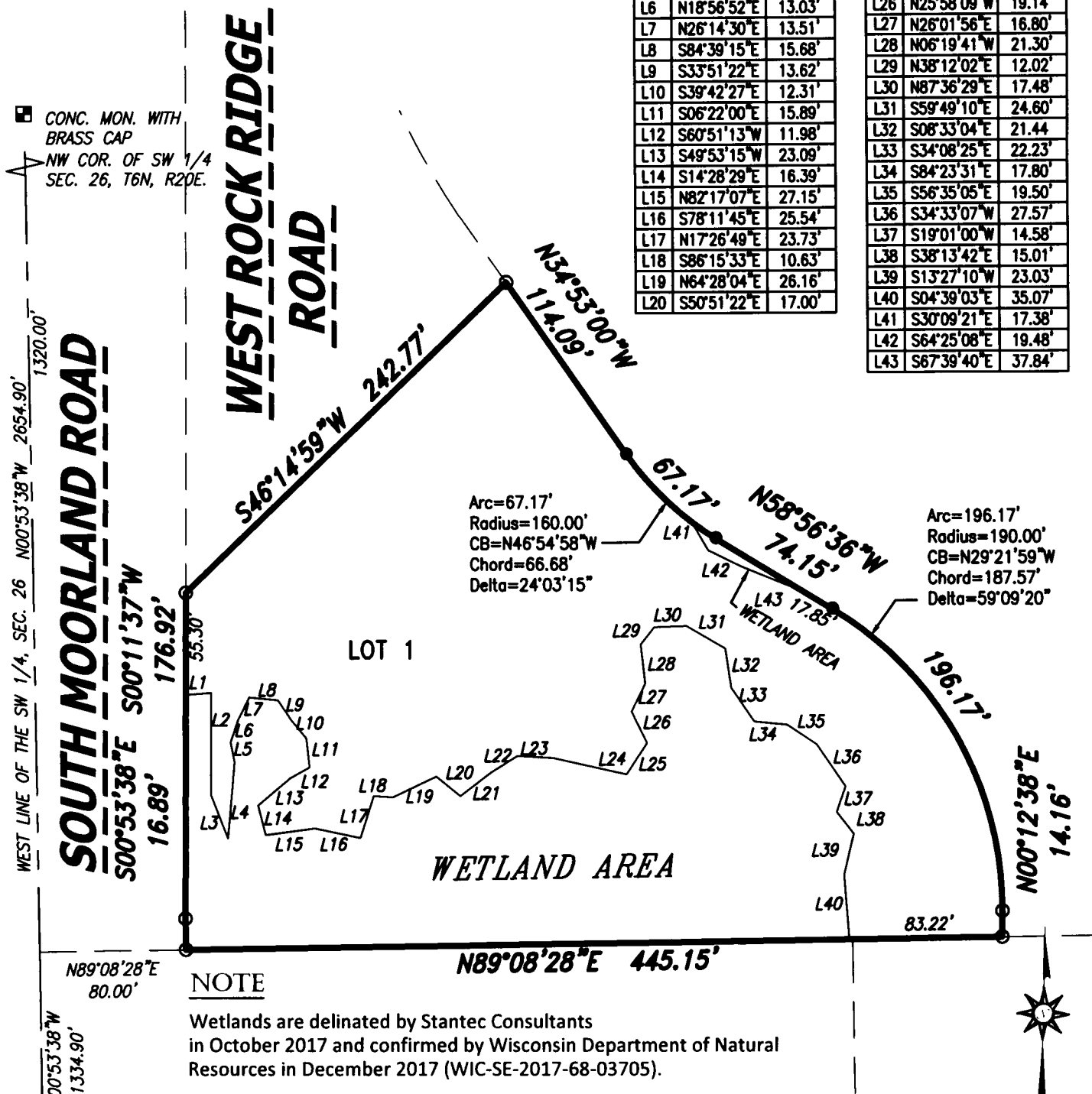
WETLANDS

LINE TABLE

| LINE | BEARING     | DIST.  |
|------|-------------|--------|
| L1   | N85°32'30"E | 13.89' |
| L2   | S00°09'23"W | 55.52' |
| L3   | S21°17'21"E | 25.38' |
| L4   | N05°03'55"E | 41.43' |
| L5   | N10°49'17"W | 11.04' |
| L6   | N18°56'52"E | 13.03' |
| L7   | N26°14'30"E | 13.51' |
| L8   | S84°39'15"E | 15.68' |
| L9   | S33°51'22"E | 13.62' |
| L10  | S39°42'27"E | 12.31' |
| L11  | S06°22'00"E | 15.89' |
| L12  | S60°51'13"W | 11.98' |
| L13  | S49°53'15"W | 23.09' |
| L14  | S14°28'29"E | 16.39' |
| L15  | N82°17'07"E | 27.15' |
| L16  | S78°11'45"E | 25.54' |
| L17  | N17°26'49"E | 23.73' |
| L18  | S86°15'33"E | 10.63' |
| L19  | N64°28'04"E | 26.16' |
| L20  | S50°51'22"E | 17.00' |

LINE TABLE

| LINE | BEARING     | DIST.  |
|------|-------------|--------|
| L21  | N52°35'35"E | 21.18' |
| L22  | N58°21'39"E | 16.85' |
| L23  | S87°04'17"E | 19.14' |
| L24  | S77°27'54"E | 41.30' |
| L25  | N33°26'21"E | 20.14' |
| L26  | N25°58'09"W | 19.14' |
| L27  | N26°01'56"E | 16.80' |
| L28  | N06°19'41"W | 21.30' |
| L29  | N38°12'02"E | 12.02' |
| L30  | N87°36'29"E | 17.48' |
| L31  | S59°49'10"E | 24.60' |
| L32  | S08°33'04"E | 21.44' |
| L33  | S34°08'25"E | 22.23' |
| L34  | S84°23'31"E | 17.80' |
| L35  | S56°35'05"E | 19.50' |
| L36  | S34°33'07"W | 27.57' |
| L37  | S19°01'00"W | 14.58' |
| L38  | S38°13'42"E | 15.01' |
| L39  | S13°27'10"W | 23.03' |
| L40  | S04°39'03"E | 35.07' |
| L41  | S30°09'21"E | 17.38' |
| L42  | S64°25'08"E | 19.48' |
| L43  | S67°39'40"E | 37.84' |



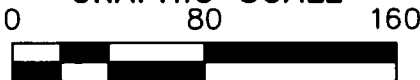
## NOTE

Wetlands are delineated by Stantec Consultants in October 2017 and confirmed by Wisconsin Department of Natural Resources in December 2017 (WIC-SE-2017-68-03705).

## NOTE

By letter dated February 6, 2019, The Southeastern Wisconsin Regional Planning Commission determined that the Isolated Natural Resource Area should coincide with the wetland boundary delineated by Stantec on the southern part of the parcel.

## GRAPHIC SCALE



( IN FEET )

1 inch = 80 ft.

**CHAPUT**  
LAND SURVEYS

234 W. Florida Street  
Milwaukee, WI 53204

414-224-8068  
www.chaputlandsurveys.com

This instrument was drafted by Donald C. Chaput  
Professional Land Surveyor S-1316

Dwg. No. 3276.02-dzb  
Sheet 3 of 6 Sheets  
26

# CERTIFIED SURVEY MAP NO. 12233

Part of Outlot 1 of Certified Survey Map No. 7449, as corrected by Affidavit of Correction recorded as Document No. 2085123, in the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

## SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN}  
:SS  
MILWAUKEE COUNTY}

I, DONALD C. CHAPUT, Professional Land Surveyor, do hereby certify:

THAT I have surveyed and mapped part of Outlot 1 of Certified Survey Map No. 7449, as corrected by Affidavit of Correction recorded as Document No. 2085123, in the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin, bounded and described as follows:

COMMENCING at the Southwest corner of the Southwest 1/4 of said Section 26; thence North 00°53'38"West along the West line of said 1/4 Section 1334.90 feet to the point; thence N89°08'28"E 80.00 feet to a point on the easterly line of South Moorland Road and the point of beginning of land hereinafter described; thence N89°08'28"E along the North line of lands described in Document No. 3825516 and the North line of Certified Survey Map No. 466 a distance of 445.15 feet to a point; thence N00°12'38"E 14.16 feet to a point; thence Northwesterly 196.17 feet along an arc of a curve whose center lies to the West having a Radius of 190.00 feet and a chord which bears N29°21'59"W 187.57 feet to a point; thence N58°56'36"W 74.15 feet to a point; thence Northwesterly 67.17 feet along an arc of a curve whose center lies to the East having a Radius of 160.00 feet and a chord which bears N46°54'58"W 66.68 feet to a point; thence N34°53'00"W 114.09 feet to a point on the Southerly line of West Rock Ridge Road; thence S46°14'59"W along said Southerly line 242.77 feet to a point on the Easterly line of South Moorland Road; thence S00°11'37"W along said Easterly line 176.92 feet to the point; thence S00°53'38"E continuing along said Easterly line 16.89 feet to the point of beginning.

Said lands as described contains 105,116 square feet or 2.4131 Acres.

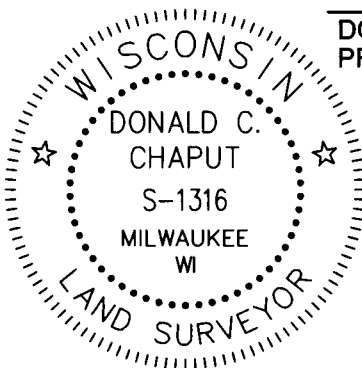
THAT I have made the survey, land division and map by the direction of Westridge Development Properties, LLC and The King J. and Stella C. Yees Joint Revocable Trust dated May 14, 2004, owner.

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with Chapter 236 of the Wisconsin Statutes and the City of New Berlin Code in

July 09, 2020  
DATE

  
DONALD C. CHAPUT  
PROFESSIONAL LAND SURVEYOR S-1316



**CHAPUT**  
LAND SURVEYS

234 W. Florida Street  
Milwaukee, WI 53204

414-224-8068  
www.chaputlandsurveys.com

This instrument was drafted by Donald C. Chaput  
Professional Land Surveyor S-1316

Dwg. No. 3276.02-dzb  
Sheet 4 of 6 Sheets  
27

# CERTIFIED SURVEY MAP NO. 12233

Part of Outlot 1 of Certified Survey Map No. 7449, as corrected by Affidavit of Correction recorded as Document No. 2085123, in the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

## OWNER'S CERTIFICATE

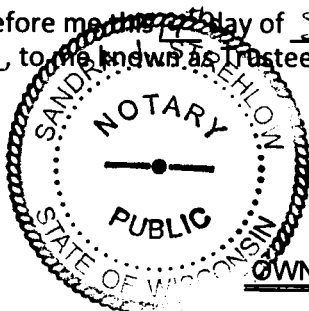
The King J. and Stella C. Yee Joint Revocable Trust dated May 14, 2004, as owner, hereby certify that I caused the land described on this map to be surveyed and mapped as represented on this map in accordance with the requirements of the Ordinances of the City of New Berlin.

The The King J. and Stella C. Yee Joint Revocable Trust dated May 14, 2004 does further certify that this map is required by S.236.10 or 236.12 to be submitted to the following for approval or objection: City of New Berlin .

WITNESS the hand and seal of Stella C. Yee on this 14<sup>th</sup> day of September 2021.

STATE OF Wisconsin  
:SS  
MILWAUKEE COUNTY

Personally came before me this 14<sup>th</sup> day of September, 2021, the above named Stella C. Yee, to me known as Trustee of The King J. and Stella C. Yee Joint Revocable Trust dated May 14, 2004.



Notary Public Sandra J. Hadden  
State of Wisconsin  
My commission expires. 11/6/2021

## OWNER'S CERTIFICATE

Westridge Development Properties, LLC, as owner, hereby certify that I caused the land described on this map to be surveyed and mapped as represented on this map in accordance with the requirements of the Ordinances of the City of New Berlin.

Westridge Development Properties, LLC does further certify that this map is required by S.236.10 or 236.12 to be submitted to the following for approval or objection: City of New Berlin .

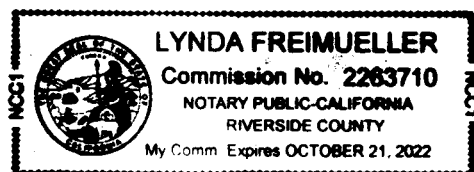
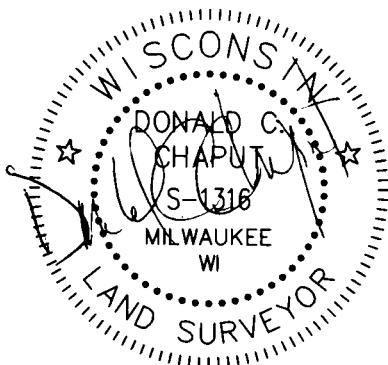
STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

Michael J. Brabo  
Michael J. Brabo, Managing Member

Personally came before me this 15<sup>th</sup> day of SEPTEMBER, 2021, the above named MICHAEL J. BRABO, to me known as Managing Member of Westridge Development Properties.

Witness the hand and seal of LYNDA FREIMUELLER, Notary Public on this 15<sup>th</sup> day of SEPTEMBER 2021.

Signature Lynda Freimueller  
State of CALIFORNIA



Date: July 09, 2020.

This instrument was drafted by Donald C. Chaput  
Professional Land Surveyor S-1316

Dwg. No. 3276.02-dzb  
Sheet 5 of 6 Sheets

# CERTIFIED SURVEY MAP NO. 12233

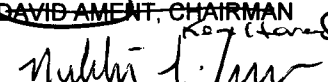
Part of Outlot 1 of Certified Survey Map No. 7449, as corrected by Affidavit of Correction recorded as Document No. 2085123, in the Northwest 1/4 of the Southwest 1/4 of Section 26, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

## PLANNING COMMISSION CERTIFICATE OF APPROVAL

Approved by the Plan Commission of the City of New Berlin on this 5 day of October, 2020

9/28/21  
Date

9/27/2021  
Date

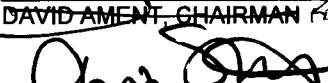
  
DAVID AMENT, CHAIRMAN *Registered - President*  
  
NIKKI JONES, SECRETARY

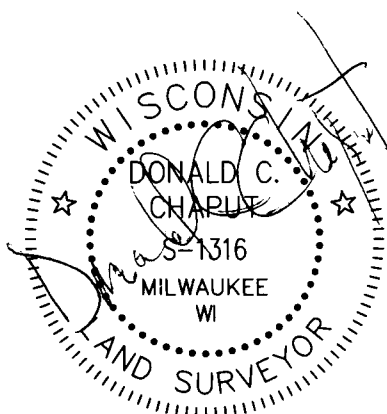
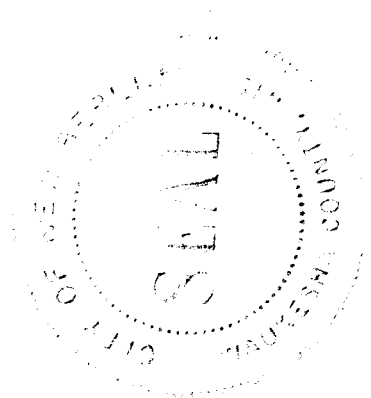
## CITY OF NEW BERLIN COMMON COUNCIL APPROVAL

Approved by the Common Council of the City of New Berlin on this 13 day of October, 2020

9/28/21  
Date

9/27/21  
Date

  
DAVID AMENT, CHAIRMAN *Registered - Council President*  
  
GEORGIA STANFORD, CITY CLERK



Date: July 09, 2020.

This instrument was drafted by Donald C. Chaput  
Professional Land Surveyor S-1316

4623815

REGISTER OF DEEDS  
WAUKESHA COUNTY, WI  
RECORDED ON

October 08, 2021 11:06 AM  
James R Behrend  
Register of Deeds

6 PGS  
TOTAL FEE: \$30.00  
TRANS FEE: \$0.00

Book 125 Page 263-268

Dwg. No. 3276.02-dzb  
Sheet 6 of 6 Sheets  
29



# MOTION SHEET

**TO:** Common Council  
Mayor Ament  
Ald. Horbinski

**FROM:** Board of Public Works

**DATE:** July 23, 2024

**RE:** July 15, 2024, BPW items requiring Common Council action

|                        |                                                                                                                                                                                                                                                                                                                                                         |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A.                     | Discussion and possible action to recommend to Common Council approval of the Relocation Order for the reconstruction of Sunny Slope Road and file with the County Clerk.                                                                                                                                                                               |
| <b>Council Motion:</b> |                                                                                                                                                                                                                                                                                                                                                         |
|                        | <b>This item was considered at the BPW meeting on July 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council to approve the Relocation Order for the reconstruction of Sunny Slope Road from Grange Avenue to College Avenue per the conditions in the Staff Report.</b> |



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# STAFF REPORT

## EXECUTIVE SUMMARY

---

**APPLICANT:** City of New Berlin

**PROJECT:** Sunny Slope Road Relocation Order

**LOCATION:** Sunny Slope Road from Grange Avenue to College Avenue

**REQUEST:** Recommendation to the Common Council to approve the Relocation Order for the reconstruction of Sunny Slope Road and file with the County Clerk.

**D.C.D. RECOMMENDATION:** Request that the Board of Public Works recommends to the Common Council to approve the Relocation Order for the reconstruction of Sunny Slope Road from Grange Avenue to College Avenue.

1. Funding for the design of the Sunny Slope Road project was approved as part of the 2024 CIP budget. The design services included the real estate acquisition services and appraisals. The Right-of-Way acquisition funding would be included in the 2025 CIP budget. Having the appraisals completed with the design will provide a more accurate budget request.
2. Construction is anticipated for Sunny Slope Road from Grange Avenue to College Avenue in 2026, pending Waukesha Counties schedule for reconstruction of Moorland Road from Grange Avenue to College Avenue. If the Moorland Road project is let in 2026, then the Sunny Slope Road project will be postponed until 2027.
3. Fee purchase of 1.44 Acres, to be negotiated by Single Source, Inc. for roadway improvements and necessary public utilities and drainage.
4. Temporary Limited Easements of .759 Acres are needed to complete construction grading and restoration.

**Attachments:**

Resolution No. 24-17

Relocation Order

Preliminary Plat

---

RESOLUTION 24-17

---

DECLARATION OF PUBLIC NECESSITY AND RELOCATION ORDER TO RECONSTRUCT SUNNY  
SLOPE ROAD IN THE CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

---

Relocation Order of the City of New Berlin, Waukesha County, Wisconsin, by its Common Council and for its Relocation Order hereby resolves as follows;

1. That this Relocation Order is in accordance with Section 840.09(3m) and 62.22(1m) of the Wisconsin Statutes, and Subsection 32.05(1) of the Wisconsin Statutes, for the purpose of the within described public improvement project.
2. The City of New Berlin hereby determines that it is necessary and a public purpose to reconstruct Sunny Slope Road from Grange Avenue to College Avenue in the City of New Berlin (the "project");
3. That the City of New Berlin will acquire certain lands of interests as shown on the attached right-of-way plat which is attached hereto as Exhibit A and incorporated herein by reference;
4. That a certified copy of this resolution shall be filed with the Waukesha County Clerk within 20 days of its adoption and final approval.

**Passed and adopted** by the Common Council this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

APPROVED:

\_\_\_\_\_  
David Ament, Mayor

Countersigned / Certified:

\_\_\_\_\_  
Rubina Medina, City Clerk

## RELOCATION ORDER

RE1708 10/2018

|                                            |                                                                                                             |                                                                    |                           |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|---------------------------|
| <u>Project ID</u><br>2244600               | <u>Road name</u><br>South Sunny Slope Road<br>from West College Avenue<br>(CTH HH) to West Grange<br>Avenue | <u>Highway</u><br>South Sunny Slope Road                           | <u>County</u><br>Waukesha |
| <u>Right of way plat date</u><br>7/11/2024 | <u>Plat sheet number(s)</u><br>5                                                                            | <u>Previously approved Relocation Order date</u><br>Not applicable |                           |

Description of termini of project:

Begin Relocation Order at the Southwest corner of Section 36, Town 6 North, Range 20 East at STA 10+00.00

And

End Relocation Order at the Northwest corner of Section 36, Town 6 North, Range 20 East at STA 62+66.79

---

To properly establish, layout, widen, enlarge, extend, construct, reconstruct, improve, or maintain a portion of the highway designated above, it is necessary to relocate or change and acquire certain lands or interests in lands as shown on the right of way plat for the above project.

To effect this change, pursuant to authority granted under Sections 62.22 (1) & (1m) and 62.23 (10) & (17), Wisconsin Statutes, the City of New Berlin orders that:

1. The said highway is laid out and established to the lines and widths as shown on the plat.
2. The required lands or interests in lands as shown on the plat shall be acquired by the City of New Berlin, pursuant to the provisions of Section 62.23 (17), Wisconsin Statutes.
3. This order supersedes and amends any previous order issued by the Agency.

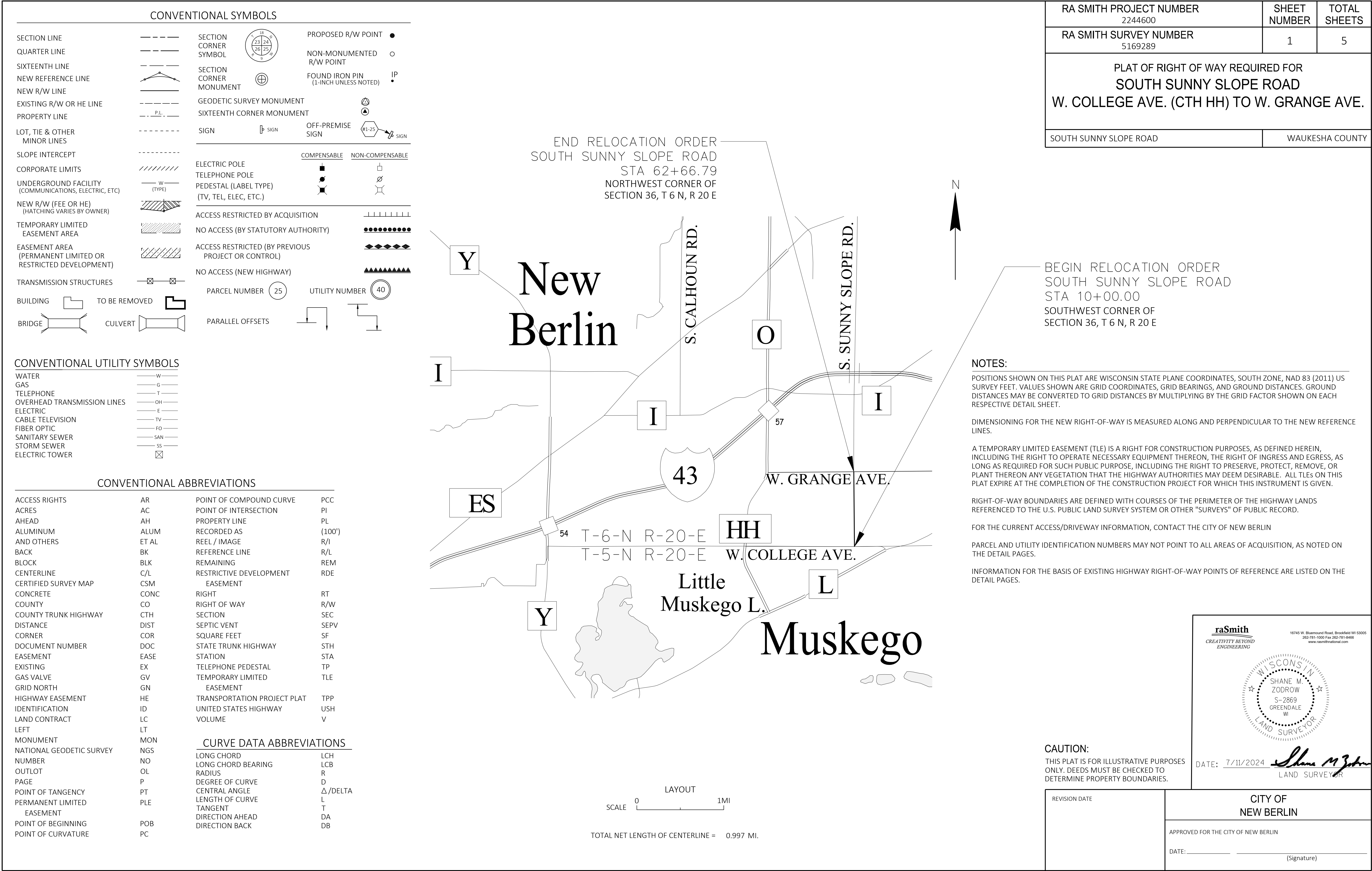
---

Signature

Date

---

Print Name and Title





SCHEDULE OF LANDS & INTERESTS REQUIRED

AREAS SHOWN IN THE TOTAL ACRES COLUMN MAY BE APPROXIMATE AND ARE DERIVED FROM TAX ROLLS OR OTHER AVAILABLE SOURCES AND MAY NOT INCLUDE LANDS OF THE OWNER WHICH ARE NOT CONTIGUOUS TO THE AREA TO BE ACQUIRED.

OWNERS NAMES ARE SHOWN FOR REFERENCE PURPOSES ONLY, AND ARE SUBJECT TO CHANGE PRIOR TO TRANSFER OF LAND AND INTERESTS TO THE CITY OF NEW BERLIN.

4

| PARCEL NUMBER | SHEET NUMBER | OWNER(S)                                          | INTEREST REQUIRED | TOTAL ACRES | R/W REQUIRED ACRES |          |       | TOTAL REMAINING ACRES | T.L.E. TEMP. ACRES | P.L.E. PERM. ACRES | PARCEL NUMBER |
|---------------|--------------|---------------------------------------------------|-------------------|-------------|--------------------|----------|-------|-----------------------|--------------------|--------------------|---------------|
|               |              |                                                   |                   |             | NEW                | EXISTING | TOTAL |                       |                    |                    |               |
| 1             | 4.04         | JAMES S HARMEYER                                  | FEE,TLE           | 1.716       | 0.171              | 0.167    | 0.338 | 1.378                 | 0.071              | -                  | 1             |
| 2             | 4.04         | BRIAN A & KRISTA L ST LAWRENCE                    | TLE               | 0.746       | -                  | -        | -     | 0.746                 | 0.006              | -                  | 2             |
| 3             | 4.04         | DAVID W. AND BARBARA A. RUEHLE JOINT TRUST        | FEE,TLE           | 19.293      | 0.543              | 0.532    | 1.075 | 18.218                | 0.227              | -                  | 3             |
| 4             | 4.04         | ROY A BRUEGGEMANN AND ELAINE BRUEGGEMANN          | FEE,TLE           | 4.949       | 0.158              | -        | 0.158 | 4.791                 | 0.075              | -                  | 4             |
| -             | -            | -                                                 | -                 | -           | -                  | -        | -     | -                     | -                  | -                  | -             |
| 6             | 4.04         | COMMON SCHOOL DISTRICT NO. 14, CITY OF NEW BERLIN | FEE,TLE           | 15.007      | 0.568              | 0.557    | 1.125 | 13.882                | 0.188              | -                  | 6             |
| 7             | 4.05         | THEOFILA C KROKOWSKI LIVING TRUST                 | TLE               | 17.383      | -                  | -        | -     | 17.383                | 0.015              | -                  | 7             |
| 8             | 4.05         | DENNIS J O'REILLY                                 | TLE               | 0.470       | -                  | -        | -     | 0.470                 | 0.030              | -                  | 8             |
| 9             | 4.05         | ENGLE JOINT REVOCABLE TRUST                       | TLE               | 0.536       | -                  | -        | -     | 0.536                 | 0.048              | -                  | 9             |
| -             | -            | -                                                 | -                 | -           | -                  | -        | -     | -                     | -                  | -                  | -             |
| 11            | 4.05         | MAHMUD MUBSHAR & BUSHRA MUBSHAR                   | TLE               | 0.821       | -                  | -        | -     | 0.821                 | 0.051              | -                  | 11            |
| 12            | 4.05         | JOSEPH CAMPBELL AND CYNTHIA CAMPBELL              | TLE               | 0.602       | -                  | -        | -     | 0.602                 | 0.040              | -                  | 12            |
| 13            | 4.05         | WILLIAM J LAFFEY AND ELLEN F LAFFEY               | TLE               | 0.483       | -                  | -        | -     | 0.483                 | 0.008              | -                  | 13            |
| -             | -            | -                                                 | -                 | -           | -                  | -        | -     | -                     | -                  | -                  | -             |
| -             | -            | -                                                 | -                 | -           | -                  | -        | -     | -                     | -                  | -                  | -             |
|               |              |                                                   |                   |             |                    |          |       |                       |                    |                    |               |
|               |              |                                                   |                   |             |                    |          |       |                       |                    |                    |               |
|               |              |                                                   |                   |             |                    |          |       |                       |                    |                    |               |
|               |              |                                                   |                   |             |                    |          |       |                       |                    |                    |               |
|               |              |                                                   |                   |             |                    |          |       |                       |                    |                    |               |
|               |              |                                                   |                   |             |                    |          |       |                       |                    |                    |               |
| 500           | 4.04,4.05    | AT&T WISCONSIN - TELEPHONE, FIBER OPTIC           | RELEASE OF RIGHTS |             |                    |          |       |                       |                    |                    |               |
| 501           | 4.04         | WE ENERGIES - GAS                                 | RELEASE OF RIGHTS |             |                    |          |       |                       |                    |                    |               |
| 502           | 4.04,4.05    | WE ENERGIES - ELECTRIC                            | RELEASE OF RIGHTS |             |                    |          |       |                       |                    |                    |               |
| 503           | 4.04         | KARRINGTON WOODS LLC - SANITARY & WATER           | RELEASE OF RIGHTS |             |                    |          |       |                       |                    |                    |               |

4

|               |                |             |                       |                                  |                 |   |
|---------------|----------------|-------------|-----------------------|----------------------------------|-----------------|---|
| REVISION DATE | DATE 7/11/2024 | SCALE, FEET | HWY: S SUNNY SLOPE RD | RA SMITH PROJECT NUMBER: 2244600 | PLAT SHEET 4.02 |   |
|               | GRID FACTOR    |             | COUNTY: WAUKESHA      | RA SMITH SURVEY NUMBER: 5169289  | PS&E SHEET      | E |





26 25  
35 36  
W GRANGE AVENUE  
25 26  
36 35

NE-NE

W FOX TAIL CT

NW-NW

S NICOLET DR

SW-NW

SE-NE

T-6-N  
R-20-E

SHEET 4.05

35 35  
35 35  
35 36  
36 36  
W BROOK HOLLOW CT

NE-SE

S SUNNY SLOPE RD

CITY OF  
NEW BERLIN

NW-SW

W OSPREY WAY

SHEET 4.04

SE-SE

W OLD FARM RD

SW-SW

35 35  
35 36  
36 36  
W COLLEGE AVENUE

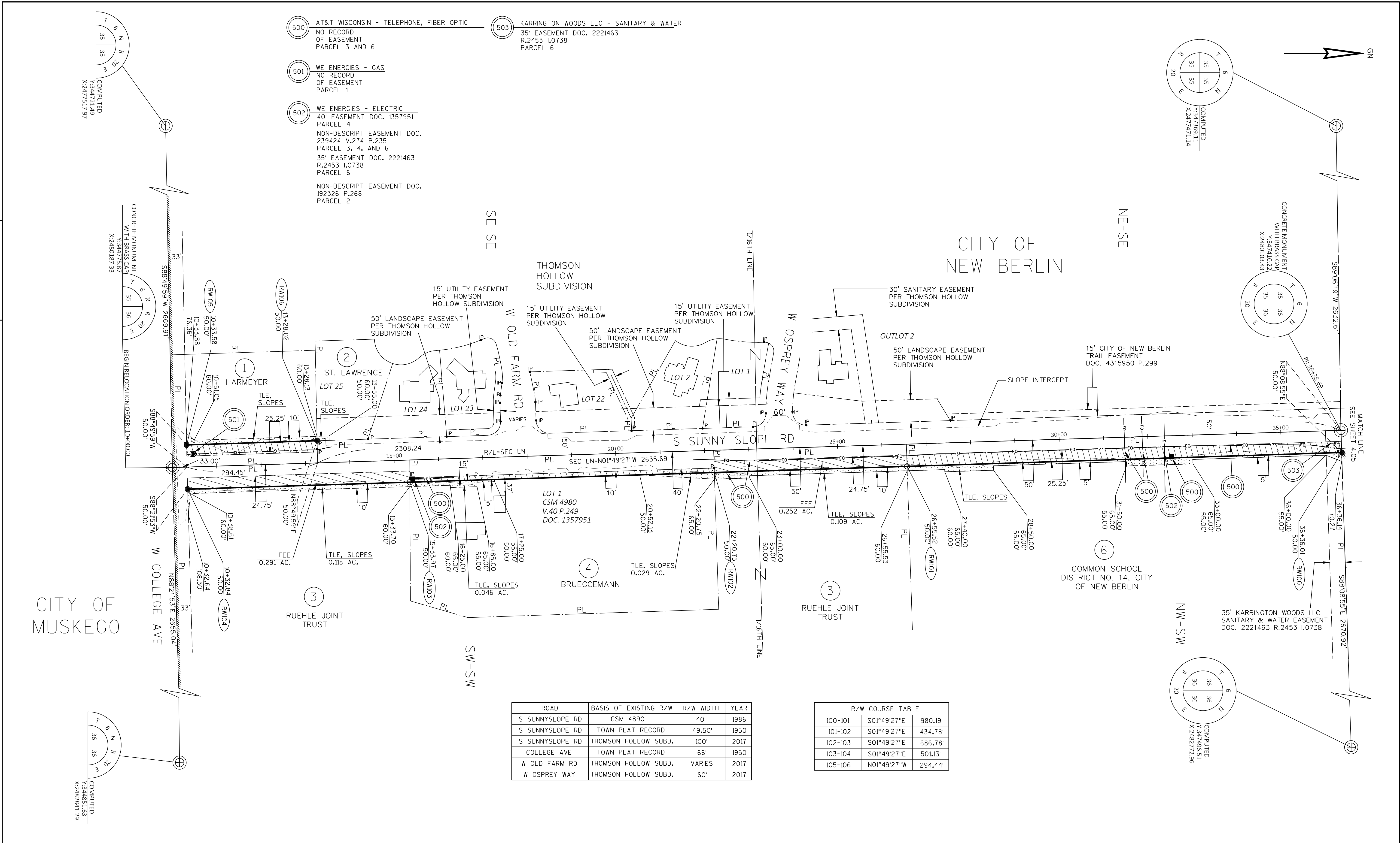
T-5-N  
R-20-E  
CITY OF  
MUSKEGO

4

4

|                                          |                                  |                              |                       |                                  |                  |   |
|------------------------------------------|----------------------------------|------------------------------|-----------------------|----------------------------------|------------------|---|
| REVISION DATE<br>_____<br>_____<br>_____ | DATE 7/11/2024<br>_____<br>_____ | SCALE, FEET<br>0 200 400<br> | HWY: S SUNNY SLOPE RD | RA SMITH PROJECT NUMBER: 2244600 | PLAT SHEET 4.03  | E |
|                                          |                                  |                              | COUNTY: WAUKESHA      | RA SMITH SURVEY NUMBER: 5169289  | PS&E SHEET _____ |   |





- 500

AT&T WISCONSIN - TELEPHONE, FIBER OPTIC  
NO RECORD  
OF EASEMENT  
PARCEL 3 AND 6
- 501

WE ENERGIES - GAS  
NO RECORD  
OF EASEMENT  
PARCEL 1
- 502

WE ENERGIES - ELECTRIC  
40' EASEMENT DOC. 1357951  
PARCEL 4  
NON-DESCRIPT EASEMENT DOC.  
239424 V.274 P.235  
PARCEL 3, 4, AND 6  
35' EASEMENT DOC. 2221463  
R.2453 I.0738  
PARCEL 6  
NON-DESCRIPT EASEMENT DOC.  
192326 P.268  
PARCEL 2
- 503

KARRINGTON WOODS LLC - SANITARY & WATER  
35' EASEMENT DOC. 2221463  
R.2453 I.0738  
PARCEL 6

| ROAD            | BASIS OF EXISTING R/W | R/W WIDTH | YEAR |
|-----------------|-----------------------|-----------|------|
| S SUNNYSLOPE RD | CSM 4890              | 40'       | 1986 |
| S SUNNYSLOPE RD | TOWN PLAT RECORD      | 49.50'    | 1950 |
| S SUNNYSLOPE RD | THOMSON HOLLOW SUBD.  | 100'      | 2017 |
| COLLEGE AVE     | TOWN PLAT RECORD      | 66'       | 1950 |
| W OLD FARM RD   | THOMSON HOLLOW SUBD.  | VARIES    | 2017 |
| W OSPREY WAY    | THOMSON HOLLOW SUBD.  | 60'       | 2017 |

| R/W COURSE TABLE |             |         |
|------------------|-------------|---------|
| 100-101          | S01°49'27"E | 980.19' |
| 101-102          | S01°49'27"E | 434.78' |
| 102-103          | S01°49'27"E | 686.78' |
| 103-104          | S01°49'27"E | 501.13' |
| 105-106          | N01°49'27"W | 294.44' |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 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4

4

500 AT&T WISCONSIN - TELEPHONE, FIBER OPTIC  
NO RECORD OF EASEMENT  
PARCEL 8, 9, 12, 13

NON-DESCRIPT EASEMENT PER DOC. NO.  
713186 V. 1122 P. 502  
PARCEL 7

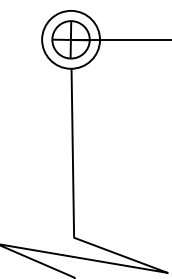
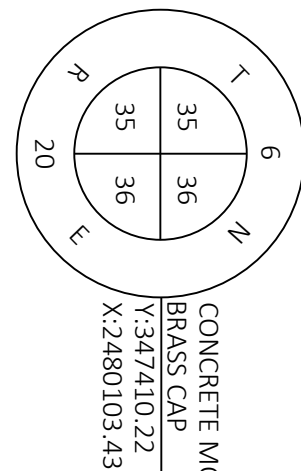
502 WE ENERGIES - ELECTRIC  
15' WEPCO EASEMENT AS SHOWN ON HIGH  
GROVE ADD'N NO. 2  
PARCEL 8, 9, 12, 13

NON-DESCRIPT EASEMENT PER DOC. NO.  
135845 P. 274-275  
PARCEL 8, 9, 11, 12, 13

NON-DESCRIPT EASEMENT PER DOC. NO.  
156755 P. 423  
PARCEL 8, 9, 11, 12, 13

NON-DESCRIPT EASEMENT PER DOC. NO.  
233263 P. 179  
PARCEL 7

NON-DESCRIPT EASEMENT PER DOC. NO.  
713186 V. 1122 P. 502  
PARCEL 7



SEE SHEET 4.04

W BROOK HOLLOW CT

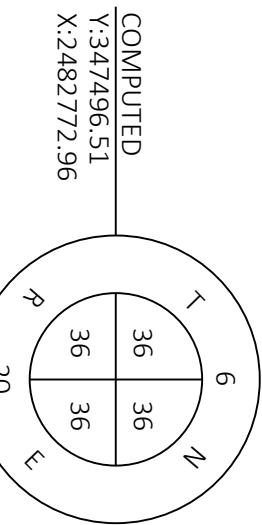
W BROOK HOLLOW CT

W BROOK HOLLOW CT

LOT 1  
CSM 11951  
DOC. 4441952  
B.121 P.117

60' x 60' VISION CORNER  
EASEMENT PER HIGH  
GROVE ADD'N NO. 2

W BROOK HOLLOW CT



SW-NW

SE-NE

CITY OF  
NEW BERLIN

LOT 2  
CSM 12457  
DOC. 4724853  
B.129 P.105

KROKOWSKI LIVING TRUST

7

LOT 1  
CSM 12457  
DOC. 4724853  
B.129 P.105

60' x 60' VISION CORNER  
EASEMENT PER HIGH  
GROVE ADD'N NO. 2

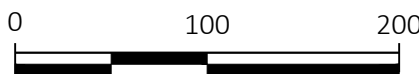
8

9

ENGLE JOINT-  
REVOCABLE TRUST

| ROAD              | BASIS OF EXISTING R/W          | R/W WIDTH | YEAR |
|-------------------|--------------------------------|-----------|------|
| S SUNNYSLOPE RD   | RED FOX CROSSING SUBD.         | 100'      | 2018 |
| S SUNNYSLOPE RD   | HIGH GROVE ADDITION NO.2 SUBD. | 100'      | 1999 |
| S SUNNYSLOPE RD   | CSM 11951                      | 100'      | 2019 |
| S SUNNYSLOPE RD   | CSM 12457                      | 100'      | 2023 |
| W FOX TAIL DR     | RED FOX CROSSING SUBD.         | 80'       | 2018 |
| S NICOLET DR      | HIGH GROVE ADDITION NO.2 SUBD. | 60'       | 1999 |
| W BROOK HOLLOW CT | HIGH GROVE ADDITION NO.2 SUBD. | 60'       | 1999 |

SCALE, FEET



HWY: S SUNNY SLOPE RD

COUNTY: WAUKESHA

RA SMITH PROJECT NUMBER: 2244600

RA SMITH SURVEY NUMBER: 5169289

PLAT SHEET 4.05

PS&E SHEET

E





DATE: July 22, 2024

TO: Rubina Medina  
City Clerk

FR: Mayor Dave Ament

RE: Mayoral Appointments for the July 23, 2024 Common Council Mtg

**Fourth of July Commission**

Krista Heinen  
13525 W Terrywood Ct  
New Berlin, WI 53151  
262-352-8156  
[kristamheinen@gmail.com](mailto:kristamheinen@gmail.com)  
(Re-Appointment)

**Expiration Date**

8/1/2028

| For Office Purposes Only |    |    |       |    |      |   |
|--------------------------|----|----|-------|----|------|---|
| T                        | Em | We | Provo | Lt | Ethc | H |
| T                        | I  | b  | x     | r  | s    | B |
|                          |    |    |       |    |      |   |

**Recreation Commission**

**Expiration Date**

Elyssa Henry  
Athletics & Activities Admin Assistant  
Eisenhower Middle/High School  
262-789-6301  
[elyssa.henry@nbexcellence.org](mailto:elyssa.henry@nbexcellence.org)  
(New Appointment)  
(Replacing Jordan Napoli)  
(NBPS Representative)

7/28/2027

| For Office Purposes Only |    |    |       |    |      |   |
|--------------------------|----|----|-------|----|------|---|
| T                        | Em | We | Provo | Lt | Ethc | H |
| T                        | I  | b  | x     | r  | s    | B |
|                          |    |    |       |    |      |   |

**Recreation Commission**

Jason Prei  
4005 S Quimby Ave  
New Berlin, WI 53151  
262-719-0828  
[jprei19@gmail.com](mailto:jprei19@gmail.com)  
(Re-Appointment)

**Expiration Date**

7/28/2027

| For Office Purposes Only |    |    |       |    |      |   |
|--------------------------|----|----|-------|----|------|---|
| T                        | Em | We | Provo | Lt | Ethc | H |
| T                        | I  | b  | x     | r  | s    | B |
|                          |    |    |       |    |      |   |

**Safety Commission**

Charles Garrigues  
13750 W National Ave. #4411  
New Berlin, WI 53151  
262-278-0115  
[chuckgarrigues@gmail.com](mailto:chuckgarrigues@gmail.com)  
(New Appointment)

**Expiration Date**

4/30/2025

| For Office Purposes Only |    |    |       |    |      |   |
|--------------------------|----|----|-------|----|------|---|
| T                        | Em | We | Provo | Lt | Ethc | H |
| T                        | I  | b  | x     | r  | s    | B |
|                          |    |    |       |    |      |   |

**New Appointments for Recreation Upon Approval of Ordinance #2697****Recreation Commission**

Joseph Izzo  
13480W Linfield Drive  
New Berlin, WI 53151  
262-227-3246  
[jpizzo@duck.com](mailto:jpizzo@duck.com)  
(New Appointment)  
(NBAA Representative)

**Expiration Date**

7/31/2025

| For Office Purposes Only |    |    |       |    |      |   |
|--------------------------|----|----|-------|----|------|---|
| T                        | Em | We | Provo | Lt | Ethc | H |
| T                        | I  | b  | x     | r  | s    | B |
|                          |    |    |       |    |      |   |

**Recreation Commission**

Brian Johnson  
16340 W Heatherly Drive  
New Berlin, WI 53151  
414-406-3351  
[coachjohnson@wi.rr.com](mailto:coachjohnson@wi.rr.com)  
(New Appointment)  
(NBAA Representative)

**Expiration Date**

7/31/2026

| For Office Purposes Only |    |    |       |    |      |   |
|--------------------------|----|----|-------|----|------|---|
| T                        | Em | We | Provo | Lt | Ethc | H |
| T                        | I  | b  | x     | r  | s    | B |
|                          |    |    |       |    |      |   |



# Committee of the Whole MEETING MINUTES

June 18, 2024 - 6:00 PM  
Council Chambers  
3805 S. Casper Drive

*Please note: Minutes are unofficial until approved at the next scheduled meeting.*

## MINUTES

### 1. CALL MEETING TO ORDER

Mayor Ament called the meeting to order at 6:00 pm

### 2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

The City Clerk took the roll call as follows:

Present: Alderperson Kroupa, Alderperson Horbinski, Alderperson Hopkins, Alderperson Maxey, Alderperson Harenda, Alderperson La Fever

Excused: Alderperson Joseph Stribl

Staff Present: Mayor Ament, City Attorney Mark Blum, City Clerk Rubina R. Medina, Library Director Natalie Beacom

The City Clerk stated that there was a quorum and the meeting was properly noticed.

### 3. APPROVAL OF MINUTES

#### A. June 11, 2024, Committee of the Whole minutes

**MOTION:** Motion to approve

**VOTE:** Motion by: Horbinski  
Second by: Kroupa  
Motion 6-0

### 4. MISCELLANEOUS

#### A. Library Department Update

Natalie Beacom, Library Director, provided a brief overview of the New Berlin Public Library. After the conclusion of her overview, the Mayor and Council thanked her for all of her hard work.

#### B. Discussion and possible recommendation to Common Council approval of a Location Agreement between the City of New Berlin and Trivity Health Services, LLC. (i.e. Silver Sneakers)

**MOTION:** Motion to approve

**VOTE:** Motion by: Harenda  
Second by: Horbinski  
Motion 6-0

#### C. Discussion and possible recommendation to Common Council approval of an agreement between the City of New Berlin and Optum Health Care Solutions, LLC

**MOTION:** Motion to approve

**VOTE:** Motion by: Harenda  
Second by: Hopkins  
Motion 6-0

- D.** Discussion and possible recommendation to Common Council to approve Resolution 2024-13, a Resolution amending the 2024 Capital Projects Budget to increase that budget by \$1.3 million for the Community Center at Hickory Grove project

**MOTION:** Motion to Approve

**VOTE:** Motion by: Alderperson Harenda  
Second by: Alderperson Hopkins  
Motion Failed 2-4

Ald. Maxey spoke in opposition to increasing the budget by 1.3 million.

Mayor Ament stated that the project and financing have been approved by the Council. What we should be discussing is whether the Council wants to amend the CIP budget by 1.3 million for the Community Center at Hickory Grove project.

Ald. Kroupa spoke in opposition to increasing the budget by 1.3 million.

City Attorney Blum asked that the Council focus on this resolution that is on the agenda so that we are consistent with the open meetings law requirements.

Ald. Horbinski spoke in favor of the resolution and increasing the budget by 1.3 million.

Ald. Hopkins spoke in favor of the resolution and increasing the budget by 1.3 million.

Ald. La Fever spoke in opposition to increasing the budget by 1.3 million.

Ald. Harenda stated that he understands the support and opposition to increasing the budget by 1.3 million. He was undecided at that time.

Ald. Horbinski stated that we could revisit the project's scope and review the needs of the Recreation Department and food pantry.

- E.** Discussion and possible recommendation to Common Council approval of Resolution No. 2024-14, a Resolution amending the 2024 Capital Projects Budget to transfer \$557,000 from the 2024 DPW Garage CIP Account to the 2024 Community Center at Hickory Grove Account

**MOTION:** Motion to approve

**VOTE:** Motion by: Harenda  
Second by: Maxey  
Motion 6-0

- F.** Discussion and possible recommendation to set a date and time for a Special Common Council meeting to be held the last week of June, along with approval for the meeting to be held electronically

**MOTION:** Motion to approve a meeting to be held in person at City Hall on June 25, 2024 at 6 pm

**VOTE:** Motion by: Kroupa  
Second by: La Fever  
Motion 6-0

## **5. ADJOURN**

**MOTION:** Motion to adjourn at 6:42 pm

**VOTE:** Motion by: Kroupa  
Second by: La Fever  
Motion 6-0

Save

Print

Clear

Form

AB-105

# **Producer Full-Service Retail Sales Application**

Date

## **Part A: Producer Information**

1. Business Legal Name (individual name if sole proprietor)

Kowalske Brewing

2. Business Name or DBA

Component Brewing

3. Agent Name

Ashley Schnering

4. FEIN

82 - 4547890

5. Wisconsin Seller's Permit Number

456 - 1030207982 - 06

6. Wisconsin Producer Permit Number

503439

7. Producer Type



Brewery



Winery



Liquor Manufacturer/Rectifier

8. Contact Person's First Name

David

9. Last Name

Kowalske

10. M.I.

E

11. Contact Person's Phone

(262) 565-8782

12. Contact Person's Email

dj@componentbrewing.com

## **Part B: Production Quantity**

**Note:** Check appropriate quantity for permit held (see instructions). If you hold more than one producer permit, check the total aggregate quantity produced for each type of permit. Enter the highest quantity produced in any of the last three calendar years.

### **Brewery**

☐ Less than 250 barrels☒ 250 - 2,499 barrels☐ 2,500 - 7,499 barrels☐ 7,500 or more barrels

### **Manufacturer/Rectifier**

☐ Less than 1,500 liters☐ 1,500 - 4,999 liters☐ 5,000 - 34,999 liters☐ 35,000 or more liters

### **Winery**

☐ Less than 1,000 gallons☐ 1,000 - 4,999 gallons☐ 5,000 - 24,999 gallons☐ 25,000 or more gallons

Calendar year: 2023

Quantity: 400

Calendar year:

Quantity:

Calendar year:

Quantity:

**Complete only ONE of Part C, D or E.**

## **Part C: Request for Full-Service Retail Sales at the Production Premises**

1. Start Date

2. Production Premises Address

3. City

4. State

5. Zip Code

6. County

7. Governing Municipality ☐ City ☐ Town ☐ Village  
of: \_\_\_\_\_

## **Part D: Request for Fixed Full-Service Retail Outlet**

1. Are you transferring one fixed full-service retail outlet to a new location? ..... ☐ Yes ☐ No  
If yes, complete boxes 2 through 9.

2. Current Outlet Name

3. Current Outlet Premises Address

4. City

5. State

6. Zip Code

7. County

8. Governing Municipality ☐ City ☐ Town ☐ Village  
of: \_\_\_\_\_

9. Premises Phone Number

Continued →

**Part D: Request for Fixed Full-Service Retail Outlet (Cont.)****New Fixed Retail Outlet Information (complete boxes 10 through 23)**

|                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                      |              |                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------|
| 10. Start Date                                                                                                                                                                                                                                                                                                                                                                                                                                | 11. New Outlet Name                                                                                                                  |              |                           |
| 12. New Outlet Premises Address                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                      |              |                           |
| 13. City                                                                                                                                                                                                                                                                                                                                                                                                                                      | 14. State                                                                                                                            | 15. Zip Code |                           |
| 16. County                                                                                                                                                                                                                                                                                                                                                                                                                                    | 17. Governing Municipality <input type="checkbox"/> City <input type="checkbox"/> Town <input type="checkbox"/> Village<br>of: _____ |              | 18. Premises Phone Number |
| 19. Premises Description - Describe the building or buildings and any outside areas where alcohol beverages are produced, sold, stored, or consumed, and related records are kept. Describe all rooms within the building, including living quarters. Authorized alcohol beverage activities and storage of records may occur only on the premises described in this application. Attach a map or diagram and additional sheets if necessary. |                                                                                                                                      |              |                           |
| 20. Will you operate a restaurant on the premises? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                         |                                                                                                                                      |              |                           |
| 21. What alcohol beverages will be offered for sale? (check all that apply) . . . . <input type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                |                                                                                                                                      |              |                           |
| 22. What alcohol beverages does the permittee produce? (check all that apply) <input type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                      |                                                                                                                                      |              |                           |
| 23. How will customers be served? (check all that apply) . . . <input type="checkbox"/> Samples <input type="checkbox"/> On-premises consumption <input type="checkbox"/> Off-premises consumption                                                                                                                                                                                                                                            |                                                                                                                                      |              |                           |

**Part E: Request for Unlimited Transfer Full-Service Retail Outlet**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                            |                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| 1. Name of Event (if applicable)<br><b>Color Clash Dash @ Malone Park</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                            |                                                         |
| 2. Dates of Operation (attach a schedule, if necessary)<br><b>August 10, 2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                            | 3. Hours of Operation<br><b>10-6PM</b>                  |
| 4. Premises Address<br><b>16400 W Al Stigler Pkwy</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                            |                                                         |
| 5. City<br><b>New Berlin</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 6. State<br><b>WI</b>                                                                                                                                      | 7. Zip Code<br><b>53151</b>                             |
| 8. County<br><b>Waukesha</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 9. Governing Municipality <input checked="" type="checkbox"/> City <input type="checkbox"/> Town <input type="checkbox"/> Village<br>of: <b>New Berlin</b> |                                                         |
| 10. Organizer of Event (if not the named applicant)<br><b>Katie Roth</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 11. Email and/or Phone Number for Organizer of Event<br><b>kroth@newberlin.org</b>                                                                         |                                                         |
| 12. Organizer Website<br><b>N/A</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 13. Event Website<br><b>N/A</b>                                                                                                                            |                                                         |
| 14. Premises Description - Describe the building or buildings and any outside areas where alcohol beverages are produced, sold, stored, or consumed, and related records are kept. Describe all rooms within the building, including living quarters. Authorized alcohol beverage activities and storage of records may occur only on the premises described in this application. Attach a map or diagram and additional sheets if necessary.<br><br><b>Beer trailer will be set up in Malone Park as part of the Color Clash Dash celebration and festivities.</b> |                                                                                                                                                            |                                                         |
| 15. On-Site Contact (Last Name, First Name)<br><b>Roth, Katie</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 16. On-Site Contact Phone<br><b>(262) 797-2443</b>                                                                                                         | 17. On-Site Contact Email<br><b>kroth@newberlin.org</b> |
| 18. Will you operate a restaurant on the premises? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                            |                                                         |
| 19. What alcohol beverages will be offered for sale? (check all that apply) . . . . <input checked="" type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                            |                                                         |
| 20. What alcohol beverages does the permittee produce? (check all that apply) <input checked="" type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                            |                                                         |
| 21. How will customers be served? (check all that apply) . . . <input type="checkbox"/> Samples <input checked="" type="checkbox"/> On-premises consumption <input type="checkbox"/> Off-premises consumption                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                            |                                                         |

**Part F: Attestation**

Who must sign this application?

- sole proprietor
- general partner of a partnership
- corporate officer
- member of an LLC

**READ CAREFULLY BEFORE SIGNING:**

I understand and agree to the following:

- I will not operate this location outside of the dates and times approved by the municipality and Division of Alcohol Beverages.
- I will operate this location according to municipal ordinance and restrictions imposed as a condition of receiving this authorization.
- I will purchase alcohol beverages I do not produce from an authorized source, such as a Wisconsin-permitted wholesaler.
- I will operate this location according to Wisconsin law and administrative regulation including but not limited to: underage restrictions, closing hours, licensed operators, and record keeping requirements.

Further, under penalty of law, I have answered each of the above questions completely and truthfully. I agree that I am acting solely on behalf of the applicant business and not on behalf of any other individual or entity seeking the authorization. Further, I agree that the rights and responsibilities conferred by the authorization, if granted, will not be assigned to another individual or entity. I understand that lack of access to any portion of a premises during inspection will be deemed a refusal to allow inspection. Such refusal is a misdemeanor and grounds for revocation of this authorization. I understand that any authorization issued contrary to Wis. Stats. Chapter 125 shall be void under penalty of Wisconsin law. I further understand that I may be prosecuted for submitting false statements and affidavits in connection with this application, and that any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000 if convicted.

Signature

David E. Kowalske



Date

07/03/2024

Last Name

Kowalske

First Name

David

M.I.

E

Title

Member

Email

dj@componentbrewing.com

Phone

(262) 565-8782

**Part G: For Municipal Use Only (Complete if Requesting Authorization in Part D or E)**1. Will the municipality limit the scope of alcohol beverages offered for sale? ..... ☐ Yes ☐ No2. Will the municipality impose any requirements or restrictions for the full-service retail outlet? ..... ☐ Yes ☐ No

3. Describe municipal restrictions indicated in questions 1 or 2 above.

4. Last Name of Municipal Official

5. First Name

6. M.I.

7. Signature of Municipal Official

8. Date

9. Date Application was Filed with Clerk

10. Date Full-Service Retail Outlet Approved by Governing Body

# **Form AB-105 Instructions**

## *Producer Full-Service Retail Sales Application*

### **Who may apply for full-service retail sales?**

Producer permittees may apply for full-service retail sales on or off the production premises. Producer permittees include brewers, rectifiers, manufacturers, and wineries.

### **Who qualifies for full-service retail sales?**

- A brewery that manufactures a minimum of 250 barrels of fermented malt beverages.
- A manufacturer/rectifier that produces a minimum of 1,500 liters of intoxicating liquor.
- A winery that produces a minimum of 1,000 gallons of wine.

### **What are full-service retail sales?**

Permittees that are granted full-service retail sales privileges may:

- Sell fermented malt beverages and intoxicating liquor at retail for on- or off-premises consumption at their production premises and at one or more off-site full-service retail outlets.
- Provide taste samples of fermented malt beverages and intoxicating liquor.

### **What are full-service retail outlets?**

Full-service retail outlets are authorized locations for full-service retail sales at places other than the permittee's production premises.

### **What is the difference between a fixed and unlimited transfer full-service retail outlet?**

Fixed full-service retail outlets may be transferred from one location to another once per year. Unlimited transfer full-service retail outlets may be transferred an unlimited number of times in a year. Only one of a producer's full-service retail outlets may be transferred without limitation on frequency.

### **How many full-service retail outlets may I have?**

The number of full-service retail outlets a producer qualifies for is determined by alcohol beverage production volume. Producers may have a maximum of three full-service outlets, regardless of the number or type of producer permits they hold.

### **Who approves full-service retail sales?**

Full-service retail sales on the production premises need only be approved by the Division of Alcohol Beverages. Municipalities do not issue licenses for full-service retail sales outlets; however, municipalities must approve of the outlets. The applicant must forward the municipal approval to the Division of Alcohol Beverages for final granting of the authority for sales to commence on the premises.

### **Can a municipality limit authorized sales at a full-service retail outlet?**

Yes, a municipality can limit authorized sales at a full-service retail outlet. Municipalities may limit the scope of alcohol beverages offered for sale by the permittee. Municipal approval of a full-service retail outlet must be based on the same standards and criteria, established by ordinance, for the evaluation and approval of retail licenses. A municipality may not impose any requirement or restriction in connection with the approval that the municipality does not impose on retail licensees.

### **How do I fill out Form AB-105 and begin the application process?**

Authorizations requested on Form AB-105 must be applied for only one premises in one municipality at a time. To request multiple authorizations, submit a separate Form AB-105 for each location/premises.

Parts A, B, and F: Applicants must complete Parts A, B, and F.

Parts C, D, and E: Complete only one Part. Form AB-105 must be used to request only one authorization at a time.

**Example:** A producer applicant requesting full-service retail sales authorization on the production premises should complete Parts A, B, C, and F.

**Example:** A producer applicant requesting a fixed full-service retail outlet should complete Parts A, B, D, and F.



**Example:** A producer applicant requesting an unlimited transfer full-service retail outlet should complete Parts A, B, E, and F. Producer applicants requesting authorization in Part E must complete one Form AB-105 for each premises. Applicants may use the same Form AB-105 to request authorization for multiple dates and times occurring on the same premises.

Municipal approval is required for authorizations requested in Parts D and E. If a producer is applying for authorization in either of these sections, the completed application must first be submitted to the governing municipality.

After the municipality has granted approval by completing Part G, the applicant should submit AB-105 to the Division of Alcohol Beverages for final approval. If the applicant is only requesting authorization in Part C, the application does not require municipal approval and may be submitted directly to the Division of Alcohol Beverages.

## **Specific Instructions:**

### *Part A: Producer Information*

- Box 1: Enter the legal business name.
- Box 2: Enter the trade name or “doing business as” name, if different than the name in box 1.
- Box 3: Enter the name of the approved agent appointed for your producer permit.
- Box 4: Enter Federal Employer Identification Number (FEIN).
- Box 5: Enter Wisconsin seller’s permit number.
- Box 6: Enter the 15-digit Wisconsin Tax Account Number of the permit that these authorizations should be associated with.
- Box 7: Check the corresponding producer permit type.
- Box 8-10: Enter contact person’s name.
- Box 11: Enter contact person’s phone number.
- Box 12: Enter contact person’s email address.

### *Part B: Production Quantity*

- Check the highest cumulative total of alcohol beverages produced in any one of the three preceding calendar years for each specific permit type held.
  - Do not include alcohol beverages produced under a contract production agreement.
- Enter the calendar year in which the highest cumulative total of alcohol beverages produced was met.
- Enter the exact quantity of alcohol beverages produced.
- If an applicant holds more than one type of permit or multiple permits of the same type, the aggregate number of full-service retail outlets that may be established is the maximum number authorized under their permit type, but not exceeding three full-service retail outlets.
  - Under these circumstances, each authorized full-service retail outlet shall serve as the full-service retail outlet associated with each applicable permit, regardless of whether permittee would otherwise be entitled to fewer full-service retail outlets when calculated under their other permit(s).

### *Part C: Request for Full-Service Retail Sales at the Production Premises*

- Authorization under this portion does not require municipal approval. If the applicant is not seeking other retail authorizations on this form, it can be submitted directly to the Division of Alcohol Beverages.
- Box 1: Enter the date that you would like to begin full-service retail sales.
- Box 2-5: List the premises address for the permit identified in Part A, boxes 5 and 6.
- Box 6: Name the county where the production premises is located.
- Box 7: Name the governing municipality where the production premises is located.

### *Part D: Request for Fixed Full-Service Retail Outlet*

- Authorization under this section must be approved by the municipality in which the retail outlet is located prior to submitting to the Division of Alcohol Beverages for final approval.
- Box 1: Check yes if you are applying to transfer a fixed full-service outlet from one location to another. Fixed Full-Service Retail Outlets may be transferred from place-to-place once per year with approval of the municipality that governs the new location.
- Boxes 2-9: Complete these boxes if you checked yes in box 1 to describe the current premises you are applying to transfer.

- Box 10: Enter the date that you would like to open the full-service retail outlet for business.
- Boxes 11-18: Complete these boxes to describe the location of your new premises.
- Box 19: Describe the premises in detail. Include outdoor spaces if the municipality allows it. Attach a floor plan if possible.

**Example:** The premises is located at 1234 Main St., Realtown, WI 12345 and includes only the first-floor bar room, dining room, kitchen, north storage room, and south office of the 5,000-square-foot building.

- Box 20: Producers may operate a restaurant on the premises of a full-service retail outlet with municipal and division approval.
- Box 21: Check all types of alcohol beverages that will be offered for sale at the full-service retail outlet, including beverages made by the producer or producer group.
- Box 22: Check all the alcohol beverages that are made by the producer under all their permits.
- Box 23: Check all types of service that apply to this full-service retail outlet.
  - Samples mean 3 oz. of beer, 3 oz. of wine, or 0.5 oz. of liquor provided free of charge to an individual.
  - On-premises consumption means alcohol beverages served by the glass to be consumed by the customer at the premises identified in Box 18.
  - Off-premises consumption means alcohol beverages sold in original, unopened containers for customers to consume away from the premises identified in Box 18.

*Part E: Request for Unlimited Transfer Full-Service Retail Outlet*

- Authorizations under Part E must be for dates of operation where the unlimited transfer location will be located at the same premises in the same municipality. You must use a new Form AB-105 to request authorization for each separate premises, regardless of whether the separate premises are in the same municipality.
- Box 1: If you are requesting authorization to initiate or move your unlimited transfer outlet to a specific event like a farmer's market, festival, or other community event, name it here.
- Box 2: List the requested dates of operation. Attach a schedule or calendar of events, if necessary.
- Box 3: List the requested hours of operation. If no hours are listed, the approving municipality and the Division will assume you are seeking authorization to operate during all hours allowed under Chapter 125, Wis. Stats.
- Box 4-9: Identify the premises address.
- Box 10-13: If you are requesting authorization to move your unlimited transfer outlet to a specific event, provide contact information for the event organizer, if not the named applicant.
- Box 14: Describe the premises in detail. Include outdoor spaces if the municipality allows it. Attach a floor plan if possible.

**Example:** The premises is located at 1234 Main St., Realtown, WI, 12345, and includes only the first-floor bar room, dining room, kitchen, north storage room, and south office of the 5,000 square foot building.

**Example:** The premises is the 1,000-square-foot tent within the southwest corner of the parking lot located at XYZ Church at 3456 Main St., Realtown, WI, 12345. All sales and storage of alcohol beverages and records will occur within the 1,000-square-foot tent in the southwest corner of the parking lot.

**Example:** The premises is located at PDQ Park (7890 Main St., Realtown, WI, 12345). A 5,000-square-foot tent will be constructed in the northeast corner of the park bordering the tree line and northern fence. All alcohol beverage sales and consumption will occur at this tent. Premises includes the adjacent north park office and the space between the tent and the office. Alcohol beverages and records will be securely stored in the north park office for the duration of the event.

- Box 15-17: Provide the name and contact information for a person who will be in control of the premises for the duration of the requested time.
- Box 18: Producers may operate a restaurant on the premises of a full-service retail outlet with municipal and Division of Alcohol Beverages approval.
- Box 19: Check all types of alcohol beverages that will be offered for sale at the full-service retail outlet, including beverages made by the producer under all their permits.
- Box 20: Check all the alcohol beverages that are made by the producer under all their permits.
- Box 21: Check all the types of service that apply to this full-service retail outlet.
  - Samples mean 3 oz. of beer, 3 oz. of wine, or 0.5 oz. of liquor provided free of charge to an individual.
  - On-premises consumption means alcohol beverages served by the glass to be consumed by the customer at the premises identified in Box 14.
  - Off-premises consumption means alcohol beverages sold in original, unopened containers for customers to consume

away from the premises identified in Box 14.

#### *Part F: Attestation*

- Read the attestation carefully, then sign and date.

#### *Part G: For Municipal Use Only*

- Box 1: Check yes or no to indicate if the municipality will limit the scope of alcohol beverages offered for sale at this full-service retail outlet.
- Box 2: Check yes or no to indicate if the municipality will impose other requirements or restrictions on the full-service retail outlet.
- Box 3: Describe any limitations the municipality has placed on the full-service retail outlet as indicated in questions 1 or 2. Some limitations may be: parking, zoning, or noise ordinance restrictions; not allowing sales of alcohol beverages for off-premises consumption.
- Box 4-10: The municipal official completing this part should fill in the information requested.

### **Completion and Submission of Form AB-105**

- The producer applicant should complete Parts A, B, and F completely, and either Part C, D, or E, depending on the type of authorization requested.
- If requesting only a Part C authorization, the application can be submitted directly to the Division of Alcohol Beverages. No municipal approval is required for Part C authorizations.
- If requesting a Part D or E authorization, provide the application to the municipality where the proposed full-service retail outlet will be located.
  - The municipality should complete Part G and return it to the producer applicant.
  - The producer applicant should provide the completed AB-105 to the Division of Alcohol Beverages for final approval.
- Sales of alcohol beverages at full-service retail outlets may not commence until the Division of Alcohol Beverages has provided final approval by way of issuing a printed authorization to the applicant to be posted at the retail premises identified in this application.

After Form AB-105 is completed by the producer and approved by the municipality in Part G, submit the form to the Division of Alcohol Beverages for final approval in one of two ways:

- Email: [DORAlcoholPermits@wisconsin.gov](mailto:DORAlcoholPermits@wisconsin.gov)
- Mail the form to the following address:

Wisconsin Department of Revenue  
Division of Alcohol Beverages  
P.O. Box 8934  
Madison, WI 53708-8934

### **Assistance**

This form is designed by the Department of Revenue. If you require assistance with this form, consider reaching out to the Division of Alcohol Beverages for assistance with submission of this application and associated forms.

If you have questions about alcohol beverage laws and regulations, you may contact the Division of Alcohol Beverages using the contact information below.

**Website:** [DOR Alcohol Beverage \(wi.gov\)](http://DORAlcoholBeverage.wi.gov)

**Write:** [DORAlcohol@wisconsin.gov](mailto:DORAlcohol@wisconsin.gov)

**Call:** (608) 264-4573

Save

Print

Clear

Form

AB-105

# Producer Full-Service Retail Sales Application

Date

## Part A: Producer Information

1. Business Legal Name (individual name if sole proprietor)

Kowalske Brewing

2. Business Name or DBA

Component Brewing

3. Agent Name

Ashley Schnering

4. FEIN

82 - 4547890

5. Wisconsin Seller's Permit Number

456 - 1030207982 - 06

6. Wisconsin Producer Permit Number

503439

7. Producer Type

☒ Brewery
 ☐ Winery
 ☐ Liquor Manufacturer/Rectifier

8. Contact Person's First Name

David

9. Last Name

Kowalske

10. M.I.

E

11. Contact Person's Phone

(262) 565-8782

12. Contact Person's Email

dj@componentbrewing.com

## Part B: Production Quantity

**Note:** Check appropriate quantity for permit held (see instructions). If you hold more than one producer permit, check the total aggregate quantity produced for each type of permit. Enter the highest quantity produced in any of the last three calendar years.

### Brewery

- ☐ Less than 250 barrels  
☒ 250 - 2,499 barrels  
☐ 2,500 - 7,499 barrels  
☐ 7,500 or more barrels

### Manufacturer/Rectifier

- ☐ Less than 1,500 liters  
☐ 1,500 - 4,999 liters  
☐ 5,000 - 34,999 liters  
☐ 35,000 or more liters

### Winery

- ☐ Less than 1,000 gallons  
☐ 1,000 - 4,999 gallons  
☐ 5,000 - 24,999 gallons  
☐ 25,000 or more gallons

Calendar year: 2023

Quantity: 400

Calendar year:

Quantity:

Calendar year:

Quantity:

Complete only ONE of Part C, D or E.

## Part C: Request for Full-Service Retail Sales at the Production Premises

1. Start Date

2. Production Premises Address

3. City

4. State

5. Zip Code

6. County

 7. Governing Municipality
 ☐ City
 ☐ Town
 ☐ Village  
 of:

## Part D: Request for Fixed Full-Service Retail Outlet

 1. Are you transferring one fixed full-service retail outlet to a new location? ..... ☐ Yes ☐ No  
 If yes, complete boxes 2 through 9.

2. Current Outlet Name

3. Current Outlet Premises Address

4. City

5. State

6. Zip Code

7. County

 8. Governing Municipality
 ☐ City
 ☐ Town
 ☐ Village  
 of:

9. Premises Phone Number

Continued →

**Part D: Request for Fixed Full-Service Retail Outlet (Cont.)****New Fixed Retail Outlet Information (complete boxes 10 through 23)**

|                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                      |              |                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------|
| 10. Start Date                                                                                                                                                                                                                                                                                                                                                                                                                                | 11. New Outlet Name                                                                                                                  |              |                           |
| 12. New Outlet Premises Address                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                      |              |                           |
| 13. City                                                                                                                                                                                                                                                                                                                                                                                                                                      | 14. State                                                                                                                            | 15. Zip Code |                           |
| 16. County                                                                                                                                                                                                                                                                                                                                                                                                                                    | 17. Governing Municipality <input type="checkbox"/> City <input type="checkbox"/> Town <input type="checkbox"/> Village<br>of: _____ |              | 18. Premises Phone Number |
| 19. Premises Description - Describe the building or buildings and any outside areas where alcohol beverages are produced, sold, stored, or consumed, and related records are kept. Describe all rooms within the building, including living quarters. Authorized alcohol beverage activities and storage of records may occur only on the premises described in this application. Attach a map or diagram and additional sheets if necessary. |                                                                                                                                      |              |                           |
| 20. Will you operate a restaurant on the premises? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                         |                                                                                                                                      |              |                           |
| 21. What alcohol beverages will be offered for sale? (check all that apply) . . . . <input type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                |                                                                                                                                      |              |                           |
| 22. What alcohol beverages does the permittee produce? (check all that apply) <input type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                      |                                                                                                                                      |              |                           |
| 23. How will customers be served? (check all that apply) . . <input type="checkbox"/> Samples <input type="checkbox"/> On-premises consumption <input type="checkbox"/> Off-premises consumption                                                                                                                                                                                                                                              |                                                                                                                                      |              |                           |

**Part E: Request for Unlimited Transfer Full-Service Retail Outlet**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                            |                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| 1. Name of Event (if applicable)<br><b>Beer Garden</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                            |                                                         |
| 2. Dates of Operation (attach a schedule, if necessary)<br><b>September 7, 2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                            | 3. Hours of Operation<br><b>12 - 6PM</b>                |
| 4. Premises Address<br><b>16400 W Al Stigler Pkwy</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                            |                                                         |
| 5. City<br><b>New Berlin</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 6. State<br><b>WI</b>                                                                                                                                      | 7. Zip Code<br><b>53151</b>                             |
| 8. County<br><b>Waukesha</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 9. Governing Municipality <input checked="" type="checkbox"/> City <input type="checkbox"/> Town <input type="checkbox"/> Village<br>of: <b>New Berlin</b> |                                                         |
| 10. Organizer of Event (if not the named applicant)<br><b>Katie Roth</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 11. Email and/or Phone Number for Organizer of Event<br><b>kroth@newberlin.org</b>                                                                         |                                                         |
| 12. Organizer Website<br><b>N/A</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 13. Event Website<br><b>N/A</b>                                                                                                                            |                                                         |
| 14. Premises Description - Describe the building or buildings and any outside areas where alcohol beverages are produced, sold, stored, or consumed, and related records are kept. Describe all rooms within the building, including living quarters. Authorized alcohol beverage activities and storage of records may occur only on the premises described in this application. Attach a map or diagram and additional sheets if necessary.<br><br><b>Beer trailer will be set up in Malone Park for an afternoon/evening beer garden with live music and a food truck.</b> |                                                                                                                                                            |                                                         |
| 15. On-Site Contact (Last Name, First Name)<br><b>Roth, Katie</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 16. On-Site Contact Phone<br><b>(262) 797-2443</b>                                                                                                         | 17. On-Site Contact Email<br><b>kroth@newberlin.org</b> |
| 18. Will you operate a restaurant on the premises? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                            |                                                         |
| 19. What alcohol beverages will be offered for sale? (check all that apply) . . . . <input checked="" type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                            |                                                         |
| 20. What alcohol beverages does the permittee produce? (check all that apply) <input checked="" type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                            |                                                         |
| 21. How will customers be served? (check all that apply) . . <input type="checkbox"/> Samples <input checked="" type="checkbox"/> On-premises consumption <input type="checkbox"/> Off-premises consumption                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                            |                                                         |

**Part F: Attestation**

Who must sign this application?

- sole proprietor
- general partner of a partnership
- corporate officer
- member of an LLC

**READ CAREFULLY BEFORE SIGNING:**

I understand and agree to the following:

- I will not operate this location outside of the dates and times approved by the municipality and Division of Alcohol Beverages.
- I will operate this location according to municipal ordinance and restrictions imposed as a condition of receiving this authorization.
- I will purchase alcohol beverages I do not produce from an authorized source, such as a Wisconsin-permitted wholesaler.
- I will operate this location according to Wisconsin law and administrative regulation including but not limited to: underage restrictions, closing hours, licensed operators, and record keeping requirements.

Further, under penalty of law, I have answered each of the above questions completely and truthfully. I agree that I am acting solely on behalf of the applicant business and not on behalf of any other individual or entity seeking the authorization. Further, I agree that the rights and responsibilities conferred by the authorization, if granted, will not be assigned to another individual or entity. I understand that lack of access to any portion of a premises during inspection will be deemed a refusal to allow inspection. Such refusal is a misdemeanor and grounds for revocation of this authorization. I understand that any authorization issued contrary to Wis. Stats. Chapter 125 shall be void under penalty of Wisconsin law. I further understand that I may be prosecuted for submitting false statements and affidavits in connection with this application, and that any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000 if convicted.

Signature

David E. Kowalske



Date

07/03/2024

Last Name

Kowalske

First Name

David

M.I.

E

Title

Member

Email

dj@componentbrewing.com

Phone

(262) 565-8782

**Part G: For Municipal Use Only (Complete if Requesting Authorization in Part D or E)**1. Will the municipality limit the scope of alcohol beverages offered for sale? ..... ☐ Yes ☐ No2. Will the municipality impose any requirements or restrictions for the full-service retail outlet? ..... ☐ Yes ☐ No

3. Describe municipal restrictions indicated in questions 1 or 2 above.

4. Last Name of Municipal Official

5. First Name

6. M.I.

7. Signature of Municipal Official

8. Date

9. Date Application was Filed with Clerk

10. Date Full-Service Retail Outlet Approved by Governing Body

# **Form AB-105 Instructions**

## *Producer Full-Service Retail Sales Application*

### **Who may apply for full-service retail sales?**

Producer permittees may apply for full-service retail sales on or off the production premises. Producer permittees include brewers, rectifiers, manufacturers, and wineries.

### **Who qualifies for full-service retail sales?**

- A brewery that manufactures a minimum of 250 barrels of fermented malt beverages.
- A manufacturer/rectifier that produces a minimum of 1,500 liters of intoxicating liquor.
- A winery that produces a minimum of 1,000 gallons of wine.

### **What are full-service retail sales?**

Permittees that are granted full-service retail sales privileges may:

- Sell fermented malt beverages and intoxicating liquor at retail for on- or off-premises consumption at their production premises and at one or more off-site full-service retail outlets.
- Provide taste samples of fermented malt beverages and intoxicating liquor.

### **What are full-service retail outlets?**

Full-service retail outlets are authorized locations for full-service retail sales at places other than the permittee's production premises.

### **What is the difference between a fixed and unlimited transfer full-service retail outlet?**

Fixed full-service retail outlets may be transferred from one location to another once per year. Unlimited transfer full-service retail outlets may be transferred an unlimited number of times in a year. Only one of a producer's full-service retail outlets may be transferred without limitation on frequency.

### **How many full-service retail outlets may I have?**

The number of full-service retail outlets a producer qualifies for is determined by alcohol beverage production volume. Producers may have a maximum of three full-service outlets, regardless of the number or type of producer permits they hold.

### **Who approves full-service retail sales?**

Full-service retail sales on the production premises need only be approved by the Division of Alcohol Beverages. Municipalities do not issue licenses for full-service retail sales outlets; however, municipalities must approve of the outlets. The applicant must forward the municipal approval to the Division of Alcohol Beverages for final granting of the authority for sales to commence on the premises.

### **Can a municipality limit authorized sales at a full-service retail outlet?**

Yes, a municipality can limit authorized sales at a full-service retail outlet. Municipalities may limit the scope of alcohol beverages offered for sale by the permittee. Municipal approval of a full-service retail outlet must be based on the same standards and criteria, established by ordinance, for the evaluation and approval of retail licenses. A municipality may not impose any requirement or restriction in connection with the approval that the municipality does not impose on retail licensees.

### **How do I fill out Form AB-105 and begin the application process?**

Authorizations requested on Form AB-105 must be applied for only one premises in one municipality at a time. To request multiple authorizations, submit a separate Form AB-105 for each location/premises.

Parts A, B, and F: Applicants must complete Parts A, B, and F.

Parts C, D, and E: Complete only one Part. Form AB-105 must be used to request only one authorization at a time.

**Example:** A producer applicant requesting full-service retail sales authorization on the production premises should complete Parts A, B, C, and F.

**Example:** A producer applicant requesting a fixed full-service retail outlet should complete Parts A, B, D, and F.



**Example:** A producer applicant requesting an unlimited transfer full-service retail outlet should complete Parts A, B, E, and F. Producer applicants requesting authorization in Part E must complete one Form AB-105 for each premises. Applicants may use the same Form AB-105 to request authorization for multiple dates and times occurring on the same premises.

Municipal approval is required for authorizations requested in Parts D and E. If a producer is applying for authorization in either of these sections, the completed application must first be submitted to the governing municipality.

After the municipality has granted approval by completing Part G, the applicant should submit AB-105 to the Division of Alcohol Beverages for final approval. If the applicant is only requesting authorization in Part C, the application does not require municipal approval and may be submitted directly to the Division of Alcohol Beverages.

## **Specific Instructions:**

### *Part A: Producer Information*

- Box 1: Enter the legal business name.
- Box 2: Enter the trade name or “doing business as” name, if different than the name in box 1.
- Box 3: Enter the name of the approved agent appointed for your producer permit.
- Box 4: Enter Federal Employer Identification Number (FEIN).
- Box 5: Enter Wisconsin seller’s permit number.
- Box 6: Enter the 15-digit Wisconsin Tax Account Number of the permit that these authorizations should be associated with.
- Box 7: Check the corresponding producer permit type.
- Box 8-10: Enter contact person’s name.
- Box 11: Enter contact person’s phone number.
- Box 12: Enter contact person’s email address.

### *Part B: Production Quantity*

- Check the highest cumulative total of alcohol beverages produced in any one of the three preceding calendar years for each specific permit type held.
  - Do not include alcohol beverages produced under a contract production agreement.
- Enter the calendar year in which the highest cumulative total of alcohol beverages produced was met.
- Enter the exact quantity of alcohol beverages produced.
- If an applicant holds more than one type of permit or multiple permits of the same type, the aggregate number of full-service retail outlets that may be established is the maximum number authorized under their permit type, but not exceeding three full-service retail outlets.
  - Under these circumstances, each authorized full-service retail outlet shall serve as the full-service retail outlet associated with each applicable permit, regardless of whether permittee would otherwise be entitled to fewer full-service retail outlets when calculated under their other permit(s).

### *Part C: Request for Full-Service Retail Sales at the Production Premises*

- Authorization under this portion does not require municipal approval. If the applicant is not seeking other retail authorizations on this form, it can be submitted directly to the Division of Alcohol Beverages.
- Box 1: Enter the date that you would like to begin full-service retail sales.
- Box 2-5: List the premises address for the permit identified in Part A, boxes 5 and 6.
- Box 6: Name the county where the production premises is located.
- Box 7: Name the governing municipality where the production premises is located.

### *Part D: Request for Fixed Full-Service Retail Outlet*

- Authorization under this section must be approved by the municipality in which the retail outlet is located prior to submitting to the Division of Alcohol Beverages for final approval.
- Box 1: Check yes if you are applying to transfer a fixed full-service outlet from one location to another. Fixed Full-Service Retail Outlets may be transferred from place-to-place once per year with approval of the municipality that governs the new location.
- Boxes 2-9: Complete these boxes if you checked yes in box 1 to describe the current premises you are applying to transfer.



- Box 10: Enter the date that you would like to open the full-service retail outlet for business.
- Boxes 11-18: Complete these boxes to describe the location of your new premises.
- Box 19: Describe the premises in detail. Include outdoor spaces if the municipality allows it. Attach a floor plan if possible.

**Example:** The premises is located at 1234 Main St., Realtown, WI 12345 and includes only the first-floor bar room, dining room, kitchen, north storage room, and south office of the 5,000-square-foot building.

- Box 20: Producers may operate a restaurant on the premises of a full-service retail outlet with municipal and division approval.
- Box 21: Check all types of alcohol beverages that will be offered for sale at the full-service retail outlet, including beverages made by the producer or producer group.
- Box 22: Check all the alcohol beverages that are made by the producer under all their permits.
- Box 23: Check all types of service that apply to this full-service retail outlet.
  - Samples mean 3 oz. of beer, 3 oz. of wine, or 0.5 oz. of liquor provided free of charge to an individual.
  - On-premises consumption means alcohol beverages served by the glass to be consumed by the customer at the premises identified in Box 18.
  - Off-premises consumption means alcohol beverages sold in original, unopened containers for customers to consume away from the premises identified in Box 18.

*Part E: Request for Unlimited Transfer Full-Service Retail Outlet*

- Authorizations under Part E must be for dates of operation where the unlimited transfer location will be located at the same premises in the same municipality. You must use a new Form AB-105 to request authorization for each separate premises, regardless of whether the separate premises are in the same municipality.
- Box 1: If you are requesting authorization to initiate or move your unlimited transfer outlet to a specific event like a farmer's market, festival, or other community event, name it here.
- Box 2: List the requested dates of operation. Attach a schedule or calendar of events, if necessary.
- Box 3: List the requested hours of operation. If no hours are listed, the approving municipality and the Division will assume you are seeking authorization to operate during all hours allowed under Chapter 125, Wis. Stats.
- Box 4-9: Identify the premises address.
- Box 10-13: If you are requesting authorization to move your unlimited transfer outlet to a specific event, provide contact information for the event organizer, if not the named applicant.
- Box 14: Describe the premises in detail. Include outdoor spaces if the municipality allows it. Attach a floor plan if possible.

**Example:** The premises is located at 1234 Main St., Realtown, WI, 12345, and includes only the first-floor bar room, dining room, kitchen, north storage room, and south office of the 5,000 square foot building.

**Example:** The premises is the 1,000-square-foot tent within the southwest corner of the parking lot located at XYZ Church at 3456 Main St., Realtown, WI, 12345. All sales and storage of alcohol beverages and records will occur within the 1,000-square-foot tent in the southwest corner of the parking lot.

**Example:** The premises is located at PDQ Park (7890 Main St., Realtown, WI, 12345). A 5,000-square-foot tent will be constructed in the northeast corner of the park bordering the tree line and northern fence. All alcohol beverage sales and consumption will occur at this tent. Premises includes the adjacent north park office and the space between the tent and the office. Alcohol beverages and records will be securely stored in the north park office for the duration of the event.

- Box 15-17: Provide the name and contact information for a person who will be in control of the premises for the duration of the requested time.
- Box 18: Producers may operate a restaurant on the premises of a full-service retail outlet with municipal and Division of Alcohol Beverages approval.
- Box 19: Check all types of alcohol beverages that will be offered for sale at the full-service retail outlet, including beverages made by the producer under all their permits.
- Box 20: Check all the alcohol beverages that are made by the producer under all their permits.
- Box 21: Check all the types of service that apply to this full-service retail outlet.
  - Samples mean 3 oz. of beer, 3 oz. of wine, or 0.5 oz. of liquor provided free of charge to an individual.
  - On-premises consumption means alcohol beverages served by the glass to be consumed by the customer at the premises identified in Box 14.
  - Off-premises consumption means alcohol beverages sold in original, unopened containers for customers to consume

away from the premises identified in Box 14.

#### *Part F: Attestation*

- Read the attestation carefully, then sign and date.

#### *Part G: For Municipal Use Only*

- Box 1: Check yes or no to indicate if the municipality will limit the scope of alcohol beverages offered for sale at this full-service retail outlet.
- Box 2: Check yes or no to indicate if the municipality will impose other requirements or restrictions on the full-service retail outlet.
- Box 3: Describe any limitations the municipality has placed on the full-service retail outlet as indicated in questions 1 or 2. Some limitations may be: parking, zoning, or noise ordinance restrictions; not allowing sales of alcohol beverages for off-premises consumption.
- Box 4-10: The municipal official completing this part should fill in the information requested.

### **Completion and Submission of Form AB-105**

- The producer applicant should complete Parts A, B, and F completely, and either Part C, D, or E, depending on the type of authorization requested.
- If requesting only a Part C authorization, the application can be submitted directly to the Division of Alcohol Beverages. No municipal approval is required for Part C authorizations.
- If requesting a Part D or E authorization, provide the application to the municipality where the proposed full-service retail outlet will be located.
  - The municipality should complete Part G and return it to the producer applicant.
  - The producer applicant should provide the completed AB-105 to the Division of Alcohol Beverages for final approval.
- Sales of alcohol beverages at full-service retail outlets may not commence until the Division of Alcohol Beverages has provided final approval by way of issuing a printed authorization to the applicant to be posted at the retail premises identified in this application.

After Form AB-105 is completed by the producer and approved by the municipality in Part G, submit the form to the Division of Alcohol Beverages for final approval in one of two ways:

- Email: [DORAlcoholPermits@wisconsin.gov](mailto:DORAlcoholPermits@wisconsin.gov)
- Mail the form to the following address:

Wisconsin Department of Revenue  
Division of Alcohol Beverages  
P.O. Box 8934  
Madison, WI 53708-8934

### **Assistance**

This form is designed by the Department of Revenue. If you require assistance with this form, consider reaching out to the Division of Alcohol Beverages for assistance with submission of this application and associated forms.

If you have questions about alcohol beverage laws and regulations, you may contact the Division of Alcohol Beverages using the contact information below.

**Website:** [DOR Alcohol Beverage \(wi.gov\)](http://DORAlcoholBeverage.wi.gov)

**Write:** [DORAlcohol@wisconsin.gov](mailto:DORAlcohol@wisconsin.gov)

**Call:** (608) 264-4573

Save

Print

Clear

Form

AB-105

# **Producer Full-Service Retail Sales Application**

Date

## **Part A: Producer Information**

1. Business Legal Name (individual name if sole proprietor)

Kowalske Brewing

2. Business Name or DBA

Component Brewing

3. Agent Name

Ashley Schnering

4. FEIN

82 - 4547890

5. Wisconsin Seller's Permit Number

456 - 1030207982 - 06

6. Wisconsin Producer Permit Number

503439

7. Producer Type



Brewery



Winery



Liquor Manufacturer/Rectifier

8. Contact Person's First Name

David

9. Last Name

Kowalske

10. M.I.

E

11. Contact Person's Phone

(262) 565-8782

12. Contact Person's Email

dj@componentbrewing.com

## **Part B: Production Quantity**

**Note:** Check appropriate quantity for permit held (see instructions). If you hold more than one producer permit, check the total aggregate quantity produced for each type of permit. Enter the highest quantity produced in any of the last three calendar years.

### **Brewery**

☐ Less than 250 barrels☒ 250 - 2,499 barrels☐ 2,500 - 7,499 barrels☐ 7,500 or more barrels

### **Manufacturer/Rectifier**

☐ Less than 1,500 liters☐ 1,500 - 4,999 liters☐ 5,000 - 34,999 liters☐ 35,000 or more liters

### **Winery**

☐ Less than 1,000 gallons☐ 1,000 - 4,999 gallons☐ 5,000 - 24,999 gallons☐ 25,000 or more gallons

Calendar year: 2023

Quantity: 400

Calendar year:

Quantity:

Calendar year:

Quantity:

**Complete only ONE of Part C, D or E.**

## **Part C: Request for Full-Service Retail Sales at the Production Premises**

1. Start Date

2. Production Premises Address

3. City

4. State

5. Zip Code

6. County

7. Governing Municipality ☐ City ☐ Town ☐ Village  
of: \_\_\_\_\_

## **Part D: Request for Fixed Full-Service Retail Outlet**

1. Are you transferring one fixed full-service retail outlet to a new location? ..... ☐ Yes ☐ No  
If yes, complete boxes 2 through 9.

2. Current Outlet Name

3. Current Outlet Premises Address

4. City

5. State

6. Zip Code

7. County

8. Governing Municipality ☐ City ☐ Town ☐ Village  
of: \_\_\_\_\_

9. Premises Phone Number

Continued →

**Part D: Request for Fixed Full-Service Retail Outlet (Cont.)****New Fixed Retail Outlet Information (complete boxes 10 through 23)**

|                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                      |              |                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------|
| 10. Start Date                                                                                                                                                                                                                                                                                                                                                                                                                                | 11. New Outlet Name                                                                                                                  |              |                           |
| 12. New Outlet Premises Address                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                      |              |                           |
| 13. City                                                                                                                                                                                                                                                                                                                                                                                                                                      | 14. State                                                                                                                            | 15. Zip Code |                           |
| 16. County                                                                                                                                                                                                                                                                                                                                                                                                                                    | 17. Governing Municipality <input type="checkbox"/> City <input type="checkbox"/> Town <input type="checkbox"/> Village<br>of: _____ |              | 18. Premises Phone Number |
| 19. Premises Description - Describe the building or buildings and any outside areas where alcohol beverages are produced, sold, stored, or consumed, and related records are kept. Describe all rooms within the building, including living quarters. Authorized alcohol beverage activities and storage of records may occur only on the premises described in this application. Attach a map or diagram and additional sheets if necessary. |                                                                                                                                      |              |                           |
| 20. Will you operate a restaurant on the premises? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                         |                                                                                                                                      |              |                           |
| 21. What alcohol beverages will be offered for sale? (check all that apply) . . . . . <input type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                              |                                                                                                                                      |              |                           |
| 22. What alcohol beverages does the permittee produce? (check all that apply) <input type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                      |                                                                                                                                      |              |                           |
| 23. How will customers be served? (check all that apply) . . . <input type="checkbox"/> Samples <input type="checkbox"/> On-premises consumption <input type="checkbox"/> Off-premises consumption                                                                                                                                                                                                                                            |                                                                                                                                      |              |                           |

**Part E: Request for Unlimited Transfer Full-Service Retail Outlet**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                 |                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| 1. Name of Event (if applicable)<br><b>Historical Day Open House/Beer Garden</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                 |                                                         |
| 2. Dates of Operation (attach a schedule, if necessary)<br><b>September 8, 2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                 | 3. Hours of Operation<br><b>1-4PM</b>                   |
| 4. Premises Address<br><b>19885 W National Ave.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                 |                                                         |
| 5. City<br><b>New Berlin</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 6. State<br><b>WI</b>                                                                                                                           | 7. Zip Code<br><b>53146</b>                             |
| 8. County<br><b>Waukesha</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 9. Governing Municipality <input type="checkbox"/> City <input type="checkbox"/> Town <input type="checkbox"/> Village<br>of: <b>New Berlin</b> |                                                         |
| 10. Organizer of Event (if not the named applicant)<br><b>Katie Roth</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 11. Email and/or Phone Number for Organizer of Event<br><b>kroth@newberlin.org</b>                                                              |                                                         |
| 12. Organizer Website<br><b>N/A</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 13. Event Website<br><b>N/A</b>                                                                                                                 |                                                         |
| 14. Premises Description - Describe the building or buildings and any outside areas where alcohol beverages are produced, sold, stored, or consumed, and related records are kept. Describe all rooms within the building, including living quarters. Authorized alcohol beverage activities and storage of records may occur only on the premises described in this application. Attach a map or diagram and additional sheets if necessary.<br><br><b>Beer trailer will be set up at the historical society campus in conjunction with the outdoor plan for the rest of the day's activities. Event will be primarily outside in the historical park on site, with the buildings on premises open for guests to enter and check out. No beer will be sold inside any of the historical buildings.</b> |                                                                                                                                                 |                                                         |
| 15. On-Site Contact (Last Name, First Name)<br><b>Roth, Katie</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 16. On-Site Contact Phone<br><b>(262) 797-2443</b>                                                                                              | 17. On-Site Contact Email<br><b>kroth@newberlin.org</b> |
| 18. Will you operate a restaurant on the premises? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                 |                                                         |
| 19. What alcohol beverages will be offered for sale? (check all that apply) . . . . . <input checked="" type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                 |                                                         |
| 20. What alcohol beverages does the permittee produce? (check all that apply) <input checked="" type="checkbox"/> Beer <input type="checkbox"/> Wine <input type="checkbox"/> Intoxicating Liquor (other than wine)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                 |                                                         |
| 21. How will customers be served? (check all that apply) . . . <input type="checkbox"/> Samples <input checked="" type="checkbox"/> On-premises consumption <input type="checkbox"/> Off-premises consumption                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |                                                         |

**Part F: Attestation**

Who must sign this application?

- sole proprietor
- general partner of a partnership
- corporate officer
- member of an LLC

**READ CAREFULLY BEFORE SIGNING:**

I understand and agree to the following:

- I will not operate this location outside of the dates and times approved by the municipality and Division of Alcohol Beverages.
- I will operate this location according to municipal ordinance and restrictions imposed as a condition of receiving this authorization.
- I will purchase alcohol beverages I do not produce from an authorized source, such as a Wisconsin-permitted wholesaler.
- I will operate this location according to Wisconsin law and administrative regulation including but not limited to: underage restrictions, closing hours, licensed operators, and record keeping requirements.

Further, under penalty of law, I have answered each of the above questions completely and truthfully. I agree that I am acting solely on behalf of the applicant business and not on behalf of any other individual or entity seeking the authorization. Further, I agree that the rights and responsibilities conferred by the authorization, if granted, will not be assigned to another individual or entity. I understand that lack of access to any portion of a premises during inspection will be deemed a refusal to allow inspection. Such refusal is a misdemeanor and grounds for revocation of this authorization. I understand that any authorization issued contrary to Wis. Stats. Chapter 125 shall be void under penalty of Wisconsin law. I further understand that I may be prosecuted for submitting false statements and affidavits in connection with this application, and that any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000 if convicted.

Signature

David E. Kowalske



Date

07/03/2024

Last Name

Kowalske

First Name

David

M.I.

E

Title

Member

Email

dj@componentbrewing.com

Phone

(262) 565-8782

**Part G: For Municipal Use Only (Complete if Requesting Authorization in Part D or E)**1. Will the municipality limit the scope of alcohol beverages offered for sale? ..... ☐ Yes ☐ No2. Will the municipality impose any requirements or restrictions for the full-service retail outlet? ..... ☐ Yes ☐ No

3. Describe municipal restrictions indicated in questions 1 or 2 above.

4. Last Name of Municipal Official

5. First Name

6. M.I.

7. Signature of Municipal Official

8. Date

9. Date Application was Filed with Clerk

10. Date Full-Service Retail Outlet Approved by Governing Body

# **Form AB-105 Instructions**

## *Producer Full-Service Retail Sales Application*

### **Who may apply for full-service retail sales?**

Producer permittees may apply for full-service retail sales on or off the production premises. Producer permittees include brewers, rectifiers, manufacturers, and wineries.

### **Who qualifies for full-service retail sales?**

- A brewery that manufactures a minimum of 250 barrels of fermented malt beverages.
- A manufacturer/rectifier that produces a minimum of 1,500 liters of intoxicating liquor.
- A winery that produces a minimum of 1,000 gallons of wine.

### **What are full-service retail sales?**

Permittees that are granted full-service retail sales privileges may:

- Sell fermented malt beverages and intoxicating liquor at retail for on- or off-premises consumption at their production premises and at one or more off-site full-service retail outlets.
- Provide taste samples of fermented malt beverages and intoxicating liquor.

### **What are full-service retail outlets?**

Full-service retail outlets are authorized locations for full-service retail sales at places other than the permittee's production premises.

### **What is the difference between a fixed and unlimited transfer full-service retail outlet?**

Fixed full-service retail outlets may be transferred from one location to another once per year. Unlimited transfer full-service retail outlets may be transferred an unlimited number of times in a year. Only one of a producer's full-service retail outlets may be transferred without limitation on frequency.

### **How many full-service retail outlets may I have?**

The number of full-service retail outlets a producer qualifies for is determined by alcohol beverage production volume. Producers may have a maximum of three full-service outlets, regardless of the number or type of producer permits they hold.

### **Who approves full-service retail sales?**

Full-service retail sales on the production premises need only be approved by the Division of Alcohol Beverages. Municipalities do not issue licenses for full-service retail sales outlets; however, municipalities must approve of the outlets. The applicant must forward the municipal approval to the Division of Alcohol Beverages for final granting of the authority for sales to commence on the premises.

### **Can a municipality limit authorized sales at a full-service retail outlet?**

Yes, a municipality can limit authorized sales at a full-service retail outlet. Municipalities may limit the scope of alcohol beverages offered for sale by the permittee. Municipal approval of a full-service retail outlet must be based on the same standards and criteria, established by ordinance, for the evaluation and approval of retail licenses. A municipality may not impose any requirement or restriction in connection with the approval that the municipality does not impose on retail licensees.

### **How do I fill out Form AB-105 and begin the application process?**

Authorizations requested on Form AB-105 must be applied for only one premises in one municipality at a time. To request multiple authorizations, submit a separate Form AB-105 for each location/premises.

Parts A, B, and F: Applicants must complete Parts A, B, and F.

Parts C, D, and E: Complete only one Part. Form AB-105 must be used to request only one authorization at a time.

**Example:** A producer applicant requesting full-service retail sales authorization on the production premises should complete Parts A, B, C, and F.

**Example:** A producer applicant requesting a fixed full-service retail outlet should complete Parts A, B, D, and F.

**Example:** A producer applicant requesting an unlimited transfer full-service retail outlet should complete Parts A, B, E, and F. Producer applicants requesting authorization in Part E must complete one Form AB-105 for each premises. Applicants may use the same Form AB-105 to request authorization for multiple dates and times occurring on the same premises.

Municipal approval is required for authorizations requested in Parts D and E. If a producer is applying for authorization in either of these sections, the completed application must first be submitted to the governing municipality.

After the municipality has granted approval by completing Part G, the applicant should submit AB-105 to the Division of Alcohol Beverages for final approval. If the applicant is only requesting authorization in Part C, the application does not require municipal approval and may be submitted directly to the Division of Alcohol Beverages.

## **Specific Instructions:**

### *Part A: Producer Information*

- Box 1: Enter the legal business name.
- Box 2: Enter the trade name or “doing business as” name, if different than the name in box 1.
- Box 3: Enter the name of the approved agent appointed for your producer permit.
- Box 4: Enter Federal Employer Identification Number (FEIN).
- Box 5: Enter Wisconsin seller’s permit number.
- Box 6: Enter the 15-digit Wisconsin Tax Account Number of the permit that these authorizations should be associated with.
- Box 7: Check the corresponding producer permit type.
- Box 8-10: Enter contact person’s name.
- Box 11: Enter contact person’s phone number.
- Box 12: Enter contact person’s email address.

### *Part B: Production Quantity*

- Check the highest cumulative total of alcohol beverages produced in any one of the three preceding calendar years for each specific permit type held.
  - Do not include alcohol beverages produced under a contract production agreement.
- Enter the calendar year in which the highest cumulative total of alcohol beverages produced was met.
- Enter the exact quantity of alcohol beverages produced.
- If an applicant holds more than one type of permit or multiple permits of the same type, the aggregate number of full-service retail outlets that may be established is the maximum number authorized under their permit type, but not exceeding three full-service retail outlets.
  - Under these circumstances, each authorized full-service retail outlet shall serve as the full-service retail outlet associated with each applicable permit, regardless of whether permittee would otherwise be entitled to fewer full-service retail outlets when calculated under their other permit(s).

### *Part C: Request for Full-Service Retail Sales at the Production Premises*

- Authorization under this portion does not require municipal approval. If the applicant is not seeking other retail authorizations on this form, it can be submitted directly to the Division of Alcohol Beverages.
- Box 1: Enter the date that you would like to begin full-service retail sales.
- Box 2-5: List the premises address for the permit identified in Part A, boxes 5 and 6.
- Box 6: Name the county where the production premises is located.
- Box 7: Name the governing municipality where the production premises is located.

### *Part D: Request for Fixed Full-Service Retail Outlet*

- Authorization under this section must be approved by the municipality in which the retail outlet is located prior to submitting to the Division of Alcohol Beverages for final approval.
- Box 1: Check yes if you are applying to transfer a fixed full-service outlet from one location to another. Fixed Full-Service Retail Outlets may be transferred from place-to-place once per year with approval of the municipality that governs the new location.
- Boxes 2-9: Complete these boxes if you checked yes in box 1 to describe the current premises you are applying to transfer.



- Box 10: Enter the date that you would like to open the full-service retail outlet for business.
- Boxes 11-18: Complete these boxes to describe the location of your new premises.
- Box 19: Describe the premises in detail. Include outdoor spaces if the municipality allows it. Attach a floor plan if possible.

**Example:** The premises is located at 1234 Main St., Realtown, WI 12345 and includes only the first-floor bar room, dining room, kitchen, north storage room, and south office of the 5,000-square-foot building.

- Box 20: Producers may operate a restaurant on the premises of a full-service retail outlet with municipal and division approval.
- Box 21: Check all types of alcohol beverages that will be offered for sale at the full-service retail outlet, including beverages made by the producer or producer group.
- Box 22: Check all the alcohol beverages that are made by the producer under all their permits.
- Box 23: Check all types of service that apply to this full-service retail outlet.
  - Samples mean 3 oz. of beer, 3 oz. of wine, or 0.5 oz. of liquor provided free of charge to an individual.
  - On-premises consumption means alcohol beverages served by the glass to be consumed by the customer at the premises identified in Box 18.
  - Off-premises consumption means alcohol beverages sold in original, unopened containers for customers to consume away from the premises identified in Box 18.

*Part E: Request for Unlimited Transfer Full-Service Retail Outlet*

- Authorizations under Part E must be for dates of operation where the unlimited transfer location will be located at the same premises in the same municipality. You must use a new Form AB-105 to request authorization for each separate premises, regardless of whether the separate premises are in the same municipality.
- Box 1: If you are requesting authorization to initiate or move your unlimited transfer outlet to a specific event like a farmer's market, festival, or other community event, name it here.
- Box 2: List the requested dates of operation. Attach a schedule or calendar of events, if necessary.
- Box 3: List the requested hours of operation. If no hours are listed, the approving municipality and the Division will assume you are seeking authorization to operate during all hours allowed under Chapter 125, Wis. Stats.
- Box 4-9: Identify the premises address.
- Box 10-13: If you are requesting authorization to move your unlimited transfer outlet to a specific event, provide contact information for the event organizer, if not the named applicant.
- Box 14: Describe the premises in detail. Include outdoor spaces if the municipality allows it. Attach a floor plan if possible.

**Example:** The premises is located at 1234 Main St., Realtown, WI, 12345, and includes only the first-floor bar room, dining room, kitchen, north storage room, and south office of the 5,000 square foot building.

**Example:** The premises is the 1,000-square-foot tent within the southwest corner of the parking lot located at XYZ Church at 3456 Main St., Realtown, WI, 12345. All sales and storage of alcohol beverages and records will occur within the 1,000-square-foot tent in the southwest corner of the parking lot.

**Example:** The premises is located at PDQ Park (7890 Main St., Realtown, WI, 12345). A 5,000-square-foot tent will be constructed in the northeast corner of the park bordering the tree line and northern fence. All alcohol beverage sales and consumption will occur at this tent. Premises includes the adjacent north park office and the space between the tent and the office. Alcohol beverages and records will be securely stored in the north park office for the duration of the event.

- Box 15-17: Provide the name and contact information for a person who will be in control of the premises for the duration of the requested time.
- Box 18: Producers may operate a restaurant on the premises of a full-service retail outlet with municipal and Division of Alcohol Beverages approval.
- Box 19: Check all types of alcohol beverages that will be offered for sale at the full-service retail outlet, including beverages made by the producer under all their permits.
- Box 20: Check all the alcohol beverages that are made by the producer under all their permits.
- Box 21: Check all the types of service that apply to this full-service retail outlet.
  - Samples mean 3 oz. of beer, 3 oz. of wine, or 0.5 oz. of liquor provided free of charge to an individual.
  - On-premises consumption means alcohol beverages served by the glass to be consumed by the customer at the premises identified in Box 14.
  - Off-premises consumption means alcohol beverages sold in original, unopened containers for customers to consume



away from the premises identified in Box 14.

#### *Part F: Attestation*

- Read the attestation carefully, then sign and date.

#### *Part G: For Municipal Use Only*

- Box 1: Check yes or no to indicate if the municipality will limit the scope of alcohol beverages offered for sale at this full-service retail outlet.
- Box 2: Check yes or no to indicate if the municipality will impose other requirements or restrictions on the full-service retail outlet.
- Box 3: Describe any limitations the municipality has placed on the full-service retail outlet as indicated in questions 1 or 2. Some limitations may be: parking, zoning, or noise ordinance restrictions; not allowing sales of alcohol beverages for off-premises consumption.
- Box 4-10: The municipal official completing this part should fill in the information requested.

### **Completion and Submission of Form AB-105**

- The producer applicant should complete Parts A, B, and F completely, and either Part C, D, or E, depending on the type of authorization requested.
- If requesting only a Part C authorization, the application can be submitted directly to the Division of Alcohol Beverages. No municipal approval is required for Part C authorizations.
- If requesting a Part D or E authorization, provide the application to the municipality where the proposed full-service retail outlet will be located.
  - The municipality should complete Part G and return it to the producer applicant.
  - The producer applicant should provide the completed AB-105 to the Division of Alcohol Beverages for final approval.
- Sales of alcohol beverages at full-service retail outlets may not commence until the Division of Alcohol Beverages has provided final approval by way of issuing a printed authorization to the applicant to be posted at the retail premises identified in this application.

After Form AB-105 is completed by the producer and approved by the municipality in Part G, submit the form to the Division of Alcohol Beverages for final approval in one of two ways:

- Email: [DORAlcoholPermits@wisconsin.gov](mailto:DORAlcoholPermits@wisconsin.gov)
- Mail the form to the following address:

Wisconsin Department of Revenue  
Division of Alcohol Beverages  
P.O. Box 8934  
Madison, WI 53708-8934

### **Assistance**

This form is designed by the Department of Revenue. If you require assistance with this form, consider reaching out to the Division of Alcohol Beverages for assistance with submission of this application and associated forms.

If you have questions about alcohol beverage laws and regulations, you may contact the Division of Alcohol Beverages using the contact information below.

**Website:** [DOR Alcohol Beverage \(wi.gov\)](http://DORAlcoholBeverage.wi.gov)

**Write:** [DORAlcohol@wisconsin.gov](mailto:DORAlcohol@wisconsin.gov)

**Call:** (608) 264-4573



City of New Berlin  
**Loudspeaker Permit Application**



Submit this application to the New Berlin Police Department, 16300 W. National Ave., New Berlin, WI 53151, not less than 14 days prior to the event. If you have any questions, call the New Berlin Police Department at (262)782-6640.

**Background Information:**

Organization/Individual Name: St. Elizabeth Ann Seton  
Address: 12700 W. Howard Ave New Berlin WI 53151

Applicant representing this event:

Name: Jim Schutte Work Phone: ( ) \_\_\_\_\_  
Address: 10018 W. Wh. Hull Ed. Dr. Home Phone: ( ) \_\_\_\_\_  
Date of Birth: 7-25-1967 Cell Phone: ( 414 ) 339-1070

Jim Schutte @ yahoo.com

**Event Information:**

Name of Event: Funfest Celebration  
Address of Event: 12700 W. Howard Ave New Berlin WI 53151

Dates of Event (no more than 3 days in a row): 7-26-7-27-7-28 2024

Estimated Number of Participants: 500

Hours of Loudspeaker Operation:

Start: 4:00 a.m./p.m.

Finish (no later than 10p.m.): 11:00 a.m./p.m.

Number of Loudspeakers to be used: 6-8

Please check the type of sound to be emitted:

☒ Speech ☐ Recorded Music ☒ Live Music ☐ Other \_\_\_\_\_

**Applicant's Statement of Agreement:**

I hereby affirm that the above information is true and correct in describing the intent of this application. I, James K Schutte, the undersigned, agree to use the loudspeaker in a careful and prudent manner so as not to cause complaints from neighbors and I agree to lower or terminate the amplification levels when requested by neighbors or police.

Applicant Signature: [Signature]

| FOR OFFICE USE ONLY                           |                                                          |
|-----------------------------------------------|----------------------------------------------------------|
| <input checked="" type="checkbox"/> Approved  | <input type="checkbox"/> Not Approved Reason for denial: |
| Issued by: <u>[Signature]</u> <u>07/22/24</u> |                                                          |

# Human Resource Department

Common Council Update  
Tuesday, July 23, 2024



# The Team



- Alexis Holland
  - Human Resource Coordinator
  - Main focus: Hiring and onboarding
  
- Rebecca Freisleben
  - Benefit & Leave Specialist
  - Main focus: benefit administration and leave processing
  
- Melissa Beck
  - Human Resource Director
  - Main focus: Overall HR strategy to improve employee performance, employee engagement and employee retention

# Department Vision



- Improve employee engagement through effective communication and education for all employees.
- Cultivate trust and respect to maintain positive interactions with employees.
- Fulfill statutory duties and maintain the highest standards of ethics and integrity.
- Position the Human Resource Department a Center of Excellence with a focus on initiatives to improve performance, growth and employee satisfaction.

# HR Update



- New Time & Attendance System has been implemented for all non-represented employees
- We have received the live data for the Compensation Study
- Completed our first round of annual evaluations city wide
- Ongoing focus on employee retention

# Hiring Update



- We have hired on 35 regular PT/FT employees so far to date in comparison to 44 new hires for all of 2023
- We have had 32 employees resign to date in comparison to 40 employees for all of 2023
- We have had 7 retirements to date in 2024 in comparison to 5 in 2023
- In addition to our regular hiring, we onboarded 141 Pollworkers and 35 Seasonal Staff so far this year



# Hiring Update



| Department | 2023 | 2024 | In Process |
|------------|------|------|------------|
| Assessors  | 0    | 1    | 0          |
| City Clerk | 0    | 1    | 0          |
| DPW        | 10   | 7    | 3          |
| DCD        | 1    | 0    | 2          |
| Finance    | 1    | 0    | 1          |
| Fire       | 11   | 4    | 3          |
| IT         | 1    | 0    | 0          |
| PD         | 10   | 4    | 1-4        |
| HR         | 1    | 2    | 0          |
| Library    | 11   | 5    | 2          |
| Recreation | 1    | 6    | 1          |
| Utilities  | 1    | 3    | 1          |



# Upcoming Items



- Analyze risk tolerance for moving to self-funding
- Implementation of Time & Attendance for Union Staff
- Review the use of our HRIS and Applicant tracking systems to improve efficiencies
- Create a compensation plan from the data compiled in the study
- Focus on Employee Retention

**Thank you for all that you do!**

**QUESTIONS?**

Resolution No. 2024-18

RESOLUTION PROVIDING FOR THE SALE OF APPROXIMATELY \$14,135,000  
GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2024A

WHEREAS the City of New Berlin, Waukesha County, Wisconsin (the "City") is presently in need of approximately \$14,135,000 for public purposes, including paying the cost of the 2024 capital improvement projects, including the Hickory Grove building renovation (collectively, the "Project"); and

WHEREAS it is desirable to borrow said funds through the issuance of general obligation promissory notes pursuant to Chapter 67, Wisconsin Statutes.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Issuance of the Notes. The City shall issue its General Obligation Promissory Notes, Series 2024A in the approximate amount of \$14,135,000 (the "Notes") for the purposes above specified.

Section 2. Sale of the Notes. The Common Council hereby authorizes and directs that the Notes be offered for public sale. At a subsequent meeting, the Common Council shall consider such bids for the Notes as may have been received and take action thereon.

Section 3. Notice of Sale. The City Clerk (in consultation with Ehlers & Associates, Inc. ("Ehlers")) be and hereby is directed to cause notice of the sale of the Notes to be disseminated in such manner and at such times as the City Clerk may determine and to cause copies of a complete Notice of Sale and other pertinent data to be forwarded to interested bidders as the City Clerk may determine.

Section 4. Official Statement. The City Clerk (in consultation with Ehlers) shall cause an Official Statement to be prepared and distributed. The appropriate City officials shall determine when the Official Statement is final for purposes of Securities and Exchange Commission Rule 15c2-12 and shall certify said Official Statement, such certification to constitute full authorization of such Official Statement under this resolution.

Section 5. Reimbursement. The Common Council hereby officially declares its intent pursuant to Treasury Regulation Section 1.150-2 to reimburse any expenditures made in connection with the Project prior to the issuance of the Notes with the proceeds of the Notes in an amount not to exceed \$14,135,000.

Adopted, approved and recorded July 23, 2024.

---

David A. Ament  
Mayor

ATTEST:

---

Rubina R. Medina  
City Clerk

(SEAL)



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Milwaukee, Wisconsin 53202-4428  
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San Diego  
Tampa  
Tucson  
Washington, D.C.

July 17, 2024

**VIA EMAIL**

Mr. Ralph Chipman  
Finance Director-Treasurer  
City of New Berlin  
3805 South Casper Drive  
New Berlin, WI 53151

Scope of Engagement Re: Proposed Issuance of \$14,135,000 City of New Berlin (the "City") General Obligation Promissory Notes, Series 2024A (the "Securities")

Dear Mr. Chipman:

We are pleased to be working with you again as the City's bond counsel. Thank you for your confidence in us.

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel in connection with the issuance of the above-referenced Securities. If you have any questions about this letter or the services we will provide, or if you would like to discuss modifications, please contact me.

**Role of Bond Counsel**

Our bond counsel engagement is a limited, special counsel engagement. Bond counsel is engaged as a recognized independent expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of municipal obligations. If you desire additional information about the role of bond counsel, we would be happy to provide you with a copy of a brochure prepared by the National Association of Bond Lawyers.

As bond counsel we will: examine applicable law; prepare authorizing and closing documents; consult with the parties to the transaction, including the City's financial advisor or underwriter or placement agent, prior to the issuance of the Securities; review certified proceedings; and undertake such additional duties as we deem necessary to render the bond counsel opinion described below. As bond counsel, we do not advocate the interests of the City or any other party to the transaction. We assume that the parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

QB\91088708.1

Subject to the completion of proceedings to our satisfaction, we will render our opinion that:

- 1) the Securities are valid and binding general obligations of the City;
- 2) all taxable property in the territory of the City is subject to ad valorem taxation without limitation as to rate or amount to pay the Securities; and
- 3) the interest paid on the Securities will be excludable from gross income for federal income tax purposes (subject to certain limitations which may be expressed in the opinion).

The bond counsel opinion will be executed and delivered by us in written form on the date the Securities are exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date.

Upon delivery of the opinion, our responsibilities as bond counsel will be concluded with respect to this financing; specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide any post-closing compliance services including any assistance with the City's continuing disclosure commitment, ongoing advice to the City or any other party concerning any actions necessary to assure that interest paid on the Securities will continue to be excluded from gross income for federal income tax purposes, or participating in an Internal Revenue Service, Securities Exchange Commission or other regulatory body survey or investigation regarding or audit of the Securities.

In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation.

The services we will provide under this engagement are strictly limited to legal services. We are neither qualified nor engaged to provide financial advice and we will make no representation about the desirability of the proposed plan of finance, the feasibility of the projects financed or refinanced by the Securities, or any related matters.

A form of our opinion and a form of a Continuing Disclosure Certificate (which we may prepare) may be included in the Official Statement or other disclosure document for the Securities. However, as bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or other disclosure document with respect to the Securities, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. If an Official Statement or other disclosure document is prepared and adopted or approved by the City, we will either prepare or review any description therein of: (i) Wisconsin and federal law pertinent to the validity of the Securities and the tax treatment of interest paid thereon and (ii) our opinion.



### Diversity of Practice; Consent to Unrelated Engagements

Because of the diversity of practice of our firm, the firm may be asked to represent other clients in matters adverse to the City, for example, in zoning, licensing, land division, real estate, property tax or other matters which are unrelated to our bond counsel work. Ethical requirements require that we obtain the City's consent to such representations. We do not represent you in legal matters regularly, although we may be called upon for special representation occasionally, and our bond counsel work does not usually provide us information that will be disadvantageous to you in other representations. We do not believe that such representations of others would adversely affect our relationship with you, and we have found that local governments generally are agreeable to the type of unrelated representation described above. Your approval of this letter will serve to confirm that the City consents and agrees to our representation of other present or future clients in matters adverse to the City which are not substantially related to the borrowing and finance area or any other area in which we have agreed to serve it. We agree, however, that your prospective consent to conflicting representation contained in this paragraph shall not apply in any instance where, as a result of our representation of the City, we have obtained proprietary or other confidential information, that, if known to the other client, could be used by that client to your material disadvantage. We will not disclose to the other client(s) any confidential information received during the course of our representation of the City. If you have any questions or would like to discuss this consent further, please call us.

We also want to advise you that from time to time we represent underwriters and purchasers of municipal obligations, as well as other bond market participants. In past transactions or matters that are not related to the issuance of the Securities and our role as bond counsel, we may have served as counsel to the financial institution that has or will underwrite, purchase or place the Securities or that is serving as the City's financial advisor. We may also be asked to represent financial institutions and other market participants, including the underwriter, purchaser or placement agent of the Securities or the City's financial advisor, in future transactions or matters that are not related to the issuance of the Securities or our role as bond counsel. By engaging our services under the terms of this letter, the City consents to our firm undertaking representations of this type.

### Fees

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the financing, and (iv) the responsibilities we assume, we estimate that our fee will be \$27,500. Such fee and expenses may vary: (i) if the principal amount of Securities actually issued differs significantly from the amount stated above, (ii) if material changes in the structure of the financing occur, or (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time, expenses or responsibility. If at any time we believe that circumstances require an adjustment of our original fee estimate, we will consult with you. It is our understanding that our fee will be paid out of proceeds of the Securities at Closing.

If, for any reason, the financing is not consummated or is completed without the rendition of our opinion as bond counsel, we will expect to be compensated at our normal hourly rates for time actually spent, plus out-of-pocket expenses. Our fee is usually paid either at the Closing out of proceeds of the Securities or pursuant to a statement rendered shortly thereafter. We customarily do not submit any statement until the Closing unless there is a substantial delay in completing the financing.

#### Terms of Engagement

Either the City or Quarles & Brady may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. If the City terminates our services, the City is responsible for promptly paying us for all fees, charges, and expenses incurred before the date we receive termination. We reserve the right to withdraw from representing the City if, among other things, the City fails to honor the terms of this engagement letter – including the City's failing to pay our bills, the City's failing to cooperate or follow our advice on a material matter, or our becoming aware of any fact or circumstance that would, in our view, render our continuing representation unlawful or unethical.

Unless previously terminated, our representation will terminate when we send to the City (or its representative) our final bill for services rendered. If the City requests, we will promptly return the City's original papers and property to you, consistent with our need to ensure payment of any outstanding bills. We may retain copies of the documents. We will keep our own files, including attorney work product, pertaining to our representation of the City. For various reasons, including the minimization of unnecessary storage expenses, we may destroy or otherwise dispose of documents and materials a reasonable time after termination of the engagement.

#### City Responsibilities

We will provide legal counsel and assistance to the City in accordance with this letter and will rely upon information and guidance the City and its personnel provide to us. We will keep the City reasonably informed of progress and developments, and respond to the City's inquiries. To enable us to provide the services set forth in this letter, the City will disclose fully and accurately all facts and keep us apprised of all developments relating to this matter. The City agrees to pay our bills for services and expenses in accordance with this engagement letter. The City will also cooperate fully with us and be available to attend meetings, conferences, hearings and other proceedings on reasonable notice, and stay fully informed on all developments relating to this matter.

#### Limited Liability Partnership

Our firm is a limited liability partnership ("LLP"). Because we are an LLP, no partner of the firm has personal liability for any debts or liabilities of the firm except as otherwise required by law, and except that each partner can be personally liable for his or her own malpractice and for the malpractice of persons acting under his or her actual supervision and control. As an LLP



Mr. Ralph Chipman  
July 17, 2024  
Page 5

we are required by our code of professional conduct to carry at least \$10,000,000 of malpractice insurance; currently, we carry coverage with limits substantially in excess of that amount. Please call me if you have any questions about our status as a limited liability partnership.

Conclusion and Request for Signed Copy

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning a copy of this letter dated and signed by an appropriate officer, retaining the original for your files. If we do not hear from you within thirty (30) days, we will assume that these terms are acceptable to you, but we would prefer to receive a signed copy of this letter from you.

We are looking forward to working with you and the City in this regard.

Very truly yours,

QUARLES & BRADY LLP

*Bridgette Keating /TAB*

Bridgette Keating

BJK:FCD:TAB  
#690094.00058

cc: Rubina R. Medina (via email)  
Greg Johnson (via email)  
Harry Allen (via email)  
Kathy Myers (via email)  
Sue Porter (via email)  
Frank DeGuire (via email)  
Tracy Berrones (via email)  
[bondsale@ehlers-inc.com](mailto:bondsale@ehlers-inc.com)

Accepted and Approved:

CITY OF NEW BERLIN

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

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

Date: \_\_\_\_\_

## **REQUESTED ACTION STATEMENT**

**DATE:** July 5, 2024

**TO:** New Berlin Common Council

**FROM:** Mark G. Blum, City Attorney

**REQUESTED ACTION:** Discussion and possible action to approve the Ordinance to amend Chapter 93 and Section 152-3(A) of the New Berlin Municipal Code to define and include electronic vaping devices.

**FISCAL IMPACT:** Minimal.

**RATIONALE:** Prior Wisconsin law which required sellers of cigarette and tobacco products to obtain a municipal retail license was modified with the passage of 2023 Wis. Act 73. It is now required that, in addition to the previous requirements, sellers of electronic vaping devices also obtain a municipal retail license. The new licensing requirements went into effect March 6, 2024, and this ordinance will ensure the New Berlin Municipal Code is consistent with those changes. Specifically, the proposed amendment to Chapter 93 would repeal the “vaping products” definition and replace it with the “electronic vaping devices” definition that was created by 2023 Wis. Act 73. The new definition would encompass arguably the same products as the previous definition, while improving consistency between the New Berlin Municipal Code and the State statutes. Additionally, the proposed amendment to Section 152-3(A) would clarify that the section is applicable to sellers of electronic vaping devices. Because Section 152-3(A) is written to adopt future modifications to Wis. Stat. § 134.65, it now encompasses the new licensure requirements for sellers of electronic vaping devices.

The City no longer issues soda water licenses. Thus, the reference to such licenses can be removed from Section 152-3(A).

Thank you for your consideration to these comments.

Respectfully Submitted,

*/s/ Mark G. Blum*

Mark G. Blum

**ORDINANCE NO. 2696****ORDINANCE AMENDING CHAPTER 93 AND SECTION 152-3(A) OF THE  
CITY OF NEW BERLIN MUNICIPAL CODE**

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The Common Council of the City of New Berlin do ordain as follows:

**SECTION I**

Chapter 93 of the New Berlin Municipal Code is hereby amended as follows:

The term and definition of “Vapor Products” is hereby repealed and replaced with the following:

*Electronic vaping device:* A device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. “Electronic vaping device” includes a component, part, or accessory of the device, and includes a liquid or other substance that may be aerosolized or vaporized by such device, regardless of whether the liquid or other substance contains nicotine. “Electronic vaping device” does not include a battery or battery charger when sold separately. “Electronic vaping device” does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

All uses of the term “vapor products” within Chapter 93 of the New Berlin Municipal Code are deemed repealed and replaced with the term “Electronic vaping device” as defined herein.

**SECTION II**

Section 152-3(A) of the New Berlin Municipal Code is hereby amended as follows:

§ 152-3 Cigarette and electronic vaping device licenses.

A. License.

The statutory provisions of § 134.65, with § 66.0433, Wis Stats., describing and defining licensure with respect to cigarettes and electronic vaping devices, exclusive of any provisions therein relating to penalties to be imposed and exclusive of any regulations for which the statutory penalty is a term of imprisonment, are hereby adopted and by reference made a part of this section as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this section. Any future amendments, revisions or modifications of the statutes incorporated herein are intended to be made part of this section in order to secure uniform statewide regulation of the licensure of cigarettes and electronic vaping devices.

### SECTION III

All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are hereby to that extent repealed.

### SECTION IV

The several sections of this ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the ordinance.

### SECTION V

This ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

**PASSED AND ADOPTED** by the Common Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

APPROVED:

\_\_\_\_\_  
David Ament, Mayor

Countersigned:

\_\_\_\_\_  
Rubina R. Medina, City Clerk

# REQUESTED ACTION STATEMENT

**DATE:** July 17, 2024

**TO:** Mayor Dave Ament  
Fellow Alderpersons

**FROM:** Kenneth A. Harenda II  
District #4 Alderman  
Common Council President  
Recreation Commission - Chairman

**ISSUE:** **REQUEST APPROVAL FOR A CHANGE TO SECTION 6-31 OF THE CITY CODE REGARDING THE COMPOSITION OF THE RECREATION COMMISSION.**

**REQUESTED ACTION:** Request that the New Berlin Common Council approve Ordinance #  
??? to Amend Section 6-31, Of The City of New Berlin Municipal Code Regarding The  
Membership of The Recreation Commission.

**FISCAL IMPACT:** None

**RATIONALE:** The City of New Berlin and the New Berlin Athletic Association (NBAA) are in the processing of folding programing and operations of current NBAA Youth Recreation Activities into the Recreation Department. The NBAA has been a proud sponsor and originator of youth recreation programs in the City of New Berlin for 50 years. As this transition takes place and for the future of youth recreation sports in the City of New Berlin, the NBAA membership representation on the Recreation Commission would offer a wealth of knowledge to the City of New Berlin, Recreation Commission and youth recreation sports going forward.

**ORDINANCE NO. 2697**

**ORDINANCE TO AMEND SECTION 6-31, A  
OF THE CITY OF NEW BERLIN MUNICIPAL CODE  
REGARDING THE MEMBERSHIP OF THE RECREATION COMMISSION**

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WHEREAS, the City Recreation Commission currently consists of five (5) members, including a Council representative appointed by the Council President; one (1) representative from the New Berlin School District; and three (3) citizen members appointed by the Mayor and confirmed by the Council; and

WHEREAS, the City would like to have two (2) representatives from the New Berlin Athletic Association be part of the Recreation Commission, increasing the size of the Commission to seven (7) members.

NOW, THEREFORE, the Common Council of the City of New Berlin do ordain as follows:

**SECTION I**

Section 6-31, A of the Municipal Code of the City of New Berlin is hereby repealed and recreated to read as follows:

**6-31 A Membership**

The Recreation Commission shall report to the Common Council and shall consist of seven (7) members: one (1) being a Common Council member who shall be appointed annually by the Common Council President, commencing May 1<sup>st</sup> of each year; one (1) New Berlin School District representative; and five (5) citizen members. Three (3) of the citizen members shall be appointed by the Mayor and confirmed by the Common Council; two (2) citizen members shall be nominated by the New Berlin Athletic Association, which appointments shall be brought forward by the Mayor and confirmed by the Common Council. The terms for these appointees shall be three (3) years, except that when the initial appointments are made, one member shall be appointed for 1 year, one member for 2 years and one member for 3 years. The initial appointment for the two members being nominated by the New Berlin Athletic Association in 2024, shall be three year terms.

**SECTION II**

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

**SECTION III**

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

#### **SECTION IV**

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

**PASSED AND ADOPTED** by the Common Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

APPROVED:

Countersigned:

\_\_\_\_\_  
David Ament, Mayor

\_\_\_\_\_  
Rubina R. Medina, City Clerk



### REQUESTED ACTION STATEMENT

**TO:** Common Council  
Mayor Dave Ament

**FROM:** Gregory Kessler, AICP – Director of Community Development 

**RE:** Requested Action Statement to eliminate large room rentals from the City's portfolio of services.

**DATE:** July 12, 2024

**REQUESTED ACTION:** Requested Action Statement to eliminate large room rentals from the City's portfolio of services.

**FISCAL IMPACT:** See chart below for revenue and expense projections for the previous 3 ½ years.

**SOURCE OF FUNDS:** Not applicable

### **RATIONALE / BACKGROUND:**

For many years, when the City's Community Center is not being utilized for City-sponsored activities, several rooms are made available for rentals to both resident and non-resident community organizations and citizens. These events have included meetings, weddings, family reunions, and birthday parties.

In reviewing previous revenue and cost projections, it is clear that the City loses money with these rentals. The numbers below do not identify the costs associated with post-event cleanup and repairs to the room(s) themselves. These rooms have experienced damage done to them from previous events such as the flooding of bathrooms and damage to paint and drywall aside from excessive garbage and debris strewn about.

Lastly, these rentals also require a city staff person to be on-call and/or available during after-hours or weekend times to respond to emergency or to be available to clean up the room and get it ready for quick turnaround should another event have the room rented.

Due to the aforementioned reasons our department is recommending that the City no longer provide large room rentals except for city of New Berlin civic groups. If this RAS is approved, the City would no longer rent any rooms from any of its buildings for weddings, parties, meetings, etc...for non-city, civic group entities or persons.



| YEAR            | # OF RESERVATIONS | TOTAL REVENUE | APPROX. STAFF COST \$30/HR | APPROX. STAFF COST \$92/HR |
|-----------------|-------------------|---------------|----------------------------|----------------------------|
| 2021            | 76                | \$20,172.20   | \$13,680                   | \$41,952                   |
| 2022            | 81                | \$21,084.10   | \$14,580                   | \$44,712                   |
| 2023            | 85                | \$16,043.30   | \$15,300                   | \$46,920                   |
| 2024- Until May | 34                | \$7356.60     | \$6,120                    | \$18,768                   |

Assumptions: Approx. Staff Cost- 2 DPW Staff 1.5 hours each to set up, 1.5 hours to take down and clean @ \$30/HR. 3 Hours Total X 2 Staff = 6 Hours per rental @ \$30/HR (\$180/Rental to set up and take down)

\$92 (\$552/Rental (6 Hours X \$92)), provided by DPW for the staff cost from past events

# New Berlin Community Center

14750 W. Cleveland Ave. | New Berlin, WI | 53151

## WELCOME!

Welcome to the New Berlin Community Center which is also known to many of the locals as the "Old Library." The Center is owned and operated by the City of New Berlin and provides key spaces for a variety of programs, activities, and events sponsored by the Recreation Department. The New Berlin Senior Citizens' Club and New Berlin Food Pantry also operate out of this facility on a year-round basis.

When the Community Center is not being utilized for City-sponsored activities, several rooms are made available for rentals to both resident and non-resident community organizations and citizens. Meetings, weddings, family reunions, and birthdays are just a few of the many occasions that the facility accommodates. The location is conveniently located within 10 minutes of two major freeways and sits adjacent to Lions Park and its many amenities which include: walking paths, picnic shelters, tennis/pickleball courts, a fishing pond, ball diamond, newly renovated playground, and much more!

Included in this rental information packet you will find the rules and regulations that govern the rental usage of the New Berlin Community Center, hours of operation, rooms available for rent and the corresponding fees, space capacities, etc.

## How To Reserve a Space

- Contact the Recreation Dept. to check room availability **(262) 797-2443** or **[recreation@newberlin.org](mailto:recreation@newberlin.org)**
- **Reservations are only accepted in-person** at the New Berlin Activity and Recreation Center on a first come, first served basis. Full payment, including deposit, is due at the time of booking.



## Contact Information

### NEW BERLIN RECREATION DEPARTMENT

15321 W. National Ave.  
New Berlin, WI 53151

### OFFICE HOURS

Monday-Friday 7:00am-7:00pm  
Saturday 9:00am-5:00pm

\*\*Hours subject to change by season\*\*

### RECREATION PHONE

(262) 797-2443

### EMAIL

[recreation@newberlin.org](mailto:recreation@newberlin.org)

### ONLINE

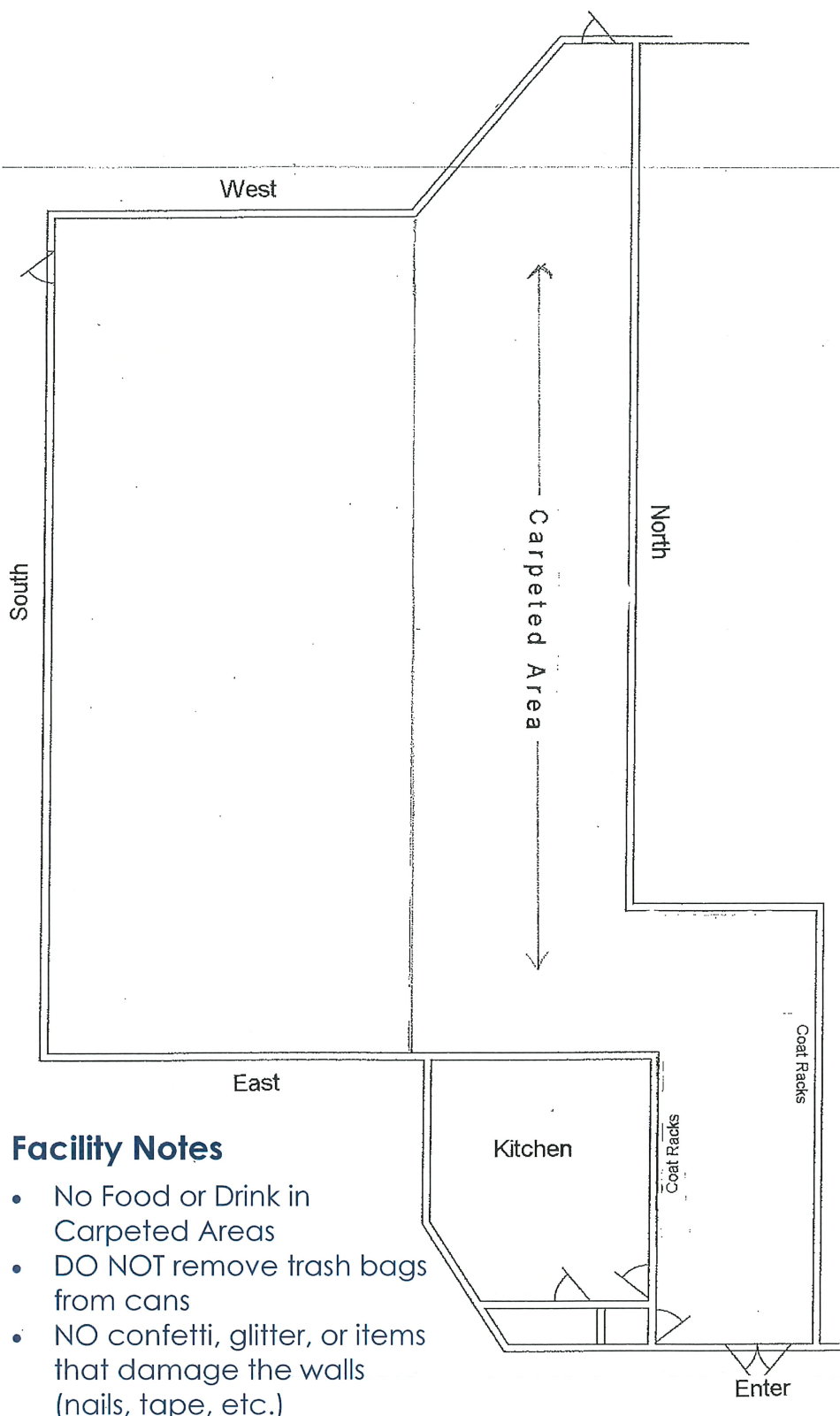
[www.newberlinwi.gov](http://www.newberlinwi.gov)





# New Berlin Community Center

## Cleveland Room with Kitchen



### Facility Notes

- No Food or Drink in Carpeted Areas
- DO NOT remove trash bags from cans
- NO confetti, glitter, or items that damage the walls (nails, tape, etc.)

## Cleveland Room

### SQUARE FOOTAGE

4,687

### CAPACITY

176 people

### MINIMUM RENTAL HOURS

Monday-Thursday: 3 Hours

Friday-Sunday: 5 Hours

### HOURLY FEE:

Residents: \$100 per Hour

Non-residents: \$140 per Hour

### SECURITY DEPOSIT:

\$500 (due at time of booking)

### INCLUDED WITH RENTAL:

- Basic Kitchen Space
  - Refrigerator
  - Microwave

### TABLES & CHAIRS AVAILABLE:

- 17—6 foot round tables with 8 chairs each
- 7—5 foot round tables with 6 chairs each
- 5—6ft rectangle tables for food, gifts, drinks, etc.

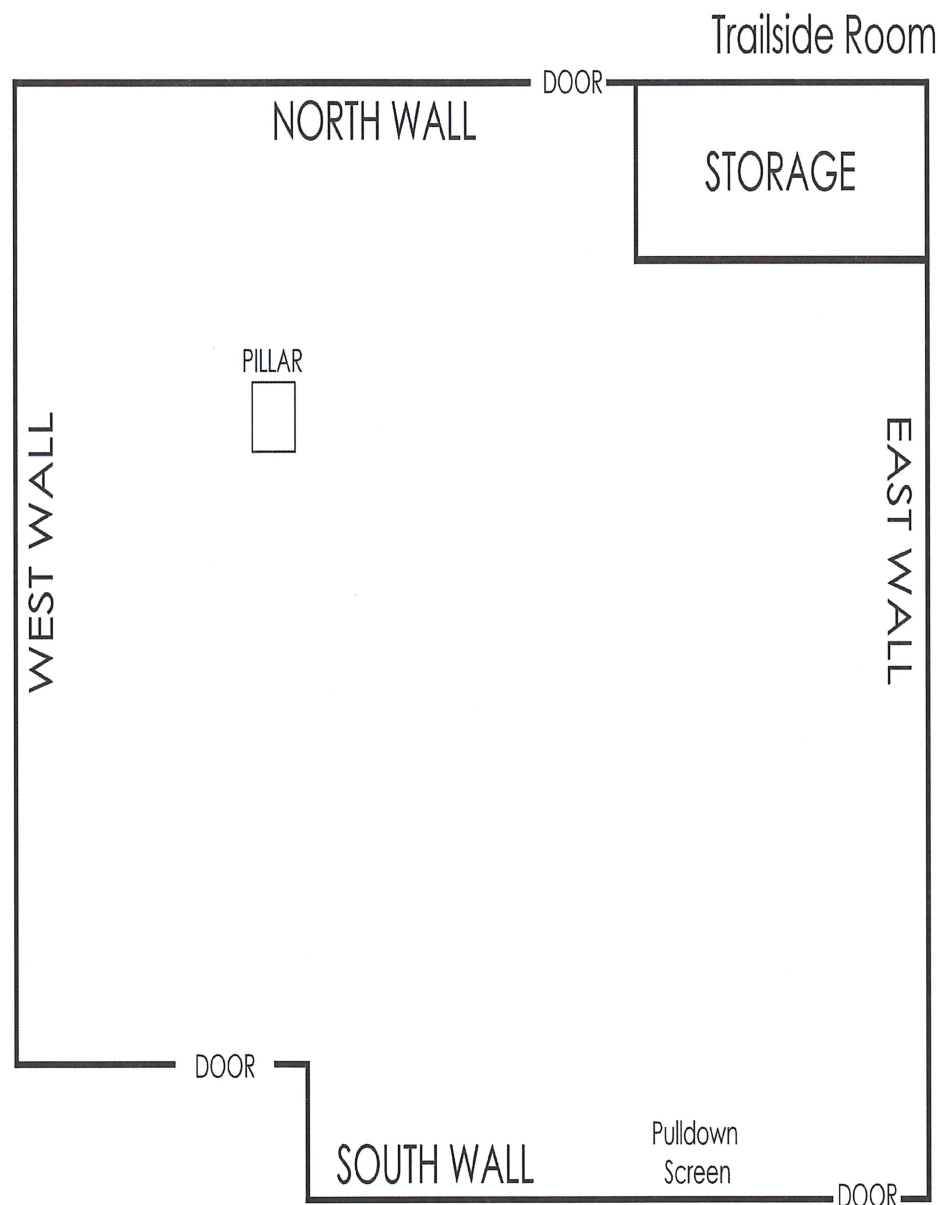
### ROOM SET-UP

The Renter Applicant is responsible for choosing a room set-up configuration no later than two weeks prior to the rental. If no room set-up configuration is submitted, staff will set-up a general configuration according to the number of guests listed on the permit.



# New Berlin Community Center

## Trailside Room with Kitchen



### Facility Notes

- Trailside Room Kitchen is kitty-corner to southeastern wall of the Trailside Room (not shown in diagram)
- No Food or Drink in Carpeted Areas
- DO NOT remove trash bags from cans
- NO confetti, glitter, or items that damage the walls (nails, tape, etc.)

## Trailside Room

### SQUARE FOOTAGE

1,614

### CAPACITY

80 people

### MINIMUM RENTAL HOURS

Monday-Thursday: 2 Hours  
Friday-Sunday: 4 Hours

### HOURLY FEE:

Residents: \$70 per Hour  
Non-residents: \$100 per Hour

### SECURITY DEPOSIT:

\$500 (due at time of booking)

### INCLUDED WITH RENTAL:

- Deluxe Kitchen Space
- Refrigerator/Freezer
- Microwave & Stove/Oven

### TABLES & CHAIRS AVAILABLE:

- 16—6 foot rectangle tables with 4 chairs each (for groups of 80 2 tables will be pushed together with 10 chairs each)
- Additional 6 foot rectangle tables for food, gifts, drinks, etc.

### ROOM SET-UP

The Renter Applicant is responsible for choosing a room set-up configuration no later than two weeks prior to the rental. If no room set-up configuration is submitted, staff will set-up a general configuration according to the number of guests listed on the permit.

## **NEW BERLIN COMMUNITY CENTER APPLICATION FORM**

**New Berlin Recreation Department - Phone (262) 797-2443**

**15321 W National Ave, New Berlin, WI 53151**

**Email: [recreation@newberlin.org](mailto:recreation@newberlin.org) Website: [www.newberlinwi.gov](http://www.newberlinwi.gov)**

APPLICANT NAME: \_\_\_\_\_ GROUP/COMPANY: NAME \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE (Home): \_\_\_\_\_ (Work): \_\_\_\_\_ (Cell): \_\_\_\_\_

EMAIL: \_\_\_\_\_

ALTERNATE CONTACT NAME: \_\_\_\_\_

PHONE (Home): \_\_\_\_\_ (Work): \_\_\_\_\_ (Cell): \_\_\_\_\_

EVENT DESCRIPTION: \_\_\_\_\_

EVENT DATE: \_\_\_\_\_

EVENT START TIME: \_\_\_\_\_ EVENT END TIME: \_\_\_\_\_ ESTIMATED ATTENDANCE: \_\_\_\_\_

### **ROOM(S) REQUESTED:**

#### **CLEVELAND COMMUNITY ROOM**

☐ Capacity 176 (includes use of Kitchen)

Use of Kitchen will be needed:

☐ Yes ☐ No

Food will be served:

☐ Yes ☐ No

If yes, will this be a Catered event?

☐ Yes ☐ No

#### **TRAILSIDE ROOM**

☐ Capacity 80 Banquet (includes use of Kitchen)

Use of Kitchen will be needed:

☐ Yes ☐ No

Food will be served:

☐ Yes ☐ No

If yes, will this be a Catered event?

☐ Yes ☐ No

#### **Other Options:**

Alcohol (Beer/Wine/Liquor)

☐ Yes ☐ No

Are you charging for alcohol?

☐ Yes ☐ No

Are you charging an entrance fee?

☐ Yes ☐ No

Amplified Music (more than Bluetooth speaker)

☐ Yes ☐ No

**Other Options:** Please enter the number of items you need:

\_\_\_\_\_ Food & Beverage Tables    \_\_\_\_\_ Display/Gift Tables    \_\_\_\_\_ Seating Tables    \_\_\_\_\_ Diagram Attached

**Any changes to the rental application (less than 5 business days prior to event) will not be granted!**

The undersigned applicant agrees on behalf of him or herself and all users of the New Berlin Community Center under the auspices of this application to indemnify and hold harmless and release the City of New Berlin its officers, elected officials, agents and insurers as and against any and all actions, demands, damages, causes of actions and claims of any kind or nature, including actual attorney's fees arising from, or in any way attributed to, in whole or in part, the granting of this application and/or the use of the New Berlin Community Center by the applicant or anyone participating in or involved with the event which is the subject of the application. Notwithstanding the foregoing the applicant shall not be required to indemnify the City against the City's own negligent or intentional conduct. By signing this agreement I/we acknowledge that I/we have read it (& Policies & Procedures) in its entirety, have given its terms due consideration, understand said terms and understand that I/we are freely and voluntarily giving up certain rights. I/we further intend that this agreement shall be binding upon all of our heirs' successors and assigns.

SIGNATURE OF APPLICANT: \_\_\_\_\_ DATE: \_\_\_\_\_

Updated 11-30-23



## **NEW BERLIN COMMUNITY CENTER BUILDING PROCEDURES & CLEANUP**

- The Community Center doors are operated on an electronic locking system. Doors will automatically unlock at the start time listed on your permit, and automatically lock at the end time listed on your permit.
- You may enter the Main entrance at the North side or South side of the building.
- As you enter your designated room, turn on the lights. Please make sure to turn off lights when your rental/meeting has concluded.
- Upon conclusion of your meeting, make sure that all areas you have utilized have been cleaned up. Each kitchen has cabinets marked with cleaning supplies for your use.
- If you are leaving more than **1 hour earlier** than the times listed on your rental, **please contact: Facilities Management: (Mon-Fri 8:00 am-3:00 pm at 262-797-2471) or (Nights & Weekends Cell at 262-527-4843).**
- Upon conclusion of your rental/meeting, please make sure all doors to rooms that you have utilized are shut.
- Make sure all outside doors are shut.

### **CLEAN-UP POLICIES**

The policies listed below will serve to identify the responsibilities on the part of both the City of New Berlin staff and the Permit Holder.

#### **STAFF**

The Primary function of City staff is to set up all tables and chairs **prior** to an event and to remove tables and chairs if necessary for the next event. The Community Center will have clean-up materials available on the premises to aid **PERMIT HOLDERS** in cleaning, such as mops and trash bags.

#### **PERMIT HOLDER**

The renter bears the responsibility of leaving the facility in the same condition as it was found. Failure to comply will lead to forfeiture of ALL or part of the permit holder's security deposit.

In order to ensure a FULL reimbursement of the security deposit, the user must meet the following criteria:

- \_\_\_\_\_ All bottles, cans, cups, tableware, etc. placed into proper trash containers.  
**Remember, NO tableware or silverware is provided by the City of New Berlin.**
- \_\_\_\_\_ Tables and chairs wiped clean of food and beverage spills
- \_\_\_\_\_ Any "wet spills" on floor mopped (wet spills must be addressed at the time they occur). If you have a wet spill, there is a mop, pail, and wet sink located in the closet inside of the men's bathroom.
- \_\_\_\_\_ Trash is bagged and placed in wastebaskets. **Do not remove plastic bags from garbage receptacles!**
- \_\_\_\_\_ Kitchen area clean and cleared of any food or debris.
- \_\_\_\_\_ All decorations taken down and discarded properly or removed from the building. No confetti, glitter, or other lingering decorations are used.

**IMPORTANT!!**

Events must conclude at the time specified on the Facility Agreement. The City of New Berlin does not permit adding additional time to an event the day of the event. If for any reason the allotted time exceeds the designated departure times, the Permit Holder's deposit will be forfeited and the Police Department may be dispatched. As noted above, the Community Center has a building computer system that will identify whether the building is being used past the designated time of the facility agreement.

**COMMUNITY CENTER FACILITY RESERVATION INFORMATION**

**To reserve a room at the New Berlin Community Center, please contact:**

New Berlin Recreation Department  
15321 W National Ave  
New Berlin, WI 53151-0921  
262-797-2443

City of New Berlin Recreation Department programs and other City of New Berlin events have first priority in scheduling use of rooms in the Community Center. The City of New Berlin reserves the right to limit the size of groups or available rooms based upon the capacity of the facilities, available parking, and to protect the public health and safety.

**Facility Application:**

**Rooms at the Community Center may not be rented in advance of the following dates:**

- **January 2024-May 2024 Reservations:** Begin Accepting in late November 2023
- **June 2024-August 2024 Reservations:** Begin Accepting in late March 2024
- **September 2024-December 2024 Reservations:** Begin Accepting in late July 2024

**This ensures all City of New Berlin events are scheduled before accepting private rentals.**

Commercial solicitation and transactions are prohibited. When facilities are not in use for scheduled City of New Berlin activities, and are available to the public for rent, then use of facilities is available on a first come, first served basis. The Applicant must be at least 21 years of age. The person or organization to whom the permit is issued assumes all responsibility for use of the facility. Permits cannot be transferred, assigned, or sublet. The rooms reserved for your activity are included on your permit. All other rooms in the facility are off limits.

**Reservations:**

Reservations are only accepted in-person at the Recreation Department office located at 15321 W. National Ave.). Hours are Monday-Friday, 8 AM – 4:30 PM.

**Reservation Status:**

A rental reservation is considered binding after the Facility Rental Agreement has been signed by the rental applicant and approved by City personnel. Rental applicants may not advertise any event until this time. Reservations will be confirmed and considered complete only after all required forms are signed and submitted and applicable fees and deposits are paid. The Recreation Department does not hold dates for any individual, businesses, groups, or organizations.

### **Rental Security Deposits and Payment Information:**

**ALL Rentals must be paid for in full at time of booking.**

**1. Rental Fee:**

- a. Rental payment must be made in full at the time of the facility application approval.

**2. Security Deposit:**

- a. The security deposit fee for all rentable rooms is \$500. A credit or debit card will be required to cover the Security Deposit. The Security Deposit is due when booking the event. The deposit is refundable if the conditions of the rental are met (processed within one week following event). If damage occurs, the refund can be delayed.
- b. Conditions which lead to withholding part or all of the Security deposit include, but are not limited to, the following:
  - 1) Clean-up is not completed as outlined in the facility rules and regulations.
  - 2) Use of the room exceeds the scheduled rental time.
  - 3) The number of persons attending the event exceeds the number of participants listed in the agreement.
  - 4) New Berlin Recreation Department equipment or the Community Center facility is damaged during rental period.
  - 5) If damage occurs and the cost of the damage exceeds the amount of the deposit, the rental applicant will be billed for any additional expense. Damages could lead to losing future facility use privileges. The decision of whether the deposit shall be refunded is solely up to the Recreation Department and will not be refunded until the facility has been inspected by City personnel.
  - 6) Additional staff time charge required for special services or items not included in prepaid facility charge, but used by renter during the rental period.

### **Cancellation/Refund Policy:**

- a. For cancellation requests received at least 60 days prior to the event date for all available rooms, all (100%) of the rental fees will be refunded plus the Security Deposit.
- b. For cancellation requests received less than 60 but more than 30 days prior to the event date for all available rooms, one-half (50%) of the rental fees will be refunded plus the full Security Deposit.
- c. For cancellation requests received less than 30 days prior to the event date, only the security deposit will be refunded. None (0%) of the rental fees will be refunded.
- d. Renter shall be liable for all costs of any additional services already performed.
- e. The person who signed the contract must submit the request for cancellation to the New Berlin Recreation Department.

### **Available Rental Hours:**

Sunday: 10:00 AM - 10:00 PM

Monday through Thursday: 8:00 AM - 10:00 PM

Friday: 8:00 AM - 12:00 Midnight

Saturday: 10:00 AM - 12:00 Midnight

Facility will be closed on all major holiday weekends and election weekends.



### **New Berlin Community Center Fee Schedule Category Definitions:**

#### **Resident:**

- a. Any New Berlin resident, individual residing within New Berlin city limits, resident business renting for non-commercial use, or resident group. To be considered a resident business, both the principal office and place of business must be located within the corporate limits of the city.
- b. New Berlin public or private elementary, middle school and high schools located within the corporate limits of the city.

#### **Non-Resident:**

- a. Any individual, business, non-profit, or for-profit group residing outside the New Berlin city limits.

#### **Fee Waiver Policy:**

- a. Please contact the Recreation Department to request the facility fee waiver policy.

#### **Fundraising Activities:**

- a. Fundraisers are only permitted on behalf of Community Based Non-Profit Organizations, or on behalf of benevolent, philanthropic, patriotic, or charitable organizations.
- b. Every charitable organization intending to conduct a fundraising activity must provide to the Department the following:
  - 1. Name under which the charitable organization intends to solicit contributions.
  - 2. Names and addresses of officers, directors, trustees, and executive personnel.
  - 3. Names and addresses of any professional fundraiser or professional solicitors.
  - 4. General purpose for which the charitable organization is organized and purpose for which the contributions to be solicited will be used.
  - 5. Where and when the organization was established and evidence of tax-exempt status.
  - 6. Whether the organization has ever been banned by any court from soliciting contributions or lost its authorization to solicit contributions.

**NEW BERLIN COMMUNITY CENTER**  
**2024 DATES UNAVAILABLE FOR RENTALS**

**2024 Holiday & Seasonal Closures**

- Friday, December 29<sup>th</sup>, 2023 thru Tuesday, January 2<sup>nd</sup>, 2024  
**New Year's Holiday**
- Friday, March 29<sup>th</sup> thru Sunday, March 31<sup>st</sup>  
**Easter Holiday**
- Friday, May 24<sup>th</sup> thru Thursday, August 22<sup>nd</sup>  
**Summer Day Camp**
- Friday, August 30<sup>th</sup> thru Monday, September 2<sup>nd</sup>  
**Labor Day Holiday**
- Wednesday, November 27<sup>th</sup> thru Sunday, December 1<sup>st</sup>  
**Thanksgiving Holiday**
- Monday, December 23<sup>rd</sup> thru Wednesday, December 25<sup>th</sup>  
**Christmas Holiday**
- Monday, December 30<sup>th</sup>, 2024 thru Thursday, January 2<sup>nd</sup>, 2025  
**New Year's Holiday**

**2024 Election Closures**

- Friday, February 16<sup>th</sup> thru Wednesday, February 21<sup>st</sup>  
**Spring Primary**
- Friday, March 29<sup>th</sup> thru Wednesday, April 3<sup>rd</sup>  
**Spring General**
- Friday, August 9<sup>th</sup> thru Wednesday, August 14<sup>th</sup>  
**Fall Primary**
- Friday, November 1<sup>st</sup> thru Wednesday, November 6<sup>th</sup>  
**Fall General**

Please note that additional "Unavailable Dates" may be added throughout the year. Contact the Recreation Department for the most up-to-date schedule.



**REQUESTED ACTION STATEMENT**

**TO:** Mayor Dave Ament  
Common Council

**FROM:** Gregory Kessler, AICP - Director of Community Development 

**RE:** Requested Action Statement for approval of the public bids and CM related fees for Phase 1 of the Community Center at Hickory Grove Renovation Project.

**DATE:** July 16, 2024

**REQUESTED ACTION:**

- 1) The approval of a contract between the City of New Berlin and Moore Construction for the construction management for the Community Center at Hickory Grove project subject to review and approval by the City Attorney.
- 2) The approval of public base bids, as well as the CM related fees and accepting no alternates totaling \$7,077,000 for Phase 1 of the Community Center and Hickory Grove project. The City shall direct that pursuant to our contract with our Construction Manager Moore Construction Services they award contracts to the lowest responsive, responsible bidders for each bid package.

**FISCAL IMPACT:** The funds to be used are from CIP account Community Center at Hickory Grove CIP account, 04252900 61103 C2024 and a donation from the New Berlin Food Pantry. The total budget for these bids in addition to Moore Construction Services fees and insurance is \$7,077,000.

The city anticipates, through value engineering, that there will be additional savings via change orders to reduce costs in 2024. Those have yet to be finalized and are not currently reflected in the overall bid package number.

**SOURCE OF FUNDS:**

|    |                                                                  |             |
|----|------------------------------------------------------------------|-------------|
| 1) | Community Center at Hickory Grove; Account: 04252900 61103 C2024 | \$6,827,000 |
| 2) | Food Pantry Donation                                             | \$250,000   |

**RATIONALE/BACKGROUND:** Phase 1 of this project will allow for the city to start work as soon as possible and to work towards gaining a functional and occupiable

building in the second quarter of 2025. The city anticipates that work can commence in late summer of 2024. Construction will continue through the winter months.

The direction of the Mayor and Common Council is to continue to work with our Architect and Construction Manager to find ways to cut costs and bring the overall budget of the project down. Staff has already identified areas within the scope that will allow us to save significant dollars by either opting for an alternative product, reducing the scope of the project, or delaying portions of the project to a future phase.

New Berlin  
Community Center at Hickory Grove



YOUR CONSTRUCTION PARTNER

| Project: New Berlin Community Center at Hickory Grove |                 | ALT #1               | ALT #2                       | ALT #3                      | ALT#4                      |
|-------------------------------------------------------|-----------------|----------------------|------------------------------|-----------------------------|----------------------------|
| #1 ASBESTOS ABATEMENT                                 |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| BALISTRIERI GROUP                                     | \$ 178,775.00   | \$ 7,151.00          |                              |                             |                            |
| HOGAN ENVIRONMENTAL CLEAN                             | \$ 271,000.00   | \$ 7,200.00          |                              |                             |                            |
| THE MRD GROUP                                         | \$ 118,300.00   | \$ 2,000.00          |                              |                             |                            |
| ROBINSON BROTHERS                                     | \$ 218,705.00   | 4,375                |                              |                             |                            |
| INTEGRITY ENVIRONMENTAL                               | \$ 99,318.00    | 2,454                |                              |                             |                            |
| INTEGRITY ENVIRONMENTAL                               | \$ 99,318.00    | 2,454                | 0                            | 0                           | 0                          |
| #2 EARTHWORK & MASS BUILDING DEMOLITION               |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| D&L GRADING                                           | \$ 505,650.00   |                      |                              |                             |                            |
| RIDGE EXCAVATING                                      | \$ 239,421.00   | 11,401               |                              |                             |                            |
| VEIT                                                  | \$ 692,150.00   | 6,922                |                              |                             |                            |
| WOLVERINE                                             | \$ 393,900.00   | 11,790               |                              |                             |                            |
| RIDGE EXCAVATING                                      | \$ 239,421.00   | 11,401               | 0                            | 0                           | 0                          |
| #3 TRENCH FILLING (ABANDONED MECHANICALS BELOW SLAB)  |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| ELASTIZELL                                            | \$ 41,421.60    | \$ 1,242.65          |                              |                             |                            |
| ELASTIZELL                                            | \$ 41,421.60    | 1,243                | 0                            | 0                           | 0                          |
| #4 CONCRETE                                           |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| NO BIDS RECEIVED                                      |                 |                      |                              |                             |                            |
| NO BIDS RECEIVED                                      | \$ -            | 0                    | 0                            | 0                           | 0                          |
| #5 MASONRY                                            |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| PAUN CONSTRUCTION                                     | \$ 376,200.00   | \$ 7,151.00          |                              |                             |                            |
| PAUN CONSTRUCTION                                     | \$ 376,200.00   | 7,151                | 0                            | 0                           | 0                          |
| #6 STRUCTURAL & MISCELLANEOUS STEEL                   |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| ACE IRON & STEEL                                      | \$ 278,100.00   | \$ 2,800.00          |                              | \$ 9,600.00                 |                            |
| CARDINAL FABRICATING CORP                             | \$ 249,000.00   | \$ 3,100.00          |                              |                             |                            |
| METRO WELDING                                         | \$ 239,500.00   | \$ 3,100.00          |                              | \$ 9,475.00                 |                            |
| METRO WELDING                                         | \$ 239,500.00   | 3,100                | 0                            | 9,475                       | 0                          |
| #7 CARPENTRY & GENERAL TRADES                         |                 | ADD PERFORMANCE BOND | LEAVE BUILT-UP ROOF IN PLACE | NEW HANDRAIL AND GUARDRAILS | ADD CUBBIES TO HALLWAY 103 |
| CONTRACTOR                                            | BASE BID AMOUNT |                      |                              |                             |                            |
| JC BUILDING                                           | \$ 1,383,545.00 | \$ 12,000.00         |                              |                             | \$ 25,000.00               |



New Berlin  
Community Center at Hickory Grove



YOUR CONSTRUCTION PARTNER

|                                             |                        |                                     |                                         |                                        |                                       |
|---------------------------------------------|------------------------|-------------------------------------|-----------------------------------------|----------------------------------------|---------------------------------------|
| MRD GROUP                                   | \$ 2,615,200.00        | \$ 40,000.00                        |                                         |                                        | \$ 7,000.00                           |
| JC BUILDING                                 | \$ 1,383,545.00        | 12,000                              | 0                                       | 0                                      | 25,000                                |
| <b>#8 ROOFING &amp; SHEET METAL</b>         |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| DIALED IN ROOFING                           | \$ 398,880.00          | \$ 7,978.00                         | \$ 17,500.00                            |                                        |                                       |
| NATIONS ROOF                                | \$ 461,300.00          | 7,000                               |                                         |                                        |                                       |
| DIALED IN ROOFING                           | \$ 398,880.00          | 7,978                               | 17,500                                  | 0                                      | 0                                     |
| <b>#9 ALUMINUM COMPOSITE PANEL SYSTEM</b>   |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| SRS ROOFING                                 | \$ 392,500.00          | \$ 7,900.00                         |                                         |                                        |                                       |
| NATIONS ROOF                                | \$ 203,900.00          | \$ 3,100.00                         |                                         |                                        |                                       |
| NATIONS ROOF                                | \$ 203,900.00          | 3,100                               | 0                                       | 0                                      | 0                                     |
| <b>#10 METAL STUD FRAMING &amp; DRYWALL</b> |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| DAVCO                                       | \$ 482,600.00          | \$ 12,100.00                        |                                         |                                        |                                       |
| OLYMPIC                                     | \$ 414,350.00          | \$ 4,560.00                         |                                         |                                        |                                       |
| OLYMPIC                                     | \$ 414,350.00          | 4,560                               | 0                                       | 0                                      | 0                                     |
| <b>#11 ELEVATOR</b>                         |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| OTIS                                        | \$ 110,750.00          | 1,108                               |                                         |                                        |                                       |
| SCHINDLER                                   | \$ 118,000.00          | 1,700                               |                                         |                                        |                                       |
| OTIS                                        | \$ 110,750.00          | 1,108                               | 0                                       | 0                                      | 0                                     |
| <b>#12 FIRE PROTECTION</b>                  |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| BLAIR FIRE PROTECTION                       | \$ 88,500.00           | \$ 1,650.00                         |                                         |                                        |                                       |
| AUTOMATIC FIRE SYSTEMS INC                  | \$ 109,216.00          | \$ 1,100.00                         |                                         |                                        |                                       |
| TOTAL MECHANICAL                            | \$ 324,340.00          | \$ 4,800.00                         |                                         |                                        |                                       |
| BLAIR FIRE PROTECTION                       | \$ 88,500.00           | 1,650                               | 0                                       | 0                                      | 0                                     |
| <b>#13 PLUMBING</b>                         |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| BRADEN PLUMBING                             | \$ 324,500.00          | \$ 12,000.00                        |                                         |                                        |                                       |
| JOE DEBELAK                                 | \$ 340,672.00          | \$ 3,877.00                         |                                         |                                        |                                       |
| SOUTHPORT                                   | \$ 397,967.00          | \$ 16,000.00                        |                                         |                                        |                                       |
| BRADEN PLUMBING                             | \$ 324,500.00          | 12,000                              | 0                                       | 0                                      | 0                                     |
| <b>#14 HVAC</b>                             |                        | <b>ADD<br/>PERFORMANCE<br/>BOND</b> | <b>LEAVE BUILT-UP<br/>ROOF IN PLACE</b> | <b>NEW HANDRAIL<br/>AND GUARDRAILS</b> | <b>ADD CUBBIES TO<br/>HALLWAY 103</b> |
| <b>CONTRACTOR</b>                           | <b>BASE BID AMOUNT</b> |                                     |                                         |                                        |                                       |
| PURE MECHANICAL                             | \$ 614,000.00          |                                     |                                         |                                        |                                       |

New Berlin  
Community Center at Hickory Grove



|                                              |                        |              |                         |                       |                       |                       |
|----------------------------------------------|------------------------|--------------|-------------------------|-----------------------|-----------------------|-----------------------|
| SOUTHPORT                                    | \$                     | 582,363.00   | 24,000                  |                       |                       |                       |
| SOUTHPORT                                    | \$                     | 582,363.00   | 24,000                  | 0                     | 0                     | 0                     |
| <b>#15 ELECTRICAL, LOW VOLTAGE, SECURITY</b> |                        |              | <b>ADD</b>              | <b>LEAVE BUILT-UP</b> | <b>NEW HANDRAIL</b>   | <b>ADD CUBBIES TO</b> |
| <b>CONTRACTOR</b>                            | <b>BASE BID AMOUNT</b> |              | <b>PERFORMANCE BOND</b> | <b>ROOF IN PLACE</b>  | <b>AND GUARDRAILS</b> | <b>HALLWAY 103</b>    |
| CIRCLE ELECTRIC                              | \$                     | 1,097,575.00 | \$ 15,585.00            |                       |                       |                       |
| NSI                                          | \$                     | 1,350,000.00 | \$ 15,000.00            |                       |                       |                       |
| CIRCLE ELECTRIC                              | \$                     | 1,097,575.00 | 15,585                  | 0                     | 0                     | 0                     |
| <b>#16 SITE UTILITIES</b>                    |                        |              | <b>ADD</b>              | <b>LEAVE BUILT-UP</b> | <b>NEW HANDRAIL</b>   | <b>ADD CUBBIES TO</b> |
| <b>CONTRACTOR</b>                            | <b>BASE BID AMOUNT</b> |              | <b>PERFORMANCE BOND</b> | <b>ROOF IN PLACE</b>  | <b>AND GUARDRAILS</b> | <b>HALLWAY 103</b>    |
| BV TETZLAFF                                  | \$                     | 390,100.00   | \$ 4,000.00             |                       |                       |                       |
| JOE DEBELAK                                  | \$                     | 207,126.00   | 2,474                   |                       |                       |                       |
| JOE DEBELAK                                  | \$                     | 207,126.00   | 2,474                   | 0                     | 0                     | 0                     |
| <b>#17 ASPHALT PAVING</b>                    |                        |              | <b>ADD</b>              | <b>LEAVE BUILT-UP</b> | <b>NEW HANDRAIL</b>   | <b>ADD CUBBIES TO</b> |
| <b>CONTRACTOR</b>                            | <b>BASE BID AMOUNT</b> |              | <b>PERFORMANCE BOND</b> | <b>ROOF IN PLACE</b>  | <b>AND GUARDRAILS</b> | <b>HALLWAY 103</b>    |
| JOHNSON AND SONS                             | \$                     | 205,382.00   |                         |                       |                       |                       |
| PAYNE & DOLAN                                | \$                     | 176,958.00   | \$ 1,769.00             |                       |                       |                       |
| PLM                                          | \$                     | 283,100.00   |                         |                       |                       |                       |
| PAYNE & DOLAN                                | \$                     | 176,958.00   | 1,769                   | 0                     | 0                     | 0                     |
| <b>#18 SITE CONCRETE</b>                     |                        |              | <b>ADD</b>              | <b>LEAVE BUILT-UP</b> | <b>NEW HANDRAIL</b>   | <b>ADD CUBBIES TO</b> |
| <b>CONTRACTOR</b>                            | <b>BASE BID AMOUNT</b> |              | <b>PERFORMANCE BOND</b> | <b>ROOF IN PLACE</b>  | <b>AND GUARDRAILS</b> | <b>HALLWAY 103</b>    |
| JOHNSON AND SONS                             | \$                     | 182,823.00   |                         |                       |                       |                       |
| STARK                                        | \$                     | 145,000.00   | \$ 1,450.00             |                       |                       |                       |
| STARK                                        | \$                     | 145,000.00   | 1,450                   | 0                     | 0                     | 0                     |



### REQUESTED ACTION STATEMENT

**TO:** Common Council  
Mayor Dave Ament

**FROM:** Gregory Kessler, AICP – Director of Community Development 

**RE:** Requested Action Statement to approve a services agreement with All Star Health Center.

**DATE:** July 15, 2024

**REQUESTED ACTION:** Requested Action Statement to approve a services agreement with All Star Health Center.

**FISCAL IMPACT:** Fee structure is outlined, per class, in Exhibit 'A' attached.

**SOURCE OF FUNDS:** Not applicable

#### **RATIONALE / BACKGROUND:**

All Star Health Center's mission is to expand the opportunities involving wellness for individuals with disabilities. Based in Thiensville, WI, All Star Health Center has contacted the City of New Berlin regarding developing a partnership in that some of their classes would be offered at the Activity and Recreation Center (ARC) started in the Fall of 2024. All Star Health Center seeks to create an inclusive and caring community for individuals with disabilities through various programs and classes. Initially, the proposed classes include martial arts, nutritional coaching/cooking class, personal training and dance class. Class sizes would be adjusted based upon participant skill level(s) and instructor-to-student ratios. The mission of All Star Health Center is directly in-step and compliments one of Recreation's nine (9) core program areas which is "Adaptive and Inclusion."

We have identified that our Adaptive and Inclusion Programs should do the following:

- Increase community recognition and value of all individuals through adaptive and inclusion programs.
- Make lasting friendships and create memorable experiences.
- Learn life skills and give back to their community through service-based programs and projects.
- Gain confidence through experiences and exploring new interests.

This would be an on-going agreement, unless terminated per the terms outlined by either party, and the revenue reimbursement rate would be 75% (for All Star Health Center) and 25% (for City of New Berlin) of the class registration fees.





NEW!

## ADAPTIVE PROGRAMS

The New Berlin Recreation department is pleased to announce it's partnership with All Star Health Center. All Star Health Center is dedicated to assisting individuals with disabilities to live a healthy lifestyle. All Star Health Center supports and facilitates the mental, physical, and emotional well-being of individuals with diverse needs through various exercise means. Join us for a fun filled class!

Individuals who wish to register for All Star Health's adaptive programs must contact [info@allstarhealthcenter.org](mailto:info@allstarhealthcenter.org) prior to registering. This initial contact ensures that we can assess specific needs and determine the best fit for our programs.

### Martial Arts

Exploring the possibilities of martial arts and self-defense through different techniques desired to build confidence, self control, block and defend. Tailored to accommodate all abilities and desires. **Price includes 4 sessions.**

**Ages:** 5+ Years Old

**Dates:** 9/21/24, 10/19/24, 11/16/24, and 12/21/24

**Location:** New Berlin ARC, Cedar Room

**Enrollment:** Min. 5 Max 12

**Time:** 10:00am-11:00am

**Class #**

**Fee:** Resident \$100, Non-resident \$136

### Nutritional Coaching/Cooking Class

A fun way to learn about fueling your body correctly. Our nutrition coach will guide and support individuals towards a healthier lifestyle while making delicious, nutritious food. Individuals will learn kitchen skills, cooking skills and their abilities in the kitchen will continue to grow as they develop a healthy relationship with food and develop an important life skill.

**Must schedule at least 3 weeks in advanced by emailing and confirming with [Info@AllStarHealthCenter.org](mailto:Info@AllStarHealthCenter.org).**

**Price includes 1 session.**

**Ages:** 12+ Years Old

**Dates:** Wednesdays Sept 25-December 20

**Location:** New Berlin ARC, Cedar Room

**Enrollment:** Min. 1 Max 4

**Time:** 10:00am-11:00am

**Class #**

**Fee:** Resident \$100 Resident, Non-resident \$136

### Personal Training

A personal exercise plan customized to the desires of the participant. We value and strive for our participants to accomplish their target goals. Sessions consist of cardio, weights, core work, stretching, and more. **These sessions will be a on one to one basis or a two to one basis. Must schedule at least 3 weeks in advanced by emailing and confirming with [Info@AllStarHealthCenter.org](mailto:Info@AllStarHealthCenter.org). Price includes 1 session.**

**Ages:** 12+ Years Old

**Dates:** Wednesdays, 11:30am - 12:30pm and Fridays, 12:30 pm to 1:30 pm

**Class #**

**Location:** New Berlin ARC, Wellness Mezzanine & Track

**Fee:** Resident \$100 , Non-resident \$136

**Enrollment:** Min. 1 Max 4

### Dance

A fun, energetic dance class filled with great moves and music. Express yourself through music and move your body in a rhythmic way. A great opportunity to be social, and have fun while exercising! **Price includes 12 sessions.**

**Ages:** 5+ Years Old

**Dates:** Friday, September 27 – December 20 (No 11/29)

**Time:** 11:00am-12:00pm

**Class #**

**Location:** New Berlin ARC, Wellness Mezzanine & Track

**Fee:** Resident \$100, Non-resident \$136

**Enrollment:** Min. 13 Max 20



All Star Health Center is dedicated to assisting individuals with disabilities live a healthy lifestyle. All Star Health Center supports and facilitates the mental, physical, and emotional well-being of individuals with diverse needs through various exercise means. Join us for a fun filled class!

**Martial Arts** – Exploring the possibilities of martial arts and self-defense through different techniques desired to build confidence, self control, block and defend. Tailored to accommodate all abilities and desires.

**Dates** – 9/21/24, 10/19/24, 11/16/24, 12/21/24

**Time** 10:00 am – 11:00 am

**Fee** – Resident - \$80.00

**Minimum age** – 5 years old

**Nutritional Coaching / Cooking class** – A fun way to learn about fueling your body correctly. Our nutrition coach will guide and support individuals towards a healthier lifestyle while making delicious, nutritious food. Individuals will learn kitchen skills, cooking skills and their abilities in the kitchen will continue to grow as they develop a healthy relationship with food and develop an important life skill.

**Dates** – Wednesday, September 25<sup>th</sup> through December 20<sup>th</sup>

**Time** – 10:00 am – 11:00 am

**Fee** – \$

**Minimum age** – 12 years old

**Personal Training** – A personal exercise plan customized to the desires of the participant. We value and strive for our participants to accomplish their target goals. Sessions consist of cardio, weights, core work, stretching, and more.

**Dates** – Wednesday, 11:30am - 12:30pm and Friday, 12:30 pm to 1:30 pm.

**Fee**- \$80 per session

**Minimum age** – 10 years old

**These sessions will be a on one to one basis or a two to one basis.**

**Dance Class** – A fun, energetic dance class filled with great moves and music. Express yourself through music and move your body in a rhythmic way. A great opportunity to be social, and have fun while exercising!

**Dates** – Friday, September 27<sup>th</sup> – December 20<sup>th</sup>

**Time** – 11:00 am to 12:00 pm

**Fee** – Resident - \$80.00

**Minimum age** – 5 years old

Number of people per class.

martial arts : minimum = 5 people, maximum = 12 people

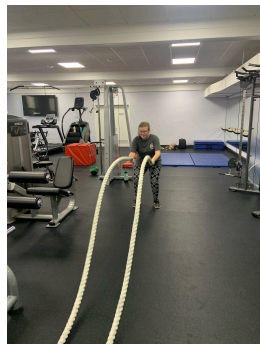
Nutrition coaching : maximum = 4 people

Dance – minimum = 13 people, maximum number = 20 people

# All Star Health Center

## To all Participants:

All Star Health Center creates an inclusive and caring community for individuals with disabilities so they are able to explore what it means to live a healthy lifestyle. By creating an engaging and welcoming environment with strong, professional role models, participants will experience the joy and happiness they deserve from exercise, nutrition, and other stimulating activities.



## Mission:

Our mission is to expand the opportunities involving wellness for individuals with disabilities. The goal of All Star Health Center is to facilitate the mental, emotional, and physical health of individuals with disabilities while empowering each person to become a star.



## Services Provided:

**Personal Training:** A personal exercise plan customized to the desires of the participant. We value and strive for our participants to accomplish their target goals. Sessions consist of cardio, weights, core work, stretching, and more.

**Nutrition coaching:** A fun way to learn about fuelling your body correctly. The coach will guide and support individuals towards a healthier lifestyle while making delicious, nutritious food.

**Taekwondo:** Exploring the possibilities of martial arts and self-defense through different techniques designed to block and defend. Tailored to accommodate all abilities and desires.

**Dance:** A fun dance class filled with great moves and music. Express yourself through music and move your body in a rhythmic way.

**Yoga:** Experience a mind- body connection through various physical poses and techniques to help bring the mind and body to a state of relaxation.

And so much more!

## Contact:

138 Buntrock Ave

Thiensville, WI 53092

[info@allstarhealthcenter.org](mailto:info@allstarhealthcenter.org)

262.240.0249

For all inquiries on scheduling or to learn more about All Star please contact us using the information above.



## SERVICES AGREEMENT



This Services Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the CITY OF NEW BERLIN, a Wisconsin municipal corporation, with its principal office located at 3805 South Casper Drive, New Berlin, Wisconsin, 53151 (hereinafter referred to as the “City”) and All Star Health Center, Inc. (hereinafter referred to as “Instructor”).

WHEREAS, the City offers recreational classes to the public; and

WHEREAS, Instructor provides special needs youth and adult martial arts, cooking, and athletic training programs; and

WHEREAS, the parties are desirous of establishing the relationship where Instructor provides classes to the City during 2024.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Instructor holds itself out as being qualified to provide cooking, martial arts and athletic training to special needs individuals as described in the attached exhibit A. The City does hereby retain the Instructor to perform instruction in the aforementioned areas as provided for hereunder.

2. All classes are to be held at New Berlin Activity and Recreation Center in the City of New Berlin in spaces to be assigned by the City. The specific class schedule shall be established, occurring from time to time, by the parties. Instructor agrees to work with the City to develop class offerings and scheduling.

3. Instructor agrees to provide City with a rate they would like to collect per participant before seasonal activity guides are finalized. City may then charge participants any amount at or above what Instructor receives. The Instructor agrees all non-residents will be charged at the resident rate and the City keeps the non-resident fees. The Instructor will provide City with an invoice after classes. Payment of services shall follow City Finance Department policies. The Instructor agrees to provide the City with a signed IRS W9 form.

4. City will provide Instructor with a class participant list. City acknowledges if participant has registered for the designated classes before the class has begun, but they are not on the class participant list, then that participant may present a receipt at the class as proof of registration.

5. The Instructor is solely responsible for and shall have sole control of the performance of the services. The parties acknowledge that the Instructor is not an employee of the City of New Berlin and is responsible to determine the instruction methods and performance of the instruction provided for in this Agreement.

6. Instructor acknowledges that neither he, nor his employees, are employees of the City for purposes of income tax retirement system or social security withholding.

7. Instructor accepts liability for damage to participant's equipment that occurs from Instructor's instruction during class. City acknowledges Instructor is only responsible for the area of the building the class is programmed in during the time the class advertised. Instructor will check the building area upon leaving, turn off lights, and restore the room to previous set-up. Instructor is not liable for damage to building after the class has ended and participants have left.

8. Either party may terminate this contract, in whole or in part, for the convenience of the parties at such time as either party determines that the continuation of the work is not in the best interests of said party upon thirty (30) days written notice to the other.

9. Instructor will defend and hold harmless the City as and against any and all claims, demands, actions or causes of action brought by a third party for damages or losses arising solely out of the Instructor's performance of the services under this Agreement. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct. The Instructor's obligation to indemnify shall include its employees and/or agents.

10. The Instructor agrees to maintain supervision of class participants who are minors until the minor is picked up by a parent, guardian or authorized adult. The Instructor agrees not to permit minor class participants to wander about the ARC outside of the class schedule.

11. The Instructor warrants and represents that all staff are trained and experienced in working with special needs individuals and that all staff to student ratios and curriculum will meet accepted standards for such instruction.

12. This Agreement represents the complete understanding of the parties with respect to the subject matter herein and may only be modified in a subsequent agreement executed by each party.

13. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

CITY:

INSTRUCTOR:

**City of New Berlin**

**All Star Health Center, Inc.**

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

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

## **REQUESTED ACTION STATEMENT**

To: New Berlin Common Council

From: City Attorney Mark Blum and Director of Community Development Greg Kessler

Date: June 7, 2024

### Requested Action:

Approval of Easement Release to remove unnecessary Public Sewer, Water, Storm Water and Access Easements which are no longer necessary on the Activity Recreation Center property, which action will facilitate the creation of the Lot to sell to Nice Bites, LLC.

### Financial fiscal impact:

None.

### Background/Rationale:

Since construction at the ARC has been completed and since utilities have now been extended to the property Nice Bites, LLC site, there are portions of the Sewer, Water, Storm Water and Access Areas which are no longer necessary as protected public easements. Therefore, the purpose of the Release is to release those portions of said Easements to facilitate the creation of a new Certified Survey Map which will create the Lot to be potentially sold to Nice Bites, LLC.

Respectfully Submitted,

Mark Blum & Greg Kessler

MGB/jb

---

**RESOLUTION NO. 2024-19****RESOLUTION OF THE CITY OF NEW BERLIN  
RELEASING PORTIONS OF PUBLIC SEWER, WATER,  
STORM SEWER AND ACCESS EASEMENTS AS  
DEPICTED ON CSM #12050, #6872 AND #7554**

---

WHEREAS, the City of New Berlin entered into a Reciprocal Easement, Party Wall and Maintenance Agreement, which document was recorded with the Waukesha County Register of Deeds on August 24, 2020 as Document No. 4504051, which identified certain public utility easements for water, sewer, storm water and public access; and

WHEREAS, since the completion of construction of the Activity and Recreation Center, portions of these Easements are no longer needed and thereby can be vacated; and

WHEREAS, attached hereto as Exhibit A is a Release which identifies the specific portions of the sewer, water, storm water and access Easements which are to be released in order to clean up the anticipated Certified Survey Map for the creation of the Lot necessary to sell a portion of said Lot 1 to Bill and Allison Spindler for Nice Bites, LLC.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of New Berlin does hereby approve the Release of Water, Sewer, Storm Water and Access Easements as depicted on the attached Exhibit A.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute said Release and the City Staff are directed to record said Release with the Waukesha County Register of Deeds.

Dated at New Berlin, Wisconsin this \_\_\_\_\_ day of June, 2024.

APPROVED:

\_\_\_\_\_  
David Ament, Mayor

Countersigned:

\_\_\_\_\_  
Rubina R. Medina, City Clerk



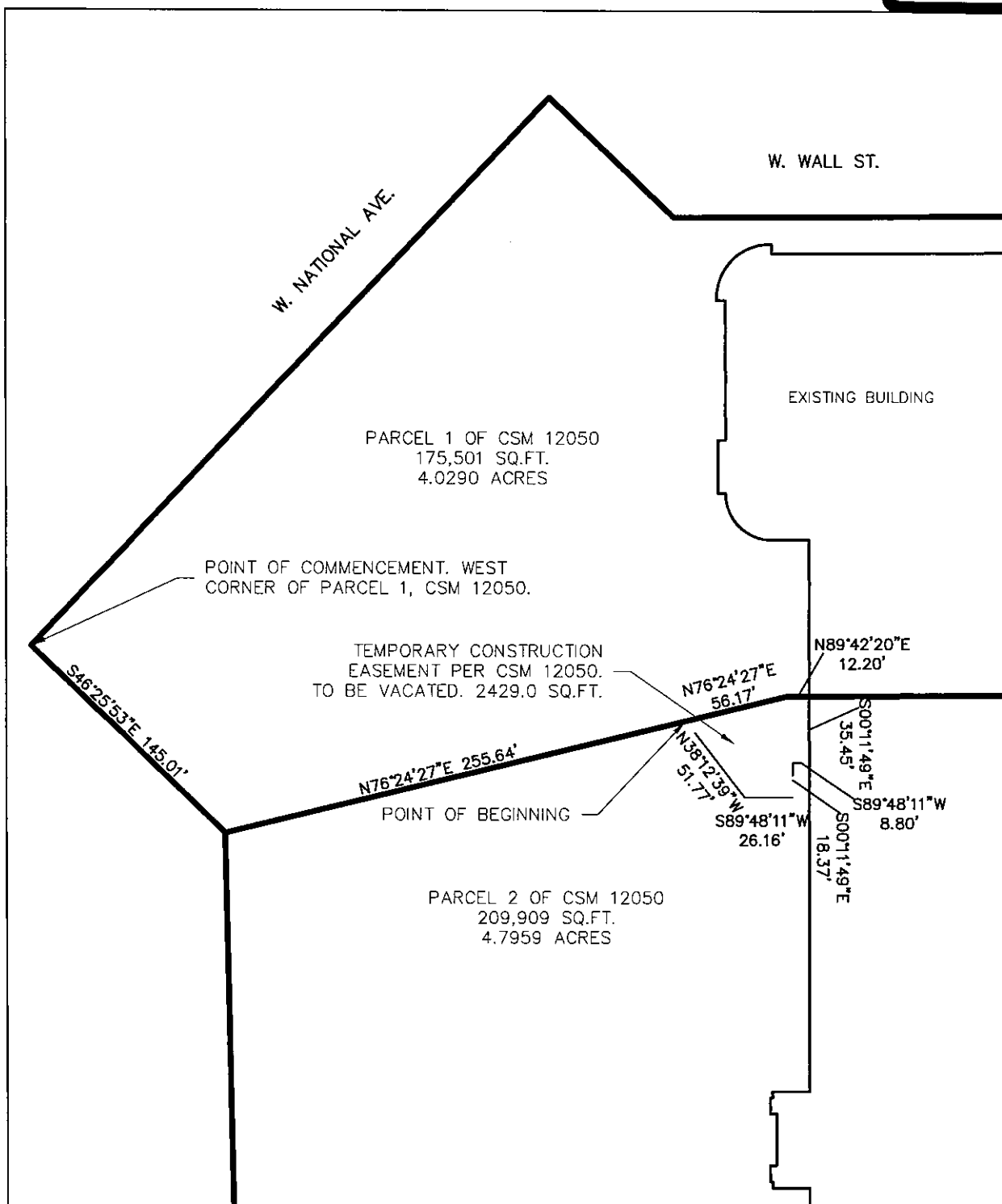
# TEMPORARY CONSTRUCTION EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

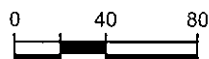
PENGAD 800-631-6969

EXHIBIT

**A**



GRAPHIC SCALE



( IN FEET )

**raSmith**

CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000

rasmith.com

# TEMPORARY CONSTRUCTION EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

### LEGAL DESCRIPTION OF VACATION:

Being a part of Parcel 2 of CSM 12050, recorded in the Waukesha County Register of Deeds in book 122, pages 329-336 as Document No. 4501130 dated August 13, 2020, being a division of a part of Parcel Two (2) of Certified Survey Map No. 7554, being a redivision of Parcel Two (2) of Certified Survey Map No. 6872, being in the Northwest one-quarter (1/4) and the Southwest one-quarter (1/4) of the Southwest one-quarter (1/4) of Section Fourteen (14), in Township Six (6) North, Range Twenty (20) East, in the City of New Berlin, County of Waukesha, State of Wisconsin. More particularly described as follows: Commencing at the West corner of Parcel 1, thence S 46°25'53" E along the Southernly line of Parcel 1, 145.01 feet to a point; thence N 76°24'27" E along the Northernly line of said Parcel 2, 255.64 feet to the point of beginning of the lands to be described; thence continuing N 76°24'27" E along the said Northernly line of Parcel 2, 56.17 feet to a point; thence N 89°42'20" E along the said Northerly Parcel line 12.20 feet to a point; thence S 00°11'49" E 35.45 feet to a point; thence S 89°48'11" W 8.80 feet to a point; thence S 00°11'49" E 18.37 feet to a point; thence S 89°48'11" W 26.16 feet to a point; thence N 38°12'39" W 51.77 feet to the point of beginning.

**raSmith**

CREATIVITY BEYOND ENGINEERING

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(262) 781-1000  
rasmith.com

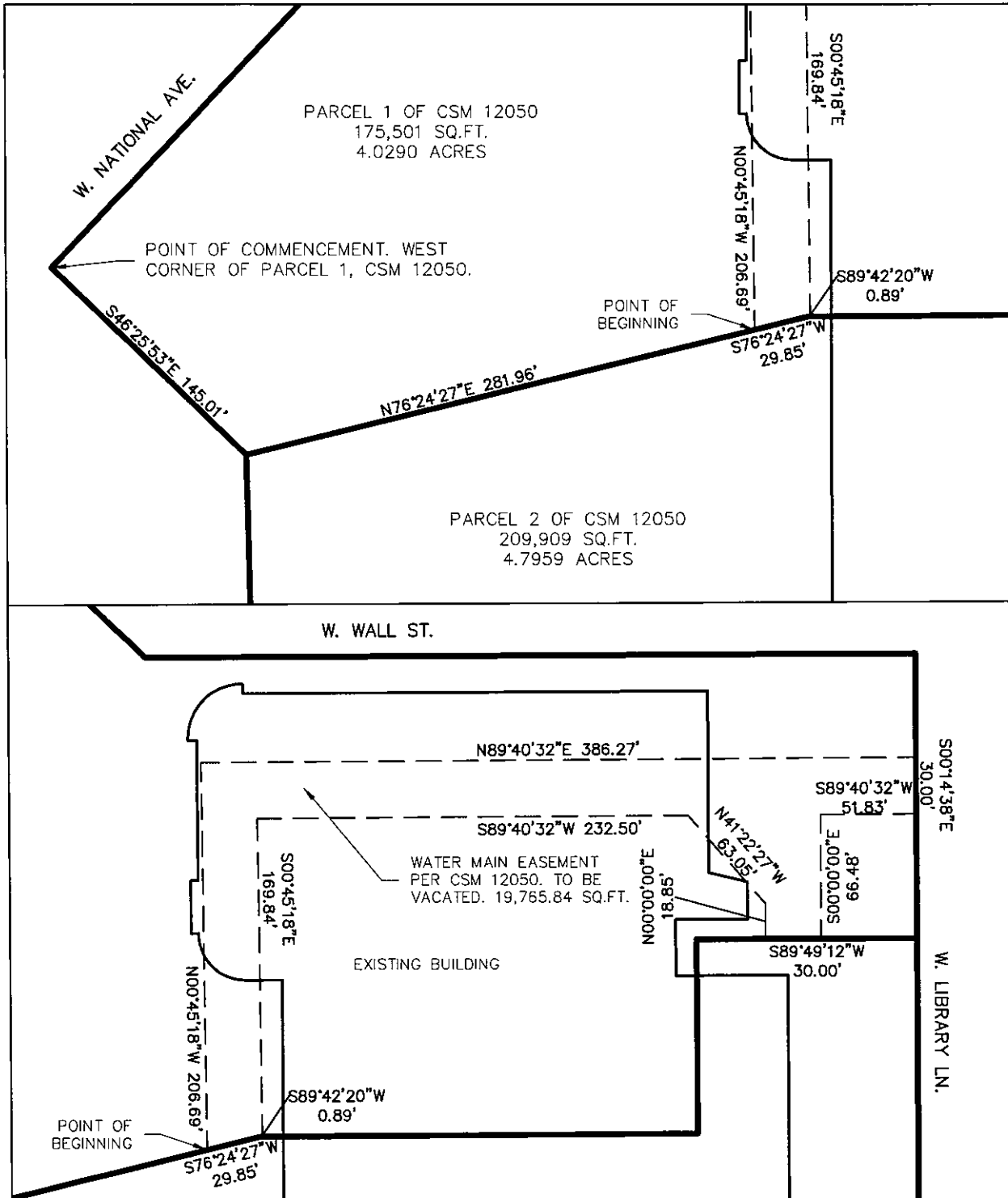
# WATER MAIN EASEMENT VACATION

CITY OF NEW BERLIN, WI

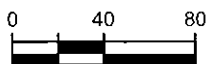
EXHIBIT

B

PENGAD 800-631-6888



GRAPHIC SCALE



(IN FEET)

**raSmith**

CREATIVITY BEYOND ENGINEERING

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(262) 781-1000

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SHEET 1 OF 2

# **WATER MAIN EASEMENT VACATION EXHIBIT**

## **CITY OF NEW BERLIN, WI**

### LEGAL DESCRIPTION OF VACATION:

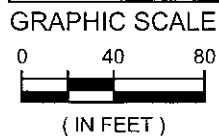
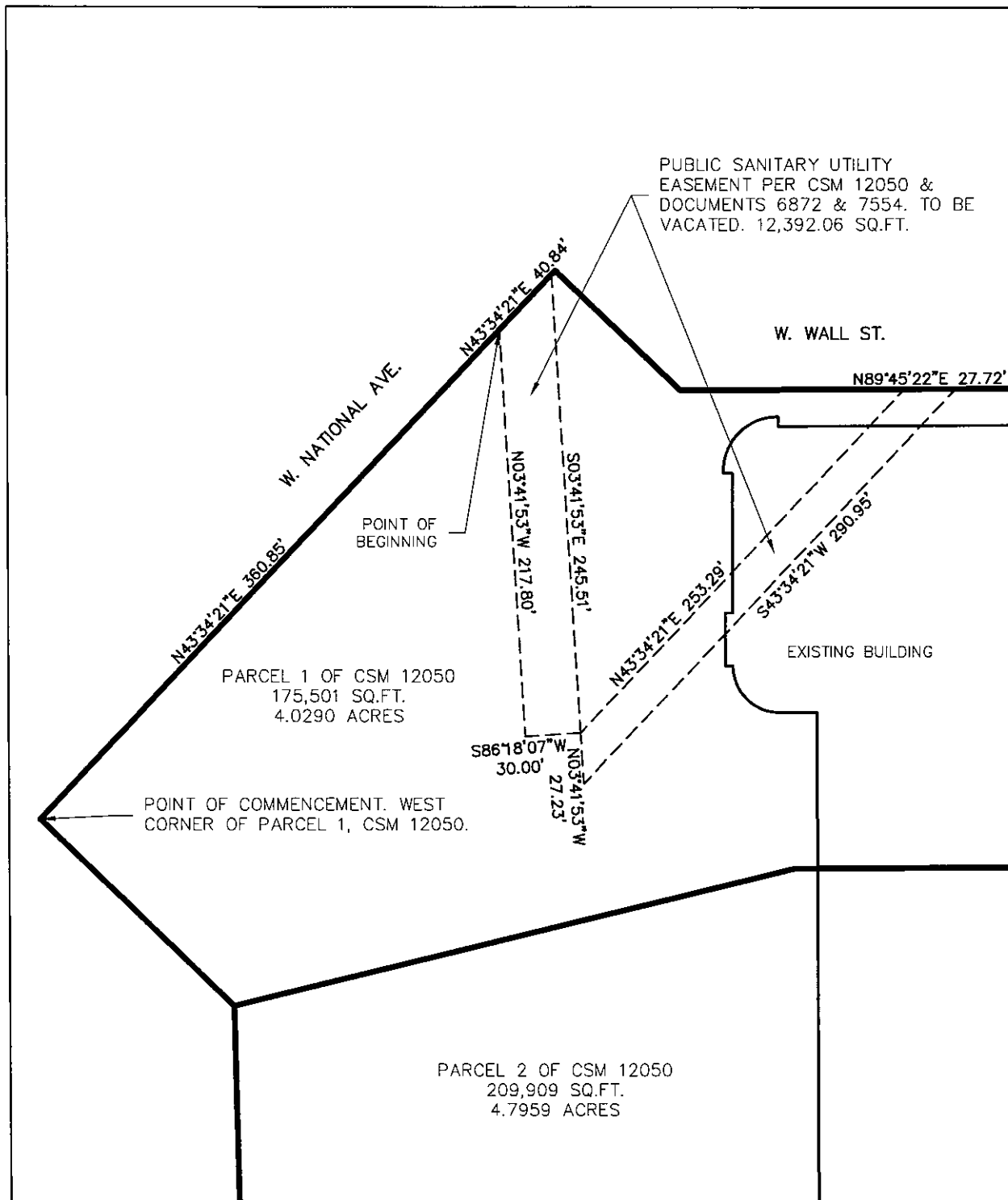
Being a part of Parcel 1 of CSM 12050, recorded in the Waukesha County Register of Deeds in book 122, pages 329-336 as Document No. 4501130 dated August 13, 2020, being a division of a part of Parcel One (1) of Certified Survey Map No. 7554, being a redivision of Parcel One (1) of Certified Survey Map No. 6872, being in the Northwest one-quarter (1/4) and the Southwest one-quarter (1/4) of the Southwest one-quarter (1/4) of Section Fourteen (14), in Township Six (6) North, Range Twenty (20) East, in the City of New Berlin, County of Waukesha, State of Wisconsin. More particularly described as follows: Commencing at the West corner of said Parcel 1, thence S 46°25'53" E along the Southernly line of said Parcel 1, 145.01 feet to a point; thence N 76°24'27" E along said Southernly Parcel line 281.96 feet to the point of beginning of the lands to be described; thence N 00°45'18" W 206.69 feet to a point; thence N 89°40'32" E 386.27 feet to a point; thence S 00°14'38" E along the West right of way of West Library Lane, 30.00 feet to a point; thence S 89°40'32" W 51.83 feet to a point; thence South (S 00°00'00" E) 66.48 feet to a point; thence S 89°49'12" W along the Southernly line of said Parcel 1, 30.00 feet to a point; thence North (N 00°00'00" E) 18.85 feet to a point; thence N 41°22'27" W 63.05 feet to a point; thence S 89°40'32" W 232.50 feet to a point; thence S 00°45'18" E 169.84 feet to a point; thence S 89°42'20" W along the Southernly line of said Parcel 1, 0.89 feet; thence S 76°24'27" W along the Southernly line of said Parcel 1, 29.85 feet to the point of beginning.

**raSmith**  
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# SANITARY SEWER EASEMENT VACATION

CITY OF NEW BERLIN, WI



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SHEET 1 OF 2

# SANITARY SEWER EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

### LEGAL DESCRIPTION OF VACATION:

Being a part of Parcel 1 of CSM 12050, recorded in the Waukesha County Register of Deeds in book 122, pages 329-336 as Document No. 4501130 dated August 13, 2020, being a division of a part of Parcel One (1) of Certified Survey Map No. 7554, being a redivision of Parcel One (1) of Certified Survey Map No. 6872, being in the Northwest one-quarter (1/4) and the Southwest one-quarter (1/4) of the Southwest one-quarter (1/4) of Section Fourteen (14), in Township Six (6) North, Range Twenty (20) East, in the City of New Berlin, County of Waukesha, State of Wisconsin. More particularly described as follows: Commencing at the West corner of said Parcel 1, thence N 43°34'21" E along the South right of way of West National Avenue, 360.85 feet to the point of beginning of the lands to be described; thence continuing along said right of way, N 43°34'21" E 40.84 feet to a point; thence S 03°41'53" E 245.51 feet to a point; thence N 43°34'21" E 253.29 feet to a point on the South right of way of West Wall Street; thence along said South right of way, N 89°45'22" E 27.72 feet to a point; thence S 43°34'21" W 290.95 feet; thence N 03°41'53" W 27.23 feet; thence S 86°18'07" W 30.00 feet; thence N 03°41'53" W 217.80 feet to the point of beginning.

**raSmith**

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(262) 781-1000

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SHEET 2 OF 2

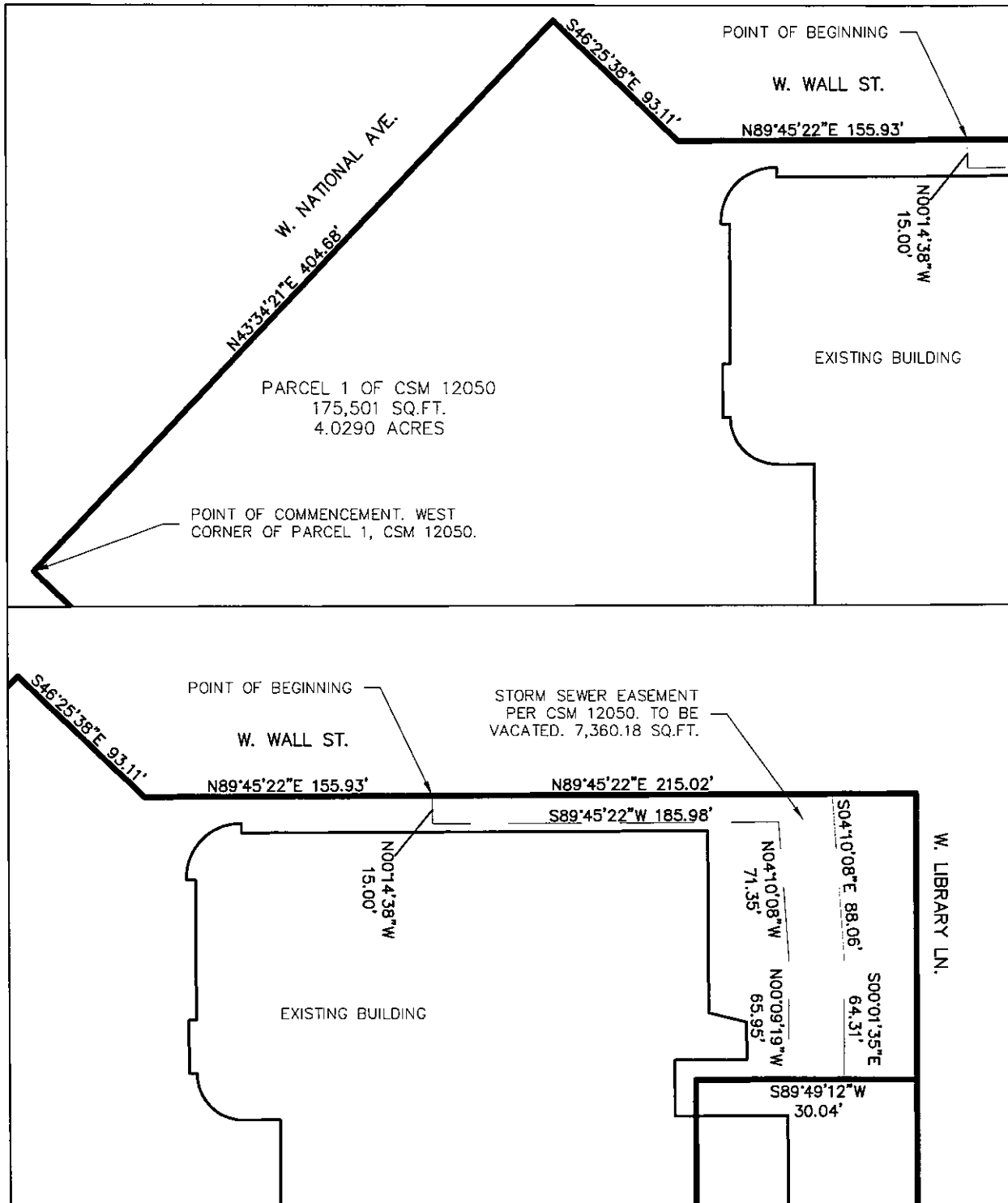
# STORM SEWER EASEMENT VACATION

CITY OF NEW BERLIN, WI

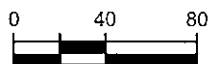
EXHIBIT

D

PENGAD 800-631-6989



GRAPHIC SCALE



( IN FEET )

**raSmith**

CREATIVITY BEYOND ENGINEERING

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Brookfield, WI 53005-5938  
(262) 781-1000

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SHEET 1 OF 2

# STORM SEWER EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

### LEGAL DESCRIPTION OF VACATION:

Being a part of Parcel 1 of CSM 12050, recorded in the Waukesha County Register of Deeds in book 122, pages 329-336 as Document No. 4501130 dated August 13, 2020, being a division of a part of Parcel One (1) of Certified Survey Map No. 7554, being a redivision of Parcel One (1) of Certified Survey Map No. 6872, being in the Northwest one-quarter (1/4) and the Southwest one-quarter (1/4) of the Southwest one-quarter (1/4) of Section Fourteen (14), in Township Six (6) North, Range Twenty (20) East, in the City of New Berlin, County of Waukesha, State of Wisconsin. More particularly described as follows: Commencing at the West corner of said Parcel 1, thence N 43°34'21" E along the South right of way of West National Avenue, 404.68 feet to a point; thence S 46°25'38" E along the South right of way of West Wall Street, 93.11 feet to a point; thence N 89°45'22" E continuing along said right of way 155.93 feet to the point of beginning of the lands to be described; thence continuing along said right of way bearing N 89°45'22" E 215.02 feet to a point; thence S 04°10'08" E 88.06 feet to a point; thence S 00°01'35" E 64.31 feet to a point; thence S 89°49'12" W 30.04 feet to a point; thence N 00°09'19" W 65.95 feet to a point; thence N 04°10'08" W 71.35 feet to a point; thence S 89°45'22" W 185.98 feet to a point; thence N 00°14'38" W 15.00 feet to the point of beginning.

**raSmith**  
CREATIVITY BEYOND ENGINEERING

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Brookfield, WI 53005-5938  
[262] 781-1000  
[rasmith.com](http://rasmith.com)



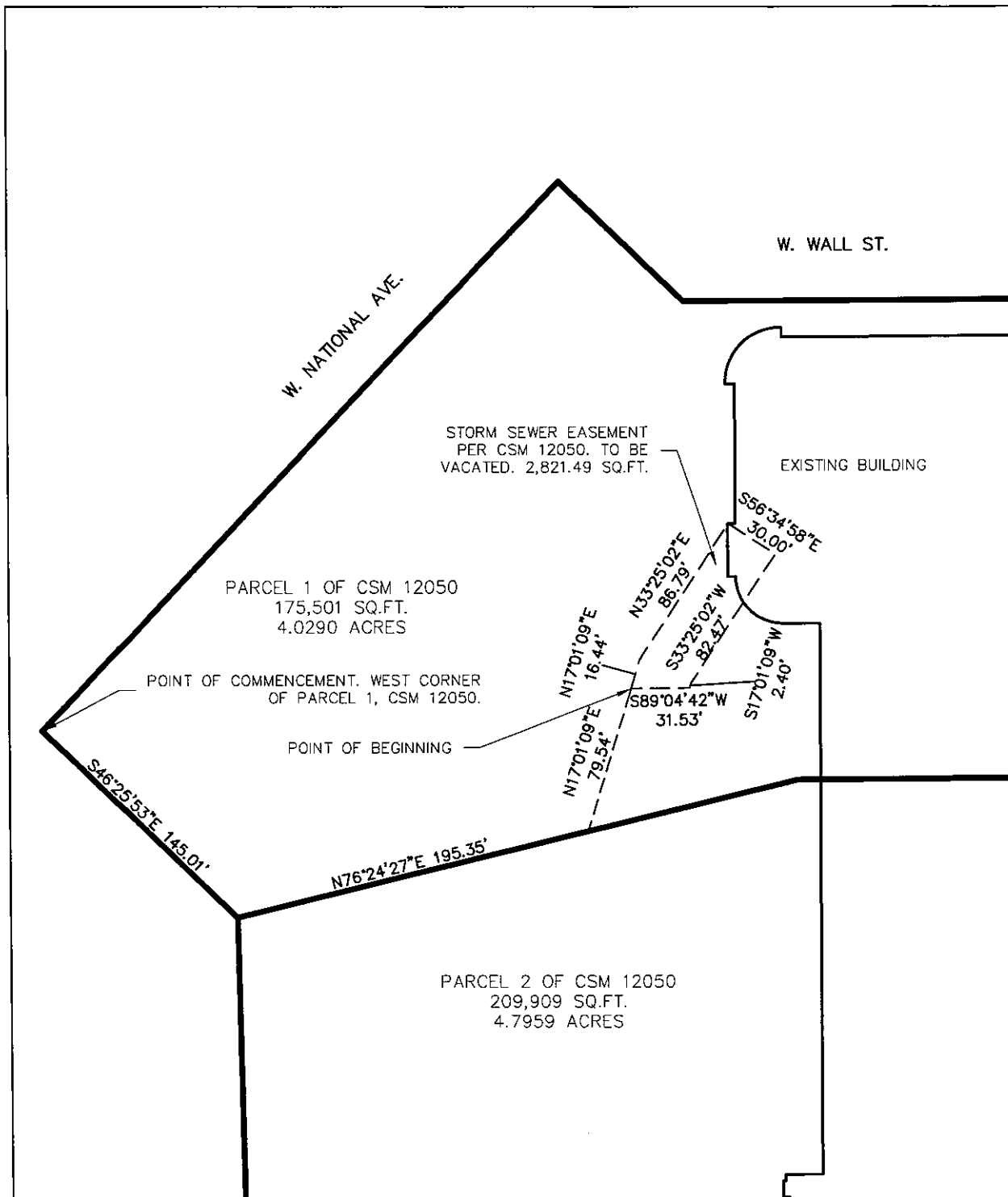
# STORM SEWER EASEMENT VACATION

CITY OF NEW BERLIN, WI

EXHIBIT

**E**

PENGAD 800-631-6088



GRAPHIC SCALE



( IN FEET )

**raSmith**

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SHEET 1 OF 2

# STORM SEWER EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

### LEGAL DESCRIPTION OF VACATION:

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**raSmith**  
CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000  
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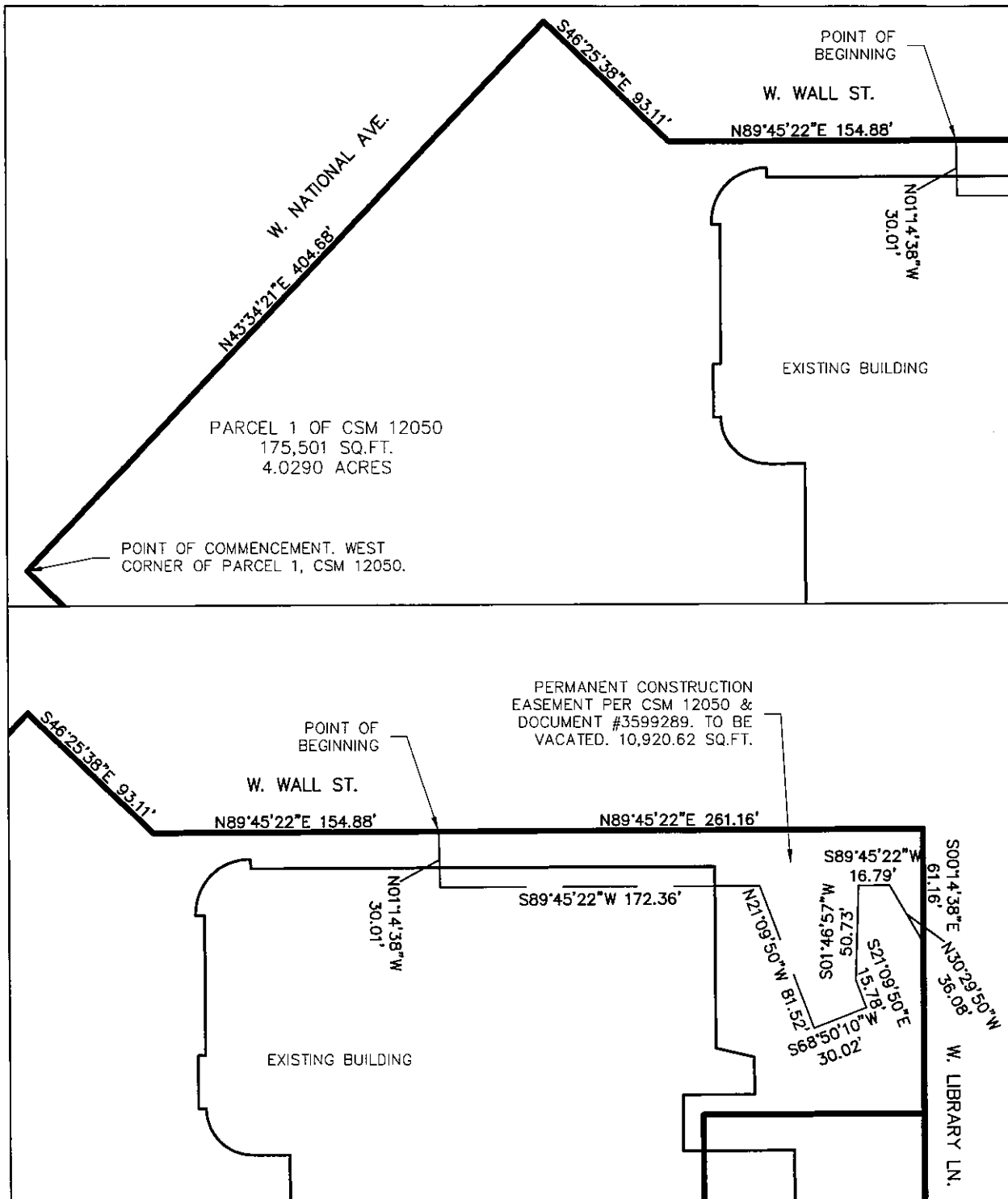
# PERMANENT CONSTRUCTION EASEMENT VACATION

## CITY OF NEW BERLIN, WI

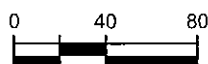
PENGAD 800-631-6888

EXHIBIT

F



GRAPHIC SCALE



( IN FEET )

**raSmith**

CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000

rasmith.com

# PERMANENT CONSTRUCTION EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

### LEGAL DESCRIPTION OF VACATION:

Being a part of Parcel 1 of CSM 12050, recorded in the Waukesha County Register of Deeds in book 122, pages 329-336 as Document No. 4501130 dated August 13, 2020, being a division of a part of Parcel One (1) of Certified Survey Map No. 7554, being a redivision of Parcel One (1) of Certified Survey Map No. 6872, being in the Northwest one-quarter (1/4) and the Southwest one-quarter (1/4) of the Southwest one-quarter (1/4) of Section Fourteen (14), in Township Six (6) North, Range Twenty (20) East, in the City of New Berlin, County of Waukesha, State of Wisconsin. More particularly described as follows: Commencing at the West corner of said Parcel 1, thence N 43°34'21" E along the South right of way of West National Avenue, 404.68 feet to a point; thence S 46°25'38" E along the South right of way of West Wall Street, 93.11 feet to a point; thence N 89°45'22" E along the South right of way of West Wall Street, 154.88 feet to the point of beginning of the lands to be described; thence N 89°45'22" E continuing along the said South right of way, 261.16 feet to a point; thence S 00°14'38" E along the West right of way of West Library Lane, 61.16 feet to a point; thence N 30°29'50" W 36.08 feet to a point; thence S 89°45'22" W 16.79 feet to a point; thence S 01°46'57" W 50.73 feet to a point; thence S 21°09'50" E 15.78 feet to a point; thence S 68°50'10" W 30.02 feet to a point; thence N 21°09'50" W 81.52 feet to a point; thence S 89°45'22" W parallel with the South right of way of West Wall Street, 172.36 feet to a point; thence N 01°14'38" W 30.01 feet to the point of beginning.

**raSmith**

CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000  
[rasmith.com](http://rasmith.com)

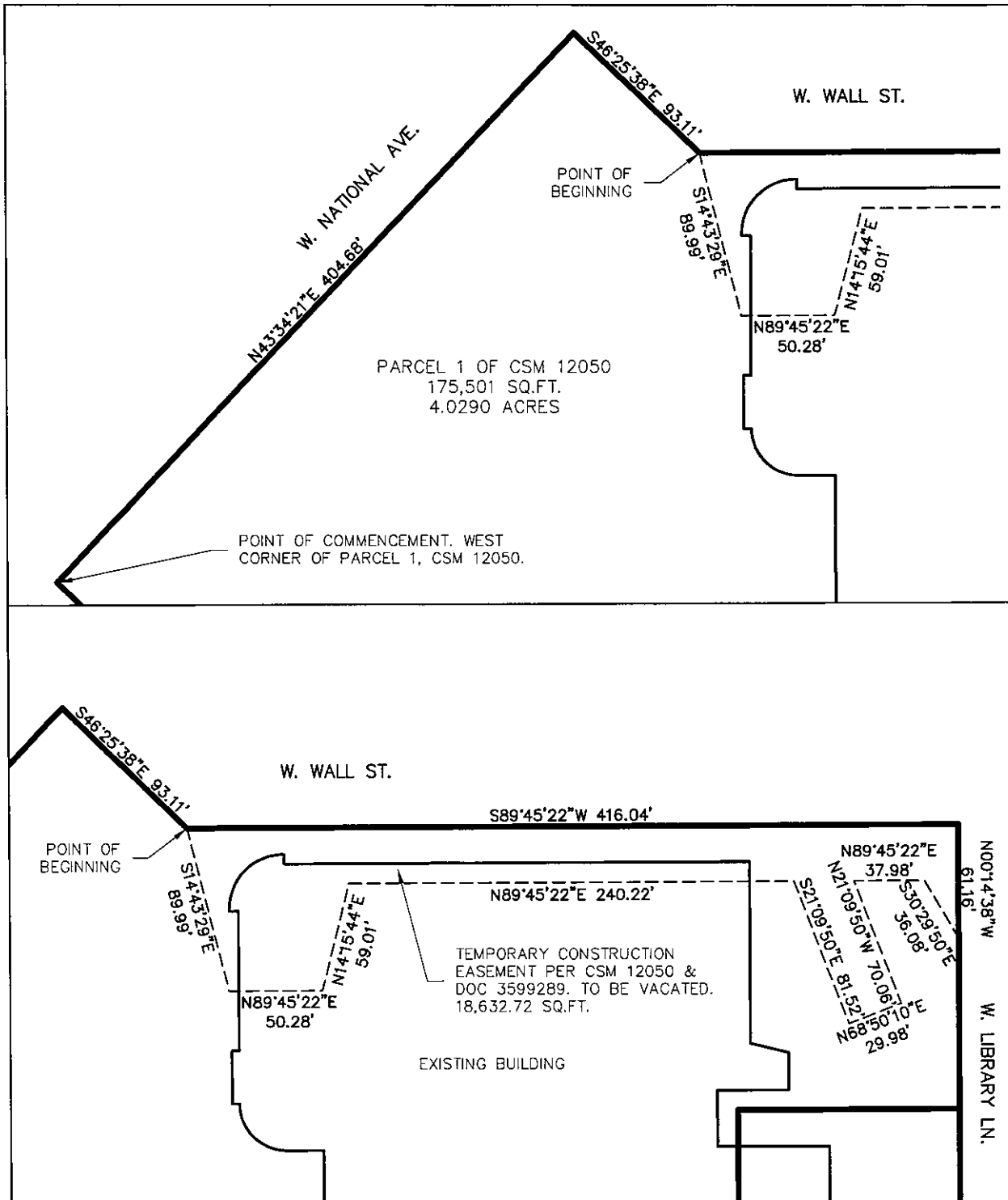
# TEMPORARY CONSTRUCTION EASEMENT VACATION

## CITY OF NEW BERLIN, WI

PENGAD 800-631-6989

EXHIBIT

G



**raSmith**

CREATIVITY BEYOND ENGINEERING

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SHEET 1 OF 2

C:\TEMP\AcPublish\_14980\

TEMPORARY CONSTRUCTION 2 TO BE VACATED.dwg \ TEMP CONSTRUCTION EXHIBIT

# TEMPORARY CONSTRUCTION EASEMENT VACATION EXHIBIT

## CITY OF NEW BERLIN, WI

### LEGAL DESCRIPTION OF VACATION:

Being a part of Parcel 1 of CSM 12050, recorded in the Waukesha County Register of Deeds in book 122, pages 329-336 as Document No. 4501130 dated August 13, 2020, being a division of a part of Parcel One (1) of Certified Survey Map No. 7554, being a redivision of Parcel One (1) of Certified Survey Map No. 6872, being in the Northwest one-quarter (1/4) and the Southwest one-quarter (1/4) of the Southwest one-quarter (1/4) of Section Fourteen (14), in Township Six (6) North, Range Twenty (20) East, in the City of New Berlin, County of Waukesha, State of Wisconsin. More particularly described as follows: Commencing at the West corner of said Parcel 1, thence N 43°34'21" E along the South right of way of West National Avenue, 404.68 feet to a point; thence S 46°25'38" E along the South right of way of West Wall Street, 93.11 feet to the point of beginning of the lands to be described; thence S 14°43'29" E 89.99 feet; thence N 89°45'22" E 50.28 feet; thence N 14°15'44" E 59.01 feet; thence N 89°45'22" E parallel with the said South right of way, 240.22 feet; thence S 21°09'50" 81.52 feet; thence N 68°50'10" E 29.98 feet; thence N 21°09'50" W 70.06 feet; thence N 89°45'22" E 37.98 feet; thence S 30°29'50" E 36.08 feet; thence N 00°14'38" W along the West right of way of West Library Lane, 61.16 feet; thence S 89°45'22" W along the South right of way of West Wall Street, 416.04 feet to the point of beginning.

**raSmith**  
CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000  
rasmith.com

**RELEASE OF WATER, SEWER,  
STORM WATER AND ACCESS  
EASEMENTS**

Document Number

Title of Document

Please see the attached Release of Water, Sewer, Storm Water and Access Agreements.

Legal descriptions for the lands described in this Release are attached as Exhibits.

Record this document with the Register of Deed.

Name and Return Address

Attorney Mark G. Blum  
720 Clinton Street, P.O. Box 766  
Waukesha, WI 53187

(Parcel Identification Number)

*Drafted By:*

New Berlin City Attorney Mark G. Blum  
Hippenmeyer, Reilly, Blum,  
Schmitzer & Fabian, S.C.  
720 Clinton St., PO Box 766  
Waukesha, WI 53187-0766  
Phone: (262) 549-8181  
Email: [mgbлум@hrblawfirm.com](mailto:mgbлум@hrblawfirm.com)

## **RELEASE OF WATER, SEWER, STORM WATER AND ACCESS EASEMENTS**

The undersigned, CITY OF NEW BERLIN, hereinafter referred to as the City, is the holder of certain Public Utility and Access Easements as are more specifically described herein. It is the desire of the City to release portions of these easements as are further described below.

1. A portion of Lot 2 designated as a Temporary Construction Easement on Certified Survey Map No. 12050 located in the City of New Berlin, Waukesha County, Wisconsin. The specific area to which the city is relinquishing its rights is depicted on the map and legal description attached hereto as Exhibit A.
2. A portion of Lot 1 designated as a 30' Public Water Main Easement created as part of Certified Survey Map No. 12050 located in the City of New Berlin, Waukesha County, Wisconsin. The specific portion of said Water Main Easement to which the city is relinquishing its rights is more specifically described in the map and legal description attached hereto as Exhibit B.
3. A portion of Lot 1 designed as a Sanitary Easement per Certified Survey Map Nos. 6872 and 7554 located in the City of New Berlin, Waukesha County, Wisconsin. The specific portion of said Sanitary Sewer and Public Utility Easements to which the City is relinquishing its rights are more specifically described in the map and legal description attached hereto as Exhibit C.
4. A portion of the Permanent Storm Sewer Easement recorded with the Waukesha County Register of Deeds as Document No. 3599289, which lands are located in the City of New Berlin, Waukesha County, Wisconsin. The specific portions of said Storm Sewer Easement to which the City of New Berlin is relinquishing its rights are described in the attached map and legal description, which is attached hereto as Exhibit D.
5. A portion of Lot 1 of the Certified Survey Map No. 12050 designated as a Storm Easement for Roof Storm located in the City of New Berlin, Waukesha County, Wisconsin. The specific portions of said storm sewer easement for roof storm to which the city is relinquishing its rights are more specifically described on the attached map and legal description, Exhibit E.
6. A portion of Lot 1 of Certified Survey Map No. 12050 designated as a Storm Sewer Easement located in the City of New Berlin, Waukesha County, Wisconsin. The specific portions of said storm sewer easement to which the city is relinquishing its rights are more specifically described in the attached map and legal description, Exhibit D.
7. A portion of Lot 1 of Certified Survey Map No. 12050, being a division of Parcel 1 of CSM No. 7554, being a redivision of Parcel 1 of CSM 6872 located in the City of New Berlin, Waukesha County, Wisconsin. The specific areas to which the city is relinquishing its rights are more specifically described on the attached map and legal description Exhibit F.



8. A portion of Lot 1 of Certified Survey Map No. 12050, located in the City of New Berlin, Waukesha County, Wisconsin, which is referenced as a Construction Easement. The specific area to which the City of New Berlin is relinquishing its rights is more specifically described in the map and legal description attached hereto as Exhibit G.

This Release was approved by the Common Council of the City of New Berlin by Resolution No. \_\_\_\_\_, on \_\_\_\_\_, 2024.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF NEW BERLIN

\_\_\_\_\_  
David Ament, Mayor

STATE OF WISCONSIN     )  
                                          ) ss.  
COUNTY OF WAUKESHA    )

Personally came before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, the above-named David Ament to me known to be the person who executed the foregoing instrument and acknowledged the same.

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

## CERTIFICATION

I, RUBINA MEDINA, the duly appointed as the City Clerk of the City of New Berlin, do hereby certify that the attached description and map are a true and correct copy of the original and to the extent they are not legible or readable, a copy of the original is available from the City of New Berlin City Clerk's Office.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024

CITY OF NEW BERLIN

\_\_\_\_\_  
Rubina Medina, City Clerk

This Certification relates to the Release of Water, Sewer, Storm Water and Access Easements as described on Certified Survey Map Nos. 12050, 6872 and 7554 and located in the City of New Berlin, Waukesha County, Wisconsin.

# REQUESTED ACTION STATEMENT

**DATE:** July 22, 2023  
**TO:** Common Council  
**FROM:** City Clerk Rubina R. Medina



## REQUESTED ACTION:

### Agenda Item:

- *Discussion and Possible Action to recommend to Common Council approval of the amendments to the City Clerk's Fee List as presented*

*\*Approval of these amendments is contingent on Chapter 152 amendments being approved by the Council.*

## ISSUE:

In preparation for the Common Council's anticipated approval of amendments to Chapter 152, we have identified the need to update the City Clerk's Fee List accordingly. The proposed amendments, highlighted in red on the attached fee list, introduce new fees to accommodate yearly and monthly license fees for direct sellers and direct seller/mobile food vendors.

Furthermore, based on feedback from the Fourth of July Coordinator and input from applicants, it has come to our attention that direct sellers and mobile food vendors often incur high costs to participate in City-sponsored events such as the Fourth of July Family Festival. To address this concern and support these vendors, we propose waiving the fees for all direct sellers invited to participate in City-sponsored events, including the Fourth of July Festival and Winterfest.

Additionally, we have established a structured fee schedule for various special event categories to enhance the organization and management of events within the City. These categories are classified as Class I, II, III, and IV events, each representing a different level of event complexity and resource requirements.

Thank you for your attention to these proposed amendments.

## ATTACHMENTS:

1. Proposed City Clerk Fee List – amendments in red font with yellow background

# OFFICE OF THE CITY CLERK

## FEE LIST



| License Type                                                     | Comments                                  | Fee          |
|------------------------------------------------------------------|-------------------------------------------|--------------|
| <b>Adult-Oriented</b>                                            |                                           |              |
| Adult-Oriented Establishment                                     | <i>Per license year</i>                   | \$ 250.00    |
| Adult-Oriented Establishment - late renewal penalty              | <i>If filed after the deadline</i>        | \$ 100.00    |
| <b>Alarm System License</b>                                      |                                           |              |
| Alarm System License - Commercial                                | <i>One-time fee</i>                       | \$ 100.00    |
| Alarm System License - Residential                               | <i>One-time fee</i>                       | \$ 50.00     |
| <b>Alcohol License</b>                                           |                                           |              |
| Class "A" (beer)                                                 | <i>Per license year</i>                   | \$ 300.00    |
| "Class A" (liquor)                                               | <i>Per license year</i>                   | \$ 500.00    |
| Class "B" (beer)                                                 | <i>Per license year</i>                   | \$ 100.00    |
| "Class B" (liquor)                                               | <i>Per license year</i>                   | \$ 500.00    |
| "Class B RESERVE (limited to quota)                              | <i>One-time fee</i>                       | \$ 10,000.00 |
| "Class C" (Wine)                                                 | <i>Per license year</i>                   | \$ 100.00    |
| Alcohol - Extension of Premise                                   | <i>Per event</i>                          | \$ 50.00     |
| Alcohol - Change of Agent                                        | <i>Must also pay background check fee</i> | \$ 10.00     |
| Alcohol - Temporary Retail (often referred to as picnic license) | <i>Per event</i>                          | \$ 10.00     |
| Publication Fee (for all liquor applications)                    | <i>Per publication</i>                    | \$ 35.00     |
| Late Renewal Penalty                                             | <i>If filed after the deadline</i>        | \$ 100.00    |
| <b>Amusement</b>                                                 |                                           |              |
| Amusement Device (pool table, juke box, electronic games, etc.)  | <i>Per device, per license year</i>       | \$ 35.00     |
| Amusement Vendor                                                 | <i>Per license year</i>                   | \$ 150.00    |
| Archery Range                                                    | <i>Per license year</i>                   | \$ 50.00     |
| <b>Background Check</b>                                          |                                           |              |
| Background Check Fee - In State                                  | <i>Per license year</i>                   | \$ 10.00     |
| Background Check Fee - Out of State                              | <i>Per license year</i>                   | \$ 18.00     |
| <b>Burn Permit Fee</b>                                           |                                           |              |
| Burn Permit                                                      | <i>per calendar year</i>                  | \$ 10.00     |
| <b>Animal License</b>                                            |                                           |              |
| Cat - Neutered Male / Spayed Female                              | <i>per license year</i>                   | \$ 10.00     |
| Cat - Non-neutered male / non-spayed female                      | <i>per license year</i>                   | \$ 15.00     |
| Dog - Dangerous Yearly Admin Fee                                 | <i>per license year</i>                   | \$ 50.00     |
| Dog - Late Applicant Fee                                         | <i>per license year</i>                   | \$ 5.00      |
| Dog - Neutered Male / Spayed Female                              | <i>per license year</i>                   | \$ 10.00     |
| Dog - Non-neutered male / non-spayed female                      | <i>per license year</i>                   | \$ 15.00     |
| Dog - Potentially Dangerous Yearly Admin Fee                     | <i>per license year</i>                   | \$ 50.00     |
| <b>Cigarette / Tobacco / Vape</b>                                |                                           |              |
| Cigarette/Vape Products                                          | <i>per license year</i>                   | \$ 100.00    |
| <b>City Map / Computer Generated / Copies</b>                    |                                           |              |
| City Map                                                         | <i>per map</i>                            | \$ 10.00     |
| Computer Generated Data - CDRom                                  | <i>per cd-rom</i>                         | \$ 15.00     |
| Computer Generated Data - DVD                                    | <i>per dvd</i>                            | \$ 15.00     |
| Computer Generated Data - Labels                                 | <i>per label</i>                          | \$ 0.08      |
| Computer Generated Data - USB                                    | <i>per usb</i>                            | \$ 10.00     |
| Computer Generated Data - WisVote Data Reports                   | <i>\$25 plus \$5 per 1,000 voters</i>     | \$ 25.00     |
| Copy Fee - Black and white                                       | <i>each page copied</i>                   | \$ 0.25      |
| Copy Fee - Color                                                 | <i>each page copied</i>                   | \$ 0.50      |

| License Type                                              | Comments                                                                                                                                         | Fee       |
|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Direct Seller</b>                                      |                                                                                                                                                  |           |
| Direct Seller - Mobile Food Vendor                        | Per year, per mobile food unit                                                                                                                   | \$ 300.00 |
| Direct Seller - Mobile Food Vendor                        | Per month, per mobile food unit                                                                                                                  | \$ 50.00  |
| Direct Seller - Mobile Food Vendor                        | Fee waived if part of a city-sponsored event (i.e. 4th of July Festival, Winter Fest, etc.)                                                      | \$ -      |
| Direct Seller                                             | Per year, per person                                                                                                                             | \$ 100.00 |
| Direct Seller                                             | Per month, per person                                                                                                                            | \$ 20.00  |
| Direct Seller                                             | Fee waived if part of a city-sponsored event (i.e. 4th of July Festival, Winter Fest, etc.)                                                      | \$ -      |
| <b>Entertainment - Dance</b>                              |                                                                                                                                                  |           |
| Entertainment (Dancing)                                   | Per license year                                                                                                                                 | \$ 25.00  |
| <b>Escort License</b>                                     |                                                                                                                                                  |           |
| Escort License (per applicant)                            | Per license year                                                                                                                                 | \$ 250.00 |
| <b>Fireworks</b>                                          |                                                                                                                                                  |           |
| Fireworks                                                 |                                                                                                                                                  | \$ 125.00 |
| <b>Massage</b>                                            |                                                                                                                                                  |           |
| Massage Establishment License                             | Per license year                                                                                                                                 | \$ 150.00 |
| Massage Technician/Therapist                              | Applicant must be licensed with the State of WI. Fee is waived, but application material must be completed and background check fee must be paid | \$ -      |
| Massage Establishment Admin/Transfer Fee                  | For applicant that wishes to surrender license mid-year so another applicant can apply                                                           | \$ 100.00 |
| <b>Operator / Bartender</b>                               |                                                                                                                                                  |           |
| Operator/Bartender License - Regular                      | 2 year license - must also pay background check fee                                                                                              | \$ 60.00  |
| Operator/Bartender License - Provisional                  | (must apply for the Regular license to qualify)                                                                                                  | \$ 15.00  |
| Operator/Bartender License - Temporary                    | 2 week license                                                                                                                                   | \$ 15.00  |
| <b>Rubbish</b>                                            |                                                                                                                                                  |           |
| Rubbish Collection - includes 1 vehicle                   | Per license year                                                                                                                                 | \$ 75.00  |
| Rubbish Collection - each vehicle over one                | Per license year                                                                                                                                 | \$ 25.00  |
| <b>Secondhand Article Dealer</b>                          |                                                                                                                                                  |           |
| Secondhand Article Dealer                                 | Per event                                                                                                                                        | \$ 50.00  |
| <b>Special Council Meeting</b>                            |                                                                                                                                                  |           |
| Special Council Meeting to consider Late Filing Applicant | For applicants that fail to apply by the deadline and need their application to be approved by Council.                                          | \$ 350.00 |
| <b>Special Events</b>                                     |                                                                                                                                                  |           |
| Class I                                                   | more than 5,000 people                                                                                                                           | \$ 500.00 |
| Class II                                                  | 501-5,000 people                                                                                                                                 | \$ 300.00 |
| Class III                                                 | 151-500 people                                                                                                                                   | \$ 100.00 |
| Class IV                                                  | 150 people or less                                                                                                                               | \$ 20.00  |
| <b>Taxi</b>                                               |                                                                                                                                                  |           |
| Taxi Cab Business                                         | Per license year                                                                                                                                 | \$ 125.00 |
| Taxi Cab Driver                                           | Per license year                                                                                                                                 | \$ 25.00  |

| License Type                                  | Comments                 | Fee       |
|-----------------------------------------------|--------------------------|-----------|
| <b>Theatre</b>                                |                          |           |
| Theatres - 1201 or more seats                 | <i>Per license year</i>  | \$ 200.00 |
| Theatres - 1-700 seats                        | <i>Per license year</i>  | \$ 100.00 |
| Theatres - 701 - 1200 seats                   | <i>Per license year</i>  | \$ 125.00 |
|                                               |                          |           |
| <b>Transient Lodging</b>                      |                          |           |
| *Transient Lodging/Short Term Lodging License | <i>Per calendar year</i> | \$ 200.00 |
|                                               |                          |           |
| <b>Trapshooting</b>                           |                          |           |
| Trapshooting                                  | <i>Per license year</i>  | \$ 50.00  |
|                                               |                          |           |
| <b>Weights &amp; Measures</b>                 |                          |           |
| Weights & Measures License                    | <i>Per license year</i>  | \$ 25.00  |

*\*Transient Lodging/Short Term Lodging License fee was approved by Council on 6/27/2023*

*\*Fee Chart approved by Council on 11/15/2022*

# REQUESTED ACTION STATEMENT

**DATE:** July 18, 2024  
**TO:** Common Council  
**FROM:** Mayor Ament and City Clerk Rubina R. Medina



## REQUESTED ACTION:

### Agenda Item:

- *Discussion and Possible Action to approve or reject the use of the Ballot Drop Box in the City of New Berlin, as outlined in the Requested Action Statement by the Mayor and City Clerk.*

## ISSUE:

On July 5th, 2024, the Wisconsin Supreme Court overruled its prior decision, in part, in *Teigen v. WEC*, and held that secure drop boxes were permitted under state law as a valid method of absentee ballot return. The decision is binding on all lower Wisconsin courts. However, the use of drop boxes is not mandatory.

On July 11th, 2024, the Wisconsin Elections Commission held a public meeting to review and issue guidance to Municipal Clerks following the Wisconsin Supreme Court's decision. The guidance provided by the Wisconsin Elections Commission is attached to this RAS.

## BACKGROUND:

In 2020, the City of New Berlin installed one ballot drop box to offer a safe and accessible voting option during the coronavirus pandemic. This measure enabled voters to submit their ballots without the need to mail them or enter City Hall, thereby reducing potential exposure to COVID-19 for themselves and others.

The drop box was strategically installed in front of City Hall. This location was carefully evaluated for multiple factors, including security, lighting (ensuring it was well-lit 24 a day), high visibility, and surveillance by security cameras. Additionally, the site was chosen for its accessibility, voter convenience, and available parking or drive-through options. While municipalities could install multiple drop boxes throughout their communities, the City of New Berlin opted to have one single, well-monitored drop box to ensure maximum security and oversight.

The drop box was secured with a lock and a tamper-evident security seal and monitored by a 24-hour video surveillance camera. Access was restricted to the City Clerk and Deputy City Clerks to ensure the highest level of security and integrity. The Clerk's Office also implemented rigorous checks and balances, including a detailed chain of custody log maintained each time ballots were collected. This log was signed by the clerks collecting the ballots, recording the date and time, the security seal number at the time of opening, and the security seal number when the box was locked and resealed.

In July 2022, the Wisconsin Supreme Court ruled to prohibit ballot drop boxes. Consequently, the Clerk's Office promptly complied by removing the drop box. Since the 2022 ruling, the City of New Berlin has not utilized a ballot drop box for approximately six elections.

The Mayor and City Clerk believe the Common Council should decide whether to use the ballot drop box.

## ATTACHMENTS:

1. Communication from the City Clerk
2. Litigation Update FAQ from the Wisconsin Elections Commission



## *Communication from the City Clerk*

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**In the interest of transparency, the Office of the City Clerk wanted to share the feedback we received from New Berlin voters regarding the ballot drop box.**

As stated in the RAS, the ballot drop box was first installed during the COVID-19 pandemic, providing absentee voters with a no-contact method to deliver their ballots to the City Clerk without entering City Hall. Absentee voters appreciated this alternative during the pandemic. Some voters expressed concerns about the postal process, fearing their ballots might be lost or tampered with, and therefore preferred using the drop box. Additionally, voters valued the convenience of the drop box being available 24/7.

We also received feedback from voters who strongly opposed the ballot drop box. Some absentee voters were concerned about the possibility of individuals tampering with the drop box or the ballots inside, such as pouring a liquid substance into the ballot insertion slot. They also expressed that absentee voters should be able to return their ballots through the mail or personally deliver them to the Clerk's Office. That said, those opposed to the ballot drop box appreciated that the New Berlin drop box was under 24-hour surveillance and were reassured that only City Clerk personnel had access to remove ballots. They also appreciated that New Berlin had one single drop box rather than multiple boxes scattered throughout the community.

### **Additional comments from the City Clerk**

- The City of New Berlin received numerous public records requests for the chain of custody log used for the ballot drop box during the 2020 Presidential Election.
- The ballot drop box purchased in 2020 is small for a municipality of our size.





# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

**DATE:** July 11, 2024

**TO:** Wisconsin Municipal Clerks  
Wisconsin County Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** The Wisconsin Elections Commission

**SUBJECT:** **Litigation Update: *Priorities USA v. WEC*<sup>1</sup>**  
RE: Unstaffed drop boxes; municipal clerk discretion; *Teigen v. WEC*<sup>2</sup>

**ATTACHMENTS:** **Attachment A** - Drop Box Resources from the United States Election Assistance Commission

On July 11, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issue guidance following the Wisconsin Supreme Court’s decision in *Priorities USA v. WEC*. The Commission passed the following motion unanimously:

The Wisconsin Elections Commission approves and issues the Clerk Communication and FAQ in Attachment A, including questions 1-16, as amended by discussion. The Commission directs staff to make edits to the *Election Administration* and *Election Day* manuals consistent with its discussion, and to bring revised pages back for Commission approval at a future meeting.

The Commission is issuing this guidance in the interest of answering common questions it has received from clerks, voters, and the media since the decision was published by the Wisconsin Supreme Court. The Commission may issue additional guidance in the future to address new questions or aspects of drop box administration and policy ahead of the November 2024 General Election.

## ***Priorities USA v. WEC*** **Frequently Asked Questions** **July 11, 2024**

**Decision Issued:** On July 5, 2024, the Wisconsin Supreme Court overruled its prior decision, in part, in *Teigen v. WEC*, and held that secure drop boxes were permitted under state law as a valid method of absentee ballot return. The decision is binding on all lower Wisconsin courts. The use of drop boxes is not mandatory and is at the discretion of the municipal clerk.

<sup>1</sup> 2024 WI 32. Wisconsin Supreme Court Number: 2024AP000164; Dane County Circuit Court Number: 2023CV1900

<sup>2</sup> 2022 WI 64, 403 Wis. 2d 607; 976 N.W.2d 519.

Wisconsin Elections Commissioners  
Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

**1. Does the decision affect all municipal clerks?**

Yes. The decision permits all municipal clerks to choose to use secure absentee ballot drop boxes in their jurisdiction if they wish, starting immediately.

**2. What does the decision say?**

The Wisconsin Supreme Court determined that the statute that permits voters to return their absentee ballots “to the municipal clerk issuing the ballot or ballots” refers to a person, not a location. The court asserted that this interpretation of state law is consistent with Wisconsin’s highly decentralized system whereby municipal clerks have broad statutory discretion to administer elections in their jurisdiction. Accordingly, since voters may return their absentee ballots to the municipal clerk, or his or her authorized representatives, they may do so via drop box, if that’s a method the municipal clerk chooses to utilize.

**3. Does the decision change any established practice?**

Yes. The decision reverses a prior Wisconsin Supreme Court decision, in part, and holds that secure drop boxes are a legal method of absentee ballot return under Wisconsin law.

**4. Do clerks have to use drop boxes?**

No. The decision explicitly states that it does not require clerks to use drop boxes, it just says that the law permits clerks to utilize them if they choose. So if a municipal clerk decides not to use drop boxes in an exercise of clerk election administration discretion, they will not be violating the *Priorities USA* decision. Clerks should note, however, that choosing not to use drop boxes because of a belief that they are not legal is likely inconsistent with the reasoning of the decision, and raises the risk of a legal challenge.

**5. Can a clerk be successfully sued if he or she chooses not to utilize drop boxes?**

Likely not. If a clerk chooses not to use drop boxes in upcoming elections, it is very unlikely that a challenger would be successful in arguing that *Priorities USA* requires them to be used.

**6. Are the Commission’s previous memos related to drop boxes prior to the *Teigen* decision back in effect?**

No. The Commission withdrew memoranda dated March 31 and August 19, 2020 relating to drop boxes as part of the *Teigen* litigation on February 16, 2022. The *Priorities USA* decision does not mean either of those memoranda are back in effect.

This memorandum, dated July 11, 2024, is the Commission’s sole issued guidance document related to drop boxes as of this date.

**7. Did the decision discuss where drop boxes may be located and who can set them up?**

Yes. The decision stated that drop boxes are set up, maintained, secured, and emptied by the municipal clerk, which includes their authorized representatives. A single person need not set up, maintain, secure, and empty all drop boxes in a municipality. The drop boxes may be placed in a location other than the municipal clerk’s office, and may be placed in any location that the municipal clerk, within his or her statutory discretion, designates.

## **8. Do drop boxes need to be secure? What should clerks consider when examining drop box security?**

Yes. The decision held that state law permits clerks to lawfully utilize secure drop boxes in an exercise of their statutorily conferred discretion. The decision did not provide guidance on what it means for a drop box to be “secure.” The Commission recommends that clerks keep the following non-exhaustive security considerations in mind when planning to utilize drop boxes, which are consistent with guidance from the U.S. Election Assistance Commission (EAC) and the U.S. Cybersecurity and Infrastructure Security Agency (CISA). These considerations are merely a starting point—the Commission recommends that clerks thoroughly complete a security assessment for each intended drop box location prior to deployment. The Commission recommends the following best practices:

### **Best Practices: Physical Security of the Drop Box Itself**

- The drop box be securely affixed to the ground or the side of the building, or secured such that the drop box cannot be removed or tampered with.
- If located outside, the drop box be sturdy enough to withstand the elements so the ballots inside will remain unspoiled.
- The drop box be secured against unlawful access or emptying.
- The slot of the drop box be appropriately sized so that only an absentee ballot can be deposited and not other objects or liquids.
- Any damage to or tampering with the drop box be documented and the drop box be inspected to ensure that it remains secure for the purpose of depositing absentee ballot envelopes.
- The drop box be clearly marked or labeled that the drop box is for the purpose of collecting absentee ballots in return envelopes.
- The time of final retrieval of ballot return envelopes be clearly marked on or near the drop box. After the time of final retrieval, the drop box be secured to prevent the submission of absentee ballot return envelopes.

### **Best Practices: Security of the Drop Box Surroundings**

- The drop box be located in a safe location with adequate parking and safe access for pedestrians.
- The drop box be located in a well-lit area.
- The drop box be clearly visible, and the path to the drop box be accessible with clear and level ground space in front.

### **Best Practices: Security of Ballot Retrieval/Emptying**

- The drop box be emptied often enough to avoid the box from being filled with ballots, and a record of the times and dates of retrieval, number of ballots retrieved and the person or persons participating in the retrieval be maintained.
- Ballots retrieved from a drop box be securely transported to the office of the clerk.
- The drop box be equipped with unique locks or seals to secure ballots.

- Absentee ballots that are returned via drop box be secured and transported in the same manner as all other absentee ballots received by clerks. Please refer to page 104 of the Election Administration Manual for guidance on how to secure and transport voted absentee ballots.

The Commission recommends that clerks review the following resources from the EAC and CISA as a starting point for procedures on the secure administration of drop boxes:

- EAC Quick Start Guide on Drop Boxes (PDF)
  - [https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot\\_Drop\\_Boxes\\_EAC\\_Quick\\_Start\\_Guide\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf)
- EAC Election Management Guidelines, Pages 53, 80, 100 (PDF)
  - [https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC\\_Election\\_Management\\_Guidelines\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf)
- EAC Sample FAQ Language for How Drop Boxes Work that Can be Adapted for Wisconsin
  - <https://www.eac.gov/how-do-drop-boxes-work>
- CISA Drop Box Considerations
  - [https://www.cisa.gov/sites/default/files/2023-07/Ballot\\_Drop\\_Box.pdf](https://www.cisa.gov/sites/default/files/2023-07/Ballot_Drop_Box.pdf)

## **9. Does the governing body of the municipality need to be the one to designate drop box locations?**

No. The governing body of the municipality designates the location of alternate absentee voting sites under Wis. Stat. § 6.855. The *Priorities USA* decision clearly states that state law “...requires only that the ballot be delivered to a location the municipal clerk, within his or her discretion, designates.”<sup>3</sup> The municipal clerk has the authority to designate drop box locations.

## **10. Who can return a ballot to a drop box?**

A voter may return his or her own ballot. An individual may also return the ballot of anyone he or she is lawfully assisting, such as a voter with a disability or a hospitalized voter. An individual is permitted to provide assistance to more than one disabled or hospitalized absentee voter. These principles were issued in Commission guidance following the litigation in *Carey v. WEC*, and are unchanged by the *Priorities USA* decision.<sup>4</sup>

The decision does not say that drop boxes need to be staffed, nor does the decision require a clerk to ask any questions of a voter who is attempting to return a ballot to a drop box.

## **11. What steps should clerks take if they want to display their drop box locations on MyVote ahead of the August 13, 2024 election?**

Once implemented, clerks will be able to add drop box locations and information to WisVote under Election Specific Absentee Options, which will make the drop box locations viewable to voters in their municipality on MyVote. Registered voters in these municipalities will be able to see the information under “Find My Local Absentee Options” button from the Vote Absentee section (<https://myvote.wi.gov/en-us/VoteAbsentee>). Clerks will receive detailed instructions when this functionality becomes available again.

Clerks are encouraged to communicate to voters as to the dates, times, and locations of drop boxes, as well as final retrieval dates and times.

<sup>3</sup> *Priorities USA v. WEC*, 2024 WI 32, P26. The *Priorities USA* decision also states that Wis. Stat. § 6.855 “...simply does not apply to drop boxes.” *Id.* at P29.

<sup>4</sup> Available at: <https://elections.wi.gov/memo/guidance-absentee-ballot-return-options-under-federal-voting-rights-act>.

**12. Does the decision require clerks to track which ballots are received by drop box?**

No. Nothing in the decision requires clerks to track, mark, or otherwise separate or indicate which returned absentee ballots were received via secure drop box.

**13. May a clerk place an insert informing voters of the availability of drop boxes?**

Yes. Clerks may place an insert informing voters of the availability of drop boxes for the return of absentee ballot envelopes. Those inserts are recommended to include the locations of the drop boxes, dates and times of availability, and date and time of final retrieval of absentee ballot envelopes. Such an insert would be considered additional administrative or logistical instructions pursuant to administrative rule EL § 6.05(2).

**14. Will there be additional training on drop boxes?**

Yes. Commission staff intend to provide training to clerks in ElectEd that will be consistent with the Commission’s guidance.

**15. Are private citizens permitted to watch drop boxes if they are located in public?**

Yes, but not if the watching interferes with voting. Whoever “interrupt[s] or disturb[s] the voting...proceedings” may be fined not more than \$1,000, or imprisoned not more than 6 months or both.<sup>5</sup> Additionally, anyone who “by abduction, duress, or any fraudulent device or contrivance, impede[s] or prevent[s] the free exercise of the franchise at an election” is guilty of a Class I felony.<sup>6</sup>

Clerks immediately contact law enforcement if anyone tampers with, defaces, destroys, unlawfully empties, or interrupts, impedes, or prevents the use of a drop box.

**16. What should I do if I still have questions?**

If you have additional questions, please email [elections@wi.gov](mailto:elections@wi.gov).

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<sup>5</sup> See Wis. Stat. §§ 12.13(3)(x), 12.60(1)(b).

<sup>6</sup> See Wis. Stat. §§ 12.09(2), 12.60(1)(a).